

The Russian Orthodox Church and International Crimes: Exploring the Potential for Religious Leadership Liability for Crimes Committed in the War in Ukraine

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Abstract

International crimes have been alleged throughout the ongoing war in Ukraine with potential liability focused on political and military leaders and low-level combatants. One group that has thus far been overlooked for potential involvement in international crimes are religious leaders. There is evidence that leaders of the Russian Orthodox Church (ROC), in particular, Patriarch Kirill, influence the Russian political and military leaders, the public, and believers. This influence could involve participation in international crimes. Not investigating or questioning this influence could allow impunity to be perpetuated.

This article explores whether leaders of the ROC could be prosecuted for international crimes arising during the Russia-Ukraine war. Specifically focusing on ROC Patriarch Kirill, it discusses whether a prosecution is likely. The article is not meant to set forward a complete case against Kirill, rather, it is an important starting point to open the discussion, based on publicly available evidence. After highlighting Kirill's participation in the war, the article discusses the potential courts which could consider such a case. Then, the possible crimes including aggression, genocide, war crimes, and crimes against humanity, followed by the potential modes are liability are assessed. Finally, the *Media* Case from the International Criminal Tribunal from Rwanda is used as an analogous case to examine whether Kirill could be prosecuted as a propagandist. The article concludes that there is not currently enough evidence to raise a prosecution, however if more evidence was discovered or Kirill's actions and statements became more extreme, a prosecution could be possible.

Keywords: Russian Orthodox Church, ROC, Kirill, crimes against humanity, war crimes, aggression, genocide, international criminal law, International Criminal Court

Introduction

There is no question that crimes were committed Russia's 2022 invasion of Ukraine and the ongoing war that resulted from it. Formal allegations have been made at the International Criminal Court (ICC)'s Office of the Prosecutor against some senior political and military leaders for war crimes and crimes against humanity, however, it raises the question of whether anyone else might be held responsible.¹ One thus far overlooked area, is the leadership of the Russian Orthodox Church of the Moscow Patriarchate (ROC) who potentially have significant influence within the government.

While Russia is constitutionally a secular state, the ROC is entwined in Russian public life, including in its political and international affairs.² As discussed below, ROC leaders may be advising the government in how it conducts the war, providing justification for its continuation, and encouraging Russian combatants to commit international crimes. This level of influence and involvement implies that ROC leaders may be responsible for some of the criminal activities taking place in this conflict.

Generally, groups cannot be held criminally responsible, and the ICC's Statute only allows the Court to exercise jurisdiction over individuals, meaning that the ROC, as an entity, cannot be held responsible for its involvement in committing international crimes.³ Instead, any accountability must be directed at individual church figures, and particularly its leaders. Determining leadership is particularly underscored in international criminal law by the charging policy to prosecute those who are "most responsible" for international crimes.⁴

1 "Ukraine – Situation in Ukraine," International Criminal Court, accessed September 19, 2025, <https://www.icc-cpi.int/situations/ukraine>

2 Natalia Dubtsova, "The Role of the Orthodox Church in Advancing Putin's War Messaging," Reuters Institute, June 2023, https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2024-02/RISJ%20Fellows%20Paper_Natalia_Trinity2023_Final.pdf

3 Jérôme de Hemptinne et al., eds., *Modes of Liability in International Criminal Law* (Cambridge: Cambridge University Press, 2019).

4 Office of the Prosecutor, *Policy Paper on Case Selection and Prioritisation*, International Criminal Court, 15 September 2016, 14, accessed September 19, 2025, https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf

Who qualifies as a religious leader is not a legal concept and, at times, is not easily defined.⁵ Some guidance can be found in the United Nations Development Programme Guidelines on Engaging with Faith-based Organizations and Religious Leaders which states that “priests, imams, rabbis, clerics, monks, nuns, lamas, traditional indigenous spiritual guides such as shamans and sukias, and lay religious leaders” are religious leaders.⁶ However, it is not only the title which determines who may be a religious leader. Ioana Cismas argues that a distinguishing feature of religious leaders is their complex “command-obedience” relationship with their followers.⁷

The ROC is an internationally recognized religion with a strict hierarchical structure. Vladimir Mikhailovich Gundyayev, better known as Patriarch Kirill, is the Patriarch of Moscow and all Rus’ and as such is the undisputed head of the Church. Other leaders may include members of the ROC Holy Synod, bishops, heads of ROC bodies and others.

With regard to the war in Ukraine, there is evidence that the ROC and its leadership is providing advice to political and military leaders, particularly President Putin, and that it is encouraging violence and hatred against Ukrainians and those who do not support Russia. This cooperative relationship between the ROC and state, and the encouragement that the church has been providing to combatants and citizens leads to the question of this paper: Could the religious leaders of the Russian Orthodox Church be tried for violations of international criminal law regarding the war in Ukraine?

Some precedent exists for holding religious leaders accountable for international crimes. Christian clergy played an important and devastating role in the Rwandan Genocide, with churches becoming massacre sites and church personnel and religious leaders participating in the killings.⁸ The wars in Yugoslavia were in part fueled by religious divisions and distrust encouraged

5 Ioana Cismas, “The Relevance of International Law Standards to Religious Leaders,” in *Religion Hateful Expression and Violence*, eds. Morten Bergsmo and Kishan Manocha (Brussels: TOAEP, 2023), 514–518.

6 United Nations Development Programme, *Guidelines on Engaging with Faith-based Organizations and Religious Leaders*, 2014, 5, accessed September 19, 2025, <https://www.undp.org/sites/g/files/zskgke326/files/publications/UNDP-CSO-Engaging-FBOs-RLs-October-2014.pdf>; Cismas, “The Relevance of International Law Standards”, 514.

7 Cismas, “The Relevance of International Law Standards”, 516; Ioana Cismas and Ezequiel Heffes, “Not the Usual Suspects: Religious Leaders as Influencers of International Humanitarian Law Compliance,” in *Yearbook of International Humanitarian Law*, vol. 22, ed. Terry D. Gill et al. (The Hague: T.M.C. Asser Press, 2021), 138–139.

8 Timothy Longman, “Church Politics and the Genocide in Rwanda,” *Journal of Religion in Africa* 31, no. 2 (2001): 163 <https://doi.org/10.1163/157006601X00112>; Gerard van ’t Spijker, “The Churches and the Genocide in Rwanda,” *Exchange* 26, no. 3 (1997): 233, <https://doi.org/10.1163/157254397X00421>.

by political and religious leaders,⁹ though no Yugoslavian religious leaders have ever been prosecuted at least on international level. At the ICC, Joseph Kony, who is wanted for crimes against humanity and war crimes is said to be a religious leader possessed by very powerful spirits which he uses in part to control his followers and encourage them to commit crimes.¹⁰

This article explores the possibility of prosecuting ROC religious leaders for international crimes within the context of the Russia-Ukraine war. It does so by specifically focusing on Patriarch Kirill as the ROC leader and potentially one of the “most responsible” people. Others, such as ROC bishops, might have had an important organizing role or helped in disseminating propaganda, but further evidence would be needed, so it is beyond the scope of this article.

This article sets out to answer the research question by examining Kirill’s statements and actions considering current international criminal law.¹¹ It argues that he is involved in the war in two ways. The first is by providing foundational justification and advice to Putin and military leaders to rationalize the war. The second is by encouraging believers to participate in the war effort. Each of these actions could result in criminal liability, but it is unlikely either meets the statutory definition of any crime prosecutable by the ICC. The first is thwarted because that type of advice does not fit in with a mode of international criminal liability and the second lacks specificity. However, either or both could easily allow for prosecution should more evidence come to light, or the conditions change.

Section 2 discusses Kirill’s actions. It establishes that he has both an advisory role and an encouraging role in the war effort. Section 3 discusses possible venues where he might be prosecuted. Domestic prosecution, universal jurisdiction, the ICC, and the Special Tribunal for the Crime of Aggression against Ukraine (The Special Tribunal) are all discussed. It is

9 Mohamed Elzarka, “The Role of Religion in the Yugoslav War,” *Aisthesis* 9 (2018): 58, <https://pubs.lib.umn.edu/index.php/aisthesis/article/view/1235>

10 *Prosecutor v. Joseph Kony*, Case No. ICC-02/04-01/05, Warrant of Arrest, International Criminal Court, 8 July 2005; Kristof Titeca, “Joseph Kony and the Lord’s Resistance Army: Violence, Myths and Media,” *Africa Spectrum* 54, no. 2 (2019): 4, <https://doi.org/10.1177/0002039719851156>

11 There are, however, some further caveats to this research. The first is that regarding the information about what Kirill has said or done, it is limited to publicly available online sources. There could be more and stronger evidence that could come to light should an official investigation occur. Further, the sources have been read in English which is an issue because they were translated from Russian and so some meaning could have been changed or lost and also because only English language searches were conducted. Finally, this paper was written while the war was ongoing. It is possible that their involvement could change and there could be either more direct involvement or less involvement by these two individuals as the war continues.

determined that the ICC is probably the most appropriate venue at least in part because they have already brought charges against other Russian leaders and have the means to gather evidence and call witnesses which might be a challenge for national courts and because of the particular issues that aggression charges pose. Section 4 discusses the crimes available for prosecution. It focuses on the definitions of crimes provided by the Rome Statute of the ICC and argues that war crimes and crimes against humanity are the most likely charges to be lodged against Kirill. Section 5 discusses modes of liability and the connections required between religious leaders and the crimes that are committed by others. Section 6 will discuss the possibility of Kirill being prosecuted as a propagandist and will use the Rwandan *Media* case as an analogy. Finally, Section 7 will offer a brief conclusion.

Russian Orthodox Church, Patriarch Kirill and Their Role in the War

Despite being a constitutionally secular country, the Russian government and the Russian Orthodox Church are deeply entwined. The ROC itself is interested in international affairs and the leaders, including Patriarch Kirill, have provided justification for Russia's invasion in Ukraine and advice to President Putin.¹² Evidence indicates that trust and belief in the Russian Orthodox Church is related to Russians' increased feelings of nationalism.¹³

While formally the Moscow Patriarch is limited by the Holy Synod and other bodies, it could safely be said that Patriarch Kirill controls the Church in a particularly authoritarian manner, by exerting his power in a way that has exceeded others who have held the position.¹⁴ Kirill is a great ally

12 Alar Kilp, "The Russian Orthodox Church and Patriarch Kirill Weaponizing Teaching of Human Rights and Ecclesiastical Social Doctrine to Justify the Russian War of Aggression in Ukraine," *Journal of Law, Religion and State* (2026) (forthcoming); Agnieszka Łukasik-Turecka, "Church of War: Propaganda and Disinformation in Patriarch Kirill's Discourse on Russia's Aggression," *Cogent Arts & Humanities* 12, no. 1 (2025): 2515329, <https://doi.org/10.1080/23311983.2025.2515329>.

13 Dubtsova, "The Role of the Orthodox Church in Advancing Putin's War Messaging", 10.

14 Katarzyna Chawryło, "A Holy War. The Russian Orthodox Church Blesses the War against the West," OSW – Centre for Eastern Studies, April 12, 2024, <https://www.osw.waw.pl/en/publikacje/osw-commentary/2024-04-12/a-holy-war-russian-orthodox-church-blesses-war-against-west>; Alar Kilp and Jerry G. Pankhurst, "Soft, Sharp, and Evil Power: The Russian Orthodox Church in the Russian Invasion of Ukraine," *Occasional Papers on Religion in Eastern Europe* 42, no. 5 (2022): 2, <https://doi.org/10.55221/2693-2148.2361>

of Putin and uses his position and the Church to provide support for the invasion and war in Ukraine.¹⁵ The Patriarch is at the center of the religion and controls what is done in all levels and areas of the church.

Under Kirill's leadership the ROC's influence has become more than religious, reaching into the political and international spheres. This has allowed the ROC to wield power and influence in countries across the globe spreading pro-Russian ideologies and propaganda.¹⁶

With regard to the current war in Ukraine, this understanding of the *Russky mir* (Russian World) doctrine provides the foundational ideologies to justify the Russian invasion of Ukraine and the war. Kirill voiced support for the war since its start, and that support has become increasingly radical over time. Arguing that Ukraine is a part of *Russky mir*, Kirill has provided justification for Putin to see Ukraine as territory that is not separate from Russia, which justifies Russia's presence in Ukraine.¹⁷ Further, Kirill, has used the ROC's organizational structure to set out strong anti-Western cultural arguments over time leading up to the invasion which provided justification for Putin, the Russian Foreign Ministry, and the Defense Ministry to invade Ukraine.¹⁸ Kirill's vision of *Russky mir* is being "manipulated into justifications for 'manifestations of hatred' carried out in the warfare itself entailing 'fratricidal clashes' between Russians and Ukrainians".¹⁹ By providing the justification for invading Ukraine and engaging in war, Kirill is carrying out an advisory role toward the political and military leaders. While seeing the Russian world as expansive and the Ukrainian territory and people as Russian does not provide strategic or specific military or political advice, it is the foundation on which those decisions are made.

In addition to the general and foundational support that Kirill has provided for the war, he has made many statements during sermons and in written documents with the intention of supporting the war. In statements and a published policy paper, Kirill declared the war a "Holy War".²⁰ During a sermon on 27 February 2022, he made a statement including his vision

15 Dubtsova, "The Role of the Orthodox Church in Advancing Putin's War Messaging," 34.

16 Kilp and Pankhurst, "Soft, Sharp, and Evil Power," 11.

17 Kilp and Pankhurst, "Soft, Sharp, and Evil Power," 4.

18 Kilp and Pankhurst, "Soft, Sharp, and Evil Power," 4.

19 Kilp and Pankhurst, "Soft, Sharp, and Evil Power," 6.

20 Riley Bailey, Christina Harward, Angelica Evans, and George Barros, "The Russian Orthodox Church Declares 'Holy War' Against Ukraine and Articulates Tenets of Russia's Emerging Official National Ideology," *Institute for the Study of War Press*, March 30, 2024, accessed September 19, 2025, <https://understandingwar.org/research/russia-ukraine/the-russian-orthodox-church-declares-holy-war-against-ukraine-and-articulates-tenets-of-russias-emerging-official-nationalist-ideology/>

of the Russian war and the war's justification: "May the Lord preserve the Russian land... a land which now includes Russia and Ukraine and Belarus and other tribes and peoples."²¹ He has also called those fighting against unification of Russia and Ukraine "evil forces."²² Kirill argues that because Ukraine belongs to Russia (through the concept of *Russky mir*) then areas in the canonical territory of the ROC, such as Ukraine, should be cleansed or purified of those who do not support Russia, including those not supporting the church.²³

While declaring people (including Ukrainians) fighting against Russia as enemies and "evil forces" the Patriarch also glorifies the war and encourages supporters to engage in combat by equating participation in the "holy war" with acting on behalf of God, with the reward of having their sins washed away.²⁴ By claiming that dying while fighting for Russia can save one's soul, the Patriarch may be attempting to radicalize Russian supporters to encourage participation in the war and incite hatred against anti-Russian supporters including Ukrainians.

Kirill's statements of support are not limited to sermons or dissemination within the church. His declarations are available in print, and he says similar things in Russian television interviews.²⁵ Further, his messages are sent to Russians fighting in Ukraine through state and social media.²⁶ The messages that the war is not only based on national or political lines, but that it also has a religious or spiritual component, is designed to further the devotion of the combatants to the Russian cause. When combined with messages of hatred for Ukrainians and those who do not support Russia,

21 "RUSSIA: Patriarch Kirill should be prosecuted by the ICC according to an NGO," Human Rights without Frontiers, 2022, accessed September 19, 2025, <https://hrwf.eu/russia-patriarch-kirill-should-be-prosecuted-by-the-international-criminal-court-icc-according-to-a-ngo-report/>

22 "RUSSIA: Patriarch Kirill should be prosecuted by the ICC according to an NGO".

23 Natalia Zhdanova, "From Pulpit to Propaganda Machine: Tracing the Russian Orthodox Church's Role in Putin's War," *Reuters Institute*, February 6, 2024, accessed September 19, 2025 <https://reutersinstitute.politics.ox.ac.uk/pulpit-propaganda-machine-tracing-russian-orthodox-churchs-role-putins-war>

24 "Orthodox Church Leader Says Russian Soldiers Dying in Ukraine Will Be Cleansed of Sin," *Reuters*, September 26, 2022, accessed September 19, 2025, <https://www.reuters.com/world/europe/orthodox-church-leader-says-russian-soldiers-dying-ukraine-will-be-cleansed-sin-2022-09-26/>

25 Lilia Kovalyk-Vasiuta, "Ukraine's Secret Service announces suspicion against Russian Orthodox Patriarch Kirill amid Russian strike in Odesa," *Catholic Review*, November 6, 2023, accessed September 19, 2025 <https://catholicreview.org/ukraines-secret-service-announces-suspicion-against-russian-orthodox-patriarch-kirill-amid-russian-strike-in-odesa/>

26 Stephen Minas, "Is the leader of Russia's church aiding and abetting Russian crimes in Ukraine?," *Jus Cogens*, May 10, 2022, accessed September 19, 2025 <https://juscogens.law.blog/category/international-criminal-law/>

these statements may incite combatants to take larger risks and to breach international humanitarian law while engaging in warfare. Fighting a war against “evil” people may provide encouragement to those fighting to defeat Ukrainians by any means including committing war crimes and crimes against humanity.

Meanwhile, the ROC and Kirill have been notably silent about mounting evidence regarding war crimes, crimes against humanity and other atrocities that Russian forces appear to be committing in Ukraine.²⁷ There is evidence of mass killings, arbitrary detention, torture, sexual violence, intentional targeting of civilians, intentional destruction of cultural property, child abduction, and mass deportations.²⁸ Any of which could qualify for violations of humanitarian law and international crimes by Russian forces. For silence to be a crime, Kirill would need to have control over the armed forces such that he could potentially stop them.²⁹ While that is not the case for Kirill, this silence, particularly by a person and group that are so vocal about supporting Putin and the war, might be taken as support and complicity in these activities.

Where Could Kirill be Prosecuted?

While countries can prosecute their own citizens for international crimes, because of the collaborative nature between the Russian government and the ROC, Russia is extremely unlikely to prosecute ROC religious leaders including Kirill. Therefore, any prosecution would need to occur in a different jurisdiction. There are four other possibilities for types of courts that could prosecute religious leaders coming out of this war for international crimes: domestic prosecution in Ukraine; domestic prosecution in a third state using universal jurisdiction; The Special Tribunal; and the ICC.

27 Kovalyk-Vasiuta, “Ukraine’s Secret Service announces suspicion.”

28 “UN Commission concludes that war crimes have been committed in Ukraine, expresses concern about suffering of civilians,” Office of the High Commissioner for Human Rights, September 23, 2022, accessed September 19, 2025, <https://www.ohchr.org/en/press-releases/2022/10/un-commission-concludes-war-crimes-have-been-committed-ukraine-expresses>; *Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine Since 24 February 2022*, Organization for Security and Co-operation in Europe (OSCE), April 13, 2022, accessed September 19, 2025, <https://www.osce.org/files/f/documents/f/a/515868.pdf>

29 *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 UNTS 90, Art. 28.

Domestic prosecution of international crimes in Ukraine is a possibility. Ukraine has already shown some willingness and capacity to carry out domestic investigations and trials for international crimes committed during the war.³⁰ They have already started over 150,000 investigations into war crimes.³¹ However, these prosecutions have focused on soldiers who have directly perpetrated crimes, such as killing civilians or targeting civilian buildings, and the justice system is overwhelmed with investigations and cases.³² These are relatively easy for domestic courts to prosecute because the evidence of the crime and the alleged perpetrator, victims and witnesses are all located within the state. However, even prosecuting a portion of these cases will quickly overcome the criminal justice system.³³ Prosecuting Kirill will be much more difficult for Ukraine to carry out as much of the evidence, the accused, and witnesses are in Russia. This will also make the trial much more expensive and time consuming for Ukrainian courts. While Ukraine does have capacity for investigations and trials, their resources might be better used focusing on those who have committed crimes through direct perpetration.

Domestic prosecution in a third state using universal jurisdiction could also be an option for prosecuting Kirill. The use of universal jurisdiction occurs when a third state prosecutes international crimes without any other connection to that crime or the alleged perpetrator.³⁴ The third state, therefore, is neither the state that the suspect or victim is from nor the state where the crimes allegedly occurred. Justification for the third state to prosecute international crimes that they do not have another connection to stems from the idea that universal jurisdiction only extends to the most serious crimes and is predicated on the notion that their seriousness warrants a response from all legal systems.³⁵ The use of universal jurisdiction is expensive and difficult because of a lack of direct ties to evidence, however,

30 Max Hunder, "Ukraine Says It Identified 511 War Crime Suspects, Convicted 81," *Reuters*, February 29, 2024, accessed September 19, 2025, <https://www.reuters.com/world/europe/ukraine-says-it-identified-511-war-crime-suspects-convicted-81-2024-02-29/>

31 Mischa Gureghian Hall, "Overfocusing on Prosecuting Aggression Risks Impunity for Ukraine's Swelling Dock of Alleged War Criminals," *Opinio Juris*, February 7, 2024, accessed September 19, 2025, <http://opiniojuris.org/2024/02/07/overfocusing-on-prosecuting-aggression-risks-impunity-for-ukraines-swelling-dock-of-alleged-war-criminals/>

32 Hall, "Overfocusing on Prosecuting Aggression."

33 Hall, "Overfocusing on Prosecuting Aggression."

34 Luc Reydams, *Universal Jurisdiction: International and Municipal Legal Perspectives* (Oxford: Oxford University Press, 2004), <https://doi.org/10.1093/acprof:oso/9780199274260.001.0001>

35 TRIAL International, *Universal Jurisdiction Database*, accessed September 19, 2025, <https://ujim.trialinternational.org>

while use of universal jurisdiction fell out fashion in the mid-2000s, its use has increased in recent years.³⁶ Often this form of jurisdiction fills a gap for cases or situations where domestic prosecution is not possible and the ICC does not have jurisdiction. A current example of this can be found in the ongoing prosecutions in Germany for crimes committed during the Syrian civil war.³⁷ However, universal jurisdiction is not limited to this use. Government leaders have been prosecuted in the past and, at times, universal jurisdiction has been used to supplement prosecutions that have otherwise been held at national or international courts and tribunals.³⁸ Criminal trials resulting from the Rwandan Genocide provide a good example. While cases from this situation have been tried at the International Criminal Tribunal for Rwanda (ICTR) and others have been tried domestically within Rwanda,³⁹ there have been also prosecutions of suspects related to the Rwandan situation in Canada and several European countries.⁴⁰

Germany is the only country which seems to be prosecuting universal jurisdiction cases resulting from the current Russia-Ukraine war.⁴¹ However, Finland recently held a trial against and convicted a Russian national for war crimes committed in Ukraine in 2014.⁴² This shows that some countries are willing to engage with universal jurisdiction to prosecute Russian nationals for international crimes in Ukraine, leading to a possibility of future universal jurisdiction trials for war crimes, crimes against humanity, and other international crimes arising out the current war. These future investigations and trials could potentially include religious leaders.

The ICC is a likely location where Kirill could be prosecuted. The Court has jurisdiction to prosecute individuals accused of crimes under its Statute in instances where the state where the crimes were committed or the accused are citizens are unwilling or unable to prosecute.⁴³ The requirement of unwilling

36 TRIAL International, *Universal Jurisdiction Database*.

37 TRIAL International, *Universal Jurisdiction Database*.

38 Reydams "Universal Jurisdiction."

39 Jean Bosco Mutangana, "Domestic Justice Mechanisms: Perspectives on Referred Cases," paper presented at the International Symposium on the Legacy of the ICTR, November 2014, <https://unictr.irmct.org/sites/unictr.org/files/publications/compendium-documents/v-domestic-justice-mechanisms-mutangana.pdf>

40 TRIAL International, *Universal Jurisdiction Database*.

41 Monica Ellena, "Universal Jurisdiction: A Key Tool for Accountability," *Institute for War and Peace Reporting*, February 6, 2024, accessed September 19, 2025, <https://iwpr.net/global-voices/universal-jurisdiction-key-tool-accountability>.

42 TRIAL International, "Yan Petrovsky (AKA Vojislav Torden)," April 10, 2025, accessed September 19, 2025, <https://ujim.trialinternational.org/latest-post/yan-petrovsky/>

43 *Rome Statute*, Art. 17.

or unable has been interpreted as when a country either obstructs fair judicial procedure, such as holding sham trials, or the national justice process has collapsed or is otherwise unavailable.⁴⁴ Russia is probably unwilling, and Ukraine is likely unable to prosecute these leaders as their capacity is limited, particularly while the war is ongoing. The ICC has jurisdiction over crimes committed within the context of the war with Ukraine. While neither Russia nor Ukraine were not states parties of the Court when the war began, Ukraine became a state party in January 2025.⁴⁵ Further, Ukraine has accepted the Court's jurisdiction for crimes committed within its territory since 2014.⁴⁶ As a result, the ICC has already opened an investigation into the situation in the Russia-Ukraine war. The Office of the Prosecutor, which oversees investigations and determines who can be charged with international crimes, focuses on crimes committed by leaders including those who are the "most responsible."⁴⁷ To date, six arrest warrants have been issued for top Russian leaders, Vladimir Putin, Maria Lvova-Belova, Sergei Kobylash, Viktor Sokolov, Sergei Shoigu and Valery Gerasimov, for alleged war crimes and crimes against humanity.⁴⁸ Because of his high position and direct connection to the government, the ICC could be a good venue for prosecution of the Patriarch, were an international prosecution started against him.

The Special Tribunal should also be considered. The Statute creating this tribunal was signed in June 2025 and it is planned to be operationalized in 2026. The only crime within its jurisdiction is aggression in Ukraine and

44 Caleb Wheeler, *Fairness and the Goals of International Trials* (New York: Routledge, 2023), 37.

45 "Ukraine – Situation in Ukraine," International Criminal Court.

46 Embassy of Ukraine, "Letter to Registrar, International Criminal Court," April 9, 2014, accessed September 19, 2025, <https://www.icc-cpi.int/sites/default/files/itemsDocuments/997/declarationRecognitionJurisdiction09-04-2014.pdf>; Pavlo Klimkin, "Letter to Herman von Hebel," September 8, 2015, accessed September 19, 2025, https://www.icc-cpi.int/sites/default/files/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf.

47 Office of the Prosecutor, *Policy Paper on Case Selection and Prioritisation*, International Criminal Court, 15 September 2016.

48 Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova," Int'l Criminal Court, Press Release, March 17, 2023, accessed September 19, 2025, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>; "Situation in Ukraine: ICC Judges Issue Arrest Warrants against Sergei Ivanovich Kobylash and Viktor Nikolayevich Sokolov," Int'l Criminal Court, Press Release, March 5, 2024, accessed September 19, 2025, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-sergei-ivanovich-kobylash-and>; "Situation in Ukraine: ICC Judges Issue Arrest Warrants against Sergei Kuzhugotovich Shoigu and Valery Vasilyevich Gerasimov," Int'l Criminal Court, Press Release, June 25, 2024, accessed September 19, 2025, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-sergei-kuzhugotovich-shoigu-and>

Kirill could be prosecuted here if he meets the requirements of this crime, which is discussed in the next section.

The ICC, The Special Tribunal, third state prosecution through universal jurisdiction, and domestic prosecution are types of courts which could prosecute Russian religious leaders for international crimes committed in Ukraine. While each of these types of courts could, at least theoretically, prosecute religious leaders anywhere in the hierarchy of the ROC, the venues are more suited to particular types of cases. For example, the ICC would probably be the most appropriate venue for the Moscow Patriarch. It is able to provide higher security for detained suspects than national courts might be able to provide and have experience detaining government leaders. Presumably, the Special Tribunal would also have this, as an international tribunal, however details of the court's location and security have not yet been determined. Of course, high ranking officials could be prosecuted through third states using universal jurisdiction or domestic prosecutions, however, this might prove more difficult for an individual state to manage. This is because leadership cases require evidence of plans and agreements that might not be available to individual states, and the states might not have the resources to acquire that evidence. However, lower-level direct perpetration cases are easier to prosecute as they do not require a common plan, and they may be proven through eyewitness testimony and other more readily available evidence. This means that this type of case will take fewer resources to prosecute and might be more easily handled by a state. The ICC has already started investigations against Russian leaders and would have the jurisdiction and capacity for this kind of trial.

Crimes Available for Prosecution

International crimes are wide-ranging, and their specific definition depends on the jurisdiction within which the allegations are made. For the purposes of this article, the ICC's definitions of international crimes will be used. That is because the ICC is a feasible jurisdiction for religious leaders in this situation to be prosecuted, the ICC's definitions of crimes were written through UN based international negotiations, and these definitions have some basis in customary international law.⁴⁹ The other reason is that while these defini-

49 John Washburn, "The Negotiation of the Rome Statute for the International Criminal Court and International Lawmaking in the 21st Century," *Pace International Law Review* 11, no. 2 (1999):

tions are not the only definitions of international crimes, they do describe the major crimes of aggression, genocide, crimes against humanity, and war crimes, and it is common for domestic legislation allowing for prosecution of international crimes to use the ICC's definitions as a basis, even if their definitions are ultimately different. These definitions are underpinned by ideas understood and accepted as criminally wrong across nations.

There are four types of crimes under the jurisdiction of the ICC: aggression; genocide; war crimes; and crimes against humanity. While there may be evidence of all four of these types of crimes in the Ukrainian situation, there is no possibility of aggression being charged and very little chance of genocide being available. Most likely, Kirill and other ROC leaders, could be tried for crimes against humanity and/or war crimes.

Aggression

The International Criminal Court and the Special Tribunal use the same basic definition for the crime of aggression. Aggression is “the use of armed force by a State against the sovereignty, territorial integrity or political independence of another state...” and includes invasion, military occupation and other uses of force.⁵⁰ The 2022 Russian invasion in Ukraine, which started the current hostilities, is widely considered an act of aggression committed by Russia.⁵¹ However, aggression cannot be charged at the ICC in this situation. This is because article 15*bis* of the Rome Statute requires the aggressive state to be a party to the Statute or the aggressive situation could have been referred to the Court by the Security Council under article 15*ter*.⁵² While Ukraine accepted the ICC's jurisdiction and became a state party on 1 January 2025, Russia, the alleged aggressor, is not a party to the Rome Statute. Further, situation was not referred to the Court by Security Council under article 15*ter*; and nor would it, as Russia would almost certainly exercise its veto over any such referral. Unlike the ICC, the Special Tribunal does not have this jurisdictional issue. Article 1 of the Special

361, <https://doi.org/10.58948/2331-3536.1238>

50 *Rome Statute*, Art. 8 bis; *Statute of the Special Tribunal for the Crime of Aggression in Ukraine*, Art. 2.

51 Julia Geneuss and Florian Jeßberger, “Russian Aggression and the War in Ukraine: An Introduction,” *Journal of International Criminal Justice* 20, no. 4 (2022): 783, <https://doi.org/10.1093/jicj/mqac055>

52 Carrie McDougall, “Expanding the ICC's Jurisdiction over the Crime of Aggression,” *Journal of International Criminal Justice* 22, nos. 3–4 (2024): 543, <https://doi.org/10.1093/jicj/mqae042>

Tribunal's Statute states that it has jurisdiction over acts of aggression that occur within Ukrainian territory. This means that the alleged perpetrator's nationality is irrelevant to whether the tribunal has jurisdiction over a case.

Aside from the ICC's jurisdictional issue, religious leaders could not be tried with aggression at either the ICC or the Special Tribunal. Only people who plan, prepare, initiate or execute the aggression and are "in a position effectively to exercise control over or to direct the political or military action of a State".⁵³ This means that there is a possibility that only heads of state or high-ranking military leaders may be charged with aggression, as they are the ones who normally have this level of control. It is unlikely, and there is no evidence that, Kirill has the power to directly and effectively control Russia's political or military actions. Absent that authority, he would be an inappropriate person to charge with aggression, even if the jurisdictional issues did not exist.

Genocide

It is possible to charge genocide in this situation, but it is very unlikely. Genocide involves committing certain acts with the intention to destroy a group or part of a group of people based on their nationality, ethnicity, race or religion.⁵⁴ The acts that can give rise to genocide include: killing members of the group or causing serious physical or mental harm to the group; "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;" imposing measures on the group to prevent births; or "forcibly transferring children of the group to another group."⁵⁵ However, it is not enough to prove that someone has engaged in any of these acts for them to be found guilty of genocide, it is also necessary to demonstrate that those actions were performed with the special intent of destroying an identifiable and enumerated group. This is a high evidentiary bar, and one that would be difficult to meet in connection with Kirill.

Considering genocide within the current situation, what evidence is available is very important. The perpetrator's mindset is an essential component

⁵³ *International Criminal Court, Elements of Crimes, Art. 8 bis(1); Statute of the Special Tribunal for the Crime of Aggression in Ukraine, Art. 1(a).*

⁵⁴ *Rome Statute, Art. 6; Elements of Crimes, Art. 6.*

⁵⁵ *Rome Statute, Art. 6; Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), Art. 2.*

to genocide which requires the specific desire to destroy the specified group.⁵⁶ Russia's focus is very clearly on Ukraine, making the possible identifiable group Ukrainians. This group is clearly defined along nationality, which is a permissibly defined group within the meaning of the Statute. There is a compelling argument that Russia is trying to destroy this group in whole or in part through aggressive warfare. It is, however, not entirely clear based on the publicly available evidence, that Russian leaders, including Putin and Kirill, identify Ukrainians as a distinct national group. Instead, their statements suggest that they view Ukrainians as Russians who have been corrupted by Western forces and identify Ukraine as Russian territory that they have a right to re-occupy. The enemy in their view seems to be people who do not agree with Russia, the Russian way of life, or Russia's right to control Ukraine. Thus, from their point of view, the group they are trying to destroy is based on ideology rather than nationality. Ideology is not a protected group within the definition of genocide.

It is notable that some of the other crimes already charged within this situation contain elements that could fall within the definition of genocide, but genocide has not been charged. The ICC has alleged that children have been forcibly transferred as a war crime, in the warrants against Putin and Lvova-Belova.⁵⁷ While these actions may be actions that could be evidence of genocide, the special additional intention of destroying a group is very difficult to prove and may not present in this situation.

War Crimes and Crimes Against Humanity

War crimes and crimes against humanity have already been charged in this situation and may be entirely appropriate crimes for the religious leaders to be charged with. There is evidence of mass killings, torture, sexual violence, intentional targeting of civilians, intentional destruction of

⁵⁶ Natasha Yvonne Barigye, Melissa Hendrickse, and Vito Todeschini, "Genocidal Intent in Armed Conflict: Unpacking the ICJ's 'Only Reasonable Inference' Standard," *Opinio Juris*, May 26, 2025, accessed September 19, 2025, <https://opiniojuris.org/2025/05/26/genocidal-intent-in-armed-conflict-unpacking-the-icjs-only-reasonable-inference-standard/>; Riccardo Pisillo Mazzeschi and Eugenio Carli, "Proof of Specific Intent in the Crime of Genocide," *Journal of International Criminal Justice* 22, no. 2 (2024): 429, <https://doi.org/10.1093/jicj/mqae025>.

⁵⁷ International Criminal Court, "Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova," Press Release, March 17, 2023, accessed September 19, 2025, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>.

cultural property, child abduction, and mass deportations and any of these could be either a war crime or crime against humanity.⁵⁸ War crimes exist when the laws of war have been intentionally and significantly violated.⁵⁹ This includes either grave breaches of the Geneva Conventions or “[o]ther serious violations of the laws and customs applicable in international armed conflict”.⁶⁰ These violations include many different types of actions, such as killing or enslavement, but can be generally understood as directly or indiscriminately targeting civilians and civilian objects and mistreating prisoners of war. Crimes against humanity are similar in that they include acts committed against civilians, but they do not require a war. Instead, the acts must be “committed as part of a widespread and systematic attack... with knowledge of the attack”.⁶¹ Both war crimes and crimes against humanity can be charged in a war context. Importantly, as discussed in the next section, people other than those who physically commit the crime can be charged with war crimes and crimes against humanity, which means that it might be possible for religious leaders who are not physically present in Ukraine to nevertheless be held liable.

Theories of Liability for Prosecution of Religious Leaders for International Crimes

While there are international crimes that ROC leaders could potentially be charged with, the question of whether they can be held responsible for those crimes remains open. Kirill is located within Russia and is more likely to have a planning, ordering, or encouraging role with regard to the actions that might qualify as a war crime or crime against humanity than acting as direct, physical perpetrators of these crimes. Liability in international criminal law can be through direct or indirect perpetration or through aiding and abetting or instigation.

Direct perpetration is generally understood as the kind of liability alleged when people physically commit the alleged crimes.⁶² In this instance it

58 Kovalyk-Vasiuta, “Ukraine’s Secret Service announces suspicion against Russian Orthodox Patriarch Kirill.”

59 Rome Statute, Art. 8.

60 Rome Statute, Art. 8(2)(a) and (b).

61 Rome Statute, Art. 7(1).

62 Tom Gal, “Direct Commission,” in *Modes of Liability in International Criminal Law*, ed. Jérôme de Hemptinne, Robert Roth, and Elies van Sliedregt (Cambridge: Cambridge University Press, 2019), <https://doi.org/10.1017/9781108678957.002>

would mean that religious leaders are actually murdering people, depriving people of rights, or otherwise physically committing crimes. This, however, is unlikely in the particular situation regarding Kirill as he is generally not located within the territory of Ukraine.

International criminal law, however, also includes working jointly as a theory of direct perpetration.⁶³ These theories have evolved since Nuremberg, and the current theory of co-perpetration is used at the ICC.⁶⁴ The *Lubanga* case at the ICC defined co-perpetration generally as:

originally rooted in the idea that when the sum of the coordinated individual contributions of a plurality of persons results in the realization of all the objective elements of a crime, any person making a contribution can be held vicariously responsible for the contributions of all the others and, as a result, can be considered as a principle to the whole crime.⁶⁵

This means that religious leaders could be held directly responsible for crimes committed as part of an agreement to contribute to the overall plan to commit those crimes. If such an agreement were proven, then Kirill could be held responsible for the crime as a whole, not just the agreement to contribute to its perpetration. The ROC's deep ties with the Russian government, their advisory role, and their vision of themselves as assisting with *Russky mir*, hint that there could be such an agreement. However, advising at a foundational level and providing justification for the war is not enough to prove agreement to commit these crimes. There would need to be further proof that they agreed to provide advice of justification for a war that involves these criminal actions, not just a war in general. At this point, there is insufficient evidence to suggest that Kirill has participated in any criminal acts in a way that would suggest his direct perpetration in them.

Indirect perpetration occurs when a crime is committed by another person or persons.⁶⁶ This is a common form of responsibility when leaders

63 Darryl Robinson et al., *An Introduction to International Criminal Law and Procedure* (Cambridge: Cambridge University Press, 2024), ch. 15.

64 The Nuremberg Charter; Robinson et al., "An Introduction to International Criminal Law and Procedure," 329, n.57.

65 *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the Confirmation of Charges, Pre-Trial Chamber I, 29 January 2007 (ICC-01/04-01/06-803), para. 326.

66 Alejandro Kiss, "Indirect Perpetration," in *Modes of Liability in International Criminal Law*, ed. Jérôme de Hemptinne, Robert Roth, and Elies van Sliedregt (Cambridge: Cambridge University Press, 2019), <https://doi.org/10.1017/9781108678957.003>; Robinson et al., *An Introduction to International Criminal Law and Procedure*, 333-336.

of organizations are believed to be involved in international crimes. The ICC Statute, for example, includes a person who “[c]ommits such a crime whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible”.⁶⁷ Perpetration through another person recognizes the idea of “innocent agency,” that is, when a person uses a wholly innocent person to commit a crime.⁶⁸ The innocent people in this situation usually either did not understand the nature of their acts, were inadvertent participants, or were acting under duress.⁶⁹ The ICC has also held that this type of perpetration can occur through control of an organization leading to criminal perpetration through that organization. In this situation, the accused person must have control over an organization, the organization must be hierarchically organized and must have enough subordinates that “if the orders are not carried out by one subordinate, another will do so nearly automatically”.⁷⁰

In addition to direct perpetration, this form of perpetration has been at the crux of the arrest warrants already issued in the Ukrainian Situation. While some of the wanted individuals are alleged to have committed crimes through the modes of ordering crimes to be committed, and failure to exercise control over forces within their command, all of the accused people in this situation have allegedly committed the crimes through the modes of liability in article 25(3)(a), that is, by acting “directly, jointly with others and/or through others”.⁷¹

Given the strict hierarchical structure of the ROC, and the idea that the Church is helping expand Russian territory through the existence of churches outside of Russia, this form of liability might fit well for the Patriarch if he were to be accused of international crimes. Further, the wide dissemination of the Kirill’s statements and his control over the church and its believers would ensure that subordinates would carry out his instructions. Although some local church officials have parted ways with Russian Orthodoxy, there are plenty of others who are devoted followers of the Patriarch, believe in

67 Rome Statute of the International Criminal Court, Art. 25.

68 Kiss, “Indirect Perpetration”; Robinson, “An Introduction,” 333.

69 Kiss, “Indirect Perpetration”; Robinson, “An Introduction,” 333.

70 Kiss, “Indirect Perpetration”; Robinson, “An Introduction,” 334. n.107; *Prosecutor v. Germain Katanga*, Decision on the Confirmation of Charges, Pre-Trial Chamber I, 30 September 2008 (ICC-01/04-01/07-717).

71 “Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova,” International Criminal Court, Press Release, 17 March 2023, accessed September 19, 2025, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>

his mission, and would carry out orders which were given by him. However, this does not seem to be what is taking place. While Kirill has been spreading messages encouraging hatred, dehumanization, and violently dealing with enemies, they fall short of ordering or instructing people to commit international crimes.

Individuals can also be held liable for aiding, abetting, or encouraging international crimes. This is an idea that has been recognized in many international criminal courts and tribunals. Most recently, the ICC Statute indicates that, “a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: (c) For the purpose of facilitating the commission of such crime, aids, abets, or otherwise assists in its commission or its attempted commission, including providing the means for its commission”.⁷² The extent of participation or assistance that is necessary to prove aiding and abetting is a matter of wide-ranging debate in the field.⁷³ The Court stated in the *Bemba* case that aiding “implies practical or material assistance”.⁷⁴ Abetting only requires encouragement, which does not have to be explicit.⁷⁵ Sometimes “even the act of being present at the crime scene (or in its vicinity) as a ‘silent spectator’ can be construed as tacit approval or encouragement of the crime”.⁷⁶ And the Appeals Chamber held that there is no particular threshold as to how much assistance would qualify.⁷⁷ That is, Article 25(3)(c) “only requires that the assistance in the commission (or attempted commission) of the crime be provided for the purposes of facilitating such commission without indicating whether the conduct must have also had an effect of the commission of the offence”.⁷⁸ For this type of liability, causing divisions between Russians and Ukrainians by encouraging Ukrainians and their supporters to be seen as enemies and evil may not be enough for encouragement. Patriarch Kirill’s refusal to acknowledge or condemn the crimes that are being committed on the ground, while simultaneously advocating for hatred and violence and providing support for the war effort and the combatants, may provide

72 Rome Statute, Art. 25(3)(c).

73 Manuel J. Ventura, “Aiding and Abetting,” in *Modes of Liability in International Criminal Law*, ed. Jérôme de Hemptinne, Robert Roth, and Elies van Sliedregt (Cambridge: Cambridge University Press, 2019), <https://doi.org/10.1017/9781108678957.007>; Robinson, “An Introduction”, 337–339.

74 Robinson, “An Introduction,” 337–339.

75 *Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Public Redacted Version of Judgment pursuant to Article 74 of the Statute, Trial Chamber VII, 19 October 2016 (ICC-01/05-01/13-1989-Red), para. 88.

76 *Bemba* (Trial Chamber VII) para. 89; Ventura, “Aiding and Abetting”; Robinson, “An Introduction”, 338.

77 *Bemba* (Appeals Chamber), 8 June 2018, para. 93.

78 *Bemba* (Appeals Chamber), 8 June 2018.

tacit encouragement. However, the link is tenuous as silence in the face of international crimes is not a criminal act unless the silent person has some control, ability or responsibility to make the crimes stop.⁷⁹ It is very unlikely that the Patriarch has this ability as he is a religious leader, rather than a political or military leader.

Finally, instigation of international crimes could be an applicable theory of criminal liability. These crimes include instigation, soliciting, inducing and inciting.⁸⁰ The ICC only allows inciting for genocide, which may or may not be applicable in the Ukrainian context.⁸¹ Soliciting or inducing war crimes or crimes against humanity may be more relevant as these crimes are more likely to apply to Kirill. These modes of liability are all similar “in the sense that they refer to a form of conduct by which a person exerts psychological influence on another person as a result of which the criminal act is committed”.⁸² Solicitation is less specific in that a person “asks or urges the physical perpetrator to commit the criminal act,” while inducement involves “influence... either by strong reasoning, persuasion or conduct implying the prompting of a commission of the offence”.⁸³ This type of crime could be relevant in this situation because of the statements made by Kirill to believers and the public. As is discussed in more detail above, the statements he has made encourage hatred and could, depending on the evidence, inspire others to commit international crimes.

Interestingly, it is not the definition of the crimes, but the modes of liability which are the biggest limiting factor in prosecuting these religious leaders. Leadership modes of liability are required for prosecution but are difficult to prove because the link between the leaders and the crimes perpetrated on the ground may lack evidence or have poor quality evidence. This link is one of the leading cause of acquittals at the ICC.⁸⁴ While there is evidence that Kirill is advising Putin and providing justification for the war and Russia’s attempts at expansion, there is no mode of liability that covers

79 *Rome Statute*, Art. 28.

80 Robinson, “An Introduction,” 343; Antonio Coco, “Instigation,” in *Modes of Liability in International Criminal Law*, ed. Jérôme de Hemptinne, Robert Roth, and Elies van Sliedregt (Cambridge: Cambridge University Press, 2019), <https://doi.org/10.1017/9781108678957.008>; Jérôme de Hemptinne, “Incitement,” in *Modes of Liability in International Criminal Law*, ed. Jérôme de Hemptinne, Robert Roth, and Elies van Sliedregt (Cambridge: Cambridge University Press, 2019), <https://doi.org/10.1017/9781108678957.014>

81 *Rome Statute*, Art. 25(3)(e).

82 *Bemba* (Trial Chamber VII), 19 October 2016, para. 75.

83 *Bemba* (Trial Chamber VII), 19 October 2016, para. 75-76.

84 *Bemba* (Appeals Chamber), 8 June 2018; *Gbagbo and Blé Goudé* (Trial Chamber I), 16 July 2019; *Ngudjolo Chui* (Appeals Chamber), 7 April 2015.

that kind of advice without evidence of an agreement for criminal actions to be committed as a result. There is stronger evidence of encouragement or indirect perpetration theories, but these too could use stronger links.

Leaders of the Russian Orthodox Church as Propagandists

The term “propaganda” lacks specific definition but requires an intentional statement “initiated for a reason and with anticipated or foreseeable consequences”.⁸⁵ In basic terms, propaganda might be understood as an argument or statement that is made with the intention of promoting a cause.⁸⁶ In the context of international criminal law propaganda is often used to create an atmosphere and culture of fear and hatred which then turns to inciting criminal actions by one group against another.⁸⁷ In terms of their communications and messaging with other religious leaders, within the Russian Orthodox Church, the believers, and the public, perhaps Kirill could best be described as a propagandist for the Russian war effort and the crimes that are occurring as a result of that effort. Some in the Church have already been accused of this.⁸⁸

Propaganda itself is not illegal. States and groups often make statements or provide arguments supporting their position and actions with the intention of gaining or keeping followers. Being able to make these arguments is seen as preservation and respect for the human right to freedom of expression as protected by Article 19 of the International Covenant on Civil and Political Rights.⁸⁹ Rather, propaganda becomes illegal when it deals with promoting war or has the intention of inciting, or causing others to engage in, international crimes.⁹⁰ For example, Article 20 of the ICCPR prohibits “any propaganda for war” and “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”⁹¹ Propaganda has formed the basis for international criminal liability in

85 Predrag Dojčinović, “Introduction,” in *Propaganda in International Criminal Law*, ed. Predrag Dojčinović (Abingdon/New York: Routledge, 2020), 3.

86 Evelyn Aswad, “Propaganda for War and International Human Rights Standards,” *Chicago Journal of International Law* 24, no. 1 (2023): 21, <https://cjl.uchicago.edu/print-archive/propaganda-war-international-human-rights-standards#heading-5>

87 Dojčinović, “Introduction,” 4.

88 Zhdanova, “From Pulpit to Propaganda Machine”; Dubtsova, “The Role of the Orthodox Church in Advancing Putin’s War Messaging.”

89 Dojčinović, “Introduction,” 4.

90 Aswad, “Propaganda for War”.

91 *International Covenant on Civil and Political Rights* (ICCPR), Art. 20.

cases as far back as Nuremberg.⁹² In international criminal trials, the use of propaganda is generally used to demonstrate intent and patterns of behavior “in a variety of ideological, political and military, individual or collectively coordinated efforts”.⁹³ Propaganda therefore is used as evidence to establish either modes of liability or substantive crimes.⁹⁴

The *Media Case* as an example

The statements given by Patriarch Kirill and the dissemination of those statements is reminiscent of the *Media Case* from the International Criminal Tribunal for Rwanda. Although it did not involve religious leaders, it did involve public statements designed to inspire criminality, and specifically the genocide perpetrated against the Tutsis in 1994.⁹⁵ As such, it provides a good analogy and one possible pathway to prosecuting Kirill for inciting or instigating others to commit atrocity crimes.

The *Media Case* involved a radio station and a newsletter both of which were widely available in Rwanda. In the months before the Rwandan genocide started, a particular radio station, RTLM, was very popular and constantly heard both publicly and privately.⁹⁶ Through the station the accused regularly referred to Tutsis as “enemies’ or ‘traitors’ who deserved to die” and branded Hutu opposition members as accomplices to the Tutsis evil acts.⁹⁷ It also included broadcasts that focused on ethnicity in its historical context.⁹⁸ During the trial of the station’s founders, an expert witness described this as “a simplistic reduction of the Rwandan past in order to create radical opposition between Tutsi and Hutu.”⁹⁹

Around the same time, another accused person, Hassan Ngeze, started *Kangura* newsletter, which he also edited.¹⁰⁰ This newsletter was widely read in Rwanda and contained hate-filled messages on the theme that the

92 Margaret Eastwood, “Hitler’s Notorious Jew-Baiter: The Prosecution of Julius Streicher,” in *Propaganda, War Crimes Trials and International Law*, ed. Predrag Dojčinović (Abingdon/New York: Routledge, 2012), 203.

93 Dojčinović, “Introduction,” 5.

94 Dojčinović, “Introduction,” 6.

95 *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, Judgement and Sentence, Trial Chamber I, ICTR-99-52-T, 5 December 2003.

96 *Nahimana et al.* (TC I), para. 343.

97 Larry May, *Genocide* (Cambridge: Cambridge University Press, 2012)

98 *Nahimana et al.* (TC I), para. 345.

99 *Nahimana et al.* (TC I), para. 347.

100 Sophia Kagan, “The ‘Media Case’ Before the Rwanda Tribunal: The *Nahimana et al.* Appeal Judgment,” *Hague Justice Journal* 3, no. 1 (2008): 87, https://www.haguejusticeportal.net/Docs/HJJ-JJH/Vol_3%281%29/Media_Case_Kagan_EN.pdf

Tutsis were “enemies who wanted to subvert the democratic system and seize power for themselves”. He also described them as “blood thirsty” and urged Hutus to “be prepared to defend themselves against this scourge”.¹⁰¹ In the *Media Case*, all three of these men were ultimately tried and convicted of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide and persecution and extermination as crimes against humanity.¹⁰²

An important aspect of the *Media Case* was that the men had ownership and editorial control over the communications published by their media outlets. So, the fact that much of their publications were messages which were hate-filled and against the Tutsis were decisions that they made. This is a similar position to Patriarch Kirill. While he does not own the ROC, Kirill is its head and makes decisions about policies and messages that the church will communicate. He has also made many statements against Ukrainians and in support of the war itself, while choosing not to condemn the crimes that soldiers are allegedly committing. Further, by being at the top of the ROC hierarchy and Putin’s advisor there is reason to believe he is working to undermine support for Ukrainians, dehumanize them, and encourage others to commit crimes against them.

The publications in the *Media Case* seemingly reached a larger audience than the ROC communications, particularly as the radio station is reported to have been heard everywhere all time. The Rwanda Court also noted the importance that the accused owned and controlled these media outlets and used them to publish not only their words but the words of many other people “for the collective communication of ideas and for the mobilization of the population on a grand scale”.¹⁰³ While the Church seems to be publishing its own words and ideas, it is also a mouthpiece and amplifier of the government’s arguments. Kirill’s statements are broadcast on Russian television both in Russia and to Russians in Ukraine. They also communicated through the hierarchy of the Church to the followers.

There are many similarities between the messaging in Rwanda and the statements made by Kirill. Both types of statements classify the opposition as “enemies” and use simplistic history to foster hatred in the minds of the people receiving the messages. The messages in Rwanda however, got to a point where they were much more specific. There were many broadcasts and articles calling for direct action against Tutsis, and in May 1994, turned into

¹⁰¹ *Nahimana et al.* (TC I), para. 139.

¹⁰² *Nahimana et al.* (TC I).

¹⁰³ *Nahimana et al.* (TC I), para. 979.

a practically non-stop called for their “extermination”.¹⁰⁴ Kirill’s statements have not reached this point, and it is unknown whether they will. However, it is important to remember that the charges involved in the Rwandan case were related to genocide, which requires a specific intent to destroy a group.¹⁰⁵ Inducing or instigating war crimes or crimes against humanity has no such specific intent requirement, therefore, less specific statements, such as those made by the ROC, would not have to be quite as specific as the statements in the *Media Case*, but they would still have to be linked to the crimes committed.

While the analogy between these situations is not a perfect fit, particularly as the church is not a radio station that one cannot avoid hearing in public spaces, there are interesting similarities, which could form a basis for prosecution. Both the publications in Rwanda and from the ROC leaders are widely available and espouse messages of hate while encouraging people to act. However, the Rwandan case was much more specific about the types of action that needed to be taken, while Kirill seems to so far encouraging people to join the fighting but not specifically to engage in criminal behavior. Any prosecutor would have to be convinced there was enough evidence that crimes against humanity or war crimes occurred and that the Church leadership had a hand in those crimes by instigating. However, if more specific and direct evidence exists then this could be an interesting avenue for prosecution.

Conclusion

It is unclear whether Patriarch Kirill can be held criminally liable for his participation in the war in Ukraine. He engages in an advisory role with President Putin and military leaders to provide justification for the war and is making statements that could instigate others to commit crimes against humanity or war crimes.

While international crimes might be wide-ranging, considering them in light of the Rome Statute allows for some definitional certainty and focus as to what types of crimes the religious leaders might be subject to. While there is very strong evidence of aggression, there is no possibility of these religious leaders being subject to that crime. The ICC has no jurisdiction over

¹⁰⁴ *Nahimana et al.* (TC I), paras. 483, 485.

¹⁰⁵ *Statute of the International Criminal Tribunal for Rwanda* (ICTR Statute), Art. 2; *Rome Statute*, Art. 6.

aggression in Ukraine and the religious leaders are not in effective control over military or political actors who have executed the aggressive acts. Genocide might be possible, but the special intent requirement is unlikely to be proven. Meanwhile, crimes against humanity and war crimes both seem like possible charges, depending on whether responsibility for those crimes can be connected to Kirill.

With regard to the advisory role, there is no evidence of an agreement between them to have international crimes committed, so there is no mode of liability that supports this as a crime. This may highlight a gap in the current law. Seemingly people so central to the overall plan, such that they are advising and providing justification the scheme, should be held accountable. However, real thought will have to go into whether this is a true gap or not. While top-down command structures show direct causation between the plan and/or command and the criminal actions taking place at lower levels, a situation like this, which show a somewhat lower-level leader giving advice and justification to the top leader who provides the commands could demonstrate a high level of participation and intent regarding the crimes.

Meanwhile, he has made statements which could be seen as instigating international crimes. On one hand these statements are encouraging hatred and violence within believers and the public. However, what he is saying and doing, is so far, not enough for prosecution under the current law. The links between Kirill and the crimes allegedly committed on the front or by the political and military leaders are not direct enough. General encouragement and dehumanization are not enough to rise to the level of criminality.

International criminal law is specific and requires particular proof so that there is not a state of over criminalization and prevention of or infringement on other fundamental rights. For example, criminalizing this type of behavior might stifle free speech and thought. From the publicly available evidence, it appears he is providing opinions and advice to Putin and general encouragement to the public who is free to take it or not. However, more evidence may be available and found through an official investigation. An investigation may well be able to find better links between Kirill and the crimes being committed in Ukraine and a plan or agreement between him or the ROC and the Russian political and military leaders.

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