

# Ukraine, Moral Outrage, and International Law

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*Wars are not won by generals, but by schoolteachers and parish priests  
-attributed to Otto von Bismarck*

*Everything we do has a political charge and the division between  
politics and aesthetics is entirely erroneous -artist Sanja Ivekovic*

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## I. INTRODUCTION

This paper aims to begin the exploration of emotion, specifically moral outrage, in international law. It uses the Russian invasion of Ukraine as a focal point. It addresses the question whether the international community can harness the incredible moral outrage at the unprovoked Russian invasion of Ukraine to hold Russia accountable.

The international community has expressed extreme moral outrage over this clear violation of international law; but acting upon such outrage has proven difficult as the international community faces entrenched power structures, nuclear weapons, and oil supplies. No court can currently hold Russia

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accountable.<sup>1</sup> President Biden has expressed his own moral outrage, telling reporters that Putin “cannot remain in power.”<sup>2</sup> President Macron of France criticized Biden’s expressions of moral outrage, saying, “I am prudent with terms today.”<sup>3</sup> Should we—political actors, journalists, academics—express our moral outrage?

Putin from the beginning, I posit, has underestimated the power of emotion. Russia and military leaders around the world thought that Ukraine would fall “in a matter of days,”<sup>4</sup> but galvanized Ukrainian forces and civilians have fought on against demoralized Russian troops.<sup>5</sup> Ukraine has also galvanized and sustained the moral outrage of the world using open source and social media to keep their cause in the forefront.<sup>6</sup> Traditionally neutral countries are rethinking what neutrality means; NATO is revitalized and Sweden and Finland formally applied to join soon after the invasion and Finland is now a part of NATO.<sup>7</sup> Individuals and groups are using open source to document war crimes. The

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<sup>1</sup> See, e.g., Oona A. Hathaway, *A Crime in Search of a Court*, FOREIGN AFFS. (May 19, 2022), <https://www.foreignaffairs.com/articles/ukraine/2022-05-19/crime-search-court> [<https://perma.cc/NX8A-SW23>].

<sup>2</sup> Olivier Knox, *On Russia, Biden Divorces His ‘Moral Outrage’ from U.S. Policy*, WASH. POST (Mar. 29, 2022), <https://www.washingtonpost.com/politics/2022/03/29/russia-biden-divorces-his-moral-outrage-us-policy/> [<https://perma.cc/3LV7-QTDJ>].

<sup>3</sup> Julian Borger, *Macron Declines to Follow Biden and Call Russian Acts in Ukraine ‘Genocide,’* GUARDIAN (Apr. 13, 2022), <https://www.theguardian.com/world/2022/apr/13/emmanuel-macron-genocide-ukraine-russia-biden> [<https://perma.cc/QP6T-2RUW>].

<sup>4</sup> See Paul Kirby, *Has Putin’s War Failed and What Does Russia Want From Ukraine?*, BBC (Feb. 24, 2023), <https://www.bbc.com/news/world-europe-56720589> [<https://perma.cc/982Z-LC3Z>]; *Ukraine Crisis: Russia has in Place 70% of Military Needed for Full Invasion—US Officials*, GUARDIAN (Feb. 6, 2022), <https://www.theguardian.com/world/2022/feb/06/ukraine-crisis-russia-has-in-place-70-of-military-needed-for-full-invasion-us-officials> [<https://perma.cc/9D8K-2NJA>]; Eric Schmitt & John Ismay, *U.S. Arms Sent to Ukraine Would Blunt but Not Stop a Russian Invasion*, N.Y. TIMES (Feb. 15, 2022), <https://www.nytimes.com/2022/02/15/us/politics/us-ukraine-weapons.html> [<https://perma.cc/NLA2-6ULK>].

<sup>5</sup> See, e.g., Sam Mednick, *Russia-Ukraine: The Civilians Fighting on Kyiv’s Front Lines*, AL JAZEERA (Mar. 23, 2022), <https://www.aljazeera.com/features/2022/3/23/the-civilian-fighters-taking-up-arms-on-ukraines-front-lines> [<https://perma.cc/4RAZ-7ET2>]; Finbarr O’Reilly, *How Ukraine’s Battered Steel Industry Galvanized Its War Effort*, N.Y. TIMES (Apr. 6, 2023), <https://www.nytimes.com/2023/03/29/world/europe/ukraine-steel-plants-war.html> [<https://perma.cc/B2XV-XH3B>].

<sup>6</sup> See Deb Amos, *Open Source Intelligence Methods Are Being Used to Investigate War Crimes in Ukraine*, NPR (June 12, 2022), <https://www.npr.org/2022/06/12/1104460678/open-source-intelligence-methods-are-being-used-to-investigate-war-crimes-in-ukr> [<https://perma.cc/JHA5-4E7R>].

<sup>7</sup> See Ivo Daalder, *If Finland and Sweden Join NATO, It’s on Russia*, POLITICO (May 12, 2022), <https://www.politico.eu/article/finland-sweden-join-nato-russia/> [<https://perma.cc/UPT9-2TD6>]; *Finland Joins NATO as 31st Ally*, N. ATL. TREATY ORG. (Apr. 4, 2023), [https://www.nato.int/cps/en/natohq/news\\_213448.htm](https://www.nato.int/cps/en/natohq/news_213448.htm) [<https://perma.cc/36YA-8QZ4>].

international community is using the moral outrage of the world to come up with new and creative ways to hold Russia accountable for a blatant violation of international law and also broaden or introduce laws that give greater access to justice for victims of serious international crimes.<sup>8</sup> One initial step the United States made to turn its moral outrage into action was to amend the War Crimes Act of 1996 to expand the United States' jurisdiction to prosecute perpetrators of war crimes to include non-nationals found on U.S. soil. Now Putin's henchmen could be prosecuted in the United States if they travel to the United States.

Of course, there is a negative side to the outrage and selective outrage. Moral outrage needs to be examined critically. For example, a revitalized NATO means a militarized Europe which could become a dangerous step.<sup>9</sup> And a chorus of voices have discussed the extreme amount of coverage and aid given to the suffering of the white population of Ukraine while other black and brown groups have not received the same aid and coverage.<sup>10</sup> The international community has to examine itself as it moves from cause to cause and think deeply about what is actually being accomplished to move international law forward.

## II. RUSSIA'S INVASION OF UKRAINE AND MORAL OUTRAGE

In response to Russia's unprovoked invasion of Ukraine, the international community, particularly Europe and the United States, responded with intense moral outrage.<sup>11</sup> Headlines and op-eds denounced the illegal act of aggression against a country with a democratically elected government.<sup>12</sup> The United Nations overwhelmingly condemned the invasion of Ukraine as a violation of Article 2(4) of the Charter.<sup>13</sup> In their first Resolution, within days of the invasion, the United Nations condemned the invasion and demanded Russian

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<sup>8</sup> See Fredrik Wesslau, *A Tribunal Like No Other: Prosecuting Russia's Crime of Aggression in Ukraine*, EUR. COUNCIL ON FOREIGN RELS. (Feb. 23, 2023), <https://ecfr.eu/article/a-tribunal-like-no-other-prosecuting-russias-crime-of-aggression-in-ukraine/> [https://perma.cc/9777-HU4F].

<sup>9</sup> See, e.g., Steven Erlanger, *Russian Invasion of Ukraine Revolutionizes NATO Military Strategy*, N.Y. TIMES (Apr. 17, 2023), <https://www.nytimes.com/2023/04/17/world/europe/nato-russia-ukraine-war.html> [https://perma.cc/35JB-DAZ5].

<sup>10</sup> See *Ukraine Attention Shows Bias Against Black Lives, WHO Chief Says*, BBC (Apr. 13, 2022), <https://www.bbc.com/news/world-61101732> [https://perma.cc/KR54-7VP3].

<sup>11</sup> See *supra* notes 2–3 and accompanying text; see, e.g., Press Release, N. Atl. Treaty Org., Statement by the North Atlantic Council on Russia's Attack on Ukraine (Feb. 24, 2022), [https://www.nato.int/cps/en/natohq/official\\_texts\\_192404.htm](https://www.nato.int/cps/en/natohq/official_texts_192404.htm) [https://perma.cc/L98T-ZQ8Z].

<sup>12</sup> See, e.g., Roger Cohen, *A Surge of Unifying Moral Outrage Over Russia's War*, N.Y. TIMES (Mar. 3, 2022), <https://www.nytimes.com/2022/03/01/world/europe/zelensky-ukraine-war-outrage.html> [https://perma.cc/2RQB-PD8S].

<sup>13</sup> See G.A. Res. ES-11/1, at 1–3 (Mar. 2, 2022).

withdrawal.<sup>14</sup> The Resolution was adopted with overwhelming support—141 Member States in favor and seven against—Belarus, the Democratic People’s Republic of Korea, Eritrea, Mali, Nicaragua, Russia and Syria.<sup>15</sup> Among the thirty-two abstentions were China, India and Pakistan; half were from African countries including Algeria, Angola, and South Africa.<sup>16</sup>

European leaders were quick to condemn the invasion in the harshest of terms. Then British Prime Minister Boris Johnson tweeted: “President Putin has chosen a path of bloodshed and destruction by launching this unprovoked attack on Ukraine.”<sup>17</sup> European Union Foreign Policy Chief, Josep Borrell, stated: “These are among the darkest hours of Europe since the Second World War . . . The EU will respond in the strongest possible terms and agree on the harshest package of sanctions we have ever implemented.”<sup>18</sup> Chancellor Olaf Scholz of Germany opined, “[A]t the heart of the matter is whether power can break the law.”<sup>19</sup> The essential issue, according to Scholz, was whether “we find it within ourselves to set limits to an international warmonger like Putin.”<sup>20</sup>

Few events have united Europe and the United States like the invasion of Ukraine. The head of the European Commission, Ursula von der Leyen, told the European Parliament the invasion has united the twenty-seven-nation European Union and the NATO military alliance: “If . . . Putin was seeking to divide the EU, to weaken NATO, and to break the international community, he has achieved the exact opposite.”<sup>21</sup> However, increasingly the global south has distanced themselves from the invasion.<sup>22</sup> Nirupamo Rao, the former Indian

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<sup>14</sup> *Id.* at 2–3.

<sup>15</sup> *UN General Assembly Calls for Immediate End to War in Ukraine*, UNITED NATIONS (Feb. 23, 2023), <https://news.un.org/en/story/2023/02/1133847> [<https://perma.cc/Q2WG-AUD4>].

<sup>16</sup> *Id.*; Niha Masih, *U.N. Resolution to End Ukraine War: How Countries Voted and Who Abstained*, WASH. POST (Feb. 24, 2023), <https://www.washingtonpost.com/world/2023/02/24/un-ukraine-resolution-vote-countries/> [<https://perma.cc/4KC3-SDYA>].

<sup>17</sup> Mary O’Connor, *Russia Attack on Ukraine Catastrophe for Europe, Say Boris Johnson*, BBC (Feb. 24, 2022), <https://www.bbc.com/news/uk-60504204> [<https://perma.cc/5DKT-5LVX>].

<sup>18</sup> *Borrell: ‘These Are Among the Darkest Hours of Europe Since the Second World War’*, EU NEIGHBORS E. (Feb. 24, 2022), <https://euneighbourseast.eu/news/latest-news/borrell-these-are-among-the-darkest-hours-of-europe-since-the-second-world-war/> [<https://perma.cc/GE4P-35BN>].

<sup>19</sup> Cohen, *supra* note 12.

<sup>20</sup> *Id.*

<sup>21</sup> Jan Strupczewski, *Russia’s Putin United EU and NATO—EU Commission Head*, REUTERS (Mar. 1, 2022) <https://www.reuters.com/markets/rates-bonds/russias-putin-united-eu-nato-eu-commission-head-2022-03-01/> [<https://perma.cc/RK8L-DNVD>].

<sup>22</sup> See Philippe Ricard & Gilles Paris, *War in Ukraine: The Revenge of the Global South*, LE MONDE (July 14, 2023), [https://www.lemonde.fr/en/international/article/2023/07/14/war-in-ukraine-the-revenge-of-the-global-south\\_6053397\\_4.html](https://www.lemonde.fr/en/international/article/2023/07/14/war-in-ukraine-the-revenge-of-the-global-south_6053397_4.html) [<https://perma.cc/E6YK-E7U6>].

ambassador to the US, expressed the right of India to pursue its own national interest at an event for Foreign Affairs magazine:

As we see it, Ukraine is an east-west struggle that is taking an obsessive destructive character with no sign of abatement. This is not a struggle that we in the global south want to be involved in because the war takes away what should be a major focus: rapid economic development, climate change, pandemics . . . and inequities in the global order.<sup>23</sup>

In defending his abstention on the first United Nations Resolution condemning the invasion, President Cyril Ramaphosa of South Africa explained, “South Africa expected that the UN resolution would foremost welcome the commencement of dialogue between the parties and seek to create the conditions for these talks to succeed.”<sup>24</sup> He continued, “Instead, the call for peaceful resolution through political dialogue is relegated to a single sentence close to the conclusion of the final text. This does not provide the encouragement and international backing that the parties need to continue with their efforts.”<sup>25</sup>

Although moral outrage has united Europe and the United States, so far this community has not been able to turn its moral outrage into a cessation of violence. However, other significant actions have been taken—some good, some worrisome. A chorus of voices have discussed that the war has revitalized NATO, with Finland and Sweden both formally applying for membership in May 2022 in response to the invasion<sup>26</sup> and Finland becoming a member on April 4, 2023.<sup>27</sup> Finland’s President, Sauli Niinistö, mentioned in his 2023 New Year’s speech how emotion touched every Finn and required action.<sup>28</sup> He stated, “The Finnish foreign and security policy is facing a historic turn . . . . The Russian demands for a sphere of interest and then the invasion of Ukraine. They surely touched every Finn. It generated a spirit and a conviction: we cannot continue along our traditional path any further.”<sup>29</sup> The moral outrage of Finland

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<sup>23</sup> Patrick Wintour, *G7 Wrestles with How to Prosecute One War and Prevent Another*, GUARDIAN (May 18, 2023), <https://www.theguardian.com/world/2023/may/18/g7-wrestles-with-how-to-prosecute-one-war-and-prevent-another> [https://perma.cc/QV4D-SYJG].

<sup>24</sup> *President Ramaphosa Calls for Peaceful Resolution of Russia-Ukraine Conflict*, SA NEWS (Mar. 7, 2022), <https://www.sanews.gov.za/south-africa/president-ramaphosa-calls-peaceful-resolution-russia-ukraine-conflict> [https://perma.cc/VUE3-5QVK].

<sup>25</sup> *Id.*

<sup>26</sup> Daalder, *supra* note 7; see also Joshua Berlinger, *Finland and Sweden Want to Join NATO. Here’s How it Works and What Comes Next*, CNN (May 16, 2022), <https://www.cnn.com/2022/05/14/europe/sweden-finland-nato-next-steps-intl/index.html> [https://perma.cc/9BFY-P9XA].

<sup>27</sup> *Finland Joins NATO as 31st Ally*, *supra* note 7.

<sup>28</sup> See Henri Vanhanen, *Finland in 2023: Beyond Military Nonalignment and a Revanchist Putin*, LAWFARE (Jan. 25, 2023), <https://www.lawfareblog.com/finland-2023-beyond-military-nonalignment-and-revanchist-putin> [https://perma.cc/7KDK-SDRN].

<sup>29</sup> *Id.*

turned into action. NATO Secretary General Jens Stoltenberg stated this is “the biggest reinforcement of our collective defense since the end of the Cold War.”<sup>30</sup> Other significant actions are being driven by the intense moral outrage as well: Switzerland is rethinking neutrality; Germany has its biggest military buildup since World War II; Russian spies are being arrested, crippling Russia’s espionage capabilities; much of the world has enacted sanctions against Russia; and there are renewed calls for a court against aggression—something the West has opposed in the past.<sup>31</sup> While some have applauded a revitalized NATO,<sup>32</sup> one needs to think deeply about the significance of a militarized Europe.

The United States’ President Biden and France’s President Macron highlight different approaches of world leaders in expressing moral outrage. After President Biden told reporters in March 2022 that Russian President Putin “cannot remain in power” after his unprovoked invasion of Ukraine, he then clarified that his words did not indicate United States policy, but his own personal moral outrage.<sup>33</sup> “‘I was expressing the moral outrage that I feel, and I make no apologies for it,’ Biden told reporters at the White House.” President Emmanuel Macron of France said he would not have used Biden’s words as the task at hand is to achieve a cease-fire in Ukraine and a withdrawal of Russian troops by diplomatic means. “If we want to do that, we can’t escalate either in words or actions.” Then, in April 2022, President Biden opined, “Putin is just trying to wipe out the idea of even being [ . . . ] Ukrainian.”<sup>34</sup> When asked if he thought Russia’s actions amounted to genocide, he answered:

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<sup>30</sup> Opinion, *What Is the Future of the War in Ukraine? NATO’s Leader Offers Insight*, WASH. POST (May 9, 2022), <https://www.washingtonpost.com/opinions/2023/05/09/interview-jens-stoltenberg-nato-ukraine/> [https://perma.cc/KHM9-T34C].

<sup>31</sup> See Opinion, *The Ukraine War Led to a Head-Spinning Shift in European Neutrality*, WASH. POST (Apr. 6, 2023), <https://www.washingtonpost.com/opinions/2023/04/06/switzerland-neutrality-europe-ukraine-war/> [https://perma.cc/F44N-7SY9]; Peter Kuras, *What Will Germany’s Biggest Military Since World War II Look Like? No One Knows*, TIME (Mar. 4, 2022), <https://time.com/6154487/german-military-expansion-ukraine/> [https://perma.cc/RKJ9-DUPK]; Shaun Walker, *Is Russia Spying More—Or Are More Spies Just Being Caught?*, GUARDIAN (Apr. 26, 2023), <https://www.theguardian.com/world/2023/apr/26/is-russia-spying-more-or-are-more-spies-just-being-caught> [https://perma.cc/G39Y-7RMU]; *What Are the Sanctions on Russia and Are They Hurting Its Economy?*, BBC (May 25, 2023), <https://www.bbc.com/news/world-europe-60125659> [https://perma.cc/5BM5-JTZT]; Wesslau, *supra* note 8.

<sup>32</sup> See, e.g., Julian Borger, *Joe Biden Gives Support to Sweden and Finland as Members of ‘Revived Nato,’* GUARDIAN (May 19, 2022), <https://www.theguardian.com/world/2022/may/19/joe-biden-gives-support-to-sweden-and-finland-as-members-of-revived-nato> [https://perma.cc/8XTK-RQGH].

<sup>33</sup> Knox, *supra* note 2.

<sup>34</sup> Joseph Biden, President of the U.S., Remarks Before Air Force One Departure (Apr. 12, 2022) (transcript available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/04/12/remarks-by-president-biden-before-air-force-one-departure-13/> [https://perma.cc/DFD9-NH22]).

[Y]es . . . the evidence is mounting . . . more evidence is coming out of the[ . . . ]horrible things that the Russians have done in Ukraine. And we're going to only learn more and more about the devastation. And we'll let the lawyers decide internationally whether or not it qualifies, but it sure seems that way to me.<sup>35</sup>

When Macron was asked to comment on Biden's accusation of genocide, although he admitted that it was clear the Russian army had committed war crimes, he said: 'I am prudent with terms today....'It's madness what's happening today. It's unbelievable brutality and a return to war in Europe. But at the same time I look at the facts, and I want to continue to try the utmost to be able to stop the war and restore peace. I'm not sure if the escalation of words serves our cause.'<sup>36</sup>

What is the role of leaders, academics, and journalists in expressing their moral outrage at world events that violate international law. As an academic, sometimes perhaps we do have a responsibility to express our moral outrage as we write and discuss egregious violations of international law to keep the human element in the forefront.

### III. MORAL OUTRAGE AND INTERNATIONAL HUMAN RIGHTS LAW

First of all, what is moral outrage? The intense emotion of moral outrage is a "response to what people perceive as violations of their rights or justifiable expectations and those of others."<sup>37</sup> It is grounded in a feeling of justice and its violation—it is based on what is right and therefore peoples' rights, and "justifiable anger" when violated.<sup>38</sup>

Moral outrage is a critical tool in motivating action to address transgressions or injustices.<sup>39</sup> The intense emotion and urgency "can be a source of insight and inspiration for principled discernment and wise, compassionate action."<sup>40</sup> Although some worry that the intense feelings of moral outrage may lead to overzealous prosecutions that do not respect the rights of the accused and fundamental fairness,<sup>41</sup> generally the hope is that moral outrage can effectuate needed change. Therefore, because moral outrage is viewed as justified is why

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<sup>35</sup> *Id.*

<sup>36</sup> Borger, *supra* note 3.

<sup>37</sup> Ward H. Goodenough, *Moral Outrage: Territoriality in Human Guise*, 32 ZYGON 1, 9–10 (1997).

<sup>38</sup> *See id.* at 10.

<sup>39</sup> Cynda Hylton Rushton & Lindsay Thompson, *Moral Outrage: Promise or Peril?*, 68 NURSING OUTLOOK 536, 536 (2020).

<sup>40</sup> *Id.* at 537.

<sup>41</sup> *See* Lynne Miriam Baum, *Pursuing Justice in a Climate of Moral Outrage: An Evaluation of the Rights of the Accused in the Rome Statute of the International Criminal Court*, 19 WIS. INT'L L.J. 197, 197 (2001).

President Biden felt he did not need to apologize for expressing his own moral outrage at the Russian invasion.<sup>42</sup>

In a study looking at the role of emotions in predicting support for political actions in post-war Iraq, researchers found that “moral outrage toward Saddam Hussein and his regime was the best predictor of support for political actions to prevent future harm to the Iraqi people and to punish the perpetrators.”<sup>43</sup> Expressing moral outrage can benefit individuals by signaling their moral quality to others.<sup>44</sup> This, in part, explains why social media users are so eager to express their moral outrage at world events. M.J. Crockett also suggests that: “It can also benefit society by holding bad actors accountable and sending a message to others that such behaviour is socially unacceptable.”<sup>45</sup>

In some ways, emotion—especially moral outrage—is at the very foundation of international human rights law. In his opening statement at the Nuremberg Trial, Justice Robert H. Jackson, Chief Counsel for the United States, stated, “[T]he world has demanded immediate action” to respond to Germany’s aggressive war and the incredible atrocities, war crimes, and crimes against humanity.<sup>46</sup> Vesselin Popovski has examined how emotions have driven developments in international human rights law.<sup>47</sup> “[T]he shock of human conscience from crimes against humanity led states to adopt international treaties and conventions that are the core of international law.”<sup>48</sup> He detailed the emotional language in the various human rights treaties.<sup>49</sup> For example, “[P]ublic outrage with human rights violations led to the adoption of the Universal Declaration of Human Rights (1948), which also includes a highly emotional statement in its Preamble: ‘Whereas disregard and contempt for human rights have resulted in barbarous acts which outraged the conscience of mankind.’”<sup>50</sup> Tymur Korotky, the International Humanitarian Law adviser to

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<sup>42</sup> See Lauren Gambino & Joanna Walters, *‘I Make No Apologies’: Biden Stands by ‘Putin Cannot Remain in Power’ Remark*, GUARDIAN (Mar. 28, 2022), <https://www.theguardian.com/us-news/2022/mar/28/biden-vladimir-putin-power-russia-ukraine> [<https://perma.cc/D7AK-JD3X>] (“I was expressing the moral outrage I felt . . . I had just come from being with those families . . . I make no apologies for it.”).

<sup>43</sup> Sabrina J. Pagano & Yuen J. Huo, *The Role of Moral Emotions in Predicting Support for Political Actions in Post-War Iraq*, 28 POL. PSYCH. 227, 227 (2007).

<sup>44</sup> M. J. Crockett, *Moral Outrage in the Digital Age*, 1 NATURE HUM. BEHAV. 769, 770 (2017).

<sup>45</sup> *Id.*

<sup>46</sup> Robert H. Jackson, Chief Counsel for the U.S., Opening Statement Before the International Military Tribunal (Nov. 21, 1945) (transcript available at <https://www.roberthjackson.org/speech-and-writing/opening-statement-before-the-international-military-tribunal/> [<https://perma.cc/BD56-2EEC>]).

<sup>47</sup> Vesselin Popovski, *Emotions and International Law*, in EMOTIONS IN INTERNATIONAL POLITICS: BEYOND MAINSTREAM INTERNATIONAL RELATIONS 184, 185 (Yohann Ariffin, Jean-Marc Coicaud & Vesselin Popovski eds., 2016).

<sup>48</sup> *Id.* at 203.

<sup>49</sup> See *id.* at 194–96.

<sup>50</sup> *Id.* at 195.



Ukraine's Red Cross Society President, also noted the comparison between international humanitarian law and the requirements of morality stating: "His prescriptions—not to kill women, children, not to subject to torture—are indisputable and understandable as imperative norms...They are contained in religious and moral sources that have been formed throughout human history."<sup>51</sup>

Finally, as Anne Saab has advocated, we as international lawyers must pay attention to emotion "because we engage with emotions, we respond to emotions, we influence emotions."<sup>52</sup> Emotion is an integral part of law, and especially international law. On the domestic front in the United States, Duane Rudolph urges judges to "express moral outrage when faced with individuals from communities whose voice has historically been at risk, is currently at risk, or is likely to be at risk of being silenced."<sup>53</sup>

Prominent international lawyers, including Russia's own lawyers, have resigned recently because of their own feelings of moral outrage. Alain Pellet, Counsel for Russia before the ICJ and other international tribunals until Russia invaded Ukraine, expressed his own moral outrage at the actions of Russia in his resignation letter, writing: "Yesterday I sent my letter of resignation to the competent authorities: lawyers can defend more or less questionable causes. But it has become impossible to represent in forums dedicated to the application of the law a country that so cynically despises it."<sup>54</sup> Similarly, after more than forty years as Nicaragua's lawyer, attorney Paul Reichler resigned, saying in a letter to Daniel Ortega: "I will continue to respect, admire and love the first Daniel Ortega, even as I despair, and grieve, over the one who has taken his place. I will always treasure my service for the former, even as, for the reasons stated above, my moral conscience dictates that I must sever my ties with, and refuse to serve, the latter."<sup>55</sup>

In the recent past, intense moral outrage has not been successful in effectuating change in international law or ensuring accountability. After Saudi Arabia's brutal killing and dismembering of The Washington Post's Jamal

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<sup>51</sup> Iryna Nazarchuk, *Without International Humanitarian Law, War Turns Into Unlimited Violence*, YURIDICHNA GAZETA (Mar. 28, 2023), <https://yur-gazeta.com/interview/bez-mizhnarodnogo-gumanitarnogo-prava-viyna-peretvoryuetsya-na-neobmezhene-nasilstvo.html> [<https://perma.cc/A37W-SVRP>].

<sup>52</sup> Anne Saab, *Emotions and International Law*, 10 EURO. SOC'Y INT'L L. REFLECTIONS 1, 10 (2021).

<sup>53</sup> Duane Rudolph, *Of Moral Outrage in Judicial Opinions*, 26 WM. & MARY J. RACE, GENDER & SOC. JUST. 335, 335 (2020).

<sup>54</sup> ALAIN PELLET, OPEN LETTER TO MY RUSSIAN FRIENDS: UKRAINE IS NOT CRIMEA (Mar. 2022), [https://www.alainpellet.eu/\\_files/ugd/64a1e7\\_aebca5badda84be1b9f9fe75d2398479.pdf](https://www.alainpellet.eu/_files/ugd/64a1e7_aebca5badda84be1b9f9fe75d2398479.pdf) [<https://perma.cc/KER3-6MZY>].

<sup>55</sup> *Attorney Paul Reichler Resigns from the Ortega Government*, CONFIDENTIAL (Mar. 27, 2022), <https://confidencial.digital/english/attorney-paul-reichler-resigns-from-the-ortega-government/> [<https://perma.cc/W8NS-PWFH>].

Khashoggi, the world appeared united in its moral outrage against the killing.<sup>56</sup> International groups, and almost everyone, demanded justice for his murder.<sup>57</sup> However, aside from statements and cancellation of arms deals, nothing really happened.<sup>58</sup> As Catherine Rampell, a colleague of Khashoggi at the Washington Post opined, “How long does outrage over a murder last? On Wall Street, six months.”<sup>59</sup> Going to an Embassy for some paperwork and coming out in a box, dismembered by your government, seemed to be able to be universally condemned, and provoke that level of moral outrage where action should be taken. However, after a brief period of shunning, the business community and governments continue to work with Saudi Crown Prince Mohammed bin Salman (“MBS”).<sup>60</sup> Biden has recently even visited with MBS and has given him a fist bump.<sup>61</sup> Photos were immediately disseminated around the world causing more outrage.<sup>62</sup> Biden had promised to hold MBS accountable and make his regime a “pariah,” but in his own op-ed he said Saudi Arabia is too important to United States interests in the Middle East—supporting the truce in Yemen and working with experts to stabilize oil prices.<sup>63</sup> Moral outrage once again meet strategic interests and entrenched power structures, and, well, oil.

The moral outrage over the brutal civil war in Syria also appeared almost universal, then nothing happened until recently, with the first step forward by a German domestic court prosecuting members of the Syrian intelligence services using universal jurisdiction.<sup>64</sup> NGOs and survivors of the Syrian regime kept alive the intense moral outrage the world felt and used creativity and hard work

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<sup>56</sup> See Catherine Rampell, *How Long Does Outrage Over a Murder Last? On Wall Street, Six Months*, WASH. POST (Apr. 18, 2019), [https://www.washingtonpost.com/opinions/how-long-does-outrage-over-a-murder-last-on-wall-street-six-months/2019/04/18/6e640fc2-620e-11e9-9ff2-abc984dc9eec\\_story.html](https://www.washingtonpost.com/opinions/how-long-does-outrage-over-a-murder-last-on-wall-street-six-months/2019/04/18/6e640fc2-620e-11e9-9ff2-abc984dc9eec_story.html) [https://perma.cc/GCD8-5U9S].

<sup>57</sup> *Id.*; see also Mehmet Guzel, *Human Rights Activists, Journalists Demand Justice for Jamal Khashoggi 2 years Later*, GLOB. NEWS (Oct. 3, 2020), <https://globalnews.ca/news/7376563/jamal-khashoggi-2-year-anniversary/> [https://perma.cc/GB7J-JD5G].

<sup>58</sup> Rampell, *supra* note 56; see Elise Thomas, *Yemen, Khashoggi, and the Deadly Saudi Trade*, LOWY INST.: INTERPRETER (Nov. 2, 2018), <https://www.lowyinstitute.org/the-interpreter/yemen-khashoggi-deadly-saudi-trade> [https://perma.cc/RW8R-38QP].

<sup>59</sup> Rampell, *supra* note 56.

<sup>60</sup> *Id.*

<sup>61</sup> Chris Cillizza, *Why Joe Biden's Fist Bump with MBS Was Such a Disaster*, CNN (July 17, 2022), <https://www.cnn.com/2022/07/17/politics/joe-biden-fist-bump-mbs-mohammed-bin-salman-white-house/index.html> [https://perma.cc/C49T-SG99].

<sup>62</sup> *See id.*

<sup>63</sup> *Id.*; see Joe Biden, *Why I'm Going to Saudi Arabia*, WASH. POST (July 9, 2022), <https://www.washingtonpost.com/opinions/2022/07/09/joe-biden-saudi-arabia-israel-visit/> [https://perma.cc/VDW3-5MJH].

<sup>64</sup> *See Germany: Conviction for State Torture in Syria*, HUM. RTS. WATCH (Jan. 13, 2022), <https://www.hrw.org/news/2022/01/13/germany-conviction-state-torture-syria> [https://perma.cc/LBN6-F3RZ].

to at least have some movement towards justice.<sup>65</sup> Although criticized for being low-level officers, there have now been two successful prosecutions of members of the Syrian Intelligence Services, the *mukhabarat*, using Universal Jurisdiction.<sup>66</sup> One of them, Anwar Raslan, was found guilty of crimes against humanity of

killing, torture, serious deprivation of liberty, rape and sexual assault in combination with murder in 27 cases, dangerous bodily injury in 25 cases, particularly serious rape, sexual assault in two cases, over a week of deprivation of liberty in 14 cases [and] hostage-taking in two cases and sexual abuse of prisoners in three cases.<sup>67</sup>

The Judges found that, as head of the Investigations Division at Branch 251 of the General Intelligence Directorate in Damascus, Anwar Raslan was responsible for interrogations and prison facilities.<sup>68</sup>

However, President Bashar al-Assad has waited for the moral outrage to subside as the world turns its attention to the next crisis and after a decade of isolation has been warmly invited back into the Arab League.<sup>69</sup> As one Syrian woman, Wafa Mustafa, has stated: “Normalisation is a betrayal of all Syrians who have been victims of the Assad regime’s atrocities, sending a message that war criminals will face no consequences for their actions. It represents an attempt to rewrite history and erase the suffering of millions of Syrians at the hands of this regime.”<sup>70</sup> Wafa’s father was an outspoken critic of the regime and

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<sup>65</sup> See *id.*; *Torture Survivors and NGO Make Big Strides Towards Justice*, UNITED NATIONS (Apr. 29, 2022), <https://www.ohchr.org/en/stories/2022/04/torture-survivors-and-ngo-make-big-strides-towards-justice> [https://perma.cc/R6XA-R5DG].

<sup>66</sup> See *Germany: Conviction for State Torture in Syria*, *supra* note 67; Deborah Amos, *In a Landmark Case, a German Court Convicts an Ex-Syrian Officer of Torture*, NPR (Jan. 13, 2022), <https://www.npr.org/2022/01/13/1072416672/germany-syria-torture-trial-crimes-against-humanity-verdict> [https://perma.cc/4J39-Q5MG].

<sup>67</sup> Press Release, U.N. Hum. Rts. Off. of the High Comm’r, UN Panel Welcomes Landmark Guilty Verdict in Germany’s Prosecution of Former Syrian Intelligence Officer for Crimes Against Humanity (Jan. 13, 2022), <https://www.ohchr.org/en/2022/01/un-panel-welcomes-landmark-guilty-verdict-germanys-prosecution-former-syrian-intelligence> [https://perma.cc/DN5E-YU6H].

<sup>68</sup> See *id.*; Jenny Hill, *German Court Finds Syrian Colonel Guilty of Crimes Against Humanity*, BBC (Jan. 13, 2022), <https://www.bbc.com/news/world-europe-59949924> [https://perma.cc/6CRR-4W6S].

<sup>69</sup> See Vivian Nereim & Raja Abdulrahim, *The Long Isolation of Syria’s al-Assad Is Over*, N.Y. TIMES (May 18, 2023), <https://www.nytimes.com/2023/05/18/world/middleeast/syria-assad-arab-league.html> [https://perma.cc/UDT4-QZ62].

<sup>70</sup> Wafa Mustafa, *Assad’s Regime Took my Father. Normalising Relations Feels Like an Attempt to Rewrite History*, GUARDIAN (May 18, 2023), <https://www.theguardian.com/global-development/2023/may/18/assads-regime-took-my-father-normalising-relations-feels-like-an-attempt-to-rewrite-history> [https://perma.cc/GW6T-TNE4].

supporter of the Syrian revolution.<sup>71</sup> He was dragged from their apartment in Damascus by Bashar al-Assad's intelligence services and her family has endured his loss and the unbearable feeling of not knowing what happened to him.<sup>72</sup> Bad actors seem to understand the limits of moral outrage. They seem all too aware that if they merely wait, the moral outrage will subside, the news cycle will move on and they will be left alone. Observers wonder if the lack of a strong international response to the war in Syria emboldened Russia to invade Ukraine.<sup>73</sup>

#### IV. PRESIDENT PUTIN, PRESIDENT ZELENKY, EMOTION, AND THE COURT OF WORLD OPINION

Putin underestimated the role of emotion in his invasion. Putin and many military leaders thought Russia would win in a matter of days, but galvanized Ukrainian forces and civilians withstood the attack of demoralized Russian troops.<sup>74</sup> Eugene Linden has compared the situation in Russia – corruption, low morale, and military failure—to Cuba, Vietnam, Iraq, and Afghanistan.<sup>75</sup> Morale is incredibly important in a war zone.<sup>76</sup> Increasingly, military leaders have seen this connection, with United States Army General Mark A. Milley saying: “Unlike Ukrainian forces—who are highly motivated to fight for their country, their freedom, their democracy and their way of life—the Russians lack leadership, and they lack will.”<sup>77</sup>

Obviously aware that the world—and the world's opinion—was watching, on February 24, 2022, Putin announced he had decided to conduct a “special military operation.”<sup>78</sup> He strove to use the language of international law in justifying his illegal invasion invoking Article 51 of the UN Charter:

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> See Zeina Karam, Bassem Mroue and Aj Naddaff, *Russia's Syria Intervention Provided Hints for Ukraine*, AP ((Mar. 1, 2022) <https://apnews.com/article/russia-ukraine-europe-middle-east-syria-moscow-d7594c4ac87f3ae8834088eb03368955> (on file with the *Ohio State Law Journal*)).

<sup>74</sup> Kirby, *supra* note 4; Gideon Rachman, *Do Not Expect the War in Ukraine to End Quickly*, FIN. TIMES (Mar. 21, 2022), <https://www.ft.com/content/63fc662c-098d-4263-b69b-34d55c9f5e0a> [<https://perma.cc/UMR6-FEYT>].

<sup>75</sup> Eugene Linden, *The Unholy Trinity of Corruption, Low Morale, and Military Failure*, LAWFARE: BLOG (Nov. 22, 2022), <https://www.lawfareblog.com/unholy-trinity-corruption-low-morale-and-military-failure> [<https://perma.cc/FA3C-TCYY>].

<sup>76</sup> *See id.*

<sup>77</sup> Jim Garamone, *Milley Says Ukraine Has Leadership, Morale to Beat Russia*, U.S. DEPT. OF DEF. (Apr. 21, 2023), <https://www.defense.gov/News/News-Stories/Article/Article/3370802/milley-says-ukraine-has-leadership-morale-to-beat-russia/> [<https://perma.cc/T6XB-JAC9>].

<sup>78</sup> *See* Vladimir Putin, President, Russ. Fed'n, Address (Feb. 24, 2022) (transcript available at <http://en.kremlin.ru/events/president/news/67843> [<https://perma.cc/F3PF-G48M>]).

The purpose of this operation is to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kiev regime . . . [W]e will seek to demilitarize and denazify Ukraine, as well as bring to trial those who perpetrated numerous bloody crimes against civilians, including against citizens of the Russian Federation.<sup>79</sup>

The interplay between law and emotion is also thought of as a type of warfare—lawfare. Putin has carefully framed his “special military operation” in terms of international law.<sup>80</sup> Ukraine has its own website dedicated to its legal actions against Russia.<sup>81</sup> Ginsburg defines authoritarian international law as “legal rhetoric, practices and rules specifically designed to extend the survival and reach of authoritarian rule across space and/or time.”<sup>82</sup>

Putin continues to try to frame his ‘special military operation’ as justified under international law and frame it as a war of the West against the Rest.<sup>83</sup> Over a year into the unprovoked attack at the Victory Day Parade, Putin stated, “A real war has once again been waged against our homeland. Today civilization is at a critical juncture.”<sup>84</sup> He blamed “Western elites” for the war and said that Ukraine has become “hostage to a coup d’etat and the criminal regime formed by its Western masters” and “a bargaining chip in the implementation of their cruel, selfish plans.”<sup>85</sup> The Just Security website is compiling Russia’s eliminationist rhetoric against Ukraine.<sup>86</sup> However, Russia is increasingly isolated, and many countries have imposed sanctions.<sup>87</sup> Additionally, instead of his aim to destroy Ukraine as a country, he has highlighted Ukraine as a country and its culture to the world.

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<sup>79</sup> *Id.*

<sup>80</sup> See Andrew Osborn & Polina Nikolskaya, *Russia’s Putin Authorises ‘Special Military Operation’ Against Ukraine*, REUTERS (Feb. 24, 2022), <https://www.reuters.com/world/europe/russias-putin-authorises-military-operations-donbass-domestic-media-2022-02-24/> [https://perma.cc/Z7RR-NU8W].

<sup>81</sup> See Jill Goldenziel, *An Alternative to Zombieing: Lawfare Between Russia and Ukraine and the Future of International Law*, 108 CORNELL L. REV. ONLINE 1, 1–2 (2022).

<sup>82</sup> Tom Ginsburg, *Authoritarian International Law?*, 114 AM. J. INT’L L. 221, 228 (2020).

<sup>83</sup> See Putin, *supra* note 78; Klaus Dräger, *The West Against the Rest? The EU, the Ukraine War, and its Collaterals*, SOCIALIST PROJECT: THE BULLET (Mar. 29, 2023), <https://socialistproject.ca/2023/03/west-against-the-rest-eu-ukraine-war-collaterals/> [https://perma.cc/XM84-TCS9].

<sup>84</sup> Mary Ilyushina & Robyn Dixon, *Putin Says ‘Real War’ Being Waged Against Russia in Muted Victory Day Parade*, WASH. POST (May 9, 2023), <https://www.washingtonpost.com/world/2023/05/09/russia-victory-day-parade-ukraine-putin/> [https://perma.cc/TZ4Q-WGZN].

<sup>85</sup> *Id.*

<sup>86</sup> Clara Apt, *Russia’s Eliminationist Rhetoric Against Ukraine: A Collection*, JUST SEC. (Sept. 13, 2023), <https://www.justsecurity.org/81789/russias-eliminationist-rhetoric-against-ukraine-a-collection/> [https://perma.cc/W7G5-UCY2].

<sup>87</sup> See Amos, *supra* note 6 and accompanying text.

President Volodymyr Zelensky, on the other hand, uses emotion to masterfully appeal to the international audience.<sup>88</sup> After the invasion, his Twitter, now referred to as “X,” account grew by “hundreds of thousands of followers a day ([as of March 3, 2022 he had] more than 4.3 million followers).”<sup>89</sup> The imagery of international law is often far removed from the battlefield with officials sitting in suits at the United Nations or other international tribunals or organizations. Zelensky brings it closer to home with his olive-green fleece or T-shirt and cargo pants.<sup>90</sup> In a speech to the U.N. Security Council, Zelensky questioned the utility of the United Nations if it “cannot act more strongly.”<sup>91</sup> Shortly after the invasion, Zelensky reportedly told EU leaders “this might be the last time you see me alive” during a video conference humanizing the invasion and showing that he was willing to die for his country.<sup>92</sup> His commitment to his own people and country, and decision not to flee the country at the outset of the invasion has been cited as a reason for the strong morale of the military and activists unlike in Afghanistan when President Ashraf Ghani fled when the Taliban surrounded Kabul.<sup>93</sup>

When asking the United States Congress for aid, Zelensky used a persuasive mechanism to invoke the emotion of the listeners.<sup>94</sup> In the first three minutes of his 17-minute speech, he spoke with great feeling about the United States, not Ukraine, to make an effective connection with his audience.<sup>95</sup> He also does not stand formally behind a podium but prefers to sit or stand in the street to show the landscape of war behind him.<sup>96</sup> He showed a video montage to Congress

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<sup>88</sup> See Dan Balz, *Zelensky, Biden Use Moral Outrage as Weapon in Conflict with Russia*, WASH. POST (Apr. 16, 2022), <https://www.washingtonpost.com/politics/2022/04/16/sundaytake-russia-biden-zelensky/> [https://perma.cc/UB57-6T6H].

<sup>89</sup> Cohen, *supra* note 9.

<sup>90</sup> *Id.*

<sup>91</sup> Balz, *supra* note 88.

<sup>92</sup> Lee Brown, *Ukraine’s Volodymyr Zelensky Warns EU Leaders ‘This Might Be the Last Time You See Me Alive,’* N.Y. POST (Feb. 25, 2022), <https://nypost.com/2022/02/25/ukraines-volodymyr-zelensky-delivers-foreboding-message-to-eu-leaders/> [https://perma.cc/8TZN-RK5K?].

<sup>93</sup> The New York Times (@nytimes), TWITTER (Feb. 28, 2022, 3:50 PM), <https://twitter.com/nytimes/status/1498400143766343682> [https://perma.cc/3KFN-W3C6]; Mykhailo Minakov, *Zelensky Versus Putin: The Personality Factor in Russia’s War on Ukraine*, WILSON CTR.: FOCUS UKR. (Apr. 13, 2022), <https://www.wilsoncenter.org/blog-post/zelensky-versus-putin-personality-factor-russias-war-ukraine> [https://perma.cc/V366-XZ7D].

<sup>94</sup> See, e.g., Minda Zetlin, *Here’s the Masterful Lesson in Persuasion Everyone Should Learn from Volodymyr Zelensky*, INC. (Mar. 17, 2022), <https://www.inc.com/minda-zetlin/zelensky-congress-speech-ukraine-war-russia-9-11-pearl-harbor-bombings.html> [https://perma.cc/MUV8-Q5TE].

<sup>95</sup> *Id.*

<sup>96</sup> Angie Basiouny, *What Can Leaders Learn from Ukraine’s Volodymyr Zelenskyy?*, KNOWLEDGE AT WHARTON (Mar. 22, 2022),

illustrating the horrors of the war, making it all too real for his audience.<sup>97</sup> A Wharton management professor, Michael Useem, has called Zelensky a “master of communication, one of the best ever.”<sup>98</sup> However, he added that:

the ultimate measure of effective management is action. Will Zelenskyy be able to persuade foreign leaders to intervene and help his country fight off Russian aggression? The professor thinks he will. “I think his words are so powerful, his purpose so unequivocal that he is going to indeed move the world,” Useem said. “These are going to be the days that shook the world, and Zelensky is at the center of all of the above.”<sup>99</sup>

From the beginning, Zelensky and his team’s use of social media has been powerful. It was reported that Zelensky said, “The fight is here; I need ammunition, not a ride” on the US evacuation offer.<sup>100</sup> The Embassy of Ukraine to the UK responded on Twitter that “Ukrainians are proud of their President.”<sup>101</sup> Ukraine has social media volunteers who understand how important their work is to garner and sustain public opinion.<sup>102</sup> They work to counter disinformation and circulate humorous content to boost morale; their most successful video—mocking Russians on holiday in the Crimean peninsula with Bananrama’s ‘Cruel Summer’ playing in the background— was viewed over 2.2 million times.<sup>103</sup> They have been honing their skills since the 2014 invasion of Crimea.<sup>104</sup> The Kyiv entrepreneur who works with a group of social media volunteers, indicated that part of their success is due to the fact that “Russians haven’t managed to come up with anything interesting . . . No humour, no beauty. Not even pain. No compassion.”<sup>105</sup>

With social media, even individuals can show the world wrenching images of the suffering in Ukraine and evoke emotion on the world stage. One image that went viral around the world was of a girl in a beautiful red prom dress

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<https://knowledge.wharton.upenn.edu/podcast/knowledge-at-wharton-podcast/what-can-leaders-learn-from-ukraines-volodymyr-zelenskyy/> [<https://perma.cc/735V-YV54>].

<sup>97</sup> Peter Marks, *Zelensky’s Address to Congress Was a Dramatic Appeal in Three Acts*, WASH. POST (Mar. 16, 2022), <https://www.washingtonpost.com/theater-dance/2022/03/16/zelensky-address-congress-skillful/> [[perma.cc/EXY8-6LLT](https://perma.cc/EXY8-6LLT)].

<sup>98</sup> Basiouny, *supra* note 99.

<sup>99</sup> *Id.*

<sup>100</sup> See ‘*I Need Ammunition, Not a Ride: Zelenskyy Turns Down U.S. Evacuation Offer*, NAT’L POST (Feb. 26, 2022), <https://nationalpost.com/news/world/i-need-ammunition-not-a-ride-zelensky-turns-down-u-s-evacuation-offer/> [[perma.cc/3F4H-HPSZ](https://perma.cc/3F4H-HPSZ)].

<sup>101</sup> *Id.*

<sup>102</sup> See Paul Adams, *How Ukraine is Winning the Social Media War*, BBC (Oct. 15, 2022), <https://www.bbc.com/news/world-europe-63272202> [<https://perma.cc/J9TG-6NYY>].

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

standing in front of the ruins of her school.<sup>106</sup> Her aunt shared the photo on Twitter with the caption: “My niece was supposed to graduate this year from her high school. She and her friends bought dresses and were looking forward to this day. Then Russians came. Her school was directly hit and destroyed. Today she came back to what is left of her school and her plans.”<sup>107</sup>

Individuals can also play a role using open-source intelligence, collecting evidence of war crimes. An estimated 50,000 war crime investigations had been opened as of December 8, 2022, and much of the evidence has been collected from individuals’ cell phones.<sup>108</sup> Following Russia’s invasion of Ukraine, the European Union has amended its regulations to allow judicial authorities to use open-source evidence on war crimes, including satellite images, and photos and videos taken by civilians, in cases before the International Criminal Court.<sup>109</sup>

Russia’s illegal invasion, and the moral outrage it evoked, has highlighted Ukraine and its people as a country and their struggles on the world stage. Banksy confirmed he was the creator of seven murals in Ukraine in 2022.<sup>110</sup> The murals have been a source of inspiration with images depicting victory over Putin and resilience. For example, one shows a young boy throwing a man resembling the Russian president, Vladimir Putin, to the floor during a judo match.<sup>111</sup> Another shows a gymnast doing a handstand among the ruins of a bombed building. One Kyiv resident, Alina Mazur, visiting the site of the murals said, “This is such a historic moment for our country, that people like Banksy and other famous figures are coming here and showing the world what Russia has done to us.”<sup>112</sup> Another Ukrainian woman, Oleksiy Savochka, opined that

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<sup>106</sup> Srimoyee Chowdhury, *Girl Poses in Front of a Bombed School in Ukraine Wearing Her Prom Dress. Powerful Photo Will Shock You*, INDIA TODAY (June 8, 2022), <https://www.indiatoday.in/trending-news/story/girl-poses-in-front-of-a-bombed-school-in-ukraine-wearing-her-prom-dress-powerful-photo-will-shock-you-1960067-2022-06-08> [perma.cc/8MS6-R38T].

<sup>107</sup> *Id.*

<sup>108</sup> Tim Mak, *A Look Into One of 50 Thousand War Crimes Under Investigation in Ukraine*, NPR (Dec. 8, 2022), <https://www.npr.org/2022/12/08/1141644863/a-look-into-one-of-50-thousand-war-crimes-under-investigation-in-ukraine> [https://perma.cc/AAV6-BCYW]; Zeba Siddiqui, *FBI Working with US Companies to Collect War Crime Evidence in Ukraine*, REUTERS (Apr. 26, 2023), <https://www.reuters.com/world/fbi-working-with-us-companies-collect-war-crime-evidence-ukraine-2023-04-26/> [https://perma.cc/A6ZF-TB84].

<sup>109</sup> *Eurojust and the War in Ukraine*, EUROJUST, <https://www.eurojust.europa.eu/eurojust-and-the-war-in-ukraine> [https://perma.cc/UTM8-95PL].

<sup>110</sup> Jacquelyne Germaine, *Banksy Reveals Seven Murals Throughout War-Torn Ukraine*, SMITHSONIAN MAG. (Nov. 16, 2022), <https://www.smithsonianmag.com/smart-news/banksy-unveils-mural-in-ukrainian-town-attacked-by-russian-forces-180981130/> [https://perma.cc/GY4W-BRPC].

<sup>111</sup> Anny Shaw, *Banksy in Ukraine: Seven New Works Appear in War-Torn Sites*, ART NEWSPAPER (Nov. 14, 2022), <https://www.theartnewspaper.com/2022/11/14/banksy-in-ukraine-seven-new-works-appear-in-war-torn-sites> [perma.cc/6W5J-YAP3].

<sup>112</sup> Germaine, *supra* note 110.



“[The mural] is a symbol that we are unbreakable. And our country is unbreakable.”<sup>113</sup>

The war has brought Ukrainian art to the world with the country in the spotlight. Ukrainian poets and novelists are reaching an international audience with translations into English.<sup>114</sup> Although “[m]ost Ukrainian rock groups are unable to tour abroad[] because of a ban on men of military age from leaving the country”, all-girl group Death Pill is going to Europe, where they now have many fans, and see themselves as “heavy metal ambassadors.”<sup>115</sup> “Russia is trying to destroy our culture. This has been going on for 300 years. We want to spread news about the war and our resistance to imperialism,” one member of the band, Khomenko, said.<sup>116</sup>

Ukrainian organizations are even turning people’s emotion into a money-making endeavor for the war effort. Individuals are able to go to websites, such as Revengefor.com, and write a message they want to see on an artillery shell.<sup>117</sup> The organization then passes the order to the Ukrainian military, and they will email participants photographic proof and brief information about the use of that shell.<sup>118</sup> The website includes a gallery of the shells with messages.<sup>119</sup>

Keeping the moral component of the war in the public’s eye is critical to success. As ethics Professor DeCosse has stated: “Ukrainians have moved the world by their willingness to die for such values. Putin has decided to kill Ukrainian civilians in order to eradicate these values. Unless we see this moral component of the war, we cannot properly understand what is going on now and how it might end.”<sup>120</sup>

Putin may not have realized that his invasion would highlight Ukraine as a country, and a people, to the world—the exact opposite of his war aims. And Ukraine will want to sustain the moral outrage of the world as other news events take hold as it continues to need military and other foreign aid.

<sup>113</sup> *Id.*

<sup>114</sup> See Alexandra Alter, *An Urgent Mission for Literary Translators: Bringing Ukrainian Voices to the West*, N.Y. TIMES (Mar. 10, 2022), <https://www.nytimes.com/2022/03/10/books/ukraine-translate-books.html> [<https://perma.cc/PJ5T-Q4ZP>].

<sup>115</sup> Luke Harding, *‘I Want to Express Rage’: Ukrainian Punks Death Pill Take Fury on Tour*, GUARDIAN (May 19, 2023), <https://www.theguardian.com/world/2023/may/19/fast-furious-and-extremely-loud-ukrainian-punk-band-death-pill-are-coming> [<https://perma.cc/PLH3-K9GZ>].

<sup>116</sup> *Id.*

<sup>117</sup> See *Your Revenge For*, REVENGE FOR, <https://revengefor.com/> [<https://perma.cc/FLY4-QMSE>].

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> David E. DeCosse, *Reflections on Ethics and the Russian Invasion of Ukraine*, MARKULA CTR. FOR APPLIED ETHICS AT SANTA CLARA UNIV. (Mar. 22, 2022), <https://www.scu.edu/ethics/all-about-ethics/reflections-on-ethics-and-the-russian-invasion-of-ukraine/> [<https://perma.cc/VCD3-MDBA>].

## V. UNIVERSAL JURISDICTION

One small but important step the United States has made to turn its moral outrage into a legal change, is to expand the jurisdiction of the War Crimes Act of 1996 now making it possible for President Putin’s henchmen to be prosecuted in the United States.<sup>121</sup> In January 2023, the United States amended the War Crimes Act of 1996 to extend the United States’ jurisdiction to prosecute perpetrators of war crimes to include non-nationals found on U.S. soil, preventing the U.S. from being a safe haven for war criminals.<sup>122</sup> Additionally, the aptly titled “Justice for War Crimes Act” does not require the victim to be a U.S. national and also removed time limits for prosecution.<sup>123</sup> This welcome step brings the United States closer to Universal Jurisdiction. Under the prior law, either the victim or perpetrator had to be a U.S. national or service member.<sup>124</sup> That requirement essentially allowed war criminals to move freely in the United States without fear of prosecution. In fact, “there has not been a single prosecution under the law . . . since it was enacted.”<sup>125</sup>

In May 2022, Senators introduced the “Justice for War Crimes Act” with bipartisan support showing the United States was taking action.<sup>126</sup> The title also invokes a strong emotional response, as evidenced by the statements of the Congressmen who passed it: “This bill sends a clear signal that America is a refuge for the persecuted—not for persecutors,” Senator Patrick Leahy said.<sup>127</sup> Senator Chuck Grassley also stated: “The United States must not be a safe haven for war criminals looking to escape justice in their home country.”<sup>128</sup> The Act was passed unanimously by the House one day after Ukrainian President Volodymyr Zelenskyy’s emotional address to Congress. Moral outrage after the invasion of Ukraine propelled Congress forward to show the world that they would hold war criminals accountable. Even Human Rights Watch Senior Counsel Esti Tambay and Washington Director Sarah Yager wrote of

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<sup>121</sup> See Justice for Victims of War Crimes Act of 2023, Pub. L. No. 117-351, 136 Stat. 6265.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> War Crimes Act of 1996, Pub. L. No. 104-192, 110 Stat. 2104.

<sup>125</sup> Esti Tambay & Sarah Yager, *Finally, a Better U.S. War Crimes Bill. Now What? Justice is Having a Moment*, HUM. RTS. WATCH (Sept. 21, 2022), <https://www.hrw.org/news/2022/09/21/finally-better-us-war-crimes-bill-now-what> [<https://perma.cc/X2FY-E2NA>].

<sup>126</sup> Aishvarya Kavi, *Congress Votes to Expand U.S. Power to Prosecute International War Crimes*, N.Y. TIMES (Dec. 22, 2022), <https://www.nytimes.com/2022/12/22/us/politics/congress-war-crimes.html> [<https://perma.cc/WVQ4-KTRX>].

<sup>127</sup> Press Release, Chuck Grassley, U.S. Sen., Bipartisan, Bicameral Lawmakers Introduce Bill to Broaden War Crimes Jurisdiction (May 18, 2022), <https://www.grassley.senate.gov/news/news-releases/bipartisan-bicameral-lawmakers-introduce-bill-to-broaden-war-crimes-jurisdiction> [<https://perma.cc/3E3S-EQNY>].

<sup>128</sup> *Id.*

Congress's actions that "justice is having a moment."<sup>129</sup> Of course, they advocate for going further to consider legislation to prosecute crimes against humanity, which can be committed during peacetime as well as during war, and to expand liability to ensure that leaders responsible for war crimes can be prosecuted using command responsibility.<sup>130</sup>

Universal jurisdiction is based on the idea that certain crimes are so heinous, so morally outrageous, that they are of universal concern. Therefore, a domestic court with no traditional source of jurisdiction may prosecute these crimes.<sup>131</sup> The domestic court acts as a "surrogate for the international community"<sup>132</sup> just as Germany has done prosecuting Syrian officials.<sup>133</sup> As Andrew K. Woods has pointed out, international criminal law is distinct from domestic criminal law as there is evidence of enough variation in global views towards crime and punishment.<sup>134</sup> However, universal jurisdiction recognizes certain crimes such as genocide, crimes against humanity, torture, and war crimes are so universally condemned that they should be prosecuted anywhere possible.<sup>135</sup> This needs to be truly universal to be effective and not only target weak states.<sup>136</sup> Universal jurisdiction is one answer to using the moral outrage of the world to effectuate legal change.

Universal jurisdiction is a useful tool for fighting atrocity crimes, but it takes time and much effort. It often takes place after the international community has moved on to the next crisis. In their Paths of International Law project, Professors Esponda, Yildiz, Endres, and Krisch examined what it takes for international legal rules to change.<sup>137</sup> For Universal Jurisdiction, they found that most crucial to the push for Universal Jurisdiction were Non-Governmental Organizations ("NGOs").<sup>138</sup> NGOs worked to publicize cases, taking them to the media and creating the political incentives that often drove the efforts of lawmakers and prosecutors in Western countries to implement universal

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<sup>129</sup> Tambay & Yager, *supra* note 125.

<sup>130</sup> *Id.*

<sup>131</sup> M. Cherif Bassiouni, *Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice*, 42 VA. J. INT'L L. 81, 96, 103 (2001).

<sup>132</sup> *Id.* at 96.

<sup>133</sup> See Heidi R. Gilchrist, *No Hiding from Justice: Universal Jurisdiction in Domestic Courts*, 57 TEX. INT'L L.J. 215, 216 (2022).

<sup>134</sup> Andrew K. Woods, *Moral Judgments & International Crimes: The Disutility of Desert*, 52 VA. J. INT'L L. 633, 637 (2012).

<sup>135</sup> *Universal Jurisdiction?*, CTR. FOR JUST. & ACCOUNTABILITY, <https://cja.org/what-we-do/litigation/legal-strategy/universal-jurisdiction/> [<https://perma.cc/3MRE-WLAV>].

<sup>136</sup> Press Release, General Assembly, Universal Jurisdiction Principle Must Be Defined to Avoid Abuse Endangerment of International Law, Sixth Committee Hears as Debate Begins, U.N. Press Release GA/L/3481 (Oct. 15, 2014), <https://press.un.org/en/2014/gal3481.doc.htm> [<https://perma.cc/T8Q7-HF7H>].

<sup>137</sup> See generally Pedro Martínez Esponda, Ezgi Yildiz, Dorothea Endres & Nico Krisch, *The Paths of International Law: Case Studies 6* (May 9, 2023) (unpublished manuscript), <https://ssrn.com/abstract=4430270> [<https://perma.cc/F8BB-FPSV>].

<sup>138</sup> *Id.* at 420.

jurisdiction.<sup>139</sup> They also found “academics played an important role” in propelling the use of universal jurisdiction, especially in “producing the legal arguments for making universal jurisdiction apply.”<sup>140</sup> I had previously argued similarly that as the moral outrage of the world is difficult, if not impossible, to sustain, the international community needs the hard work and commitment of NGOs to sustain and move forward, taking action as they have done prosecuting members of Syrian intelligence using universal jurisdiction.<sup>141</sup>

## VI. NEGATIVE SIDE OF MORAL OUTRAGE & SELECTIVE OUTRAGE

In addition to fueling needed change, moral outrage can have a negative side. Three days after 9/11 almost every member of Congress attended a memorial service at Washington National Cathedral.<sup>142</sup> Reverend Nathan Baxter, in his opening invocation, said, “Let us also pray for divine wisdom as our leaders consider the necessary actions for national security, wisdom of the grace of God, that as we act we not become the evil we deplore.”<sup>143</sup> Rep. Barbara Lee, the sole opposing vote to giving the president “a broad, open-ended authorization for military force,” quoted Reverend Baxter in explaining her vote against the Authorization for Military Force (“AUMF”).<sup>144</sup> For the past twenty-two years, presidents have used the AUMF as authorization to wage war almost wherever they please.<sup>145</sup> The horrors of torture and unlawful detention resulted from the horrors and outrage of 9/11.

Emotion must also be examined critically. As others have also questioned, why was there such a strong emotion to Ukrainians plight, but not other groups?<sup>146</sup> In the United States, there are Ukrainian flags everywhere to support Ukraine, but not other causes.<sup>147</sup> Ukraine has received incredible media coverage that other non-white groups have not received.<sup>148</sup> The real Banksy is

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<sup>139</sup> *Id.* at 420–21.

<sup>140</sup> *Id.* at 421.

<sup>141</sup> See Gilchrist, *supra* note 133, at 235.

<sup>142</sup> Gillian Brockell, *She Was the Only Member of Congress to Vote Against War in Afghanistan. Some Called Her a Traitor*, WASH. POST (Aug. 17, 2021), <https://www.washingtonpost.com/history/2021/08/17/barbara-lee-afghanistan-vote/> [<https://perma.cc/Q7Z7-CNQA>].

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> Gene Healy & John Glaser, *Repeal, Don't Replace, the AUMF*, CATO INST. POL'Y REPORT, July/Aug. 2018, at 11, 11, <https://www.cato.org/sites/cato.org/files/serials/files/policy-report/2018/8/cpr-v40n4.pdf> [<https://perma.cc/4XP8-SMMC>].

<sup>146</sup> See *supra* note and accompanying text.

<sup>147</sup> Khaled A. Beydoun, *On Terrorists and Freedom Fighters*, 136 HARV. L. REV. F. 1, 35 (2022).

<sup>148</sup> *Id.* at 16.

in Ukraine, but Syria had a copycat.<sup>149</sup> As Khaled Beydoun has stated: “The War in Ukraine, distinctly unfolding alongside similar campaigns in the ‘Middle East’ and Muslim-majority contexts, is a powerful theatre illustrating this dissonance; such dissonance colors the framing of ‘nonwhite’ Muslims vying for self-determination as terrorists and white Ukrainians, engaged in the very acts of resistance, as freedom fighters.”<sup>150</sup> Moral outrage can highlight these unfortunate biases.

As Sâ Benjamin Traoré has pointed out, “the assertion that selective condemnation, selective indignation, and different treatments of similar violations profoundly affect the legitimacy of international law is beyond dispute.”<sup>151</sup> He explained that some African states abstained on the Ukraine resolution because the resolution did not “strongly reaffirm the commitment of all states—especially the most powerful that have been using force unlawfully over years—to put an end to the repetitive violations and the weakening of the regime of use of force in international law.”<sup>152</sup> He used Libya and NATO’s 2011 intervention, and regime change, as an example of being blatantly unlawful and yet there was very little moral outrage.<sup>153</sup>

Additionally, while moral outrage and other emotions can be a force for needed change, one needs to be circumspect as it can also lead to quick decisions that would be best reasoned through. For example, on March 15, 2022, less than three weeks after the Ukrainian invasion by Russia, the Council of Europe issued an opinion requesting the Russian Federation “immediately withdraw from the Council of Europe.”<sup>154</sup> The same day the government of the Russian Federation announced its withdrawal from the Council of Europe and its intention to denounce the European Court of Human Rights.<sup>155</sup> Therefore, victims of Russian atrocities are now left with one less avenue of redress. Amnesty International’s Director for Eastern Europe and Central Asia, Marie Struthers, called it “a tragedy for the victims of the Kremlin’s human rights abuses.”<sup>156</sup> Is

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<sup>149</sup> Vidar, *Syria’s Banksy*, STREET ART UTOPIA (Sept. 29, 2021), <https://streetartutopia.com/2021/09/29/syrias-banksy/> [https://perma.cc/BT8X-H7WU].

<sup>150</sup> Beydoun, *supra* note 151, at 6–7.

<sup>151</sup> Sâ Benjamin Traoré, *Making Sense of Africa’s Massive Abstentions During the Adoption of the UNGA Resolution on the Aggression Against Ukraine*, AFRICLAW (Apr. 21, 2022), <https://africlaw.com/2022/04/21/making-sense-of-africas-massive-abstentions-during-the-adoption-of-the-unga-resolution-on-the-aggression-against-ukraine/> [https://perma.cc/DXG8-TDFQ].

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> Eur. Parl. Assemb., *Consequences of the Russian Federation’s Aggression Against Ukraine*, 4th Sess., Opinion 300 (2022), <https://pace.coe.int/en/files/29885/html> [https://perma.cc/B62D-MZHU].

<sup>155</sup> *The Russian Federation Is Excluded from the Council of Europe*, COUNCIL OF EUR. (Mar. 16, 2022), <https://www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe> [https://perma.cc/9BJY-P4RM].

<sup>156</sup> *Russia’s Withdrawal from Council of Europe a Tragedy for Victims of Kremlin’s Abuses*, AMNESTY INT’L (Mar. 15, 2022),

it the best course to kick Russia out of European Council? As the Council of Europe is supposed to promote human rights, there are obvious arguments to expel Russia, but also arguments to keep avenues of redress open and whether further isolating Russia is the best course.<sup>157</sup> In order to help the Ukrainian military, the United States has sent cluster munitions to Ukraine.<sup>158</sup> One hundred and twenty-three countries have signed the Convention banning cluster munitions as a threat to civilian populations.<sup>159</sup> However, international law is also criticized for being slow and people wanting a more immediate response to war crimes.

Misplaced outrage has prompted attacks on Russian restaurants and calls for bans on anything Russian-affiliated. “Russian restaurants across the United States have been vandalized and . . . [even] received bomb threats.”<sup>160</sup> The famed Russian Tea Room in New York City has a pop-up that appears when individuals go to the website, denouncing the Russian invasion of Ukraine.<sup>161</sup> Ukraine’s culture minister, Oleksandr Tkachenko, wrote an opinion piece in *The Guardian* stating the Kremlin is using Russian culture as a “tool and even a weapon,” wielding it to “justify their terrible war” and called for a pause in performances of Tchaikovsky’s *Nutcracker*.<sup>162</sup> Although ballet companies did not cancel their performances, other arts venues launched their own boycotts, with the Metropolitan Opera canceling contracts with artists who support Putin, Eurovision banning Kremlin-backed artists from participating, and the Cannes film festival disinviting Russian delegations.<sup>163</sup> Academics and writers compared “the moment to McCarthy’s red scare of the 1950s.”<sup>164</sup> As Kevin

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<https://www.amnesty.org/en/latest/news/2022/03/russias-withdrawal-from-council-of-europe-a-tragedy-for-victims-of-kremlins-abuses/> [<https://perma.cc/NL8H-KJMU>].

<sup>157</sup> *The Council of Europe in Brief*, COUNCIL OF EUR., <https://www.coe.int/en/web/about-us/do-not-get-confused> [<https://perma.cc/3ACM-T77W>].

<sup>158</sup> Mike Stone & Nandita Bose, *US to Give Ukraine Cluster Munitions in \$800 Million Aid Package*, REUTERS (July 7, 2023), <https://www.reuters.com/world/us-cluster-munitions-ukraine-expected-fridays-800m-aid-package-2023-07-07/> [<https://perma.cc/M923-7ZGP>].

<sup>159</sup> *Cluster Munitions: Renew Global Momentum for Ban*, HUM. RTS. WATCH (May 29, 2023), <https://www.hrw.org/news/2023/05/29/cluster-munitions-renew-global-momentum-ban> [<https://perma.cc/CYA2-5MRC>].

<sup>160</sup> Deon J. Hampton, *Russian Businesses in the U.S. Face Backlash Over War in Ukraine*, NBC NEWS (Mar. 9, 2022), <https://www.nbcnews.com/news/us-news/russian-businesses-us-face-backlash-war-ukraine-rcna19155> [<https://perma.cc/2DYK-QBVC>].

<sup>161</sup> RUSSIAN TEA ROOM, <https://russiantearoomnyc.com/> [<https://perma.cc/RM9T-SXRK>]; see also Kunyi Yang, *The Russian Tea Room in New York City Suffers as Ukraine Invasion Escalates*, CNN BUSINESS (Mar. 7, 2022), <https://www.cnn.com/2022/03/05/business/russian-tea-room-ukraine-invasion/index.html> [<https://perma.cc/69Z5-TSUC>].

<sup>162</sup> Oleksandr Tkachenko, *As Ukraine’s Culture Minister, I’m Asking You to Boycott Tchaikovsky Until This War Is Over*, GUARDIAN (Dec. 7, 2022), <https://www.theguardian.com/commentisfree/2022/dec/07/ukraine-culture-minister-boycott-tchaikovsky-war-russia-kremlin> [<https://perma.cc/ZK2A-CF2J>].

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

M.F. Platt, a professor in the department of Russian and East European Studies at the University of Pennsylvania, and a translator of contemporary Russian poetry, wrote in the New York Times, “It is profoundly ironic that those who react to the war in Ukraine by aggressively or indiscriminately canceling or restricting artists and artistic works simply for being Russian are reflecting the same kind of nationalist thinking driving the Russian invasion in the first place.”<sup>165</sup>

Strong reactions have also occurred in the sporting world with calls to ban Russian athletes.<sup>166</sup> In January 2023, the International Olympic Committee issued a “Statement on solidarity with Ukraine, sanctions against Russia and Belarus, and the status of athletes from these countries” in which they declared that they would “[r]espect the rights of all athletes to be treated without any discrimination, in accordance with the Olympic Charter. Governments must not decide which athletes can participate in which competition and which athletes cannot. No athlete should be prevented from competing just because of their passport.”<sup>167</sup>

The border between vigilance or using moral outrage for good and paranoia can easily be crossed. Human rights advocates explain that is what is happening in Norway where they are beginning to see Russian spies everywhere.<sup>168</sup> European sanctions have banned Russians from flying aircraft, which Norway has interpreted to include Russians operating hobby drones.<sup>169</sup> As spying is extremely hard to prove, “seven Russians were arrested in mid-October alone for flying drones.”<sup>170</sup> Human rights lawyers argue the law is discriminatory and possibly a human rights violation.<sup>171</sup> “[F]our have been put on trial.”<sup>172</sup> “Two have been convicted and ordered to serve prison sentences of 90 or 120 days.”<sup>173</sup>

## VII. CONCLUSION

Moral outrage can look like it will lead to change and strong action, the problem is with sustaining it. Bad actors seem to understand the limits of moral

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<sup>165</sup> *Id.*

<sup>166</sup> Press Release, Int’l Olympic Comm., Statement on Solidarity with Ukraine, Sanctions Against Russia and Belarus, and the Status of Athletes from These Countries (Jan. 25, 2023), <https://olympics.com/ioc/news/statement-on-solidarity-with-ukraine-sanctions-against-russia-and-belarus-and-the-status-of-athletes> [<https://perma.cc/LMY2-UXQJ>].

<sup>167</sup> *Id.*

<sup>168</sup> Erika Solomon & Henrik Pryser Libell, *In a Wary Arctic, Norway Starts to See Russian Spies Everywhere*, N.Y. TIMES (Dec. 12, 2022), <https://www.nytimes.com/2022/12/12/world/europe/arctic-norway-russian-spies.html> [<https://perma.cc/HVT8-ZJEG>].

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

outrage. They seem all too aware that if they merely wait, the moral outrage will subside, the news cycle will move on, and they will be left alone. Syria used chemical weapons on its own people, killing an estimated 306,000 civilians, and Bashar al-Assad is still in power.<sup>174</sup> He waited, on script, and now a normalization of relations has been seen by his recent attendance at the Arab League Summit.<sup>175</sup> Former President Obama says the Syrian civil war “haunts me constantly.”<sup>176</sup> If the international community had acted then, many wonder, would Russia had felt such impunity now? How can we best harness moral outrage to effectuate change? However, there are, of course, limits to the response when dealing with nuclear powers, especially as the ultimate goal is peace, not war. The goal of the international community is to find ways to translate this emotion into action, look at it critically, and apply the rules universally, so we can make sure Article 2(4) of the United Nations Charter is meaningful: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State.”<sup>177</sup>

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<sup>174</sup> *Syria Events of 2022*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2023/country-chapters/syria> [<https://perma.cc/5YR3-YEUX>].

<sup>175</sup> Patrick Wintour, *Bashar al-Assad Tells Arab League He Hopes His Return Marks New Era of Peace*, GUARDIAN (May 19, 2023), <https://www.theguardian.com/world/2023/may/19/syria-bashar-al-assad-receives-warm-welcome-on-arab-league-return> [<https://perma.cc/V2NJ-U39V>].

<sup>176</sup> Kevin Liptak, *Obama Says Syria War ‘Haunts’ Him*, CNN POLITICS (Sept. 22, 2016), <https://www.cnn.com/2016/09/22/politics/obama-syria-civil-war-haunts/index.html> [<https://perma.cc/2QWL-49NL>].

<sup>177</sup> U.N. Charter art. 2, ¶ 4.