

A Ukraine Wars People's Tribunal?

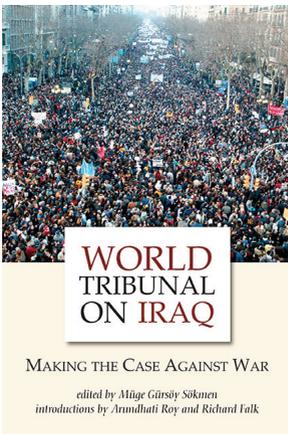
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A somewhat modified version was published online in CounterPunch on May 6, 2022 under the title 'Toward a Ukraine Wars People's Tribunal'. The most important change is the insistence that the Geopolitical War taking place under the rubric of the Ukraine War is different and far more dangerous than what is being described as a 'proxy war.' Also important is the growing evidence that the inflammatory nature of Biden's tactics in the Geopolitical War, especially the endorsement of 'a victory scenario' compounds the dangers, including heightening the risk that nuclear weapons will be used. What is needed is for civil society to frame with a sense of urgency 'a peace scenario' with as many specifications of its character as possible. I consider the proposal to form a civil society tribunal a step in this direction.

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Towards a People's Ukraine Wars Tribunal

The deepening current Ukraine Crisis is properly linked to the Russian aggression that commenced with a massive military attack against Ukraine on February 24, 2022, although it should not cover up the provocative developments of preceding years that prepared the way for what has erupted. The Russian attack has continued to ravage the country since, including inducing a refugee flow numbering several million. There is a broad consensus around the world that such aggression is a criminal violation of international law, and while noting the irresponsible nature of NATO provocations, it is widely agreed, fail to



provide Russia with a legally, morally, or even politically persuasive rationale with respect to accountability for such a violent encroachment on Ukrainian sovereign rights and territorial integrity. At the same time, from the outset of these events there was much more limited international support for the American led punitive response by NATO featuring harsh comprehensive sanctions amounting to 'economic warfare,' shipment of weaponry to the beleaguered country, dehumanization of Putin and Russophobic propaganda, along with silence about recourse to a diplomacy directed at stopping the killing and devastation. In the background of the two-level war was the related internal struggle within Ukraine between dominant indigenous forces in the Western part of the country and the Russian-speaking Ukrainians who are the majority in the industrial heartland of the country in the Dombas East.

As Russian military operations proceeded, perceptions of the core conflict began to change. What seemed at first a simple war of aggression, to be followed by belligerent operation, became by successive phases a geopolitical war between the United States and Russia, with strategic goals quite apart from the outcome of events in Ukraine, as well as heightening costs of the encounter for the entire world, including the people of Ukraine and especially the extreme poor everywhere. And while Washington bears the main responsibility for this shift, the Russian response was also irresponsible— not compromising war goals and recourse to veiled threats of nuclear warfare emanating from Moscow and Putin. Yet the essential character in this elevation of the war strategy to a geopolitical level of engagement is the rather explicit American shift in its policy entailing less of an emphasis upon bolstering Ukrainian resistance to Russian aggression and far more about inflicting a stunning geopolitical defeat on Russia and at the same time revitalizing post-Cold War transatlantic unity through a reaffirmation of the benefits of the NATO alliance in a global context where Russia is once more cast as the enemy of Western democracy.

It is important to understand that this Geopolitical War raises the stakes in Ukraine much higher than the prevailing tendency to view the second level war between the US and Russia as a 'proxy war.' A proxy war conceives of the strategic stakes in terms of the outcome of the conflict on the ground, whose overt antagonists are Russia and Ukraine. Conceiving of this confrontation as a geopolitical war calls attention to the much larger strategic consequences and risks because what is at stake is the structure of power on a global scale, specifically this Geopolitical War will influence the struggle between the US, Russia, and China as to whether the global security will reflect unipolarity or multipolarity. It is easier for a

country to accept defeat in a proxy war than in a geopolitical war, and herein lies embedded grave dangers of escalation.

Given such developments, the time has come for civil society initiatives to counter the disastrous global confrontation that is now endangering the world, and indeed even species survival prospects, in the pursuit of these geopolitical goals by the United States disguised somewhat by media complicity that continues to convey the impression that the Ukraine War is still only about the defence of Ukrainian sovereignty and territorial integrity, the daily war crimes attributable to the Russians, and the heroic and increasingly successful efforts of the Zelensky leadership and the courageous national unity of the Ukrainian people. I believe this is a basically deceptive and potentially dangerous image, including for Ukraine, and even for the main disseminator of hostile geopolitical propaganda, the US Government and consequently, the American people. Perhaps it comes as a disturbing surprise that only the political extremes of right and left are interpreting the Ukraine War as producing a global disaster that begun to spill across the borders of Ukraine, with far worse to come without even taking full account of the growing nuclear dangers. What has also become evident is the helplessness of peace-oriented approaches. Such voices are being shut out by mainstream media platforms, which is reinforced by the inability of the UN to act independently of a geopolitical consensus, and by inter-governmental impotence to safeguard human interest in face of the menacing moves by the most powerful states motivated by strong contradictory geopolitical goals.

In light of this line of interpretation, I am proposing the establishment of a civil society tribunal along the lines of the Russell Tribunal that brought independent critical voices to the fore during the Vietnam War, which had become the principal combat theatre of the Cold War in 1966-67. Although the tribunal was controversial at the time and of questionable relevance to ending that war, the Russell undertaking inspired many notable efforts along the same lines, most notably organized under the sponsorship of the Lelio Basso Foundation in Rome. Perhaps most notable was the elaborate series of such initiatives in response to US aggression against Iraq in 2003 culminating in the very significant Iraq War Tribunal of 2005. The proceedings of that event, appropriately held in Istanbul, can be beneficially studied to cast light on the policy dilemmas of the Ukraine Crisis. This self-funded event in Istanbul, orchestrated brilliantly by a group of Turkish progressive women citizens, brought together internationally prominent jurists and moral authority figures including

Arundhati Roy who served as the chair of the jury of conscience that sat in judgment, and rendered an opinion of lasting significance, especially for anti-war world tendencies.

It is my belief that such a tribunal devoted to passing judgment of the Ukraine Wars, constituted as a matter of urgency, is more important than any of these previous comparable civic events because the stakes for humanity are higher. The use of the plural for what is happening in Ukraine is not a typo, but reflects the view explained in my prior articles that the Ukraine Crisis can only be properly understood if interpreted as three interrelated wars with contradictory features: Level 1: Russia vs. Ukraine; Level 2: US vs. Russia; Level 3: Western Ukraine vs. Dombas. It is for this reason that I am proposing here that the tribunal be named People's Tribunal on the Ukraine Wars, despite its awkwardness.

The case for such an initiative is not only to give expression to views of the Ukraine Crisis that take international law, geopolitical crime, and nuclear dangers seriously, but also in view of the political incapacity of the UN to act effectively and responsibly when geopolitical actors get heavily embroiled in such a violent conflict which threatens world peace generally and causes massive suffering throughout the world, especially in the least developed countries or in societies dependent on import of basic foodstuffs and energy for reliable supplies at affordable prices. Most of the people vulnerable to such a mega-crisis live in states that have hardly any influence in the formation of global policy, but often bear the heaviest weight of its shortcomings. At present a normative vacuum exists in response to the Ukraine Crisis. This leaves transnational civil society as the last, best hope to exert a responsibility to act, and indeed seize the opportunity to goad the formal political actors on the global stage to operationalize a peace scenario before it is too late.

Clarifying the Background

First, when it comes to war/peace issues there exist two operational sets of norms with respect to international relations: (1) International Law, binding on all sovereign states; (2) Geopolitics that privileges a few powerful states. The identity of geopolitical actors is not as clearly identified as is that of sovereign states, which is rather clearly signified by internationally recognized territorial boundaries and access to membership in the UN, now numbering 193, that is, virtually all. The most influential, yet still misleading, guideline as to geopolitical stature is contained in the UN Charter, taking the form of the right of veto conferred on the five Permanent Members of the Security Council (also known as the P-5) who happened to be the winners in World War II and also the five countries first

to acquire nuclear weapons. As the composition of the P-5 has remained frozen in time for more than 77 years it is no longer descriptive of the geopolitical landscape, and never was. For this reason alone geopolitical identity is currently more blurred and problematic than earlier. Some P-5 members have declined in both hard and soft power since 1945, such as the UK and France, and seem to lack the capabilities and stature to qualify any longer as first tier geopolitical actors. In contrast, countries such as India, Japan, Germany, Brazil, Nigeria, Indonesia, South Africa have increased their capabilities and raised their stature in such ways as to seem existentially entitled to the status of 'geopolitical actors' at least regionally, and in some instances, globally.

From a normative point of view the distinction between international law and geopolitics is fundamental, and again is made clear by the significance of P-5 status within the UN framework which was designed to keep the peace after World War II. International law is applicable to every state, but is explicitly not obligatory for the P-5, which is what has made the UN so limited in its operational ability to provide humanity with a globally supervised war prevention system based on compliance with international law. Giving the Western states a veto was tantamount to acknowledging, as had been true for international relations in prior centuries, that the UN could not be expected to implement its own Charter norms if they collided with strategic interests of the P-5, but that compliance with these norms, if forthcoming at all would depend on geopolitical self-restraint or the counterforce of adversary geopolitical actors exerted outside the UN. A similar pattern of obstruction existed when Russia was the Soviet Union, yet its participation was seen as vital in 1945 if the UN was to enjoy global legitimacy premised on universal membership. Granting the USSR a right of veto was also a matter of protecting the country against its understandable anxiety about facing a Western majority on vital issues. As the decades have shown, the US in particular has used the veto (e.g. to shield Israel) or avoided the UN (as in the Vietnam War, NATO Kosovo War, and Iraq War of 2003) when it thought its proposed plan of action would be vetoed, or otherwise not supported. The UN was deliberately disempowered from any legal attempt to implement compliance with the UN Charter in relation to geopolitical actors, and the existential reality was not dissimilar from the pre-UN Westphalian structure of and experience with world order since the mid-17th century. Regulation of the use of force by the Great Powers, as they were formerly called, depended on a mixture of their self-restraint and what came to be known as 'the balance of power,' redesigned in the nuclear age as 'deterrence.' These nuclear dimensions are under challenge

from many non-geopolitical states and world public opinion, most recently in the form of the 2021 Treaty on the Prohibition of Nuclear Weapons (TPNW). This initiative is so far limited in its impacts due to the distressing non-participation of any of the nine nuclear states, as well as their allies staking their security on the reliability of the 'the nuclear protectorate' provided by geopolitical actors.

A second set of related considerations can be identified as the 'Nuremberg Exception,' which can be interpreted as follows: a geopolitical actor loses its impunity with respect to international law if it is defeated in a major war. This attitude is evident in the course of the unfolding two-level war in Ukraine. The US at the highest level of its government has been condemning the Russian attack as a war crime that should engage criminal accountability of Putin, and others, if the International Criminal Court acts to fulfil its mandate. This can be viewed from one angle as a kind of 'winner takes all' feature of geopolitical order, or from another as gross hypocrisy by recourse to one-sided (in)justice beneath the banner of 'Victors' Justice.' Nuremberg would enjoy somewhat increased jurisprudential credibility if the US had demonstrated post-Nuremberg its own willingness to be held accountable under the frameworks of international criminal law or the codified version of the Nuremberg Principles, which do not acknowledge that a Nuremberg Exception exists, despite its persisting reality.

Thirdly, what is missing in this recital of the jurisprudential realities of international relations is the availability of a venue capable of a legitimate normative assessment of the behaviour of geopolitical actors whether they are on the winning or losing side in a major war. It is evident that the UN lacks the constitutional mandate and political independence to undertake such a challenge without a thorough overhaul in its authority structure. Such reforms would require the approval of the very actors whose behaviour would then become subject to international law, and these actors show no readiness to curtail their discretion. It is for this reason that the only way to close the accountability gap is to rely on civil society activism as a legitimate source of normative authority. One such responsive effort, used in the past, has been to convene a tribunal based on the authority of ordinary people as representatives of society to uphold international law in the event of the failure of the UN or governments to do so. In the setting of the Ukraine Crisis such a tribunal could be entrusted with investigating the three levels of the war from the perspective of international law, with the addition of an aspirational norm that extends the reach of the tribunal to the geopolitical domain.

At present, inter-governmentally generated international law not

surprisingly fails to criminalize geopolitical wrongdoing. It is not surprising because throughout modern history geopolitical actors have been the principal architects of international law and vigilant about protecting their freedom of action along with their national interest more generally. I believe it has become desirable to posit the existence of a residual civil society legislative capacity somewhat analogous to the residual role of the General Assembly of the UN if an impasse is present in the Security Council with respect to a serious threat to international peace and security. On this basis a civil society endorsement of the concept of 'geopolitical crime' is justified to bring the US/Russia Geopolitical War within the ambit of the authority of The Ukraine Wars Tribunal.

There are two obvious weaknesses of this line of thinking that should be acknowledged. First, the Tribunal lacks any formal enforcement capability, although it could call for civil society boycotts and divestments that were effective in exerting transformative pressure on South Africa's apartheid regime. Secondly, the activist impulses that fund and make operational The Ukrainian Wars Tribunal are themselves self-consciously partisan or reflect the outlook of social movement, which is of course not qualitatively different than the deep biases of intergovernmental institutions. Such partisanship of this radical civic action will be subject to criticism from start to finish, which may yield a helpful debate about war, law, and accountability.

It is evident that this proposal is principally an undertaking whose effectiveness will in the first instance be registered symbolically rather than substantively in the sense that nothing immediate will change behaviourally in the prosecution and conduct of the three Ukrainian wars. Symbolic impacts should not be underestimated. The political outcomes in the most salient wars since 1945, including the epic struggles against colonialism, were politically controlled, often after many years of devastating warfare, by the weaker side if measured by material, especially military capabilities. I recall hearing the American president, Lyndon Johnson, in the mid-1960s boast that there was no way the United States could lose the war to Vietnam, 'a tenth-rate Asian power.' Symbolic venues shift power balances due to the commitments of people, and even alter the impacts of material interests over time. The struggles against slavery, racism, and patriarchy each manifest this dynamic. What at first seemed futile somehow became history!

In concluding, I hope some readers throughout the world will feel motivated enough to make the People's Ukraine Wars Tribunal a reality. It should be thought about as contributing to the imperative of framing A Peace Scenario that challenges the now ascendant Victory Scenario.