

[ADRN Issue Briefing]

## Sustaining Democratic Unity for Ukraine's Victory and South Korea's Roles in This

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Russian troops are retreating. As of Friday, November 11, 2022, Kherson has returned to Ukrainians, which marked the most significant victory for Kyiv and the biggest disappointment for Moscow since the outbreak of war in February. This will be marked as an important milestone of the Russia-Ukraine war, considering that President Putin declared residents of Kherson would be Russians “forever” following the September referendum<sup>1</sup>. Although it is still early to predict when and how the war will end, it is time to think about what the world’s like-minded liberal countries need to do after supporting Ukrainians in successfully defending their country from Russia’s aggression. This issue briefing discusses why the Russia-Ukraine war matters, what will happen next in Ukraine, what we know about the war crimes committed by Russian troops, and the measures needed to be taken after the war.

### 1. *A Good Victory is needed in Ukraine*

In this war, a lot has been at stake for democratic countries. US President Biden repeatedly claimed that this is a “battle between democracy and autocracy,” “between liberty and repression,” and about “the very culture and identity.”<sup>2</sup> German Chancellor Scholz defined the war as a “crusade against liberal democracy, a crusade against the rules-based international order, a crusade against freedom and progress, a crusade against our way of life.”<sup>3</sup> This is because Putin claimed that “Russia’s values were superior and diametrically opposed to Western decadence<sup>4</sup>,” which was echoed by other high officials in Moscow, arguing that democracies cannot defend themselves in times of great tension<sup>5</sup>.

It is not simply rhetoric. Unlike its pivotal role played during the Korean War in 1950 and

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<sup>1</sup> Reuters. “Extracts from Putin’s speech at annexation ceremony.” September 9, 2022.

<sup>2</sup> The White House. “Remarks by President Biden on the United Efforts of the Free World to Support the People of Ukraine.” March 26, 2022.

<sup>3</sup> Oltermann, Philip. “Germany still a ‘teenager’ in leading foreign security policy, says Scholz aide”. *The Guardian*, Oct 13, 2022.

<sup>4</sup> Gordon, Michael, Pancevski, Bojan, Bisserbe, Noemie, and Walker, Marcus. 2022. “Vladimir Putin’s 20-Year March to War in Ukraine—and How the West Mishandled It.” *Wall Street Journal*, April 1.

<sup>5</sup> Macaes, Bruno. “Russia cannot afford to lose, so we need a kind of a victory: Sergey Karaganov on what Putin wants.” *The New Statesman*, April 2, 2022.

the Gulf War in 1990, the United Nations (UN) revealed its significant limitations and incompetence in delivering collective security when it comes to fighting against the aggression of a veto player in the UN Security Council with credible nuclear capabilities. The failure to adopt the Security Council resolution condemning Russian attempts to unlawfully annex four regions of Ukraine on September 30 was a déjà vu of what happened in the League of Nations after the Manchurian Crisis in 1931 and the Abyssinian Crisis in 1935. Moscow's blatant violation of UN Charter Article 2 (4) is "a threat to the foundational principle that underpins the modern legal order."<sup>6</sup>

Such a failure emboldened other authoritarian regimes in East Asia. North Korea has been test-firing more than 50 ballistic missiles, including Intercontinental Ballistic Missiles (ICBM), adopting a new policy on Nuclear Forces in September, stipulating conditions for using nuclear weapons against non-nuclear powers like Seoul and Tokyo<sup>7</sup>. China also has proclaimed its clear intention to use force if necessary and demonstrated its military might and willpower by repeatedly launching missiles and conducting military exercises encircling Taiwan after US House of Representatives Speaker Pelosi's visit to Taipei last August.<sup>8</sup> This showed how US security guarantees connect the two different theaters of Europe and the Indo-Pacific and how a deterrence failure in the former leads to regional instability in the latter. Thomas Schelling's theory of "interdependence of commitments" across time and space appears to prove its relevance in today's world.<sup>9</sup>

Accordingly, this is not simply a war of territory but a war of value, about restoring the functioning of global governance, and has substantial strategic implications in multiple regions around the world. In this regard, the democratic countries need a good victory in Ukraine.

Recent developments in the war show that it is more likely we will have one. Ukraine's counteroffensives in the south near Kherson and the east near Kharkiv have been remarkably successful. The retaking of Kherson only proves how capable Ukrainian forces are compared to their adversary's. This major victory is thanks to the high morale of Ukrainian troops defending their homes and families, Kyiv's smart move of deception, long-range precision strikes destroying Russian command posts and supply depots, and Western support of important weapons such as Javelin Anti-Tank Guided Missiles (ATGM) and High Mobility Artillery Rocket System (HIMARS).<sup>10</sup> Pentagon Press Secretary Brigadier General Pat Ryder explained that the victory was a surprise only to Moscow.<sup>11</sup> "Ukrainian military adopted the NATO battle tactics, embracing combined arms as a way of war" and outmaneuvered the older Russian army with its Soviet-era tactics. As the former Minister of Defense of Ukraine claimed, "Ukraine can win big."<sup>12</sup>

This wise military strategy and relentlessly high-spirited morale of Ukraine is based on its people's resolve to defend their democracy and the unity of the international community in supporting

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<sup>6</sup> Hathaway, Oona. "The Case for Creating an International Tribunal to Prosecute the Crime of Aggression Against Ukraine (Part I)." *Just Security*, September 20, 2022.

<sup>7</sup> Korea Central News Agency of DPRK. "Law on DPRK's Policy on Nuclear Forces Promulgated." September 9, 2022.

<sup>8</sup> The State Council, The People's Republic of China. "China releases white paper on Taiwan Question, reunification in new era." August 10, 2022; Gallo, William. "With Pelosi Gone, China Circles Taiwan with Missiles." *Voice of America*, August 4 2022.

<sup>9</sup> Thomas Schelling. *Arms and Influence*. Greenwood Press, 1976 .

<sup>10</sup> Adetunji, Jo. "Ukraine's rapid advance against Russia shows mastery of 3 essential skills for success in modern warfare." *The Conversation*, September 16, 2022; Glantz, Mary. "How Ukraine's Counteroffensives Managed to Break the War's Stalemate." United States Institute of Peace, September 19.

<sup>11</sup> United States Department of Defense. "Ukraine's Success Was a Surprise Only to the Russians." September 13, 2022.

<sup>12</sup> Zagorodnyuk, Andriy. "Ukraine's Path to Victory." *Foreign Affairs*, October 18, 2022. .

such determination. Also, somewhat ironically, the Russian aggression against Ukraine has achieved what Moscow wanted the least: the unity of the democratic world. As US Indo-Pacific Policy Coordinator Kurt Campbell said, even Washington has been “struck by [...] the level of engagement on Indo-Pacific countries around issues associated with Ukraine.”<sup>13</sup> Ukraine’s victory, possibly a big one, will be the triumph of democracy and the liberal way of life.

## 2. *The Case of Genocide: Defining the Russian Atrocities during the War*

Ukraine’s major military success reminds us of the need to start thinking of post-war measures. Considering what has been at stake in this war, we should prepare action plans that hold Russian soldiers responsible for the atrocities they have committed during the war. One of the contentious issues among Russian crimes against humanity is genocide.

For the legal accusation of Russia for its war crimes, the International Court of Justice (ICJ) should hold jurisdiction over the case. However, neither Ukraine nor Russia has declared to accept the ICJ’s compulsory jurisdiction.<sup>14</sup> The only way the ICJ can intervene and investigate the case is when it is related to the issue of genocide, as both Russia and Ukraine are States Parties of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.<sup>15</sup> This is why Ukraine filed an application to the ICJ by arguing that Putin is making a false claim and using the genocide convention to justify its aggression against Ukraine.<sup>16</sup> Before the war, Putin explained that “acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine” against Russian speakers, which required the immediate implementation of a “special military operation.” In the application, Kyiv emphasized it was Moscow that had committed acts of genocide by “intentionally killing and inflicting serious injury on members of the Ukrainian nationality.” Defining atrocities committed by Russian troops is a critical issue in this regard.

The official definition of genocide includes two elements<sup>17</sup>. First, the ‘mental’ element indicates “the *intent* to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.” Second, the ‘physical’ elements involve five acts, enumerated exhaustively: *killing* members of the group, *causing serious bodily or mental harm* to members of the group, *deliberately inflicting on the group conditions of life* calculated to bring about its physical destruction in whole or in part, *imposing measures intended to prevent births* within the group, and *forcibly transferring children* of the group to another group. The most challenging part in the legal case of genocide is to determine whether there was an intent to destroy a particular group.<sup>18</sup> It has nothing to do with how many have been killed.

According to the testimony of Ukrainian participants at the Asia Democracy Research Network (ADRN)’s special roundtable discussion on November 2, Russian troops have been targeting

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<sup>13</sup> Campbell, Kurt. “CSDS-CSIS Transatlantic Dialogue on the Indo-Pacific.” Center for Strategic and International Studies (accessed November 21, 2022).

<sup>14</sup> Hathaway, Oona. 2022. “The Case for Creating an International Tribunal to Prosecute the Crime of Aggression Against Ukraine (Part I).” *Just Security*, September 20, 2022.

<sup>15</sup> United Nations. “Convention on the Prevention and Punishment of the Crime of Genocide.” *United Nations Treaty Collection*, 1948.

<sup>16</sup> International Court of Justice. “Ukraine institutes proceedings against the Russian Federation and requests the Court to indicate provisional measures.” February 27, 2022.

<sup>17</sup> United Nations Office on Genocide Prevention and the Responsibility to Protect. United Nations (accessed November 21, 2022).

<sup>18</sup> Sen, Ashish Kumar. “Is Russia Committing Genocide in Ukraine?” United States Institution of Peace, September 21, 2022.

civilians.<sup>19</sup> First, they attacked cities and destroyed critical infrastructure for heating, gas, electricity, and water supply to break the will of the Ukrainian people to continue to fight. The participants argue that it is a Russian strategy to get civilians to die from cold and hunger during the winter. Second, Ukrainian children in the area occupied by Russia are forced to study the Russian language and its version of history. Teachers who are not teaching Russian are persecuted. Numerous cases of kidnapping children and murdering parents are reported, with the Ukrainian children adopted by Russian families. Third, Russian soldiers have been killing young women after raping them. Mass graves and burial sites were found in Bucha, Hostomel, and Iziium, and exhumed bodies had signs of torture.

Their assertions are confirmed by numerous reports from journalists and diverse international investigation groups such as Amnesty International and the Atrocity Crimes Advisory Group.<sup>20</sup> Russian forces have been executing and torturing Ukrainian civilians in occupied areas, committing sexual violence, deliberately attacking shelters, evacuation routes, and humanitarian corridors, sieging Ukrainian cities, indiscriminately bombing residential areas, and forcefully deporting Ukrainians to Russia. Ambassador Clint Williamson, the Lead Advisor to the Atrocity Crimes Advisory Group, said what has been committed by Russian forces is “almost unimaginable” and “overwhelming.”<sup>21</sup> He said the investigators had found 33,000 cases of war crimes.

Finding evidence of Russian war crimes would not be difficult. The challenging part is how to prove that they constitute genocide. As mentioned earlier, it is crucial to meet the condition of “intent to destroy” towards a national, ethnic, racial, or religious group to be identified as the crime of genocide. To prove that Russia has been committing genocide, we need evidence of “a general plan, documents or policy statements” or “a systematic pattern of atrocities that are taking place” that can be inferred as genocide cases.<sup>22</sup> The former would be hard to find, while the latter would be disputable.

Even if we make a convincing argument, punishing offenders would still be hard unless they are arrested and put on trial in the Ukrainian court. Even though the ICJ’s judgments are final and binding and those parties in dispute have no option for appeal, Russia can simply ignore them.<sup>23</sup> This is because Kyiv has to bring the matter to the UN Security Council if Moscow does not follow the ICJ’s ruling, yet Russia possesses veto power. Although the judgment should have political implications, punishing the offenders, including Putin, is very difficult.

Alternatively, democratic countries could work together to create a new International Tribunal to give the International Criminal Court (ICC) jurisdiction over Russia’s crime of aggression against Ukraine. This would be a more fundamental approach as crimes against humanity, war crimes, and genocide would not occur if there were no illegal aggression against Ukraine from the first place. Numerous individual and organizational calls for creating a new International Tribunal have already been made, so it is one way to go along with the efforts to prove Russian war crimes as genocide.<sup>24</sup> A special tribunal could be established by the agreement of the UN and Ukraine via the UN General Assembly.

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<sup>19</sup> Hopko, Hanna, Kaleniuk, Daria, and Tregub, Olena. “Russian Military Aggression in Ukraine and the Vision of Victory in the War.” Asia Democracy Research Network, November 2, 2022.

<sup>20</sup> Parker, Claire. “Russia has incited genocide in Ukraine, independent experts conclude.” *The Washington Post*, May 27, 2022.

<sup>21</sup> Sen, Ashish Kumar. “Is Russia Committing Genocide in Ukraine?” United States Institution of Peace, September 21, 2022.

<sup>22</sup> Sen, Ashish Kumar. “Is Russia Committing Genocide in Ukraine?” United States Institution of Peace, September 21, 2022.

<sup>23</sup> Maree, Shannon. “Ukraine v Russia at the International Court of Justice.” Parliament of Australia, August 5, 2022.

<sup>24</sup> Hathaway, Oona. “The Case for Creating an International Tribunal to Prosecute the Crime of Aggression Against Ukraine (Part I).” *Just Security*, September 20, 2022.

### 3. Potential Democratic Unity Roles for South Korea

What role should South Korea play in this united attempt of like-minded countries to fight for Ukraine? After Putin publicly accused South Korea of supplying weapons and ammunition to Ukraine on October 28, South Korean President Yoon Suk-yeol told reporters the following day that South Korea only has been “providing humanitarian and peaceful support” and not “any lethal weapons.” However, he added, “this is a matter of our sovereignty.”<sup>25</sup>

Officially, South Korea has been sending non-weapon supplies to Ukraine, such as bulletproof vests, helmets, tents, blankets, and medical supplies. ROK Ministry of Foreign Affairs announced that Seoul had provided US \$100 million worth of humanitarian assistance.<sup>26</sup> The South Korean government also donated US \$1 million to UNICEF to assist Ukraine refugees and US \$ 2 million for maternal and newborn health services in Ukraine.<sup>27</sup> But the support is limited to humanitarian aid. This is why Ukrainian President Volodymyr Zelenskyy appealed to South Korea’s National Assembly in April to assist them in standing up against Russia.

Although Seoul’s move is based on a strategic calculation considering future relations with Russia, the South Korean government should bear in mind the following. First of all, we are dealing with measures taken *after* deterrence failure. Before the war, US President Joe Biden strongly warned Putin that Washington would impose “swift and severe costs” on Moscow should Russia invade Ukraine.<sup>28</sup> As French Foreign Minister Pierre-Étienne Flandin argued after Nazi Germany’s remilitarization of the Rhineland in 1936, it is crucial to inflict a failure on the leader of a revisionist power like Adolf Hitler when deterrence fails.<sup>29</sup> As mentioned earlier, security commitments are interdependent. If we fail to restore the credibility of deterrence in Europe, it could encourage authoritarian regimes further to challenge the status quo in the Taiwan Strait and on the Korean Peninsula.

Furthermore, we need to think about what it means to seek the status of a Global Pivotal State.<sup>30</sup> Victor Cha, D.S. Song-KF Professor of Government at Georgetown University, argued that “how far South Korea is willing to go on these global issues in a way that can hurt their equities with China and Russia” is one way to measure whether South Korea is ready to play a larger role beyond North Korea issues.<sup>31</sup> It is because being a global player many times mean “accepting short-term costs in terms of self-interest to pursue longer-term games in support of the liberal international order.” Given that Washington has been seeking to establish a global security framework connecting its European and Indo-Pacific allies with the new strategic concept of “integrated deterrence,” Seoul

<sup>25</sup> Nam, Hyun-woo. “South Korean president dismisses Putin’s warning.” *The Korea Times*, October 28, 2022.

<sup>26</sup> Ministry of Foreign Affairs, Republic of Korea. “Korea to Provide Additional Humanitarian Assistance to Ukraine.” July 21, 2022.

<sup>27</sup> UNICEF. 2022. “Republic of Korea donates 1 million USD to UNICEF in support of Ukrainian refugee children and families in Romania.” August 30, 2022; UNFPA. 2022. “The Government of Korea allocates US\$ 2 million for women and girls in Ukraine and Moldova.” July 18, 2022.

<sup>28</sup> Liptak, Kevin. “Biden predicts Russia ‘will move in’ to Ukraine, but says ‘minor incursion’ may prompt discussion over consequences.” *CNN*, January 19, 2022. .

<sup>29</sup> Kim, Yang Gyu. “After Deterrence: Policy Choices during Crises of Conventional and Nuclear Direct Deterrence Failure.” *FIU Electronic Theses and Dissertations*.

<sup>30</sup> Yoon, Suk-yeol. “South Korea needs to step up.” *Foreign Affairs*, February 8, 2022.

<sup>31</sup> Cha, Victor. “글로벌 중추국가 한국의 인도-태평양 전략은(What is South Korea’s Indo-Pacific Strategy as a Global Pivotal State)?” <보이는 논평(Video Commentary)>. East Asia Institute (accessed: November 12, 2022)

should consider measures to demonstrate its stance.<sup>32</sup> In this regard, the United States asks European allies whether they are ready to support the fight in Taiwan Strait while asking Asian allies whether they are willing to go the extra mile for Ukraine. If South Korea does not want to go to greater lengths in both areas, it would hardly be recognized as a global pivotal power by the international community.

Supporting Ukraine's war efforts by selling artillery shells and ammunition to third countries assisting Kyiv would be one way to consider.<sup>33</sup> However, if providing indirect military assistance to Ukraine is still too burdensome for Seoul, it should consider ways to extend support to Ukrainian efforts to fight against Russia on other fronts.

First, South Korea should now consider ways, possibly in close cooperation with the United States and Japan, to sanction Russian companies violating United Nations Security Council resolutions and relevant sanctions against Pyongyang. After the war broke out in February, Pyongyang supported Moscow whenever the occasion arose, from diplomatically supporting Russia in the UN,<sup>34</sup> to sending workers to Donetsk and Luhansk<sup>35</sup> and to selling artillery shells.<sup>36</sup> In response to Pyongyang's unprecedented number of missile launches and possible nuclear tests in the near future, Washington, Seoul, and Tokyo agreed to "coordinate sanctions and work together to close gaps in the international sanctions regime to ensure all relevant sanctions are fully enforced."<sup>37</sup> In this regard, the South Korean government will be able to include those Russian agencies strengthening ties with North Korea in the sanctions list. This would not only support Ukraine to have relatively more strategic endurance than Russia but also enhance the effectiveness of economic sanctions against Pyongyang.

Second, as winter is coming, Seoul should extend its humanitarian aid to Kyiv. Russia has been purposely targeting key infrastructure pertaining to the provision of heat and electricity, and Ukraine is not ready for the harsh weather. South Korea should join the efforts of the international community to provide winterization-specific humanitarian assistance such as generators, warm clothing, and thermal blankets<sup>38</sup>.

Third, Seoul can support Kyiv's efforts to win the legal fight. Considering the complexities with regard to proving war crimes as genocide, empowering Ukrainians to find evidence for holding Russia accountable is crucial. Seoul can examine ways to cooperate with other like-minded countries to provide technical assistance to civil society groups in Ukraine to gather evidence and investigate crime cases systematically<sup>39</sup>. Supporting Kyiv at the UN General Assembly for creating a new tribunal is another critical area where South Korea could help Ukrainians. ■

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<sup>32</sup> Kim, Yang Gyu. 2022. "President Yoon's Trip to Madrid: Rethinking Seoul's Policies toward Moscow, Beijing, Tokyo, and Pyongyang." *EAI Issue Briefing*, East Asia Institute (accessed November 21, 2022); United States Department of Defense. 2021. "Defense Secretary Says 'Integrated Deterrence' Is Cornerstone of U.S. Defense." April 30, 2021; The White House. 2022. *National Security Strategy*, October 12, 2022.

<sup>33</sup> Baldor, Lolita and Copp, Tara. "US to buy South Korean howitzer rounds to send to Ukraine." *AP News*, November 11, 2022.

<sup>34</sup> United Nations. "General Assembly resolution demands end to Russian offensive in Ukraine." March 2, 2022.

<sup>35</sup> Kolganova, Victoria. 2022. "В МИД РФ заявили, что у ДНР и ЛНР нет препятствий для сотрудничества с КНДР, поскольку республики — не члены ООН." *Kommersant*, August 8, 2022.

<sup>36</sup> Smith, Josh. "Explainer: Russia and North Korea forge closer ties amid shared isolation." *Reuters*, November 04, 2022.

<sup>37</sup> The White House. "Phnom Penh Statement on US – Japan – Republic of Korea Trilateral Partnership for the Indo-Pacific." November 11, 2022.

<sup>38</sup> USAID. "USAID Announces Additional \$25 Million for Winterization Assistance for Ukraine." November 8, 2022

<sup>39</sup> Johnson, Danielle. "Russia must be held accountable for committing genocide in Ukraine." *Atlantic Council*, August 31 2022.

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