March 23, 2022 / Mariupol

[2 SECONDS OF SILENCE]

[BILLBOARD]

NOEL KING (host): What’s behind Vladimir Putin’s BRUTAL siege of the city of Mariupol?

SCORING IN - UNLOCKING

SHELLING SOUNDS

*<CLIP>SKY NEWS: For Mariupol, in southern Ukraine, it’s already a city in ruins after days of bombardments.*

NOEL: One reason is obvious. Location. It’s positioned almost like a bridge - between TWO Ukrainian territories that Russia already occupies.

NOEL: But there’s another POSSIBLE reason. In 2014, when Russia invaded those territories, it wanted to take Mariupol, too.

JACK LOSH (reporter): And th*e separatists certainly had it in their targets. But the Ukrainian forces did beat back the Russians and secured the town, something that some believe Putin never really forgave.*

NOEL: On Today, Explained Vladimir Putin seeks revenge. And an international law expert tries to determine the price Putin should pay.

SCORING OUT

[PREROLL]

[THEME]

Jack Losh is a filmmaker and freelance journalist. He’s spent a lot of time covering eastern Ukraine since 2014.

He travels roads that cut through endless fields and steppes / and land that’s punctuated by grim, gray post-Soviet mining towns.

Which might explain why he loves Mariupol.

JACK: Mariupol is by the sea, and you could feel the change in air.

OCEAN AMBI

JACK: It's on a sea called the Azov sea, you know where people would kind of go down to the beach. They’d sunbathe a touch of the Mediterranean atmosphere, people taking in the air.

AMBI BUMP

JACK: My Mariupol friends have always described it as that much more liberal. It's a city where people prefer marijuana over alcohol. They've said to me that gay people found a more permissive atmosphere and was fair to say a pretty homophobic country. And some of them have seen that as being the antithesis of what the Putin regime represents.

NOEL: Mm-Hmm.

JACK: Of course, it wasn't that far away from the front line.

SCORING IN - ALASKA YUKON

*<CLIP-UNDERWATER ECHOES>BBC: Clashes in the city of Mariupol between Ukrainian forces and pro-Russian activists.*

JACK: I mean, bombed out villages like Sharrock (sp) and I were just really a few miles down the road.

*<CLIP>BBC: More than 20 people have been killed.*

JACK: And you would get echoes of the war there.

*<CLIP>FRANCE24: And the threat of a separatist offensive still looms large.*

JACK: You'd see sometimes soldiers moving through the street.

*<CLIP>FRANCE24: And the front line is just a few kilometers away.*

JACK: But really, for someone so close to an active front line up until recently, it felt quite far from the war. I felt quite peaceful.

SCORING OUT

AMBI OUT

NOEL: Why did this city become such a target for the Russian military?

JACK: Well, if you can picture a map of Ukraine along its southern coast, along the Azov sea and going into the Black Sea, you have Crimea, which of course, Russia annexed in 2014. But they never got further than that, apart from the Donetsk and Luhansk regions in southeastern Ukraine that border Russia. And the thinking was that Putin would always want a land corridor to connect these de facto puppet states occupied by Russia, and these these Russian backed separatists connecting those with the Russian occupied peninsula of Crimea. Mariupol lies along that coast. And by securing that city and other towns, you'd be able to connect up those two places Crimea and Donbas Why would you want to do that? What they built this big bridge connecting Russia with the Crimean Peninsula several years ago.

*<CLIP>CNN: This was the first traffic to cross the newly opened crimea bridge.*

JACK: Built it with great cost, and it's just one road.

*<CLIP>CNN: Construction trucks, one driven by Vladmir Putin himself, sped the 19 kilometers across the Kirch straight.*

JACK: Well, this would just allow another way of supplying the Crimean Peninsula, you know, Mariupol as well, it's a very industrial city. There's kind of huge plants, factories there.

*<CLIP>FRANCE24: Since we began work in 1973, we’ve rolled out 61 million tons of steel.*

JACK: So the economic gain of taking over such a city is pretty large, though of course, we've seen that infrastructure absolutely gutted over the last few weeks by these Russian rockets. So it's kind of hard to see your economic interest there is for Russia now there.

NOEL: When and how did the siege of Mariupol start?

JACK: Well, I mean, war erupted in Ukraine on the 24th of February. The horrors that we're now seeing unfold really began escalating, I'd say, a week or so later. I mean,the siege really began ramping up, I'd say, at the beginning of this month. One of the problems is that these communication towers, these phone towers around the city, were taken out pretty early on as well. There are two reasons for that. One, to sow chaos. If you can't communicate with the outside world and see what's going on, that's going to induce panic. And two, it serves impunity.

SCORING IN - TURTLES

JACK: The destruction against the human population and the fabric of the city has been immense.

*<CLIP>SKY NEWS: In Mariupol, where food and medicines are running out, 400 thousand people are stranded in a paralyzed ruined city.*

JACK: We've seen bodies of children, women, civilians killed in these unrelenting Russian bombardments and these bodies piling up in mass graves. We've seen Russian airstrikes and Russian artillery shells destroying homes.

*<CLIP>BBC: Ukraine calls this strike, which hit a maternity hospital in Mariupol, a war crime.*

JACK: Bombing the maternity hospital.

*<CLIP>BBC: If a hospital is hit, how can anywhere be safe?*

JACK: We've had reports of trapped residents melting snow to drink burning furniture for warmth in the freezing cold. Last week, several thousand people, tens of thousands of people, actually in thousands of cars did manage to escape. But that followed multiple failed attempts to create humanitarian corridors through this Russian siege.

*<CLIP>ZELENSKY: We have not done, and would never do, anything like this war crime in the Donetsk and Luhansk regions. Because we are people. Are you?*

JACK: In terms of the deaths, I mean, no one knows the official title has been put at more than two and a half thousand. We're not going to know for a while. And by stopping Ukrainian civilians and journalists documenting these war crimes and these atrocities, whether only serves to bolster the lack of accountability the Russians are hoping to face.

SCORING OUT

NOEL: people in Mariupol are taking shelter, they're leaving their homes and they're going to public buildings. And it seems as though Russia is deliberately targeting those public buildings where people are, are hiding, are seeking to be safe. Can you tell me a little bit about what we've seen in terms of the direct targeting of civilians and and how Russia is attacking those, those areas?

JACK: Sure. Well, I mean, the world watched in horror last week while hundreds, potentially more than a thousand civilians, were sheltering in the drama theater in the city center,

*<CLIP>CBC: This is video posted to social media, said to have been recorded a week ago, and it shows women, old people, and children seeking refuge in the theater’s basement.*

JACK: A beautiful building kind of neoclassical facade. And last week, one of these struck the building head on,

*<CLIP>CBC: Ukrainian president Volodymr Zelenskyy says the building was hit by, in his words, “a huge Russian bomb.”*

JACK: And news started coming out a few days ago that actually the shelter it held up and that people were alive. But there are trapped and many tons of rubble to be bombing places like that places which, by the way, had the Russian word for children written outside in huge letters to let the Russian warplanes know that this was a civilian target clearly didn't do anything to dissuade them from bombing such a civilian target, which would likely qualify as a war crime. Not only bombing these places, but the fact that rescue attempts are stymied as well just gives you a sense the nightmare that these people have been living through.

NOEL: Based on the conversations you've had with people in Mariupol, people who have left the city. How much longer does Mariupol have, do you think?

JACK: Well, there's a great deal of uncertainty, and what we're probably moving towards now is less purely of a distant bombardment of the city, and we're now moving to a much more grueling phase of street battles. The battle was going to continue, and that only spells one thing for the hundreds of thousands of civilians who remain there. Death. Horrific injuries. Suffering and this fear. It's not just the people who are in that city. There are many people who grew up in very poor who are looking on this from afar with absolute horror, who was still waiting to find out if their loved ones are well, let alone alive.

*<CLIP>VIKTORIA: It’s a nightmare.*

JACK: I was speaking to my friend Victoria about this a few days ago, and I asked her what her hopes were when this nightmare ends and she told me this.

*<CLIP>VIKTORIA: My husband and I we discussed why we shouldn’t right now go there, because our hearts want to be there. But we had to stop ourselves because we know that someone someday has to build it up again.*

SCORING IN - FIVE YEARS IN A MINUTE

*<CLIP>And I think we are the people that can do this.*

JACK: Great pain, but perhaps a little bit of optimism amid this immense darkness that one day they will be able to take their city back to the happier, more peaceful place it once was.

SCORING OUT

[MIDROLL]

[BUMPER]

NOEL: Philippe Sands is a law professor, he’s currently visiting at Harvard. He’s also a practicing lawyer with deep expertise with crimes against humanity and genocide. Philippe, President Joe Biden recently called Vladimir Putin a war criminal. Do you agree that that's what Putin is?

PHILIPPE SANDS (expert): I listened with interest to President Biden's characterization of Vladimir Putin as a war criminal.

*<CLIP>REPORTER: President Biden, do you think Vladimir Putin is a war criminal?*

PHILIPPE: I'm wondering whether the remarks were somewhat off the cuff

*<CLIP>PRESIDENT BIDEN: Oh, I think he is a war criminal*

PHILIPPE: And perhaps not quite fully prepared, because I'm not sure what he meant.

SCORING IN - BEES AMBIENT 3

PHILIPPE: There are four existing international crimes under international law: the well-established war crimes, targeting civilians, and genocide, and then a fourth crime, the crime of aggression.

SCORING BUMP

PHILIPPE: If President Biden was referring to Vladimir Putin as someone who's perpetrating war crimes, that might go a little far. I think that war crimes seem to be taking place in Ukraine. There is ample evidence of the targeting, the willful targeting of civilians. What we don't know, of course, is who is responsible for that? Is it the fighters on the ground? Is it military commanders? Is it Vladimir Putin himself? So I think to characterize him as a war criminal goes a bit far. I think you can certainly say he is the head of state of a country that is currently perpetrating war crimes.

SCORING OUT

NOEL: OK, this is a very interesting distinction, and I want to ask you to dig in a bit more. A person like me who's not a barrister might say, but Putin is the boss of the country, right? So if his forces are doing things that reach the level of war crimes, like what we're seeing in Mariupol, with the theater, with civilians and children sheltering targeted. If the president of the country, if the leader of the country is the one on whose behalf that army is acting, isn't it obvious that he's a war criminal?

PHILIPPE: Well, well, it may be obvious, but put yourself in the position of the prosecutor at the International Criminal Court, who will surely be investigating the terrible events that are happening at Mariupol, where it seems that individual civilians are being targeted. The prosecutor has to prove a number of things. He's got to prove that civilians are being hit, that they've been targeted, or that the targeting is reckless and there is a disproportionate killing or harm to civilians. But the prosecutor then has to do something else. The prosecutor has to identify the person or persons who are responsible for that. And that raises a number of questions. It could be the individuals who are actually firing the missiles. It could be the commanders who are telling the individual who's firing the missiles to fire randomly and to hit civilian targets, or it could be on instructions, or with reckless abandon, that the head of state has ordered all of his military to target in that way, which affects civilians in this terrible way. That's what we don't know, and that's what a prosecutor has to prove. Now, I have to say, the scale of what is happening is certainly consistent with responsibility going all the way to the top. It's called command responsibility. But I suppose I'm being a little bit cautious in recognizing that a prosecutor's job is to prove the relationship between the individual, Mr. Putin and the crimes that are said to be being perpetrated.

NOEL: And are you being cautious because that is in fact a very difficult thing to do? We know that there are many leaders in this world who do bad things to their people or to other people. They don't often go to trial, do they?

PHILIPPE: I'm being cautious because bitter experience teaches me that proving a crime at an international court is not a straightforward thing, particularly when it comes to war crimes and crimes against humanity. The prosecutor at the International Criminal Court is going to have to gather evidence. That's a long and time consuming process, and he's going to then have to tie that evidence to particular individuals who he will presumably, at some point, indict. Now it may be that it goes all the way to the top. But that is going to take time. And I do think it's important that political leaders exercise care in what they say. I think war crimes are taking place. I think it's on such a systematic scale that it appears to be a crime against humanity. But I'm just being a little more cautious on who exactly is responsible for these crimes.

NOEL: I wonder if we can step back into history a little bit and just explain the importance of some of these institutions. So President Biden makes this statement. Vladimir Putin is a war criminal. And then the rejoinder from Biden's critics is the United States is not a member of the International Criminal Court or ICC. Can you explain what the ICC is and why it matters?

PHILIPPE: The Nuremberg trial in 1945, the famous Nuremberg trial, was the first instance of an international criminal tribunal being established.

*<CLIP>NEWSREEL: Nuremberg, Germany, once the shrine city of the Nazis*

PHILIPPE: To prosecute Nazi leaders for war crimes, crimes against humanity, genocide and the crime of agression.

*<CLIP> NUREMBERG PROSECUTOR: The wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating that civilization can not tolerate their being ignored*

PHILIPPE: There have been subsequent tribunals established on an ad hoc basis. But then in 1998, after 50 years of effort, governments finally came together and created this policy, known as the International Criminal Court.

*<CLIP>CHERIF BASSIOUNI: The establishment of the ICC is above all, a triumph.*

PHILIPPE: It's created by Treaty. I was involved in the negotiations of the statute in Rome in 1998. And it came into force in 2002, and it's got about 125 states that have ratified the treaty. And the parties do not include some significant countries the United States, Russia, China are not parties to the statute. Ukraine has accepted the jurisdiction of the International Criminal Court, but basically once a state has accepted the jurisdiction of the court, the court has jurisdiction to investigate crimes that fall within its powers that take place either on the territory of a state party or which are perpetrated by the national of a state party. Since Ukraine declared in 2014 its acceptance of the jurisdiction of the court, the court has jurisdiction for crimes taking place on the territory of Ukraine, but the jurisdiction of the International Criminal Court is limited in this case to war crimes, crimes against humanity and genocide. The ICC does not have jurisdiction over the fourth crime, which to my mind, is the most important one of all, and that is the decision to wage war in the first place and to continue waging war. Which is why I and many individuals, including former British Prime Minister Gordon Brown and John Major, are calling for the creation of a special tribunal

NOEL: Who does have jurisdiction over that? This is an interesting distinction you've just drawn.

PHILIPPE: It's an important distinction because my concern is and the concern of many others is that we find ourselves in a situation in five years time where some mid-level military or civilian leaders find themselves holed up to The Hague being indicted and prosecuted for crimes against humanity or war crimes. But the main perpetrators, that's to say Mr Putin and his cohort of characters around him, the financiers, the political leaders, the military leaders somehow are off the hook. And if you don't focus on the crime of aggression, you're effectively letting the main perpetrators off the hook. At this moment in time, no international tribunal has jurisdiction to try the crime of aggression. Now, a brief word here on the crime of aggression. Curiously, it was put into the Nuremberg statute by the Soviets, and after the Nuremberg judgment in 1946, the Soviet Union and Ukraine and Belarus all incorporated into their domestic laws, into their criminal codes, their penal codes, the crime of aggression as it was drafted at Nuremberg. And today all of those countries accept the crime of aggression is a crime within their jurisdiction. And what the Foreign Minister of Ukraine and President Zelenskyy are calling for is an internationalization of Ukraine's domestic criminal jurisdiction over the crime of aggression Basically, they're asking for help from other countries to set up an office in The Hague to investigate and as appropriate, then prosecute for the crime of aggression.

NOEL: A thing that I wonder will any of this end the war?

PHILIPPE: The truth is, Noel, we don't know. On the legal side. What we do know is that there is ample evidence in other conflicts, and here I go all the way back to 1945 in the spring, that putting people of interest on a list of possible indictees for international crimes investigations does have the effect of concentrating the mind. The example that comes immediately to my mind is that of Karl Wolfe, General Wolff, who was Hitler's major military commander in southern Europe. And in the spring of 1945, when he started featuring on various lists, he decided to break ranks. And he cut a deal to basically avoid going to Nuremberg in return for downing arms and cooperating much earlier. And one of the hopes that I have for the crime of aggression beyond delegitimizing what Russia is doing, providing further support and solidarity with Ukraine and its people is that there will be in Putin's close circle doubters. We know there are doubters and this might concentrate their minds, and that might have the effect of causing them to peel away.

SCORING IN - MONO PLANET 8

PHILIPPE: In 1942, when the government in exile came together in London and issued something called the Declaration of St. James, calling for the prosecution of Nazi criminals. I don't think anyone really imagined it would happen, but three years later, there they were, 24 of them in the dock at Nuremberg. So I think we just don't know what is going to happen.

SCORING BUMP

NOEL: Today’s show was produced by Will Reid, edited by Matthew Collete, engineered by Efim Shapiro, and fact-checked by Laura Bullard. It’s Today, Explained. I’m Noel King.

[10 SECONDS OF SILENCE]