

ARTICLE

A COUNCIL OF EUROPE TRIBUNAL TO PROSECUTE PUTIN FOR THE CRIME OF AGGRESSION IN UKRAINE

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[T]he ultimate step in avoiding periodic wars, which are inevitable in a system of international lawlessness, is to make statesmen responsible to law. And let me make clear that while this is first applied against German aggressors, the law includes, and if it is to serve a useful purpose it must condemn, aggression by any other nations, including those which sit here now in judgement.¹

I. INTRODUCTION

On February 24, 2022, Russian military troops invaded Ukraine from Belarus, Russia, and Crimea.² Russian troops entered Ukrainian territory in tanks and conducted airstrikes in multiple locations.³ Casualty tolls and allegations of Russian war crimes amass as armed conflict in Ukraine continues.⁴ As of February 2025, Ukrainian President Volodymyr Zelenskyy estimated Ukrainian military fatalities at over 46,000.⁵ As of December 30,

1. See Robert H. Jackson, Chief Prosecutor for the United States, Opening Remarks at the Nuremberg Trials, Nuremberg Trial Proceedings Volume 2: Second Day (Nov. 21, 1945), (transcript available in the Yale Law School Library), <https://avalon.law.yale.edu/imt/11-21-45.asp> (last visited Aug. 7, 2025).

2. See HOUSE OF COMMONS LIBRARY, CONFLICT IN UKRAINE: A TIMELINE (2014 – EVE OF 2022 INVASION), HC CBP 9476, at 4 (2023).

3. See *Ukraine Conflict: Simple Visual Guide to the Russian Invasion*, BBC NEWS (Feb. 24, 2022), <https://www.bbc.com/news/world-europe-60506298>.

4. See, e.g., *Ukraine: Ongoing Russian Strikes Continue Alarming Casualty Trend*, UN NEWS (June 11, 2025), <https://news.un.org/en/story/2025/06/1164276> [perma.cc/GT62-BJRF].

5. See Elsa Court, “A Very Bloody War”: What is the Death Toll in Ukraine?, KYIV INDEPENDENT (Feb. 13, 2025), <https://kyivindependent.com/a-very-bloody-war-what-is-the-death-toll-of-russias-war-in-ukraine/> [perma.cc/4P2T-QED8].

2024, there are 12,456 verified Ukrainian civilian deaths and 28,382 injured.⁶ Additionally, at least 1,878 attacks involving healthcare facilities, patients, supplies, and movement of the aforementioned have been verified by the World Health Organization (WHO).⁷ As of February 2025, Russian casualties are estimated at approximately 1,000,000, with over 111,000 confirmed.⁸ If Russia continues at the current pace and accomplishes its stated objectives, the estimated Russian casualties are 1.5–1.8 million Russians.⁹ For comparison, the United States' wounded in World War II totaled 671,801, with an estimated 298,000 total fatalities.¹⁰

The devastation of World War II revealed the level of destruction caused by developing technology, and in the eighty years after World War II, the Allies developed a world order designed to prevent World War III.¹¹ This new world order began with holding individual German and Japanese leaders criminally accountable for starting World War II at the Nuremberg and Tokyo tribunals.¹² As stated by the International Military Tribunal during the Nuremberg Trials, "To initiate a war of aggression . . . is not only an international crime; *it is the supreme international crime*

6. UNITED NATIONS HUM. RTS. COUNCIL, OFF. OF THE HIGH COMM'R, UKRAINE: PROTECTION OF CIVILIANS IN ARMED CONFLICT DECEMBER 2024 UPDATE 3 (2025), https://ukraine.ohchr.org/sites/default/files/2025-01/Ukraine%20-%20protection%20of%20civilians%20in%20armed%20conflict%20%28December%20%202024%29_E NG_1.pdf [perma.cc/5JZF-KUAC].

7. *Id.*

8. See Court, *supra* note 5. Note, this is likely a low estimate of actual fatalities.

9. See Ellie Cook, *Russia Could Lose '1.8m' Troops Taking Four Ukraine Regions in 5 Years: UK*, NEWSWEEK (July 24, 2024), <https://www.newsweek.com/russia-casualties-five-years-ukraine-luhansk-donetsk-zaporizhzhia-kherson-roly-walker-1929408> [perma.cc/ZST9-K5Z3].

10. See Kenny Chmielewski, *Casualties of World War II*, ENCYC. BRITANNICA, <https://www.britannica.com/event/casualties-of-World-War-II-2231003> [https://perma.cc/44QV-X25X] (last visited Aug. 7, 2025).

11. See Oona A. Hathaway, *The Case for Creating an International Tribunal to Prosecute the Crime of Aggression Against Ukraine (Part I)*, JUST SEC. (Sep. 20, 2022), <https://www.justsecurity.org/83117/the-case-for-creating-an-international-tribunal-to-prosecute-the-crime-of-aggression-against-ukraine/> [perma.cc/SD9E-NJJB]; JOHN IKENBERRY, *AFTER VICTORY: INSTITUTIONS, STRATEGIC RESTRAINT, AND THE REBUILDING OF ORDER AFTER MAJOR WARS* 176 (2001); MICHAEL J. MAZARR & ASHLEY L. RHOADES, RAND CORP., *TESTING THE VALUE OF THE POSTWAR INTERNATIONAL ORDER* (2018).

12. See Susana Sácouto, *Individual Criminal Responsibility for the Crime of Aggression: Why and How?*, 38 MD. J. INT'L L. 85, 90 (2024).

differing only from other war crimes in that it contains within itself the accumulated evil of the whole.”¹³

Vladimir Putin, President of Russia, committed the crime of aggression when he invaded Ukraine.¹⁴ The international community must unite and hold Putin criminally accountable for the crime of aggression by convening an international tribunal that represents “an expression of the will of the international

13. See *Prosecutor v. Anto Furundžija*, Declaration of Judge Lal Chand Vohrah, ¶ 3 (Int’l Crim. Trib. for the Former Yugoslavia July 21, 2000), <https://www.icty.org/x/cases/furundzija/acjug/en/fur-asojvoh000721e.htm> [perma.cc/8UTE-QWSV] (citation modified); see also 1 INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG, TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, at 186 (1947).

14. The composition of a tribunal to hold Putin accountable for the crime of aggression has been proposed and examined by international law scholars. See, e.g., Letter from the Permanent Representatives of Latvia, Liechtenstein and Ukraine to the Secretary-General (Aug. 12, 2022), U.N. Doc. S/2022/616 at 4; see also Hathaway, *supra* note 11; Astrid Reisinger Coracini, *The Case for Creating a Special Tribunal to Prosecute the Crime of Aggression Against Ukraine (Part II)*, JUST SEC. (Sep. 23, 2022), <https://www.justsecurity.org/83201/tribunal-crime-of-aggression-part-two/> [perma.cc/S7AP-7AEM]; Jennifer Trahan, *The Case for Creating an International Tribunal to Prosecute the Crime of Aggression Against Ukraine (Part III)*, JUST SEC. (Sep. 26, 2022), <https://www.justsecurity.org/83238/tribunal-crime-of-aggression-part-three/> [perma.cc/Z7W7-ECCE]; David Scheffer, *The Case for Creating a Special Tribunal to prosecute the Crime of Aggression Committed Against Ukraine (Part IV)*, JUST SEC. (Sep. 28, 2022), <https://www.justsecurity.org/83290/tribunal-crime-of-aggression-part-four-2/> [perma.cc/7AE2-USS7]; Carrie McDougall, *The Imperative of Prosecuting Crimes of Aggression Committed against Ukraine*, 28 J. CONFLICT & SEC. L. 203, 204–05 (2023); OLIVIER CORTEN & VAIOS KOUTROULIS, EUR. PARL., IN-DEPTH ANALYSIS: TRIBUNAL FOR THE CRIME OF AGGRESSION AGAINST UKRAINE - A LEGAL ASSESSMENT (Dec. 2022), [https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/702574/EXPO_IDA\(2022\)702574_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/702574/EXPO_IDA(2022)702574_EN.pdf) [perma.cc/4U58-TF9H]; U.N. General Assembly and International Criminal Tribunal for the Crime of Aggression Against Ukraine, JUST SEC. (May 9, 2023), <https://www.justsecurity.org/86748/u-n-general-assembly-and-international-criminal-tribunal-for-the-crime-of-aggression-against-ukraine/> [perma.cc/H2PC-YTSJ]; Kevin Jon Heller, *Creating a Special Tribunal for Aggression Against Ukraine Is a Bad Idea*, OPINIO JURIS (Mar. 7, 2022), <https://opiniojuris.org/2022/03/07/creating-a-special-tribunal-for-aggression-against-ukraine-is-a-bad-idea/> [perma.cc/N3ET-C277] [hereinafter *Creating a Special Tribunal*]; Kevin Jon Heller, *Options for Prosecuting Russian Aggression Against Ukraine: A Critical Analysis*, 26 J. GENOCIDE RSCH. 1, 1 (2024); Carrie McDougall, *Why Creating a Special Tribunal for Aggression Against Ukraine is the Best Available Option: A Reply to Kevin Jon Heller and Other Critics*, OPINIO JURIS, (Mar. 15, 2022), <https://opiniojuris.org/2022/03/15/why-creating-a-special-tribunal-for-aggression-against-ukraine-is-the-best-available-option-a-reply-to-kevin-jon-heller-and-other-critics/> [perma.cc/M8NP-Q25H]; Tom Dannenbaum, *Mechanisms for Criminal Prosecution of Russia’s Aggression Against Ukraine*, JUST SEC. (Mar. 10, 2022), <https://www.justsecurity.org/80626/mechanisms-for-criminal-prosecution-of-russias-aggression-against-ukraine/> [perma.cc/63GF-VRX6].

community”¹⁵ (“Ukraine Tribunal”). While the crime of aggression was committed in Ukraine, the entire world has an interest in preventing further destruction and instability and deterring other world leaders from committing the crime of aggression. It is important the Ukraine Tribunal fulfills basic due process rights, to include that the tribunal was “established by law,” meaning the tribunal satisfies international law principles.¹⁶ The composition of the Ukraine Tribunal must express that the international community will not tolerate the crime of aggression, and that there is a lawful forum for accountability.¹⁷

Section II of this article explores the historical development of the crime of aggression, the prohibitions on the use of force between nations as outlined by the United Nations (U.N.) General Assembly, and the International Criminal Court definition of the crime of aggression. This section also discusses how Vladimir Putin’s use of force in Ukraine constitutes the crime of aggression. Section III notes legal challenges of prosecuting Putin for the crime of aggression, to include overcoming head-of-state immunity, claims of selective justice by Western nations, and securing Putin’s presence at trial. Sections IV and V examine the composition of previous successful international tribunals, which aspects of those tribunals will not work for a Ukraine Tribunal, and aspects of previous successful tribunals that could work for a Ukraine Tribunal. Section VI explores leading proposals for establishing a Ukraine Tribunal to hold Putin accountable for the crime of aggression. Section VII proposes the international community, to include the United States, should support a Council of Europe tribunal. The Council of Europe Secretary General and Volodymyr Zelenskyy have already signed an agreement to establish a Special Tribunal for the Crime of Aggression against Ukraine.¹⁸ The U.N.

15. Prosecutor v. Taylor, SCSL-2003-01-I, Decision on Immunity from Jurisdiction, ¶ 38 (May 31, 2004).

16. See CORTEN & KOUTROULIS, *supra* note 14, at 14 (citing G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Mar. 23, 1976)).

17. See McDougall, *Imperative*, *supra* note 14, at 210.

18. See *Ukraine and Council of Europe Sign Landmark Agreement for Special Tribunal on Crime of Aggression*, DELEGATION EUR. UNION TO COUNCIL EUR. (July 1, 2025), [https://www.eeas.europa.eu/delegations/council-europe/ukraine-and-council-europe-sign-landmark-agreement-special-tribunal-crime-aggression_en?s=51#:~:text=On%2025th%20June%202025%2C%20Strasbourg,Statue%20of%20the%20Special%20Tribunal%20\[perma.cc/CE44-ABSR\]](https://www.eeas.europa.eu/delegations/council-europe/ukraine-and-council-europe-sign-landmark-agreement-special-tribunal-crime-aggression_en?s=51#:~:text=On%2025th%20June%202025%2C%20Strasbourg,Statue%20of%20the%20Special%20Tribunal%20[perma.cc/CE44-ABSR]).

General Assembly should endorse the Special Tribunal for the Crime of Aggression against Ukraine and states from every continent should publicly support the agreement and assist with the Special Tribunal to demonstrate the will of the international community to condemn and deter the crime of aggression and preserve the post-World War II world order.

II. THE CRIME OF AGGRESSION

The Ukraine Tribunal established to prosecute Vladimir Putin for the crime of aggression must have a sufficient basis in international law.¹⁹ International law is defined as “The legal system governing the relationships between countries; more modernly, the law of international relations, embracing not only countries but also such participants as international organizations and individuals (such as those who invoke their human rights or commit war crimes).”²⁰ International law is designed to regulate the conduct between nations, essentially creating a world order of principles of fairness to protect fundamental, universal rights.²¹

At the heart of international law is the principle of *jus cogens*, or the idea of peremptory norms. “[A] peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”²² While there are more than 115 parties to the Vienna Convention on the Law of Treaties,²³ what does or does not constitute a violation of “international terms” is unclear at best, and highly contested.²⁴ As noted below, states disagree on specifics

19. See *infra* Section III.A. A domestic tribunal would not be sufficient here.

20. *International Law*, BLACK’S LAW DICTIONARY (12th ed. 2024).

21. See UNITED NATIONS, UNDERSTANDING INTERNATIONAL LAW, FACT SHEET NO. 1, 2011 TREATY EVENT: TOWARDS UNIVERSAL PARTICIPATION AND IMPLEMENTATION 1 (2011), https://treaties.un.org/doc/source/events/2011/Press_kit/fact_sheet_1_english.pdf [perma.cc/2KD7-HXM3].

22. Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 331.

23. See *id.*; *Vienna Convention on the Law of Treaties*, UNITED NATIONS TREATY COLLECTION, <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003902f> [perma.cc/KFB5-RW3D] (last visited May 13, 2026).

24. See Markus Petsche, *Jus Cogens as a Vision of the International Legal Order*, 29 PENN ST. INT’L L. REV. 233, 242–43 (2010).

of an international definition of the crime of aggression.²⁵ However, the general prohibition of aggression between states has been internationally recognized for the last eighty years as a *jus cogens* norm of international law.²⁶ The bottom line is that the crime of aggression is an attack on the existing world legal order, and cannot be tolerated.²⁷

A. *Historical Evolution of the Crime of Aggression*

Prior to World War I, the crime of aggression, while rooted in the history and tradition of the law of war, was not clearly defined or internationally enforced.²⁸ It was not uncommon for nations to go to war. However, the devastation caused by developing technology after World War I²⁹ led major world powers to re-examine the use of force between nation states.³⁰ Peace negotiations following World War I took place in Versailles in 1920.³¹ The Covenant of the League of Nations was drafted and

25. See Rome Statute of the International Criminal Court arts. 8 bis(1), 8 bis(2), July 17, 1998, 2187 U.N.T.S. 90; see also Claus Kreß & Leonie von Holtzendorff, *The Kampala Compromise on the Crime of Aggression*, 8 J. INT'L CRIM. JUST. 1179, 1183–94 (2010) (discussing the complexity and nuance of proposals for the ICC definition of aggression from 2002–2009).

26. See Int'l L. Comm'n, *Draft Conclusions on Peremptory Norms of General International Law (Jus Cogens) on first reading*, U.N. Doc. A/CN.4/L.936, annex, concl. 23 (May 29, 2019).

27. See Tom Dannenbaum, *Accountability for Aggression: Atrocity, Attributability, the Legal Order, and Sanitized Violence*, 38 MD. J. INT'L L. 16, 28–30 (2024); see also Johnathan Hafetz, *International Criminal Law and the Role of Narrative in the War in Ukraine*, 36 PACE INT'L L. REV. 363, 377 (2024).

28. See Jocelyn Getgen Kestenbaum, *Closing Impunity Gaps for the Crime of Aggression*, 17 CHI. J. INT'L L. 51, 57 (2016).

29. These advancements include chemical warfare, more sophisticated tanks, machine guns and, probably most notably, developments in nuclear weapons and air warfare. See *Technological Advancements of WWI, WWII, and the Cold War*, COLBY COLLEGE COMMUNITY WEB (Oct. 10, 2020), <https://web.colby.edu/st112a-fall20/2020/10/10/technological-advancements-of-wwi-wwii-and-the-cold-war/> [perma.cc/TGW2-SFYL]; see also David MacIsaac, *Air Warfare*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/air-warfare/The-jet-age> [perma.cc/KR6D-LA27] (last visited Aug. 7, 2025).

30. See Kestenbaum, *supra* note 28, at 57; IKENBERRY, *supra* note 11, at 176.

31. See *The League of Nations*, UNITED NATIONS: OFF. AT GENEVA, <https://www.ungeneva.org/en/about/league-of-nations/overview> [perma.cc/CX58-3NNY] (last visited Aug. 7, 2025); see also *Background of the League of Nations*, UNITED NATIONS: OFF. AT GENEVA, <https://www.ungeneva.org/en/about/league-of-nations/background> [perma.cc/8WKU-GYTP] (last visited Apr. 9, 2026).

eventually signed as part of the peace agreement.³² The League of Nations was comprised of sixty countries that all agreed to disarmament,³³ and the idea of respecting the independence of each member state.³⁴ In furtherance of preventing World War II, the Kellogg-Briand Pact of 1928³⁵ was signed by over sixty countries agreeing to “renounce war as a national policy” and “settle disputes by peaceful means”.³⁶ In other words, signatory countries agreed that waging war as a means to further their countries’ national objectives violated international norms.³⁷ The Kellogg-Briand Pact was not successful, as evidenced by World War II.³⁸

The first time individual world leaders were held criminally responsible for the crime of aggression was at the Nuremberg and Tokyo Tribunals following World War II.³⁹ The Nuremberg and Tokyo tribunals were established to hold leaders from Japan and Germany criminally responsible for the atrocities each leader committed and/or participated in during World War II.⁴⁰ The Nuremberg International Tribunal at the end of World War II was established by the London Agreement, signed by France, the Soviet Union, the United Kingdom, and the United States.⁴¹ German

32. See *The League of Nations*, *supra* note 31; see also League of Nations Covenant. The Covenant of the League of Nations was signed by 63 countries, including Germany. *Notes to Part 1, Articles 1 to 26 of the Covenant of the League of Nations*, OFF. HISTORIAN, <https://history.state.gov/historicaldocuments/frus1919Parisv13/ch10subch1> [perma.cc/P2Z5-3PHV] (last visited Aug. 7, 2025).

33. See League of Nations Covenant art. 8.

34. See *id.* art. 10. It is also worth noting that the League of Nations “failed dismally.” See DEREK BOWETT, *THE LAW OF INTERNATIONAL INSTITUTIONS* 17–18 (4th ed. 1982).

35. See Treaty Between the United States and Other Powers Providing for the Renunciation of War as an Instrument of National Policy, Aug. 27, 1928, 46 Stat. 2343, 94 L.N.T.S. 57 [hereinafter Kellogg-Briand Pact].

36. *Id.*

37. See *id.*

38. Sácouto, *supra* note 12, at 86; Sean Brennan & Nerea Cal, *When the World Banned War*, WESTPOINT: MODERN WAR INST. (Mar. 30, 2018), <https://mwi.westpoint.edu/world-banned-war/> [perma.cc/4V68-CQ9M]. It is further worth noting that Germany was a signatory to both the Covenant of the League of Nations and the Kellogg-Briand Pact.

39. Petsche, *supra* note 24, at 271.

40. See *The Nuremberg Trial and the Tokyo War Crimes Trials (1945–1948)*, OFF. HIST., <https://history.state.gov/milestones/1945-1952/nuremberg> [perma.cc/7BFJ-AQHK] (last visited Aug. 7, 2025).

41. See London Agreement of 1945, Aug. 8, 1945, 82 U.N.T.S. 251. A second agreement, the International Military Tribunal for the Far East (IMTFE), was established to punish Japan for its crimes committed during World War II. The IMTFE Charter mirrored the London Agreement. Australia, Canada, China, France, India, the Netherlands,

leaders were charged with committing crimes against the peace, war crimes, and crimes against humanity in violation of Article 6 of the Charter of the International Military Tribunal.⁴² “Crimes against the Peace” are defined as, “... planning, preparation, initiation, or waging a war of aggression, or a war in violation of international treaties, agreements, [or] assurances ...”⁴³ The fact that Germany signed the Kellogg-Briand Pact provides strength to the international legal basis for holding German leaders responsible for aggression.⁴⁴

The Tokyo tribunal was patterned off the Nuremberg tribunal.⁴⁵ General Douglas MacArthur, the Supreme Commander for the Allied Powers, signed an order to establish the Tokyo tribunal.⁴⁶ The Japanese surrender in World War II granted the Allies broad powers, and the authority for General MacArthur was derived from that surrender.⁴⁷

The atrocities committed by German and Japanese leaders in World War II are universally recognized.⁴⁸ The legitimacy of the Tokyo and Nuremberg tribunals has been viewed favorably, making them a universally recognized standard for international criminal tribunals holding leaders responsible for war crimes and aggression.⁴⁹

The crime of aggression is viewed as a leadership crime, meaning the leaders who started the war should be held

New Zealand, the Philippines, the Soviet Union, the United Kingdom, and the United States were involved. See *Tokyo War Crimes Trial*, NAT'L WWII MUSEUM, <https://www.nationalww2museum.org/war/topics/tokyo-war-crimes-trial> [perma.cc/Y8WM-FPDC] (last visited Aug. 1, 2025). Japan was also a signatory to the Kellogg-Briand Pact. See Kellogg-Briand Pact, *supra* note 35.

42. Judgment of the Nuremberg International Military Tribunal (1946), reprinted in 41 AM. J. INT'L L. 172, 186 (1947).

43. See U.N. Secretary-General, The Charter and Judgment of the Nürnberg Tribunal: History and Analysis, U.N. Doc. A/CN.4/5 (Mar. 3, 1949); see also *The Nuremberg Trial and the Tokyo War Crimes Trials (1945–1948)*, *supra* note 40.

44. Judgment of the Nuremberg International Military Tribunal, *supra* note 42.

45. *The Nuremberg Trial and the Tokyo War Crimes Trials (1945–1948)*, *supra* note 40.

46. See Japanese Instrument of Surrender, Sep. 2, 1945, 59 Stat. 1771, E.A.S. No. 493, 5 Bevans 1009 (on file with Nat'l Archives, Milestone Documents); Special Proclamation: Establishment of an International Military Tribunal for the Far East, Jan. 19, 1946 (on file with Univ. of British Columbia Library, Open Collections).

47. See *id.*

48. Petsche, *supra* note 24, at 272.

49. See *id.*

individually criminally accountable.⁵⁰ As noted by Major-General Iona Timofeievich Nikitchenko in the Judgment against Hermann Göring in the Nuremberg tribunal,⁵¹ “Crimes . . . against international law are committed by men, not by abstract entities, and only by punishing the individuals who commit such crimes can the provisions of international law be enforced.”⁵² Holding leaders criminally responsible could include punishments such as jail time, fines, forfeiture of property or proceeds, or even the death penalty.⁵³ Those leaders should be punished to deter other leaders from action tantamount to aggression.⁵⁴

B. The United Nations and the Crime of Aggression Definition

The United Nations (U.N.) was established following the World War II atrocities to create “a new world order” aimed at maintaining peace.⁵⁵ In 1945, The U.N. Charter was signed by fifty countries, to include the United States and the Union of Soviet Socialist Republics.⁵⁶ The U.N. is an open international organization, with 193 current member-states.⁵⁷

50. Sácouto, *supra* note 12, at 90.

51. Major-General Iona Timofeievich Nikitchenko wrote the Judgment of Hermann Göring, one of the prominent Nazi leaders, at the Nuremberg tribunal. See Trial of the Major War Criminals Before the International Military Tribunal (U.S. v. Göring), Judgment, at 223 (Oct. 1, 1946), https://www.worldcourts.com/imt/eng/decisions/1946.10.01_United_States_v_Goring.pdf [perma.cc/FFM4-7F3R] (last visited May 13, 2026).

52. Sácouto, *supra* note 12, at 86.

53. See Trahan, *supra* note 14. Criminal proceedings are designed to punish an individual for the crimes he or she committed. Contrast criminal liability with other tools of diplomacy such as sanctions, tariffs, and reparations, which are levied upon the state as a whole. Other states can also provide support for Ukraine as it continues fighting Russia. See Hafetz, *supra* note 27, at 380–81. Like holding Putin responsible for the crime of aggression, economic sanctions serve as an expression of the will of the international community to restore world order and peace. See *id.* at 377, 383–84; Scheffer, *supra* note 14. The ICC does not permit the death penalty. See Trahan, *supra* note 14.

54. See Trahan, *supra* note 14.

55. See Hathaway, *supra* note 11.

56. See *Founding Member States*, DAG HAMMARSKJÖLD LIB., <https://research.un.org/en/unmembers/founders> [perma.cc/C5LW-XDYC] (last visited Aug. 1, 2025).

57. See Astrid Reisinger Coracini & Jennifer Trahan, *The Case for Creating a Special Tribunal to Prosecute the Crime of Aggression Committed Against Ukraine (Part VI): On the Non-Applicability of Personal Immunities*, JUST SEC. (Nov. 8, 2022), <https://www.justsecurity.org/84017/the-case-for-creating-a-special-tribunal-to-prosecute-the-crime-of-aggression-committed-against-ukraine-part-vi-on-the-non-applicability-of-personal-immunities/> [https://perma.cc/RR3Q-ASBS]; see also *Founding Member States*, *supra* note 56.

There are six organs of the U.N.⁵⁸ Most relevant to establishing a Ukraine Tribunal for the crime of aggression are the U.N. General Assembly, the U.N. Security Council, and the International Court of Justice (ICJ). The U.N. General Assembly serves as the “chief deliberative, policymaking and representative organ of the United Nations.”⁵⁹ All 193 member-states are part of the U.N. General Assembly.⁶⁰ The U.N. General Assembly makes recommendations regarding international relations and disputes in support of Resolutions.⁶¹ Resolutions are not legally binding but do demonstrate the will of the international community.⁶² Each country gets one vote.⁶³

The U.N. Security Council is the arm of the United Nations charged with keeping international peace, which includes establishing international tribunals to enforce the peace.⁶⁴ The U.N. Security Council can issue binding, legally enforceable decisions.⁶⁵ Last, the ICJ is the “principal judicial organ” of the United Nations.⁶⁶ “The Court’s role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.”⁶⁷ The ICJ can issue “contentious” binding rulings, settling a question between states, and non-binding advisory opinions answering questions of international law.⁶⁸

58. See *UN Structure*, UNITED NATIONS, <https://www.un.org/en/model-united-nations/un-structure> [<https://perma.cc/NGC8-2YQF>] (last visited May 13, 2026). The six organs are the General Assembly, the Security Council, the International Court of Justice, the Economic and Social Council, the Secretariat, and the Trusteeship Council. This article will discuss and define the organs of the U.N. that are relevant to establishing international tribunals and addressing the crime of aggression, which are the General Assembly, the Security Council, and marginally the International Court of Justice.

59. *Functions and Powers of the General Assembly*, UNITED NATIONS, <https://www.un.org/en/ga/about/background.shtml> [<https://perma.cc/9F8F-9SDW>] (last visited Aug. 1, 2025).

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. See *infra* Section IV.C (discussing ICTY/ICTR); see also U.N. Charter arts. 24, 41.

65. See U.N. Charter art. 25.

66. See *The Court*, INT’L CT. JUST., <https://www.icj-cij.org/court/> [<https://perma.cc/3Q3B-6A5N>] (last visited Aug. 1, 2025).

67. *Id.*

68. How the Court Works, INT’L CT. JUST., <https://www.icj-cij.org/how-the-court-works> [<https://perma.cc/3Q3B-6A5N>] (last visited Aug. 1, 2025).

All State Parties to the U.N. Charter agree to follow the terms in the U.N. Charter, and face international consequences such as sanctions or even expulsion from the United Nations for violating the U.N. Charter.⁶⁹ Article 2(4) of the U.N. Charter prohibits the threat of force or use of force against territorial integrity of any state.⁷⁰ The U.N. Charter specifically states, “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, or in any other manner inconsistent with the Purposes of the United Nations.”⁷¹ The issue with Article 2(4) is that abiding by the U.N. Charter is the responsibility of the state, not a mechanism to hold an individual criminally liable for a violation.⁷²

The ICJ addressed violations of Article 2(4) of the U.N. Charter in 1986 in the *Nicaragua* case.⁷³ The *Nicaragua* case was a contentious issue between the United States and Nicaragua, meaning the finding is binding on the two countries.⁷⁴ The ICJ specifically noted that the principles of Article 2(4) are considered customary international law, meaning it is law binding on all nations.⁷⁵

In 1974, the U.N. General Assembly issued Resolution 3314 attempting to define the Crime of Aggression.⁷⁶ The definition includes “invasion, occupation, or annexation of another state’s territory; bombardment of another state’s territory; . . . [and] attacks by one armed force against another”⁷⁷ The U.N. General Assembly further specifically calls out the crime of aggression, stating “2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility. 3. No

69. See U.N. Charter arts. 4, 6.

70. U.N. Charter art. 2, ¶ 4.

71. See *id.* Article 2(4) of the U.N. Charter raises questions of what actions constitute force, how direct the force needs to be, and how directly the State needs to be involved with employment of force. See OSCAR SCHACHTER, *INTERNATIONAL LAW IN THEORY AND PRACTICE* 110–13 (1991). This Article will not address those issues, but presumes Russia’s actions in Ukraine amount to a violation of Article 2(4).

72. *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, 188 (June 27).

73. *Id.* at 188.

74. *Id.* at 190.

75. *Id.*

76. See G.A. Res. 3314 (XXIX) (Dec. 14, 1974).

77. See PATRICK BUTCHARD, *RESEARCH BRIEFING: CONFLICT IN UKRAINE: A SPECIAL TRIBUNAL ON THE CRIME OF AGGRESSION* 4 (2024).

territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.”⁷⁸ Russia did not object to the 1974 General Assembly definition of aggression, but the definition applies to state actors, not individuals.⁷⁹ General Assembly Resolution 3314 reflects the General Assembly’s consensus regarding the definition of aggression and provided the foundation for the definition of the crime of aggression later codified in 8 bis of the Rome Statute.⁸⁰

C. *The International Criminal Court Definition of Aggression*

The Nuremberg and Tokyo tribunals remain the only historical examples where individuals were held personally accountable for the crime of aggression.⁸¹ Since Nuremberg and Tokyo, international law and the law of aggression have continued to develop. The international community attempted to codify the crime of aggression in 2010 under the jurisdiction of the International Criminal Court (ICC).⁸² “The International Criminal Court investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression. As a court of last resort, it seeks to complement, not replace, national Courts.”⁸³ The ICC has jurisdiction to hold individuals criminally liable for crimes that violate international law.⁸⁴

78. G.A. Res. 3314, *supra* note 76, art. V ¶¶ 2–3.

79. See Kathryn Sikkink, *Using the 1933 Soviet Definition of Aggression to Condemn Russia Today*, JUST SEC. (May 24, 2022), <https://www.justsecurity.org/81629/using-the-1933-soviet-definition-of-aggression-to-condemn-russia-today/> [https://perma.cc/AM9W-N45R].

80. Roger S. Clark, *Negotiation Provisions Defining the Crime of Aggression, its Elements, and the Conditions for ICC Jurisdiction Over It*, 20 EUR. J. INT’L L. 1103, 1105 (2009).

81. Andrew Forde, *The Road Not (Yet) Taken: A Special Tribunal for the Crime of Aggression against Ukraine*, OPINIO JURIS (Apr. 16, 2025), <https://opiniojuris.org/2025/04/16/the-road-not-yet-taken-a-special-tribunal-for-the-crime-of-aggression-against-ukraine/> [https://perma.cc/C3H9-7NVA].

82. See Rome Statute of the International Criminal Court art. 8 *bis*, July 17, 1998, 2187 U.N.T.S. 90.

83. *About the Court*, INT’L CRIM. CT., <https://www.icc-cpi.int/about/the-court> [perma.cc/X8Z3-5B7P] (last visited Aug. 1, 2025).

84. Rome Statute, *supra* note 82, art. 25.

The ICC was established by a treaty referred to as the “Rome Statute.”⁸⁵ The 125 States Parties to the Rome Statute are bound by the ICC’s jurisdiction.⁸⁶ Additionally, in some instances, citizens of non-State Parties are subject to the ICC’s jurisdiction.⁸⁷ Neither the United States nor Russia is a State Party to the Rome Statute.⁸⁸

When the Rome Statute was adopted on July 17, 1998, the crime of aggression was not clearly defined, and the conditions under which the ICC could exercise jurisdiction over the crime of aggression were not stated.⁸⁹ It was difficult to reach consensus among State Parties on how to define the crime and who would be subject to jurisdiction for committing the crime of aggression.⁹⁰ The Kampala Amendments, adopted in 2010, twelve years after the Rome Statute was adopted, include the ICC definition of the crime of aggression.⁹¹ Forty-seven states ratified the Kampala Amendments.⁹² The crime of aggression was activated in 2017, to take effect on July 17, 2018.⁹³ Per the Kampala Amendments to the Rome Statute:

1. crime of aggression’ means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.⁹⁴

85. *See id.*

86. *Id.* art. 12, ¶ 1.

87. For example, the ICC issued an arrest warrant for Putin. *See* Situation in Ukraine, ICC-01/22, Pre-Trial Chamber II (Oct. 24, 2022).

88. *The States and Parties to the Rome Statute*, INT’L CRIM. CT., <https://asp.icc-cpi.int/states-parties> [perma.cc/5Q3E-HT6Z] (last visited Aug. 1, 2025). Note, the United States and Russia are not included in the list of States Parties.

89. *See* Rome Statute, *supra* note 82; *see also* Amendments on the Crime of Aggression to the Rome Statute of the International Criminal Court, June 11, 2010, 2187 U.N.T.S. 3 (adopted by Res. RC/Res. 6) [hereinafter Kampala Amendments].

90. Kreß & von Holtendorff, *supra* note 25, at 1191.

91. Activation of the Jurisdiction of the Court over the Crime of Aggression Res. ICC-ASP/16/Res.5 (Dec. 14, 2017).

92. Kevin Jon Heller, *States Seek to Harmonize ICC Jurisdiction Regarding Aggression*, OPINIO JURIS (Apr. 8, 2025), <https://opiniojuris.org/2025/04/08/states-seek-to-harmonize-icc-jurisdiction-regarding-aggression> [perma.cc/FR27-5WTV].

93. Res. ICC-ASP/16/Res.5, *supra* note 91.

94. Rome Statute, *supra* note 82, art. 8bis. The rest of the definition of the crime of aggression states the following:

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

The United States has neither ratified the Rome Statute, nor the Kampala Amendments. The United States concerns on activation of crime of aggression by the ICC are that the ICC:

may reduce the ability of the international community to . . . resolve conflicts. While the international community has strived for consensus around the principle that atrocities cannot legitimately be the subject of amnesty, it is not obvious that the same approach is appropriate for the crime of aggression, which is of a fundamentally different character.⁹⁵

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Id.

95. Sarah Sewall, Under Sec’y for Civilian Sec., Democracy, and Hum. Rts., Remarks at the Annual Meeting of the American Society for International Law (Apr. 9, 2015).

D. *Vladimir Putin Committed the Crime of Aggression*

Vladimir Putin should be held criminally responsible for committing the crime of aggression when he invaded Ukraine in February of 2022. On February 24, 2022, Russian military troops invaded Ukraine from Belarus, Russia, and Crimea, entering Ukrainian territory in tanks and conducted airstrikes in multiple locations in Ukraine.⁹⁶ Using armed force in violation of the territorial integrity of Ukraine, an internationally recognized independent state, falls squarely within the prohibition of the use of force in Article 2(4) of the U.N. Charter.⁹⁷ Russia's actions also satisfy the definition of the Crime of Aggression as detailed by that 1974 U.N. General Assembly and in the Kampala Amendments to the Rome Statute.⁹⁸

Putin's invasion of Ukraine has been publicly condemned by the United Kingdom,⁹⁹ the United States,¹⁰⁰ and the European Union.¹⁰¹ In 2022, 141 states in the U.N. General Assembly voted that Russia violated Article 2(4) of the U.N. Charter.¹⁰² It is the most

96. *Ukraine Conflict: Simple Visual Guide to the Russian Invasion*, *supra* note 3. Belarus' complicity in these crimes is also worth noting. However, whether Belarus' actions constitute the Crime of Aggression will not be addressed in this Article.

97. See U.N. Charter art. 2, ¶ 4.

98. See *id.*; Rome Statute, *supra* note 82. See also Hafetz, *supra* note 27, at 367–68. Note, the International Centre for the Prosecution of the Crime of Aggression in Ukraine (ICPA) was established to collect and preserve evidence of the crime of aggression for prosecution of Russian leaders complicit in invading Ukraine. The ICPA consists of participants from Ukraine, Estonia, Latvia, Lithuania, Poland, and Romania. *International Centre for the Prosecution of the Crime of Aggression against Ukraine*, EUROPEAN UNION AGENCY FOR CRIM. JUST. COOP., <https://www.eurojust.europa.eu/international-centre-for-the-prosecution-of-the-crime-of-aggression-against-ukraine> [perma.cc/7HTE-JRDF] (last visited Aug. 1, 2025).

99. Russia's assault on Ukraine: Foreign Secretary's Statement, GOV.UK (Feb. 24, 2022), <https://www.gov.uk/government/news/foreign-secretary-statement-on-ukraine-situation-24-february-2022> [perma.cc/JKK3-DJ86].

100. See President Joseph R. Biden Jr., Statement by President Biden on Russia's Unprovoked and Unjustified Attack on Ukraine (Feb. 24, 2022). Note, while the United States has withdrawn from the International Centre for the Prosecution of the Crime of Aggression against Ukraine, the United States Congress has also publicly condemned Russia's actions in Ukraine. See 22 U.S.C. §§ 8902, 8922 (2025).

101. See Press Statement, President Charles Michel of the European Council and President Ursula von der Leyen of the European Commission, Russia's Unprecedented and Unprovoked Military Aggression of Ukraine (Feb. 23, 2022), https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1321 [perma.cc/65LH-ZAYJ].

102. See G.A. Res. ES-11/1 (Mar. 2, 2022); *General Assembly resolution demands end to Russian offensive in Ukraine*, UN NEWS (Mar. 2, 2022), <https://news.un.org/en/story/2022/03/1113152> [perma.cc/8DCE-FQPE].

blatant violation of the prohibition of aggression since World War II.¹⁰³

Putin referred to his invasion of Ukraine as “a special military operation” and claimed self-defense.¹⁰⁴ However, there is no proof Ukraine was planning an imminent armed attack against Russia.¹⁰⁵ Russia also claimed it was exercising collective self-defense on behalf of the Donetsk and Luhansk Republics, both ethnically Russian but located in Ukraine.¹⁰⁶ However, Russia is the only country to recognize the Donetsk and Luhansk Republics as separate states than Ukraine.¹⁰⁷ The Donetsk and Luhansk Republics do not meet criteria of statehood under international law.¹⁰⁸ Russia has further claimed Ukraine is committing genocide in the Donetsk and Luhansk Republics; there is no evidence to support these assertions either.¹⁰⁹

Putin’s crime of aggression was the source of war-crime atrocities committed by Russia in Ukraine. In addition to the hundreds of thousands of fatalities, to include many civilians, associated with Putin’s crime of aggression, other egregious crimes have been committed.¹¹⁰ Civilian infrastructure in Ukraine—including hospitals and schools—has been destroyed.¹¹¹ Children have been deported.¹¹² Further, the conflict in Ukraine has been

103. See Emily Mullin & Gregory Stanton, *Prosecuting Putin: Creation of a Special Tribunal for Russian Aggression*, OPINIO JURIS (Oct. 1, 2024), <https://opiniojuris.org/2024/10/01/prosecuting-putin-creation-of-a-special-tribunal-for-russian-aggression/> [perma.cc/B75H-46TL].

104. See Hafetz, *supra* note 27, at 388–89.

105. See Michael N. Schmitt, *Russia’s “Special Military Operation” and the (Claimed) Right of Self-Defense*, LIEBER INSTITUTE: WEST POINT (Feb. 28, 2022), <https://lieber.westpoint.edu/russia-special-military-operation-claimed-right-self-defense/> [perma.cc/6SUQ-HHAG].

106. See LAW AND THE FUTURE OF WAR PODCAST: *Ukraine, the Crime of Aggression and the Need for a Special Tribunal* (BuzzSprout, Oct. 9, 2022), <https://www.buzzsprout.com/1403818/episodes/11137033-ukraine-the-crime-of-aggression-and-the-need-for-a-special-tribunal-carrie-mcdougall> [perma.cc/CP9S-Z7KP]; see also Schmitt, *supra* note 105.

107. *Id.*

108. See Mark Weller, *Russia’s Recognition of the ‘Separatist Republics’ in Ukraine was Manifestly Unlawful*, EJIL: TALK! (Mar. 9, 2022), <https://www.ejiltalk.org/russias-recognition-of-the-separatist-republics-in-ukraine-was-manifestly-unlawful/> [perma.cc/CP9S-Z7KP].

109. See LAW AND THE FUTURE OF WAR, *supra* note 106.

110. Sácouto, *supra* note 12, at 89; Cook, *supra* note 9.

111. See Sácouto, *supra* note 12, at 89.

112. See *id.*

marked by rape, torture, summary executions, and other blatant violations of international humanitarian law and the Geneva Conventions.¹¹³ All of these crimes stem from Putin's aggression in invading Ukraine, and he must be held legally accountable.

III. LEGAL AND POLITICAL CHALLENGES

A. Head of State Immunity and Aggression

Head of state immunity is a key consideration in determining the appropriate forum for the Ukraine Tribunal to try Putin for the crime of aggression. Vladimir Putin, the President of Russia, will likely claim head of state immunity for his actions in Ukraine, particularly if the tribunal was a "hybrid court" or tribunal based in the Ukrainian legal system.¹¹⁴ The ICJ issued a ruling regarding head of state immunity in the *Democratic Republic of the Congo v. Belgium*.¹¹⁵ The ICJ noted that while an incumbent Minister for Foreign Affairs enjoys diplomatic immunity (*ratione personae*) from the criminal jurisdiction of foreign states while in office, such immunity does not bar prosecution in all circumstances, to include certain international criminal courts.¹¹⁶ In other words, head of state immunity is internationally recognized so heads of state are effectively able to do their jobs without fear of political retribution by other countries.¹¹⁷ One sovereign cannot assert jurisdiction

113. *See id.*

114. *See Creating a Special Tribunal*, *supra* note 14; *see also* Patryk I. Labuda, *Making Counter-Hegemonic International Law: Should A Special Tribunal for Aggression be International or Hybrid?*, JUST SEC. (Sep. 19, 2023), <https://www.justsecurity.org/88373/making-counter-hegemonic-international-law-should-a-special-tribunal-for-aggression-be-international-or-hybrid/> [perma.cc/CD5Y-7YL5]; *see infra* Section IV.B (discussing why a hybrid tribunal will not work in this case).

115. *See* Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 3, 23–25 (Feb. 14).

116. *See id.* *Ratione personae*, or personal immunity, "covers all acts, both official and private, committed during the time when the State official is in office as well as private acts committed before this time." CORTEN & KOUTROULIS, *supra* note 14, at 21. Personal immunity applies based on position, and usually includes Heads of State, Heads of Government, and Ministers of Foreign Affairs. *Id.* Once the actor leaves his or her position, personal immunity no longer applies. *Id.*

117. *See* Arrest Warrant of 11 April 2000, *supra* note 115. Heads-of-state include high-level state officials such as Foreign Ministers, State Heads, and Heads of Government. *See* CORTEN & KOUTROULIS, *supra* note 14, at 21.

over another sovereign.¹¹⁸ However, all persons and states are bound to follow customary international law, and particularly *jus cogens*.¹¹⁹ The status of a tribunal as sufficiently “international” is critical to whether personal head of state immunity bars individual criminal prosecution.¹²⁰

While ICC prosecution is not currently a viable forum to prosecute Putin for the crime of aggression,¹²¹ the Rome Statute was still ratified by 125 states.¹²² The Rome Statute expressly states, “[i]mmunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person”.¹²³ Further, the ICC found that a head of state is not immune from ICC jurisdiction in the case of Omar Al-Bashir, president of Sudan.¹²⁴ “According to the ICC Appeals Chamber, international courts ‘act on behalf of the international community as a whole,’ they ‘do not act on behalf of a particular State or States.’”¹²⁵

The issue of head-of-state immunity was also addressed by the Appeals Chamber of the Special Court for Sierra Leone (SCSL).¹²⁶ Charles Taylor, President of the state of Liberia, was charged, and eventually convicted of rape, murder, and conscripting children, among other international crimes.¹²⁷ Before his trial, President Taylor claimed he was immune from

118. See James A. Goldston & Anna Khalfaoui, *In Evaluating Immunities before a Special Tribunal for Aggression Against Ukraine, the Type of Tribunal Matters*, JUST SECURITY (Feb. 1, 2023), <https://www.justsecurity.org/84959/in-evaluating-immunities-before-a-special-tribunal-for-aggression-against-ukraine-the-type-of-tribunal-matters/> [perma.cc/RH7Q-TMU4].

119. See *Dem. Rep. Congo v. Belg.*, 2002 I.C.J. 3, ¶ 56; see also *supra* Section II.

120. See *LAW AND THE FUTURE OF WAR*, *supra* note 106.

121. See *infra* Section IV.A.

122. See *supra* Section II.C.

123. See Rome Statute, *supra* note 82, art. 27(2).

124. See *Prosecutor v. Omar Hassan Ahmad Al-Bashir*, ICC-02-05-01/09 OA2, Judgment (Int’l Crim. Ct. May 6, 2019). When Jordan executed the ICC arrest warrant against Sudanese President al-Bashir, al-Bashir appealed the arrest claiming head of state immunity. The ICC rejected this argument.

125. See Goldston & Khalfaoui, *supra* note 118 (citing Al-Bashir, ICC-02-05-01/09 OA2, ¶ 115).

126. For an in-depth discussion of the background and composition of the Special Court for Sierra Leone, see *infra* Section V.B.

127. See Sarah Childress, *Charles Taylor Sentenced to 50 Years for War Crimes*, PBS: FRONTLINE (May 30, 2012), <https://www.pbs.org/wgbh/frontline/article/charles-taylor-sentenced-to-50-years-for-war-crimes/> [perma.cc/835N-N4CN].

prosecution by the tribunal as a sitting head of state.¹²⁸ The Appeals Chamber of the SCSL found head of state immunity did not apply for President Taylor because of the international nature of the Sierra Leone tribunal.¹²⁹ While the tribunal was based on aspects of international law and the domestic law of Sierra Leone, the Appeals Chamber of the SCSL found the prosecution to be more international in nature.¹³⁰ Of note, President Taylor was specifically charged with crimes in violation of international humanitarian law. If he were charged with violation of Sierra Leone's domestic law, the tribunal may not have been viewed as "sufficiently international" to overcome President Taylor's claim of head of state immunity.¹³¹ "[T]he bilateral agreement between the U.N. and Sierra Leone was 'an agreement between all members of the United Nations and Sierra Leone' which made it 'an expression of the will of the international community as a whole' and therefore the court was 'truly international.'"¹³² However, the Security Council, while not acting under its Chapter VII powers, did refer that case and mandate creation of the tribunal.¹³³

In contrast, the ICJ addressed the issue of head of state immunities in a national court-based legal system prosecuting a head of state for international crimes in the Yerodia judgment.¹³⁴ Yerodia was a Congolese foreign minister.¹³⁵ Belgium issued a warrant for his arrest for crimes Yerodia allegedly committed in his capacity as foreign minister.¹³⁶ The ICJ ruled that Yerodia could not be subjected to prosecution in a Belgian court, because he enjoyed head of state immunity.¹³⁷ A tribunal must have significant international support so head of state immunity does not bar

128. See *Prosecutor v. Taylor*, SCSL-2003-01-I, Decision on Immunity from Jurisdiction, ¶ 1 (May 31, 2004).

129. See *id.* ¶ 40; see also *infra* Section V.B.

130. See *Taylor*, SCSL-2003-01-I, ¶ 40.

131. See *id.* ¶¶ 14–16; see also Zuzanna Deen-Racsmay, *Prosecutor v. Taylor: The Status of the Special Court for Sierra Leone and Its Implications for Immunity*, 18 LEIDEN J. INT'L L. 299, 304–06 (2005).

132. See Coracini & Trahan, *supra* note 57 (quoting *Taylor*, SCSL-2003-01-I, ¶ 38).

133. See Gaiane Nuridzhanian, *International Enough? A Council of Europe Special Tribunal for the Crime of Aggression*, JUST SEC. (June 3, 2024), <https://www.justsecurity.org/96320/council-of-europe-ukraine-tribunal/> [perma.cc/2F7E-T3Y9]; CORTEN & KOUTROULIS, *supra* note 14, at 27.

134. See Trahan, *supra* note 14; see also *Dem. Rep. Congo v. Belg.*, 2002 I.C.J. 3.

135. See Coracini & Trahan, *supra* note 57.

136. See *id.*

137. See *id.*

jurisdiction.¹³⁸ Once the individual leaves office, the personal immunity (*ratione personae*) no longer applies.¹³⁹

The international tribunal to prosecute Putin for aggression must be sufficiently international to avoid head of state immunity objections.¹⁴⁰ There are three criteria for a court to be sufficiently international in nature.¹⁴¹ First, more than one state must be involved in the creation of the tribunal. The more states involved in the creation of the tribunal, the more likely the tribunal would be considered sufficiently international so head of state immunity would not bar jurisdiction.¹⁴² The tribunal could be established in multiple ways, to include a treaty between states or a treaty between a state and an intergovernmental organization such as the U.N. or E.U.¹⁴³ Second, the tribunal must have a basis in international law.¹⁴⁴ Third, the tribunal should not be incorporated into the domestic legal system of Ukraine; the more the tribunal has a basis in customary international law or treaty law, the more likely it is to be considered “sufficiently international.”¹⁴⁵ A tribunal based on Ukraine’s domestic law would likely not be considered sufficiently international.¹⁴⁶

B. *Claims of Selective Justice*

Selective justice by Western nations is another critical consideration in the composition of a Ukraine Tribunal to prosecute Putin for the crime of aggression. A tribunal that is viewed as selective or unfair could undermine the current world order and international legal system and lead to cynicism of the system.¹⁴⁷ The United States, United Kingdom, and France have all considered their national interests and past actions when

138. See Labuda, *supra* note 114.

139. See Coracini & Trahan, *supra* note 57. On personal immunity (*ratione personae*), see *supra* note 116. Note, it is unlikely that Vladimir Putin will ever leave office.

140. See Nuridzhanian, *supra* note 133; see also Prosecutor v. Taylor, SCSL-2003-01-I.

141. See Nuridzhanian, *supra* note 133.

142. See *id.*

143. See *id.*

144. See *id.*

145. *Id.*

146. See *infra* Section IV.B (hybrid tribunal ad hoc discussion).

147. See Hafetz, *supra* note 27, at 396–97.

determining which type of tribunal to endorse.¹⁴⁸ The United States in particular is cautious in its endorsement for international criminal tribunals. The United States objected to the definition in the Rome Statute and Kampala Amendments, in favor of retaining power at the Security Council, presumably to avoid being subjected to the ICC's jurisdiction.¹⁴⁹

Russia masterfully controls the narrative of the U.S.-led world order via multi-pronged disinformation campaigns.¹⁵⁰ Included in Russia's counter-U.S. narrative is the principle that the United States has violated international law but selectively applies the principles to other non-Western countries.¹⁵¹ Putin has garnered support and strengthened economic ties with several countries, to include Brazil, China, and India.¹⁵²

Western support for the tribunal can be viewed, particularly by the Global South, as selective justice, aimed at the enemies of the Western world.¹⁵³ This is particularly salient in countries that were once colonies of Western states such as France and the United Kingdom.¹⁵⁴ Western intervention by force, to include United States intervention in Iraq, arguably meets the definition of the crime of aggression if viewed in a certain light.¹⁵⁵ U.S. action in Iraq in 2003 has been widely condemned by jurists, scholars, and countries around the world.¹⁵⁶ However, no aggression tribunal was convened to address the U.S. action.¹⁵⁷ Putin has weaponized the U.S. invasion of Iraq and U.S. actions as part of the "War on

148. See Patryk I. Labuda, *Countering Imperialism in International Law: Examining the Special Tribunal for Aggression Against Ukraine through a Post-Colonial Eastern European Lens*, 49 *YALE J. INT'L L.* 271, 290 (2024).

149. See Hafetz, *supra* note 27, at 372; see also generally Harold Hongju Koh & Todd F. Buchwald, *The Crime of Aggression: The United States Perspective*, 109 *AM. J. INT'L L.* 257, 257-260 (2015).

150. See Hafetz, *supra* note 27, at 386-88.

151. See *id.* at 391.

152. See *id.*

153. See Labuda, *supra* note 148, at 290.

154. Emily Mullin & Gregory Stanton, *Prosecuting Putin: Creation of a Special Tribunal for Russian Aggression*, *OPINIO JURIS* (Oct. 1, 2024), <https://opiniojuris.org/2024/10/01/prosecuting-putin-creation-of-a-special-tribunal-for-russian-aggression/> [perma.cc/7RNK-UE3G].

155. See Labuda, *supra* note 148, at 290.

156. See CORTEN & KOUTROULIS, *supra* note 14, at 5 n.31.

157. See Labuda, *supra* note 148, at 289.

Terror” as examples of selective justice by the Western world.¹⁵⁸ Critics have argued that international criminal justice has been disproportionately shaped by Western political influence, leading to the perception of selective enforcement.¹⁵⁹ However, the absence of fairness does not give states permission to violate international law.¹⁶⁰ Validity of the tribunal is essential in bringing Putin to justice and deterring other nations from future aggression.

C. Arrest and Enforcement Obstacles

The outcome of the conflict and securing Vladimir Putin for trial is another possible challenge for the aggression tribunal. The war in Ukraine continues, and it is quite possible that Vladimir Putin and Russia could emerge as victors in the conflict. Additionally, even if Putin “lost” the war, securing his presence for trial could be difficult and costly.¹⁶¹ An arrest warrant for Putin could only be effectuated if Putin entered the territory of a country willing to effectuate the arrest warrant.¹⁶² Unless Russia signs a treaty agreeing to the tribunal, or the Security Council orders the tribunal, arguably Russia will have no obligation under international law to comply with tribunal orders, to include an arrest warrant.¹⁶³ States Parties to the tribunal treaty could agree to honor an arrest warrant and extradite Putin if he entered a State Party.¹⁶⁴ However, in the past, States Parties have been hesitant to arrest heads of state, even under treaty obligations.¹⁶⁵

158. See Hafetz, *supra* note 27, at 392; see also Luis Moreno Ocampo, *Ending Selective Justice for the International Crime of Aggression*, JUST SEC. (Jan. 31, 2023), <https://www.justsecurity.org/84949/ending-selective-justice-for-the-international-crime-of-aggression/> [perma.cc/2F7E-T3Y9] (Ocampo further notes that the U.S. also killed one of Iran’s senior leaders in Iraq in 2020 with no consequences within the international community).

159. See Labuda, *supra* note 148, at 274–76.

160. See *id.*; see also Katerina Borrelli, *Between Show-Trials and Utopia: A Study of the Tu Quoque Defence*, 32 LEIDEN J. INT’L L. 315, 350–51 (2019).

161. See Robert Plummer, *Will Vladimir Putin ever face a war crimes trial?*, BBC NEWS (Mar. 17, 2023), <https://www.bbc.com/news/world-64994992> [perma.cc/8BS7-RV6Z].

162. See *id.*; Hafetz, *supra* note 27, at 379–80.

163. See CORTEN & KOUTROULIS, *supra* note 14, at 32.

164. See *id.*

165. See *id.* (citing *Prosecutor v. Al-Bashir*) (noting that even though Al-Bashir entered the jurisdiction of a Rome Statute State Party, the ICC arrest warrant was not executed).

In absentia proceedings are possible under international law, and Ukraine seems to favor this approach.¹⁶⁶ However, the international community generally frowns on trials in absentia.¹⁶⁷ With the exception of the SCSL, all previous successful international tribunals did not permit trials in absentia.¹⁶⁸ In absentia trials raise human rights and due process concerns, particularly that one cannot lodge a sufficient defense if he or she is not present to defend him or herself.¹⁶⁹ The International Covenant on Civil and Political Rights clearly states that minimum requirements for a fair trial include the accused's presence at trial.¹⁷⁰

Convening a tribunal prior to peace in Ukraine could have other practical implications. The tribunal could further anger Putin to the point where he escalates the conflict, potentially resorting to his nuclear arsenal or attacking other countries besides Ukraine.¹⁷¹ Perhaps after a regime-change Putin could be secured, but that would also involve a significant shift in Russian politics.¹⁷² Last, ending the war in Ukraine is an important political and humanitarian objective.¹⁷³ Forming a tribunal to prosecute Putin for the crime of aggression could negatively affect peace talks to end the war.¹⁷⁴

166. See Labuda, *supra* note 114.

167. See *id.*

168. See CORTEN & KOUTROULIS, *supra* note 14, at 34. ICTR, ICTY, ICC, SCSL, ECCC, EAC, and Kosovo Specialist Chambers all provided the accused the right to be present for his or her trial. *Id.*

169. See Beth Van Schaack, *Trials in Absentia Under International, Domestic, and Lebanese Law*, JUST SEC. (Jan. 18, 2014), <https://www.justsecurity.org/5839/trials-absentia/> [perma.cc/TH9R-5PLN].

170. See CORTEN & KOUTROULIS, *supra* note 14, at 34 (citing International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171). Russia signed and ratified the International Covenant on Civil and Political Rights. See International Covenant on Civil and Political Rights, UN Hum. Rts. Treaty Bodies, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR [perma.cc/9N7R-X763] (last visited May 13, 2026). The European Court of Human Rights also notes presence at trial as a minimum due process requirement. See Van Schaack, *supra* note 169.

171. See Hafetz, *supra* note 27, at 376.

172. See *id.* at 375–76.

173. See *id.* at 376.

174. *Id.*

D. Accountability for Others

While this article focuses on Putin's crime of aggression, Vladimir Putin did not act alone. Others, including the President of Belarus, Alexander Lukashenko, were complicit in Putin's invasion of Ukraine, and therefore may also bear responsibility for Russia's invasion of Ukraine.¹⁷⁵ North Korea also sent help during the war in Ukraine.¹⁷⁶ Identifying the appropriate forum must also consider the prosecution of these actors. The forum also may consider Putin's 2014 invasion of Crimea as a second crime of aggression.

IV. INTERNATIONAL TRIBUNAL MODELS INSUFFICIENT FOR THE UKRAINE TRIBUNAL

A. The ICC's Jurisdictional Limitations

One proposed solution for prosecuting Putin for the crime of aggression is to amend the Rome Statute and Kampala Amendments so Putin could be prosecuted for all his war crimes in the International Criminal Court (ICC). Proponents of this solution argue the ICC would be ideal for prosecuting Putin for the crime of aggression in Ukraine.¹⁷⁷ It is a fully international tribunal that includes a specific definition of the crime of aggression and has the existing resources and infrastructure for the prosecution.¹⁷⁸ The ICC rules of procedure have been established and the court already has the resources necessary to investigate and prosecute the crimes perpetrated in Ukraine.¹⁷⁹ The ICC has already issued a

175. Hathaway, *supra* note 11.

176. Giulia Pecorella, *The Crime of Aggression: A Preliminary Look at Ukraine's Special Tribunal*, INT'L L. BLOG (July 1, 2025), <https://internationallaw.blog/2025/07/01/the-crime-of-aggression-a-preliminary-look-at-ukraines-special-tribunal/> [perma.cc/UKN7-75AV].

177. CORTEN & KOUTROULIS, *supra* note 14, at 20–21.

178. See Claus Kress, Stephan Hobe, & Angelika Nußberger, *The Ukraine War and the Crime of Aggression: How to Fill the Gaps in the International Legal System*, JUST SECURITY (Jan. 23, 2023), <https://www.justsecurity.org/84783/the-ukraine-war-and-the-crime-of-aggression-how-to-fill-the-gaps-in-the-international-legal-system/> [perma.cc/H3HG-48MT].

179. See Press Release, *International coalition to Support ICC Russian War Crimes Investigation*, GOV.UK (Mar. 24, 2022), <https://www.gov.uk/government/news/international-coalition-to-support-icc-russian-war-crimes-investigation> [perma.cc/E28A-YPKW].

warrant for Vladimir Putin's arrest for violating articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute.¹⁸⁰ Essentially, the warrant alleges that Vladimir Putin unlawfully deported children from Ukraine to Russia, in violation of the Geneva Conventions of 1949.¹⁸¹

Even though Russia and Ukraine are not States Parties to the Rome Statute,¹⁸² the ICC has jurisdiction over Putin's deportation crimes because several States Parties to the Rome Statute referred the situation in Ukraine to the ICC.¹⁸³ Ukraine has also accepted ICC jurisdiction for crimes committed in its territory in accordance with article 12(3) of the Rome Statute.¹⁸⁴

Beyond the deportation crimes, Putin is alleged to have committed a laundry list of other war crimes and crimes against humanity that fall squarely within the jurisdiction of the ICC.¹⁸⁵ Prosecuting Putin in one forum would be economical and efficient.¹⁸⁶ If the ICC decided to prosecute Putin for the crime of aggression, it would be the decision of the ICC prosecutor, and not

180. See Press Release, Int'l Crim. Ct., *Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova* (Mar. 17, 2023), <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> [perma.cc/5Y9U-7W3W].

181. See *id.*

182. See *Russia Withdraws from International Criminal Court treaty*, BBC NEWS (Nov. 16, 2016), <https://www.bbc.com/news/world-europe-38005282> [perma.cc/NS4E-NSTA].

183. *Situation in Ukraine*, INT'L CRIM. CT., <https://www.icc-cpi.int/situations/ukraine> [perma.cc/X44Z-8APM] (last visited Aug. 7, 2025) (referring states include Republic of Albania, Commonwealth of Australia, Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, Canada, Republic of Colombia, Republic of Costa Rica, Republic of Croatia, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Republic of Estonia, Republic of Finland, Republic of France, Georgia, Federal Republic of Germany, Hellenic Republic, Hungary, Republic of Iceland, Ireland, Republic of Italy, Republic of Latvia, Principality of Liechtenstein, Grand Duchy of Luxembourg, Republic of Malta, New Zealand, Kingdom of Norway, Kingdom of the Netherlands, Republic of Poland, Republic of Portugal, Romania, Slovak Republic, Republic of Slovenia, Kingdom of Spain, Kingdom of Sweden, Swiss Confederation, United Kingdom of Great Britain and Northern Ireland).

184. See *id.*; Letter from Pavlov Klimkin, Minister for Foreign Affs. of Ukraine, to Herman von Hebel, Registrar, Int'l Crim. Ct. (Sept. 8, 2015), https://www.icc-cpi.int/sites/default/files/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf [perma.cc/L8PT-5XW5]. Article 12(3) of the Rome Statute allows a state where crimes have been committed to accept jurisdiction of the ICC. See Rome Statute, *supra* note 82, art. 12(3).

185. See LAW AND THE FUTURE OF WAR, *supra* note 106.

186. See Kress, Hobe, & Nußberger, *supra* note 178.

of individual countries.¹⁸⁷ If the ICC made the decision of whether to prosecute, it could lessen the argument of Western influence and selective justice.¹⁸⁸

Unfortunately, the ICC cannot exercise jurisdiction over the crime of aggression by Russian nationals in the situation in Ukraine absent a U.N. Security Council referral.¹⁸⁹ While the crime of aggression itself falls within the jurisdiction of the ICC,¹⁹⁰ the ICC may only exercise jurisdiction over persons from States Parties to the Kampala Amendments to the Rome Statute, or with the consent of the state to prosecute its citizens.¹⁹¹ The ICC has specifically recognized it does not have jurisdiction to prosecute Vladimir Putin for the crime of aggression.¹⁹² Russia is not a State Party to the Kampala Amendments to the Rome Statute, nor has it consented to the ICC prosecuting its citizens.¹⁹³ Alternatively, the U.N. Security Council could refer Putin's crime of aggression to the ICC.¹⁹⁴ However, since Russia is a member of the U.N. Security Council, Russia would likely veto the resolution.¹⁹⁵

A leading proposal is to amend the Rome Statute and Kampala Amendments, so the ICC would have jurisdiction over Putin for the crime of aggression.¹⁹⁶ However, amending the Rome Statute has major flaws. First, if the Rome Statute and Kampala Amendments are amended, the amendments cannot retroactively apply to Russia's invasion of Ukraine in 2022.¹⁹⁷ Second, many world-

187. See Ocampo, *supra* note 158.

188. See *id.*

189. See BUTCHARD, *supra* note 77.

190. See Rome Statute, *supra* note 82, art. 5.

191. See *id.* art. 15 *ter*.

192. See Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: "I have been closely following recent developments in and around Ukraine with increasing concern.", INT'L CRIM. CT. (Feb. 25, 2022), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-been-closely-following> [perma.cc/BYH8-RD4Y].

193. See Status of Kampala Amendments, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-b&chapter=18&clang=_en [perma.cc/84EY-2ZX4] (last visited Aug. 7, 2025); Kampala Amendments, *supra* note 89.

194. See Rome Statute, *supra* note 82, art. 15 *ter*.

195. See BUTCHARD, *supra* note 77, at 10; see also Russia vetoed a U.N. Security Council Action on Ukraine, U.N. NEWS (Feb. 26, 2022), <https://news.un.org/en/story/2022/02/1112802> [perma.cc/P6UJ-6AEN].

196. See BUTCHARD, *supra* note 77, at 12; Kress, Hobe, & Nußberger, *supra* note 178.

197. See McDougall, *Imperative*, *supra* note 14, at 213–14.

power states, including the United States, France, and the United Kingdom, have opposed amending the Rome Statute in such a broad manner.¹⁹⁸ Even if the Rome Statute were amended, since so many powerful nations, to include Russia, would be unlikely to ratify, the ICC would not serve as a good model for holding powerful nations accountable for their aggression, both now and in the future.¹⁹⁹ Last, it is highly unlikely the Rome Statute could be amended quickly enough to ensure a timely prosecution of Putin for the crime of aggression.²⁰⁰ Current geopolitical realities make the ICC an untenable option.²⁰¹

*B. Domestic Proceeding in Ukraine
“Hybrid Court” or “Ad Hoc” Option*

A “hybrid court” or “ad hoc” tribunal option would consist of a “court combining domestic Ukrainian and international elements.”²⁰² The “hybrid court” could be created via a treaty between Ukraine and the U.N., modeled off of the Cambodian tribunal.²⁰³ A hybrid tribunal could prove more efficient than other options, since Ukraine could act quickly via domestic legislation to establish the court, and to include rules of evidence and

198. Kress, Hobe, & Nußberger, *supra* note 178. As members of the U.N. Security Council, the United States, the United Kingdom, and France are hesitant to relinquish such power.

199. Labuda, *supra* note 114.

200. Kress, Hobe, & Nußberger, *supra* note 178.

201. *See id.*; *see also* Ocampo, *supra* note 158. Amending the Rome Statute and Kampala Amendments to allow for universal prosecution for the crime of aggression regardless of whether the nation is a Rome Statute State Party or whether the U.N. Security Council approves would certainly provide the ICC with more flexibility and latitude. However, it would also restrict the power of the U.N. Security Council, the law enforcement arm of the United Nations. The United States, France, and the United Kingdom are unlikely to support such amendments, and therefore the prosecution of Putin for the crime of aggression would be lacking support from several key world powers.

202. *See* Jennifer Trahan, *Why a “Hybrid” Ukrainian Tribunal on the Crime of Aggression Is Not the Answer*, JUST SEC. (Feb. 6, 2023), <https://www.justsecurity.org/85019/why-hybrid-ukrainian-tribunal-on-crime-of-aggression-is-not-the-answer/> [perma.cc/HJN7-G9UN]; Labuda, *supra* note 114.

203. *See* Alexander Komarov & Oona A. Hathaway, *The Best Path for Accountability for the Crime of Aggression Under Ukrainian and International Law*, JUST SECURITY (Apr. 11, 2022), <https://www.justsecurity.org/81063/the-best-path-for-accountability-for-the-crime-of-aggression-under-ukrainian-and-international-law/> [perma.cc/2NMA-4CCK].

procedure.²⁰⁴ States that may be hesitant to outwardly support a fully international tribunal may be more likely to support a “hybrid” Ukrainian tribunal.²⁰⁵ The G7—which includes the Foreign Ministers of Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States of America—and the High Representative for the European Union, have expressed support for the hybrid model, stating: “We support exploring the creation of an internationalized tribunal based in Ukraine’s judicial system to prosecute the crime of aggression against Ukraine.”²⁰⁶ Last, since Putin’s crime of aggression and the following atrocities were committed in Ukraine, a Ukrainian-led tribunal could enforce Ukraine’s sovereignty and empower Ukraine.²⁰⁷

1. Precedent for a Hybrid Tribunal

The Extraordinary Chambers in the Courts of Cambodia (ECCC) is an example of a successful “hybrid court” that included support from the international community but was based in Cambodian domestic law.²⁰⁸ In the early 1970s, a communist group known as the Khmer Rouge overthrew the Cambodian government in a civil war, ousting the Cambodian monarch.²⁰⁹ When the Khmer Rouge took power in 1975, they employed brutal tactics that included murdering hundreds of thousands of political opponents.²¹⁰ The Khmer Rouge also committed genocide of ethnic Vietnamese and Muslims living in Cambodia.²¹¹ In 1979,

204. See Labuda, *supra* note 114.

205. See BUTCHARD, *supra* note 77, at 18–19 (noting the U.S. and U.K. were initially more supportive of a hybrid tribunal rooted in Ukrainian law).

206. See *id.* at 20. Note, “the U.S. has . . . withdrawn from the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA)” and prosecuting Putin for the crime of aggression is not currently a priority. See Ali Abbas Ahmadi, *Trump administration withdraws from Russian war crime investigations*, BBC NEWS (Mar. 19, 2025), <https://www.bbc.com/news/articles/c0rzygdn8w2o> [perma.cc/XA9D-ZH4E].

207. See BUTCHARD, *supra* note 77, at 19.

208. See CORTEN & KOUTROULIS, *supra* note 14, at 10.

209. See *Khmer Rouge: Cambodia’s years of brutality*, BBC NEWS (Nov. 16, 2018), <https://www.bbc.com/news/world-asia-pacific-10684399> [perma.cc/9V7T-WS7V]; *Khmer Rouge*, HISTORY.COM (May 28, 2025), <https://www.history.com/articles/the-khmer-rouge> [perma.cc/J89V-QYFA].

210. See *Khmer Rouge: Cambodia’s years of brutality*, *supra* note 209.

211. See *id.*

Vietnamese troops overthrew the Khmer Rouge.²¹² Vietnam ruled Cambodia until the monarch returned in 1993.²¹³

In 1997, the legitimate Cambodian government requested U.N. assistance prosecuting war criminals.²¹⁴ Cambodia enacted legislation establishing the ECCC as part of the Cambodian courts.²¹⁵ The U.N. General Assembly requested that the U.N. Secretary General enter into an agreement to convene the tribunal,²¹⁶ and the Secretary General subsequently concluded an agreement recognizing the Cambodian law for the tribunal and detailing the U.N.'s involvement.²¹⁷ This tribunal did not address the crime of aggression, and used Cambodian domestic law to prosecute Khmer Rouge leaders.²¹⁸ The ECCC was composed of judges from both Cambodia and the international community.²¹⁹ The Cambodian tribunal also included international crimes such as genocide, in violation of the Geneva Conventions, making it a "hybrid" tribunal between Cambodian and international law.²²⁰ However, the ECCC only successfully prosecuted five Khmer Rouge leaders and secured three convictions.²²¹ Additionally, all crimes took place on Cambodian soil, with the cooperation of the

212. *See id.*

213. *See Khmer Rouge: Cambodia's years of brutality*, *supra* note 209.

214. *See Extraordinary Chambers in the Courts of Cambodia (ECCC)*, CTR. FOR JUST. & ACCOUNTABILITY, <https://cja.org/what-we-do/litigation/khmer-rouge-trials/related-resources/the-extraordinary-chambers-in-the-courts-of-cambodia-eccc/> [perma.cc/66TF-98SW] (last visited Aug. 7, 2025).

215. Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, 2001 (Reach Kram No. NS/RKM/0801/12) (Cambodia).

216. G.A. Res. 57/228 B, pmbl., Khmer Rouge trials (May 22, 2003).

217. Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea, Cambodia–U.N., June 6, 2003, 2329 U.N.T.S. 117.

218. CORTEN & KOUTROULIS, *supra* note 14, at 10.

219. *See Extraordinary Chambers in the Courts of Cambodia (ECCC)*, *supra* note 214.

220. *See Choongman Lee, The End of the Khmer Rouge Tribunal: Its Success and Legacy*, 34 INT'L L. 355, 368 (2025).

221. *See Marija Đorđeska, The ECCC Begins Winding Down: In Cambodia, a Hybrid Tribunal's Hybrid Legacy*, JUST SEC. (Oct. 3, 2022), <https://www.justsecurity.org/83316/eccc-winding-down-in-cambodia-hybrid-tribunals-hybrid-legacy/> [perma.cc/5F EZ-P7X2].

Cambodian government.²²² Those prosecuted were no longer in positions of power within the Cambodian government.²²³

2. “Hybrid” Tribunal Pitfalls

There are significant issues with employing the hybrid tribunal model to prosecute Putin for the crime of aggression for invading Ukraine. First, the hybrid model in the ECCC employed the law of the host nation, Cambodia.²²⁴ However, using Ukrainian law and Ukrainian-led proceedings to prosecute the crime of aggression raises significant concerns.²²⁵ The Ukrainian Constitution specifically states, “[t]he establishment of extraordinary and special courts will not be permitted.”²²⁶ This indicates a tribunal cannot be complementary to a Ukrainian court; it needs to be a completely separate, international entity.²²⁷ The Law of Ukraine on International Treaties provides that a treaty between Ukraine and the U.N. could be made subject to the ratification by the Ukrainian parliament, and thus become “Part of the National Legislation” of Ukraine.²²⁸

Another issue with a hybrid tribunal is that while Ukraine domestically defines the crime of aggression,²²⁹ the maximum punishment for the crime of aggression under Ukrainian law is fifteen years in prison.²³⁰ It would be difficult for Ukraine to secure Putin’s presence at the trial, so the trial would likely be held in absentia, which would lessen the maximum punishment per

222. See Memorandum from J. Matthew Linehan for the Extraordinary Chambers in the Courts of Cambodia (2008), https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1104&context=war_crimes_memos [perma.cc/NNS4-FB9Q].

223. See *Atrocities Committed by the Khmer Rouge*, CTR. JUST. & ACCOUNTABILITY, <https://cja.org/what-we-do/litigation/khmer-rouge-trials/> [perma.cc/36VY-4P6G] (last visited May 13, 2026).

224. See *id.*

225. See Trahan, *supra* note 14.

226. KONSTYTUTSIIA UKRAINY [CONSTITUTION] June 28, 1996, art. 125 (Ukr.).

227. See Hathaway, *supra* note 11.

228. See *id.*

229. See G.A. Res. 3314 (XXIX), annex art. 3 (14, 1974); see also Butchard, *supra* note 77, at 4–5 (“Acts that could amount to aggression include invasion, occupation, annexation of another state’s territory, bombardment of another state’s territory, attacks of armed force by one armed force against another, a use of force in contravention to an international agreement or treaty, allowing one’s territory to be used as a launching point to attack a third country, sending an armed group of irregulars or mercenaries to carry out one of the above armed acts.”).

230. Trahan, *supra* note 14.

Ukrainian domestic laws.²³¹ This would be particularly problematic in holding Putin and other leaders accountable, giving leaders a “head of state immunity” argument to bar jurisdiction.²³²

The war in Ukraine is not a civil war like the conflicts in Cambodia and Sierra Leone. Neither Sierra Leone nor Cambodia involved one independent state invading and attempting to annex another state (the crime of aggression). Depending on the trajectory the ongoing war in Ukraine takes, it is quite possible the Government of Ukraine will have limited resources, if the current Ukrainian government is still in power at the end of the conflict.²³³

The last potential issue is head of state immunity. The ECCC did not involve prosecuting any sitting heads of state.²³⁴ If Putin were prosecuted using Ukrainian domestic law, and not purely international crimes in violation of international humanitarian law and international human rights law, head of state immunity would likely still shield Putin from prosecution in a “hybrid court.”²³⁵ The tribunal would be less likely considered “sufficiently international.”²³⁶

C. U.N. Security Council Tribunals

The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were both established by U.N. Security Council Resolution.²³⁷ The U.N. Security Council is the arm of the United Nations charged with keeping international peace.²³⁸ The U.N. Security Council has the

231. See Maya Nicholson, *Ukraine's Precarious Pursuit of Justice Through In Absentia Trials*, *LAWFARE* (June 18, 2025), <https://www.lawfaremedia.org/article/ukraine-s-precarious-pursuit-of-justice-through-in-absentia-trials> [perma.cc/BVW6-BT7N].

232. See Trahan, *supra* note 203.

233. See *Creating a Special Tribunal*, *supra* note 14.

234. See Trahan, *supra* note 203.

235. Trahan, *supra* note 14.

236. See *supra* Section III.A.

237. See S.C. Res. 827, at 2 (May 25, 1993) (resolution regarding Yugoslavia); see also S.C. Res. 955 (Nov. 8, 1994) (resolution regarding Rwanda); *The ICTR in Brief*, UNITED NATIONS INT'L RESIDUAL MECHANISM FOR CRIM. TRIBUNALS, <https://unictr.irmct.org/en/tribunal> [perma.cc/BZ98-TKCY] (last visited Aug. 7, 2025). The ICTY had jurisdiction over grave breaches of the Geneva Conventions, violations of the customs of the law of war, genocide, and crimes against humanity. The Rwanda Tribunal mostly addressed issues of genocide in accordance with the Geneva Conventions.

238. See *Peace and Security*, UNITED NATIONS SEC. COUNCIL <https://main.un.org/securitycouncil/en> [perma.cc/4UUS-N5H4] (last visited Aug. 7, 2025).

authority to issue binding resolutions on member states under Article 25 of the U.N. Charter in the interest of international peace and security.²³⁹ The U.N. Security Council's power to enforce binding action includes authorizing military action and imposing sanctions.²⁴⁰ Additionally, the U.N. Security Council can investigate when there are disputes between nations.²⁴¹

The U.N. Security Council has five permanent members: the United States, the United Kingdom, France, Russia, and China.²⁴² Any permanent member can vote to veto Security Council action.²⁴³ The U.N. Security Council is further composed of ten additional countries that are elected by the U.N. General Assembly and serve in two-year terms.²⁴⁴ Examples of U.N. Security Council action include establishing international criminal tribunals and levying sanctions.²⁴⁵

Both the ICTY and ICTR operated as an arm of the Security Council.²⁴⁶ Since the Security Council has the power to enforce international peace, the tribunals were seen as pure expressions of international law and binding in nature.²⁴⁷ However, since Russia has veto power within the U.N. Security Council, this model will be nearly impossible to implement to prosecute Putin for the crime of aggression. Further, neither the ICTR nor the ICTY involved alleged crimes of aggression committed by State leaders.²⁴⁸ Both tribunals addressed atrocities State leaders committed against their own

239. See U.N. Charter art. 25.

240. See *id.*, ch. VII.

241. See *id.*

242. See *Current Members*, UNITED NATIONS SEC. COUNCIL, <https://main.un.org/securitycouncil/en/content/current-members> [perma.cc/DR6T-BLU3] (last visited Aug. 7, 2025).

243. See *Voting System*, UNITED NATIONS SEC. COUNCIL, <https://main.un.org/securitycouncil/en/content/voting-system> [perma.cc/HVW5-VBHE] (last visited May 13, 2026).

244. See *Current Members*, *supra* note 242.

245. See *Sanctions*, UNITED NATIONS SEC. COUNCIL, <https://main.un.org/securitycouncil/en/sanctions/information> [perma.cc/DGD3-PAFF] (last visited May 13, 2026).

246. See CORTEN & KOUTROULIS, *supra* note 14, at 8.

247. See SEC. COUNCIL REP., THE RULE OF LAW: THE INSTITUTIONAL FRAMEWORK: INTERNATIONAL CRIMINAL COURTS AND TRIBUNALS 10 (2015).

248. See *Mandate and Crimes under ICTY Jurisdiction*, ICTY, <https://www.icty.org/en/about/tribunal/mandate-and-crimes-under-icty-jurisdiction> [perma.cc/S4TH-4SCC] (last visited May 13, 2026); see also S.C. Res. 827, *supra* note 237; see also S.C. Res. 955, *supra* note 237.

people.²⁴⁹ The focus of these tribunals was not interstate use of force.²⁵⁰

V. INTERNATIONAL TRIBUNAL MODELS THAT COULD CONTRIBUTE TO A SUCCESSFUL UKRAINE TRIBUNAL

While examining other tribunal models provides insight into designing a tribunal to prosecute Putin for Russia's aggression against Ukraine, only the Nuremberg and Tokyo tribunals have included prosecution of individual state leaders for the crime of aggression.²⁵¹ The only other comparable instances of one sovereign nation directly using force to annex the territory of another are Iraq's invasion of Kuwait in 1991 and Russia's annexation of Crimea in 2014. However, there was never any international criminal liability for these actions.²⁵² Even though the only world leaders held accountable for the crime of aggression were prosecuted in Nuremberg and Tokyo, past international tribunals can help serve as a basis for composition of the proposed Ukraine Tribunal.

A. Nuremberg and Tokyo Tribunals

The Nuremberg Tribunal was created via a treaty between the four major allied powers, the United States, the United Kingdom, France, and the Soviet Union, to prosecute German leaders for crimes against the peace and crimes against humanity such as murder, deportation, and extermination committed in World War II.²⁵³ The composition and rules of procedure of the Tokyo tribunal were a condition of Japan's surrender in World War II.²⁵⁴ General

249. See S.C. Res. 827, *supra* note 237; see also S.C. Res. 955, *supra* note 237.

250. See *LAW AND THE FUTURE OF WAR*, *supra* note 106.

251. *The Nuremberg Trial and the Tokyo War Crimes Trials (1945–1948)*, *supra* note 40.

252. See *LAW AND THE FUTURE OF WAR*, *supra* note 106.

253. Charter of the International Military Tribunal—Annex to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis art. 1, Aug. 8, 1945, 82 U.N.T.S. 279 [hereinafter *Nuremberg Charter*].

254. See Instrument of Surrender, at 1734, Sep. 2, 1945, E.A.S. No. 493, 59 Stat. 1733; see also Special Proclamation — Establishment of an International Military Tribunal for the Far East, Jan. 19, 1946, <https://open.library.ubc.ca/media/stream/pdf/davidconde/1.0126406/1> [perma.cc/NS43-2LMK] [hereinafter *IMTFE Proclamation*].

MacArthur, Supreme Commander for the Allied Powers, signed a special proclamation to establish the tribunal.²⁵⁵

As discussed in Section II.A, both tribunals charged leaders with crimes against the peace—the forerunner of the modern crime of aggression—grounded in part in Germany and Japan’s adherence to the Kellogg-Briand Pact.²⁵⁶ The atrocities committed by German and Japanese leaders in World War II are universally recognized.²⁵⁷ The legitimacy of the Tokyo and Nuremberg tribunals has been viewed as a universally recognized standard for international criminal tribunals holding leaders responsible for war crimes, to include aggression.²⁵⁸

Both the Nuremberg and Tokyo tribunals had jurisdiction over the crime of aggression, known at the time as “crimes against peace.”²⁵⁹ These are the only two tribunals where world leaders were successfully prosecuted for committing the crime of aggression.²⁶⁰ Nuremberg and Tokyo also notionally represent the idea that bringing individual leaders responsible for wartime atrocities to justice after the war can help “restore the international world order.”²⁶¹ Since Russia’s invasion of Ukraine is the most blatant violation of the international world order since World War II, convening a tribunal to prosecute Putin for the crime of aggression could symbolically signal that the post-World War II order has been restored.²⁶²

While the Nuremberg and Tokyo tribunals successfully prosecuted individual leaders for what would evolve into the crime of aggression, it is important to note that World War II ended with clear winners and losers.²⁶³ At the end of the war, the victorious

255. *See id.*

256. *The Nuremberg Trial and the Tokyo War Crimes Trials (1945–1948)*, *supra* note 40.

257. *See Petsche*, *supra* note 24, at 272.

258. *See id.*

259. *See The Nuremberg Trial and the Tokyo War Crimes Trials (1945–1948)*, *supra* note 40.

260. *See id.*

261. Hafetz, *supra* note 27, at 377.

262. *See id.*

263. Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 82 U.N.T.S. 280. A second tribunal, the International Military Tribunal for the Far East (IMTFE), was established to prosecute Japanese leaders for crimes committed during World War II. *See* Charter of the International Military Tribunal for the Far East, Jan. 19, 1946, T.I.A.S. No. 1589. On the IMTFE, *see supra* note 41.

states essentially exercised jurisdiction over the defeated states, indicating bias in the processes employed.²⁶⁴ Additionally, the tribunals were not created via the United Nations.²⁶⁵ However, as noted, legitimacy of the Nuremberg and Tokyo tribunals has not been challenged in the last eighty years, and therefore the tribunals serve as foundational precedent for prosecuting individual leaders for the crime of aggression.²⁶⁶

B. A Special Tribunal Supported by the U.N. General Assembly

Another leading proposal for the composition of a Ukraine Tribunal to punish Putin for the Crime of Aggression is to establish the tribunal created solely through the U.N. General Assembly.²⁶⁷ The Special Court for Sierra Leone (SCSL) is an example of a successful “hybrid court” created via U.N. Security Council Resolution.²⁶⁸ The SCSL was convened after a ten-year civil war in Sierra Leone.²⁶⁹ The leader of neighboring Liberia supported the Revolutionary United Front in overthrowing the Government of Sierra Leone.²⁷⁰ Over seventy thousand people were killed in the war.²⁷¹ Atrocities committed by all parties in the Sierra Leone Civil

Japan was also a signatory to the Kellogg-Briand Pact. See Kellogg-Briand Pact, *supra* note 35.

264. See Judgment of the Nuremberg International Military Tribunal, *supra* note 42, at 2.

265. The U.N. Charter was entered into force in 1945. See *United Nations Charter*, UNITED NATIONS, <https://www.un.org/en/about-us/un-charter> [perma.cc/33ZK-LYD9] (last visited Aug. 1, 2025).

266. Petsche, *supra* note 24, at 272.

267. See generally Labuda, *supra* note 114; Trahan, *supra* note 14; Hathaway, *supra* note 11; Coracini, *supra* note 14 (specifically supporting the Sierra Leone model); Komarov & Hathaway, *supra* note 203; Goldston & Khalfaoui, *supra* note 118; Hans Corell, *A Special Tribunal for Ukraine on the Crime of Aggression — The Role of the U.N. General Assembly*, JUST SEC. (Mar. 22, 2023), <https://www.justsecurity.org/85116/a-special-tribunal-for-ukraine-on-the-crime-of-aggression-the-role-of-the-u-n-general-assembly/> [perma.cc/HCL3-2URD].

268. Note, while the Sierra Leone tribunal is referred to as a “special” tribunal, it is generally considered a “hybrid court” because the tribunal blended international law and elements with the law and personnel of Sierra Leone.

269. See *Sierra Leone*, ADVOCATES FOR HUM. RTS., https://www.theadvocatesforhumanrights.org/Sierra_Leone [perma.cc/Q8SS-JUSD] (last visited May 13, 2026).

270. See *What Caused the Sierra Leone Civil War?*, SIERRA LEONE: INSIDE THE WAR (Aug. 13, 2020), <https://sierraleonewar.com/uncategorized/what-caused-the-sierra-leone-civil-war/> [perma.cc/6UR5-CJ3A].

271. *Sierra Leone*, *supra* note 277.

War included rape, recruitment of child soldiers, and forced amputations.²⁷²

Following the end of the Civil War, the President of Sierra Leone requested a United Nations-formed tribunal to prosecute those responsible for war crimes during the civil war.²⁷³ The U.N. Security Council passed a resolution requesting “the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court.”²⁷⁴ The SCSL was independent and not an “organ of the U.N.”²⁷⁵ The tribunal prosecuted international crimes including crimes against humanity and war crimes, but also included the criminal code of Sierra Leone in its statutory construction.²⁷⁶ The United Nations Secretary General and Sierra Leone signed an agreement to prosecute international law violations committed during civil war in Sierra Leone.²⁷⁷ While the SCSL had jurisdiction to prosecute leaders of Sierra Leone, the tribunal did not address the crime of aggression.²⁷⁸

C. *International Tribunals Created Without the United Nations*

There is precedent for establishing international tribunals holding individual leaders responsible for war crimes outside of the United Nations construct. The European Union supported accountability efforts in Kosovo through its Rule of Law Mission (EULEX), which deployed international prosecutors and investigators to investigate serious crimes, including alleged war crimes and inhuman treatment, investigations that ultimately preceded the establishment of the Kosovo Specialist Chambers.²⁷⁹

272. *Id.*

273. See *Special Court for Sierra Leone*, U.S. DEP’T OF STATE: OFF. WAR CRIMES ISSUES, <https://2001-2009.state.gov/s/wci/sierraleone/index.htm> [perma.cc/2L8D-BVKF] (last visited May 13, 2026).

274. S.C. Res. 1315, ¶ 1, (Aug. 14, 2000).

275. CORTEN & KOUTROULIS, *supra* note 14, at 9.

276. *Id.* at 8.

277. Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, U.N.–Sierra Leone, Jan. 16, 2002, 2178 U.N.T.S. 137.

278. CORTEN & KOUTROULIS, *supra* note 14, at 8.

279. Eur. Parl. Ass., *Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo*, Doc. 12462 (Jan. 7, 2011).

The Kosovo War was fought in 1998–1999.²⁸⁰ The war was fought between Yugoslavia, which controlled Kosovo before the war, and Kosovo's ethnic Albanians.²⁸¹ Tension between Serbs and Albanians dates back to the 1880s.²⁸² By the 1990s, Serb refugees were being relocated by their government to Kosovo, creating worse living conditions for ethnic Albanians already living in Kosovo.²⁸³ This tension eventually led to war between the Yugoslav Serbs and the Albanians already residing in Kosovo.²⁸⁴ The Yugoslav Serbs destroyed mosques and world heritage sites as part of ethnic cleansing of Kosovo, committed rape and sexual violence against Albanian women, and committed mass executions against Albanians.²⁸⁵ While the ICTY originally had jurisdiction over these crimes and prosecuted some of the higher-profile criminals, such as the President of Serbia, the ICTY prosecuted criminals on both sides of the conflict.²⁸⁶ However, the Western countries, to include most of Europe and the United States, supported the ethnic Albanians in Kosovo.²⁸⁷

"Creation of the Kosovo Specialist Chambers and Specialist Prosecutor's Office was triggered by a report published on 7 January 2011 by the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly on 'Inhuman treatment of people and illicit trafficking in human organs in Kosovo.'" ²⁸⁸ EULEX was established in 2008 with a rule-of-law mandate to investigate and prosecute serious crimes committed in Kosovo, and subsequently the Kosovo Specialist Chambers was established under Kosovo law with substantial support from EULEX.²⁸⁹ However, the Chambers were within Kosovo's legal

280. See Sarah L. Ochs & Kirbi Walters, *Forced Justice: The Kosovo Specialist Chambers*, 32 DUKE J. COMP. & INT'L L. 239, 241–42 (2022).

281. *A Kosovo Chronology*, Frontline, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/kosovo/etc/cron.html> [perma.cc/TH8Q-HNLD] (last visited May 13, 2026).

282. See *id.*

283. Ochs & Walters, *supra* note 280, at 241.

284. See *id.*

285. *Id.*

286. See *id.* at 250–51.

287. See *id.* at 242.

288. CORTEN & KOUTROULIS, *supra* note 14, at 12.

289. See Robert Muharremi, *The European Union Rule of Law Mission in Kosovo (EULEX) from the Perspective of Kosovo Constitutional Law*, 70 ZAÖRV 357, 365–66 (2010); See also CORTEN & KOUTROULIS, *supra* note 14, at 12–13.

system.²⁹⁰ Kosovo amended its constitution for the Chambers.²⁹¹ Kosovo, like Ukraine, requested assistance in prosecuting the atrocities committed in their country.²⁹² While a treaty outside of the U.N. Security Council is a model that could work to prosecute Putin for committing the crime of aggression, the domestic nature of the Kosovo Chambers would not work for the reasons indicated above, particularly in overcoming head of state immunity claims.

The Extraordinary African Chambers (EAC), established in Senegal for crimes committed in Chad, is another example of a tribunal established outside the structure of the United Nations. The EAC was established to prosecute Hissène Habré for international crimes committed in Chad during the time when Habré was president (1982–1990).²⁹³ “In a judgment handed down on 20 July 2012, the Court found that Senegal had violated its obligations under the UN Convention against Torture by failing to bring Hissène Habré to justice.”²⁹⁴ The African Union and Senegal signed an agreement establishing the EAC as part of the Senegal Court system, essentially creating a special tribunal similar to the SCSL.²⁹⁵ However, there was a major difference between the Chad and Sierra Leone tribunals—“in the Habré case, the State whose former President was tried by the tribunal—Chad—was a member to the international organization that concluded the agreement with Senegal and had consented both to the tribunal’s creation and to the waiver of any immunities that could apply.”²⁹⁶

290. CORTEN & KOUTROULIS, *supra* note 14, at 12; *see also* Law on Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo, Law No. 04/L-274 (2014)(Kos.).

291. *See* Law on Specialist Chambers and Specialist Prosecutor’s Office, Law No. 05/L-053, art. 1 (2015) (Kos.).

292. *See id.* art. 4(2).

293. *See* Accord entre l’Union Africaine et le Gouvernement de la République du Sénégal sur la Création de Chambres Africaines Extraordinaires au sein des Juridictions Sénégalaises, Sen.-Afr. Union, Aug. 22, 2012 [hereinafter EAC Agreement]; *see also* Mullin & Stanton, *supra* note 103.

294. CORTEN & KOUTROULIS, *supra* note 14, at 11; *see also* Questions relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. (July 20).

295. *See* EAC Agreement, *supra* note 301, pmbl.

296. Eur. Parl. Ass., *Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo*, Doc. 12462 (Jan. 7, 2011); CORTEN & KOUTROULIS, *supra* note 14, at 11–13.

VI. PROPOSALS FOR A UKRAINE TRIBUNAL

There is pervasive international support for a tribunal to hold Vladimir Putin responsible for the crime of aggression for invading Ukraine. Estonia, Latvia, and Lithuania issued a joint statement supporting a Special Tribunal.²⁹⁷ The European Union Commission,²⁹⁸ France,²⁹⁹ and Germany have also issued statements of support.³⁰⁰ The Netherlands will host the Special Tribunal.³⁰¹ Ukrainian President Volodymyr Zelenskyy has also called for an international tribunal.³⁰² In May 2025, over forty world leaders announced support for the creation of an international tribunal to prosecute Putin created via an agreement between the Council of Europe and Ukraine.³⁰³

There are several possibilities for the Special Tribunal to hold Putin accountable for the crime of aggression in Ukraine.³⁰⁴ The tribunal must be sufficiently international to strengthen the argument that head of state immunity does not bar prosecution of Putin while he serves as President of Russia.³⁰⁵ The international

297. CORTEN & KOUTROULIS, *supra* note 14, at 12.

298. See European Commission Statement 22/7307, Statement by President von der Leyen on Russian accountability and the use of Russian Frozen Assets (Nov. 30, 2022).

299. See Jorge Liboreiro, 'Point of no return': 36 countries join special tribunal to prosecute Vladimir Putin, *EURO NEWS* (May 15, 2026), <https://www.euronews.com/my-europe/2026/05/15/point-of-no-return-36-countries-join-special-tribunal-to-prosecute-vladimir-putin> [perma.cc/VHY2-XFWE].

300. See Monir Ghaedi & Rosalia Romaniec, *Germany's Baerbock calls for special Ukraine tribunal at ICC*, *DW NEWS* (Jan. 16, 2023), <https://www.dw.com/en/germanys-baerbock-calls-for-special-ukraine-tribunal-at-icc/a-64408862> [perma.cc/ZDT9-PYNY].

301. See *Netherlands willing to house special court for Russia invasion of Ukraine*, minister says, *REUTERS* (Dec. 12, 2022), <https://www.reuters.com/world/europe/netherlands-willing-house-special-court-russia-invasion-ukraine-minister-says-2022-12-12/> [perma.cc/92J7-XLCA]. The Netherlands currently hosts several international courts and tribunals at The Hague, including the International Court of Justice, the International Criminal Court, the International Residual Mechanism for Criminal Tribunals, and also hosted the Special Tribunal for Lebanon. See BUTCHARD, *supra* note 77, at 12–13.

302. See Volodymyr Zelenskyy, President of Ukraine, Address to the participants of the public debate "War and Law" in Paris (Oct. 5, 2022), <https://www.president.gov.ua/en/news/mayemo-stvoriti-specialnij-tribunal-shodo-zlochynu-agresiyi-78285> [perma.cc/8PZ9-SLHD].

303. See Molly Quell & Samya Kullab, *What is the special tribunal for Ukraine that world leaders have backed?*, *ASSOC. PRESS NEWS* (May 9, 2025), <https://apnews.com/article/ukraine-aggression-tribunal-europe-russia-war-court-d3e144e3f1eeecaa2dd0f16ae90415f5> [perma.cc/DL7T-EDER].

304. See CORTEN & KOUTROULIS, *supra* note 14, at 2.

305. See *supra* Section III.A.

nature of the tribunal will also send the message that the international community will not tolerate a state unlawfully using armed force against another state.³⁰⁶ The U.N. General Assembly should endorse establishing the tribunal.³⁰⁷ The U.N. General Assembly includes 193 countries, and General Assembly participation gives the whole international community the ability to participate.³⁰⁸ The more countries that endorse establishing the tribunal, the more likely the tribunal will be viewed as “sufficiently international” so head of state immunity does not bar jurisdiction.³⁰⁹

A. A U.N. General Assembly Tribunal

A leading proposal for a tribunal to prosecute Putin for the crime of aggression could consist of the U.N. General Assembly authorizing the U.N. Secretary General to work with Ukraine in establishing the tribunal.³¹⁰ However, the treaty would focus on international law and international court composition, rather than a focus on a Ukrainian-led court applying Ukrainian laws (the hybrid model).³¹¹ “Ukraine has also favored this approach.”³¹² The

306. See Hathaway, *supra* note 11.

307. See CORTEN & KOUTROULIS, *supra* note 14.

308. See Hathaway, *supra* note 11 (suggesting the tribunal should allow the ICC to take jurisdiction over all crimes other than aggression). This Article will not opine on whether the ICC should take jurisdiction over other crimes outside the crime of aggression or whether the tribunal formed for the crime of aggression should address other crimes.

309. See *supra* Section III.A.

310. See *supra* note 267 and the accompanying text.

311. See Joint Statement on the Accountability for the Crime of Aggression Committed on the Territory of Ukraine, ESTONIAN PERMANENT MISSION IN U.N. (Apr. 17, 2023), <https://un.mfa.ee/joint-statement-on-the-accountability-for-the-crime-of-aggression-committed-on-the-territory-of-ukraine/> [perma.cc/PC3X-7W7F]. This proposition has widespread support. The following statement was issued by Albania, Belgium, Costa Rica, Czech Republic, Estonia, Guatemala, Latvia, Liechtenstein, Lithuania, Luxembourg, Marshall Islands, North Macedonia and Poland:

We believe that an international tribunal, before which the immunities granted by international law to the most senior leadership of a state do not apply, is best placed to deliver the above-described objectives. We therefore call on the international community to actively engage in discussions on the establishment of such a tribunal, in particular through decisions of the United Nations General Assembly.

Id.

312. See *Special international tribunal should become an effective way to punish Russia for its Aggression against Ukraine* – Andriy Smyrnov, PRESIDENT OF UKRAINE OFFICIAL WEBSITE

SCSL was independent and not an “organ of the U.N.” and the Ukraine Tribunal should also be an independent organ from the U.N. after the U.N. endorses the Ukraine Tribunal.³¹³ U.N. endorsement would express the will of the international community, meaning it would likely be considered “sufficiently international,” much like the composition of the SCSL.³¹⁴

Unlike the SCSL, a Ukraine Tribunal would not include a U.N. Security Council Resolution³¹⁵ requesting the U.N. Security Council action for a tribunal.³¹⁶ However, a U.N. General Assembly resolution authorizing the Secretary-General to conclude an agreement between the U.N. and Ukraine is a possibility for a Ukraine Tribunal.³¹⁷ The most important aspect of modeling a Ukraine Tribunal off of the SCSL is that even though in ways the SCSL was considered a “hybrid court,” it was sufficiently international to overcome head of state immunity claims.³¹⁸ To be considered sufficiently international, a tribunal must “(1) . . . be established under international law, and (2) it must sufficiently reflect the will of the international community as a whole to enforce crimes under customary international law.”³¹⁹

A U.N. General Assembly tribunal could be created in the following manner: the U.N. General Assembly authorizes the Secretary General to work with Ukraine to establish a tribunal to which Ukraine voluntarily consents through international agreement.³²⁰ While the U.N. General Assembly solely makes recommendations, one such recommendation can be that member states enter into a Treaty.³²¹ States that are not parties to the treaty are not bound to carry out its orders (such as honoring an arrest warrant), but the tribunal would still indicate the will of the international community and therefore could still exercise

(July 18, 2023), <https://www.president.gov.ua/en/news/specialnij-mizhnarodnij-tribunal-maye-stati-diyevim-sposobom-84405> [perma.cc/5E3C-MTGW].

313. See CORTEN & KOUTROULIS, *supra* note 14, at 9.

314. See *supra* Section III.A.

315. S.C. Res. 1315, ¶ 1 (Aug. 14, 2000).

316. See *supra* Section IV.C.

317. See *supra* note 267 and accompanying text.

318. Trahan, *supra* note 14; see also Coracini, *supra* note 14.

319. See Trahan, *supra* note 14; Coracini, *supra* note 14; For an in-depth discussion on what constitutes a sufficiently international tribunal, see also *supra* Section III.A.

320. Hathaway, *supra* note 11.

321. See Coracini & Trahan, *supra* note 57.

criminal jurisdiction under international law.³²² Since Ukraine is willing to make a treaty, the Security Council does not need to “impose” a tribunal on Ukraine to address atrocities committed by Russia in Ukrainian territory.³²³ A possible issue with this approach is that U.N. General Assembly is not the enforcement branch of the U.N., the Security Council is.³²⁴ However, if the Ukraine Tribunal solely has jurisdiction over violations of customary international law, and nearly all of the 193 states in the U.N. General Assembly support the tribunal, the tribunal will reflect the will of the international community.³²⁵

To strengthen an international tribunal based on a U.N. General Assembly treaty, and to overcome issues with the General Assembly assuming the role of the Security Council, the General Assembly could follow the “Uniting for Peace” procedure for the first time in forty years.³²⁶ The “Uniting for Peace” procedure was created in 1950 during the Cold War to allow the U.N. General Assembly to act expeditiously in response to an international crisis when the U.N. Security Council has failed to uphold its peacekeeping duties.³²⁷ Essentially, the General Assembly could determine that the Security Council is failing to fulfill its duties of upholding international peace and security, allowing the General Assembly to intervene.³²⁸ The General Assembly could coordinate its approach with ICC and share resources.³²⁹ The “Uniting for

322. See Trahan, *supra* note 14.

323. Hathaway, *supra* note 11. Russia may require enforcement powers, but this could also be enforced through other countries respecting a warrant for Putin’s arrest and physically securing Putin if he enters that country’s territory.

324. CORTEN & KOUTROULIS, *supra* note 14; U.N. Charter arts. 41–42.

325. Coracini & Trahan, *supra* note 57. Aggression is considered customary international law.

326. See G.A. Res. 377 (V) (Nov. 3, 1950); SEC. COUNCIL REP., SECURITY COUNCIL DEADLOCKS AND UNITING FOR PEACE (Oct. 2013). For an overview of the Uniting for Peace process at the UN, see Christian Tomuschat, *Uniting for Peace procedure and history*, U.N. AUDIO-VISUAL LIBRARY INT’L LAW (Oct. 2008); ASIA-PAC. CTR. FOR RESPONSIBILITY TO PROTECT, THE POWERS OF THE UN GENERAL ASSEMBLY TO PREVENT AND RESPOND TO ATROCITY CRIMES: A GUIDANCE DOCUMENT 29 (2021); G.A. Res. ES-11/1 (Mar. 2, 2022). 141 states voted in favor of the Resolution, with 5 voting against, 35 abstentions, and 12 absent or not voting.

327. Michael P. Scharf, *Power Shift: The Return of the Uniting for Peace Resolution*, 55 CASE W. RES. J. INT’L L. 217, 222–27 (2023).

328. G.A. Res. ES-11/1, *supra* note 102.

329. See David Scheffer, *Forging a Cooperative Relationship Between International Criminal Court and a Special Tribunal for Russian Aggression Against Ukraine*, JUST SECURITY (Oct. 25, 2022), <https://www.justsecurity.org/83757/forging-a-cooperative-relationship>

Peace” procedure specifically notes that the Security Council’s failure to act on the crime of aggression could require expedited General Assembly action.³³⁰ While the “Uniting for Peace” procedure was used by the General Assembly in 2022 to condemn Russia’s attack on Ukraine,³³¹ creating an international tribunal using the procedure would be a different issue. Only the U.N. Security Council has Chapter VII authority to create binding international tribunals.³³² While the U.N. General Assembly can still endorse an international tribunal, arguably, the U.N. General Assembly cannot create a tribunal with the same force of the U.N. Security Council based on a strict interpretation of the U.N. Charter.³³³

B. A “Coalition” Special Tribunal with the Council of Europe

The leading proposal for the Ukraine Tribunal to prosecute Putin for aggression is a Special Tribunal involving an international organization outside of the U.N., the Council of Europe.³³⁴ The forty-six member states of the Council of Europe authorized the Secretary General of the Council of Europe to sign an agreement with Ukraine to create a Special Tribunal for the Crime of Aggression in Ukraine.³³⁵ The agreement was signed in June of 2025.³³⁶

-between-intl-crim-court-and-a-special-tribunal-for-russian-aggression-against-ukraine/ [perma.cc/KR9E-DURC].

330. See G.A. Res. 377(V) (Nov. 3, 1950).

331. See G.A. Res. ES-11/1, *supra* note 102; G.A. Res. ES-11/2 (Mar. 24, 2022); G.A. Res. ES-11/3 (Apr. 7, 2022); G.A. Res. ES-11/4 (Oct. 12, 2022); G.A. Res. ES-11/5 (Nov. 14, 2022); G.A. Res. ES-11/6 (Feb. 23, 2023).

332. See U.N. Charter arts. 41–42.

333. See Oona A. Hathaway, Maggie Mills, & Heather Zimmerman, *The Legal Authority to Create a Special Tribunal to Try the Crime of Aggression Upon the Request of the UN General Assembly*, JUST SEC. (May 5, 2023), <https://www.justsecurity.org/86450/the-legal-authority-to-create-a-special-tribunal-to-try-the-crime-of-aggression-upon-the-request-of-the-un-general-assembly/> [perma.cc/RU5S-GAJ9].

334. See Labuda, *supra* note 114.

335. See *Ukraine and the Council of Europe Sign Agreement on Establishing a Special Tribunal for the Crime of Aggression Against Ukraine*, COUNCIL OF EUR. (June 25, 2025), <https://www.coe.int/en/web/portal/-/ukraine-and-the-council-of-europe-sign-agreement-on-establishing-a-special-tribunal-for-the-crime-of-aggression-against-ukraine> [perma.cc/WHH8-VL3X] [hereinafter *Ukraine and the Council of Europe Sign Agreement*].

336. See *id.*

The Council of Europe was “[s]et up to promote democracy, human rights and the rule of law.”³³⁷ The Council of Europe was established in 1949 and includes the European Court of Human Rights.³³⁸

The aim of the Council of Europe is to “achieve greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress.”³³⁹ The Statute of the Council of Europe specifically notes that National Defense matters are not within the Council of Europe’s purview.³⁴⁰ However, members view the line “accountability for the commission of an international crime, the fight against impunity and the need for full reparation for the damage caused by the crime” as permitting Council of Europe establishment of an aggression tribunal.³⁴¹ Ukraine has delegated its sovereign jurisdiction to the Council of Europe, meaning the Council of Europe would have jurisdiction over aggression that occurred in Ukraine.³⁴²

In June of 2025, a treaty was signed between Ukraine and the Secretary General of the Council of Europe to establish a special tribunal.³⁴³ Like Chad was a member of the African Union, Russia was a member of the Council of Europe at the time of the act of aggression.³⁴⁴ However, Russia is no longer a member of the Council of Europe, which could lead to questions of whether the tribunal would actually have jurisdiction over Russia to prosecute the crime of aggression.³⁴⁵

The Special Tribunal will be “complementary” to the ICC, so functionally the ICC could have jurisdiction over all crimes within

337. *European Council*, COUNCIL OF EUR. UNION, <https://www.consilium.europa.eu/en/european-council/> [perma.cc/9VX3-2K5E].

338. *See id.*

339. Statute of the Council of Europe art. 1(a), May 5, 1949, 87 U.N.T.S. 103.

340. *See id.* art. 1(d).

341. CORTEN & KOUTROULIS, *supra* note 14, at 18.

342. *See id.*

343. *See Ukraine and the Council of Europe Sign Agreement*, *supra* note 335.

344. *See Exclusion of the Russian Federation from the Council of Europe and suspension of all relations with Belarus*, EUR. COMM. ON LEGAL COOP. (Mar. 17, 2022), <https://www.coe.int/en/web/ccpe/-/the-russian-federation-is-excluded-from-the-council-of-europe> [perma.cc/AW4G-4PQV] (noting Russia was excluded from the Council of Europe because of its actions in Ukraine).

345. *See* CORTEN & KOUTROULIS, *supra* note 14.

its jurisdiction in the proposed Special Tribunal for the Crime of Aggression against Ukraine.³⁴⁶ As previously noted, the President of Ukraine and the Council of Europe Secretary General signed a treaty for the Special Tribunal in June 2025 so the Special Tribunal for the Crime of Aggression against Ukraine has already garnered significant support.³⁴⁷ Specific European countries supporting the proposal and who will bear the costs of the tribunal are still being determined at this time.³⁴⁸ As of June 2025, the Special Tribunal for the Crime of Aggression against Ukraine is expected to begin work in 2026.³⁴⁹ The tribunal is open to Council of Europe member states, and non-member states, which could even include international organizations.³⁵⁰ The statute will use Ukraine's territorial jurisdiction, but will borrow the article 8 bis definition of aggression from the Rome Statute with slight changes to include the U.N. General Assembly definition of aggression.³⁵¹

One issue remains: to overcome head-of-state immunity, the Tribunal must be "sufficiently international."³⁵² Additionally, the Tribunal arguably sets a precedent where any country can form a coalition with other nations to prosecute political enemies.³⁵³ However, the composition of the Council of Europe tribunal is similar in nature to Kosovo and Chad Chambers, increasing legitimacy.³⁵⁴

346. *Frequently Asked Questions*, COUNCIL OF EUR., <https://www.coe.int/en/web/portal/frequently-asked-questions> [perma.cc/SGY9-FHNX] (last visited May 13, 2026); see also Agreement Between the Council of Europe and Ukraine on the Establishment of a Special Tribunal for the Crime of Aggression Against Ukraine, art. 46.

347. *See id.*

348. *See id.*

349. Pecorella, *supra* note 176.

350. *See id.*

351. *See id.*

352. *See* Nuridzhanian, *supra* note 133. The Council of Europe specifically noted that the Special Tribunal for the Crime of Aggression against Ukraine will not bring sitting "Head of State, Heads of Government and Foreign Ministers until they either leave their positions of authority or privileges of immunity are waived. *Frequently Asked Questions*, COUNCIL OF EUR., <https://www.coe.int/en/web/portal/frequently-asked-questions> [perma.cc/SGY9-FHNX] (last visited May 13, 2026). However, the Statute for the Special Tribunal for the Crime of Aggression against Ukraine specifically notes that functional immunity does not apply for the tribunal. Agreement Between the Council of Europe and Ukraine on the Establishment of a Special Tribunal for the Crime of Aggression Against Ukraine, art. 23.

353. *See* Komarov & Hathaway, *supra* note 203.

354. *See* CORTEN & KOUTROULIS, *supra* note 14.

Ukraine supports the tribunal, and essentially “transferred” jurisdiction over crimes committed in its territory to the Tribunal.³⁵⁵ Additional proposals for such a tribunal have included coalitions of the willing, or states willing to support the Special Tribunal, signing a treaty.³⁵⁶ “Coalitions of the willing are temporary groups of like-minded states that come together in pursuit of a particular military or political (often diplomatic) goal.”³⁵⁷

VII. PROPOSAL: A CALL FOR INTERNATIONAL SUPPORT FOR THE COUNCIL OF EUROPE

The U.N. General Assembly should pass a resolution in support of the Special Tribunal for the Crime of Aggression against Ukraine led by the Council of Europe.³⁵⁸ The Council of Europe has already signed a treaty with Ukraine to establish the tribunal.³⁵⁹ Additionally, the location of the tribunal, the Hague, will foster information sharing with the ICC.³⁶⁰

While the Council of Europe has the infrastructure in place to proceed with the Special Tribunal for the Crime of Aggression against Ukraine, the rest of the world should demonstrate support for the Special Tribunal via a U.N. General Assembly resolution.³⁶¹ While the U.N. General Assembly does not have the power of enforcement, the General Assembly can provide support via resolution endorsing the Council of Europe Special Tribunal for the Crime of Aggression against Ukraine.³⁶² The demonstration of the will of the international community will strengthen the argument

355. See Kevin Jon Heller, *Report: Ukraine Willing to “Compromise” on a Non-Ukrainian Internationalized Tribunal*, OPINIO JURIS (Aug. 23, 2023), <https://opiniojuris.org/2023/08/23/report-ukraine-willing-to-compromise-on-a-non-ukrainian-internationalized-tribunal/> [perma.cc/7XEK-WKSU]. Note, according to the Agreement on the Establishment of a Special Tribunal for the Crime of Aggression Against Ukraine, jurisdiction of the Tribunal is “based on the territorial jurisdiction of Ukraine.” Agreement Between the Council of Europe and Ukraine on the Establishment of a Special Tribunal for the Crime of Aggression Against Ukraine, Annex, art. 1.

356. See BUTCHARD, *supra* note 77, at 3.

357. See *id.*

358. See *supra* Section VI.A.

359. See *supra* Section VI.B.

360. See CORTEN & KOUTROULIS, *supra* note 14.

361. See *supra* Section VI.A.

362. See *supra* Section VI.A.

that the Council of Europe Special Tribunal is “sufficiently international” to weaken head of state immunity claims.³⁶³

Last, if the Council of Europe is solely responsible for the tribunal, the prosecution will more likely raise concerns of selective justice.³⁶⁴ The entire world, with representation from all continents, should come together and demonstrate that Putin’s act of aggression is a violation of the existing world order that will not be tolerated.³⁶⁵

VIII. CONCLUSION

Russia’s attack on Ukraine is the most blatant violation of Article 2(4) of the U.N. Charter since its inception in October of 1945.³⁶⁶ Russia’s invasion of Ukraine, aided by Belarus, does not just represent a clear violation of international law; it represents a threat to the foundational principle that underpins the modern legal order of the world.³⁶⁷ The international community must ensure that Vladimir Putin is held accountable for the crime of aggression in a forum that reflects the collective will of the world by supporting the tribunal established by the Council of Europe.

Section II of this article explored the historical development of the crime of aggression, beginning with the prosecution of German and Japanese leaders after World War II for their role in instigating the conflict. This section also explored the U.N. Charter, binding on 193 nations, including Russia, which prohibits the use of force, as well as the International Criminal Court’s (ICC) definition of the crime of aggression. Section III noted legal challenges of prosecuting Putin for the crime of aggression, to include overcoming head of state immunity challenges, claims of selective justice by Western nations, and securing Putin’s presence at trial.

Sections IV and V examined the composition of previous successful international tribunals, which portions of those tribunals will not work for a Ukraine Tribunal, and aspects of previous successful tribunals that could work for a Ukraine

363. *See supra* Section III.A.

364. *See supra* Section III.B.

365. *See supra* Section I.

366. *See* LAW AND THE FUTURE OF WAR, *supra* note 106.

367. Hathaway, *supra* note 11.

Tribunal. Section VI explored leading proposals for establishing a Ukraine Tribunal to hold Putin accountable for the crime of aggression. Section VII proposed the international community, to include the United States, should support a Council of Europe tribunal. The Secretary General of the Council of Europe and Volodymyr Zelenskyy have already signed an agreement to establish a Special Tribunal to prosecute Putin for the crime of aggression.³⁶⁸ The U.N. General Assembly should endorse the Special Tribunal for the Crime of Aggression against Ukraine and states from every continent should publicly support the agreement and assist with the Special Tribunal to demonstrate the will of the international community to condemn and deter the crime of aggression and preserve the post-World War II world order.

Russia's invasion of Ukraine in February 2022 posed a direct threat to the current world order. Under international law, other nations could have lawfully taken military action in collective self-defense in Ukraine.³⁶⁹ As noted by Gabriel Boric, President of Chile, in July 2023, "today it is Ukraine, but tomorrow it could be any of us."³⁷⁰ The international tribunal established to hold Putin accountable for his international crimes, including the crime of aggression, must send a clear message to Putin and the world that the international community will not tolerate such blatant violations of international law or the established world order.³⁷¹

368. *Ukraine and Council of Europe Sign Landmark Agreement for Special Tribunal on Crime of Aggression*, DELEGATION OF THE EUR. UNION TO THE COUNCIL OF EUR. (July 1, 2025), https://www.eeas.europa.eu/delegations/council-europe/ukraine-and-council-europe-sign-landmark-agreement-special-tribunal-crime-aggression_en?s=51#:~:text=On%2025th%20June%202025%2C%20Strasbourg,Statue%20of%20the%20Special%20Tribunal [perma.cc/QVL9-NELF].

369. McDougall, *Imperative*, *supra* note 14, at 209.

370. See Labuda, *supra* note 114 (citing Benjamin Alvarez, X (July 18, 2023), <https://x.com/BenjAlvarez1/status/1681318731593682944> [perma.cc/88QK-7MQ3]).

371. See McDougall, *Imperative*, *supra* note 14, at 210.