

PROSECUTING PUTIN: THE CASE FOR AN AD HOC INTERNATIONAL TRIBUNAL TO PROSECUTE RUSSIAN CRIMES OF AGGRESSION AGAINST UKRAINE

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The Russo-Ukraine War has intensified global discussions on accountability for international crimes, particularly concerning Russian President Vladimir Putin’s violation of the crime of aggression. Since Russia’s full-scale invasion of Ukraine in February 2022, calls for prosecuting Putin for aggression—a leadership crime prohibiting the use of force against another state’s sovereignty—have gained momentum. However, existing international legal mechanisms face significant jurisdictional and enforcement limitations that prevent a viable prosecution for aggression. This article explores these challenges and proposes the establishment of an ad hoc international tribunal as the most effective solution for holding Putin accountable.

This article argues that an ad hoc international tribunal, established through the UN General Assembly, presents the most effective path toward accountability. Unlike other mechanisms, such a tribunal would possess the necessary jurisdiction to prosecute aggression, avoid immunity defenses, and reinforce the international legal order. The tribunal’s exclusive focus on aggression would set a vital precedent against unlawful wars of conquest, reaffirming that no leader, regardless of power, is above the law. While enforcement challenges remain, including securing Putin’s custody, the tribunal would serve as a crucial instrument in deterring future acts of aggression and preserving international stability. By addressing the crime of aggression directly, the tribunal would close the accountability gap left by existing courts, strengthen global deterrence against unlawful military conflicts, and reaffirm the international community’s commitment to upholding the rule of law.

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I. INTRODUCTION

The Russo-Ukraine War has brought to the forefront urgent questions of accountability for international crimes, with a specific focus on Russian President Vladimir Putin. Widely condemned as an unlawful violation of Ukraine’s sovereignty, Putin’s actions have been deemed a violation of the crime of aggression.¹ Since Russia’s full-scale invasion of Ukraine in February 2022, calls for Putin’s prosecution for aggression, a charge exclusive for state leaders, have escalated. Coined the “supreme international crime,” the crime of aggression prohibits the use of armed force against the sovereignty of another state.²

As the death toll escalates and calls for accountability reverberate globally, attention has turned to the International Criminal Court (ICC) and various forms of ad hoc tribunals as potential avenues for prosecuting Putin for war crimes and aggressions against Ukraine. However, the intricacies of the ICC’s jurisdiction and enforcement mechanisms pose significant challenges to seeking accountability through traditional channels. The limitations of both the ICC and a possible domestic tribunal underscore international law’s inadequacy for addressing the unique challenges posed by powerful leaders like Putin, raising broader questions about accountability mechanisms within international criminal law. As the world grapples with these challenges, the focus shifts towards the establishment of a specialized ad hoc

1. Kristen E. Eichensehr, *Russian Invasion of Ukraine Draws Widespread—But Not Universal—Condemnation*, 116 AM. J. INT’L L. 605, 606 (2022).

2. Oona A. Hathaway, *The Case for Creating an International Tribunal to Prosecute the Crime of Aggression Against Ukraine (Part I)*, JUST SEC. (Sept. 20, 2022), <https://www.justsecurity.org/83117/the-case-for-creating-an-international-tribunal-to-prosecute-the-crime-of-aggression-against-ukraine>.

international tribunal. The primary argument for such a tribunal lies in its unique ability to prosecute crimes of aggression, a power the ICC and other courts lack. This Comment proposes that an international tribunal dedicated exclusively to the crime of aggression is the most effective means of holding Putin accountable and delivering justice to Ukraine. Establishing this tribunal through the UN General Assembly avoids issues of personal immunity and sets a significant precedent against aggression. Despite the challenges raised, establishing an ad hoc international tribunal is a necessary step towards bringing Putin to justice.

Part II of this Comment will discuss the importance of prosecuting the crime of aggression in order to uphold international law and maintain global stability. Putin's blatant violations of international law and its destabilizing impact on global relations underscore the urgency of holding him accountable. Part III will provide a comprehensive overview of Putin's aggressions by discussing the Russo-Ukraine conflict, beginning with the Euromaidan Protests in 2013, moving to the annexation of Crimea, the Donbas conflict, and ultimately Russia's full-scale invasion in 2022.

Part IV explores the feasibility of prosecuting Putin through different legal avenues. It first examines the ICC, including its jurisdictional limitation in addressing aggression, the absence of effective enforcement mechanisms, and the substantial resources required for prosecuting world leaders. Next, the section explores the potential of a hybrid "internationalized national court" grounded in Ukrainian law and incorporating international elements. The discussion highlights the difficulties in ensuring that this tribunal is perceived as an international court rather than a Ukrainian initiative subject to Putin's personal immunities. Part IV will conclude by examining the creation of a purely international tribunal through the UN General Assembly to prosecute Putin for aggression. The analysis will delve into the numerous appeals for the creation of such a tribunal from various international bodies and will scrutinize the limitations and enforcement challenges the tribunal will encounter.

Part V will assert that an international tribunal singularly focused on the crime of aggression is the optimal avenue for securing Putin's criminal accountability and delivering justice to Ukraine. The tribunal's creation through the UN General Assembly ensures widespread global support and the affirmation of a precedent against aggression. Given the limitations of other courts in holding state leaders accountable for serious international crimes, this section emphasizes the ongoing necessity for discussions on a tribunal's effectiveness in prosecuting a seemingly untouchable Putin.

II. AGGRESSION DURING THE RUSSO-UKRAINE WAR

With the Russian invasion of Ukraine in February 2022, Europe was launched into its bloodiest conflict since World War II, prompting

questions on how to hold the aggressors of this conflict accountable.³ Ukraine, a former Soviet Bloc state, declared independence from the Soviet Union in August 1991 shortly before the Union's collapse.⁴ While Ukraine sought to establish its status as a sovereign state, deep cultural and economic bonds with Russia remained.⁵ Ukraine has aimed to balance its foreign relations to ally itself more closely with the West, but internal resistance and Russian influence have interfered.⁶ The Western-Ukrainian population, primarily speaking Ukrainian, favor closer integration with Western Europe, while the Russian-speaking population in Eastern Ukraine prefer to remain tied to Russia.⁷ Russia has argued that as a former Soviet Bloc state, the Ukrainian and Russian people share historical unity—Putin has even defended his actions by claiming the two are “one people . . . one nation, in fact.”⁸

Putin's aggressions against Ukraine trace back to events years before the internationally condemned full-scale invasion in 2022.⁹ In 2010, Russian-preferred candidate Viktor Yanukovich won the Ukrainian presidency.¹⁰ By 2013, Ukraine was poised to sign the European Union-Ukraine Association Agreement, which would have drawn Ukraine into a closer relationship with the European Union (EU).¹¹ However, President Yanukovich suddenly withdrew from the agreement amid Putin's pressure to reject Western influence and instead join the Russian-led Eurasian Economic Union.¹² Largescale violent protests, in which dozens of protestors were killed, ensued from Ukrainians who viewed the decision as a betrayal by Yanukovich and an abuse of government power.¹³ Amid growing civil unrest, Yanukovich fled Kyiv for Russia,

3. Jonathan Masters, *Ukraine: Conflict at the Crossroads of Europe and Russia*, COUNCIL ON FOREIGN RELS. (Feb. 14, 2023), <https://www.cfr.org/background/ukraine-conflict-crossroads-europe-and-russia>.

4. Ali Rogin & Morgan Till, *Ukraine's History and its Centuries-Long Road to Independence*, PBS NEWS (Mar. 8, 2022), <https://www.pbs.org/newshour/show/ukraines-history-and-its-centuries-long-road-to-independence>.

5. Masters, *supra* note 3.

6. *See id.* (noting that Kyiv has struggled to manage its foreign relations amid internal divisions).

7. *Id.*

8. *See* Putin: Russians, *Ukrainians are 'One People'*, ASSOC. PRESS (July 20, 2019), <https://apnews.com/article/3fe3ff2299994fae97825381765b831c> (detailing Putin's statements concerning his views on Ukrainian and Russian integration).

9. *See* Masters, *supra* note 3 (discussing Ukraine's 2013 plans to join the EU and President Yanukovich's subsequent withdrawal in favor of maintaining closer relations to Russia, thereby igniting Euromaidan protests).

10. Paul Kubicek, *Dancing with the Devil: Explaining the European Union's Engagement with Ukraine Under Viktor Yanukovich*, 25 J. CONTEMP. EURO. STUD. 143, 144 (2017).

11. Masters, *supra* note 3.

12. DESMOND DINAN ET AL., *THE EUROPEAN UNION IN CRISIS* 3 (2016).

13. *See* Masters, *supra* note 3; *see also* NIGEL WALKER, *CONFLICT IN UKRAINE: A TIMELINE (2014 – EVE OF 2022 INVASION)*, HOUSE OF COMMONS LIBR. 7–10 (Aug.

prompting the Ukrainian parliament to remove him as president for abandoning his constitutional duties.¹⁴ The Euromaidan Protests and Yanukovich's ouster as president represented how the "aspirations of the EU to extend its influence eastwards collided with Russia's determination to rebuild power and status following the collapse of the Soviet Union."¹⁵

As the pro-Russian government in Ukraine was removed, Putin faced a loss of political influence over Ukraine and turned to force.¹⁶ Following Yanukovich's flight and before a replacement government was elected, Putin began the annexation of Ukraine's Crimean Peninsula, his first physical aggression towards Ukraine's territory.¹⁷ The Crimea annexation was the largest land seizure in Europe since World War II,¹⁸ and marked the official beginning of the Russo-Ukraine War.¹⁹ Despite initially denying Russian involvement,²⁰ Putin later admitted to the seizure, arguing the Euromaidan Protests were a "western-backed fascist coup" that endangered the Russian population in Crimea and framing the annexation as a "rescue operation."²¹ Supported by Russian troops, local politicians dismembered the official government in Crimea and declared Sergey Aksyonov, a Russian politician and Putin ally, as prime minister.²² The Russian-controlled Crimean Parliament held a referendum to decide whether to officially join the Russian Federation.²³ Despite international reports overwhelmingly confirming falsified results, the referendum passed with Russia claiming that 97% of Crimean voters

22, 2023), <https://researchbriefings.files.parliament.uk/documents/CBP-9476/CBP-9476.pdf> (detailing timeline of Euromaidan civil unrest and how many protestors were killed by Ukrainian forces on each day).

14. Daisy Sindelar, *Was Yanukovich's Ouster Constitutional?*, RADIO FREE EUROPE (Feb. 23, 2014), <https://www.rferl.org/a/was-yanukovychs-ouster-constitutional/25274346.html>.

15. DINAN ET AL., *supra* note 12, at 3.

16. WALKER, *supra* note 13, at 11 (noting that while Russia had made previous plans to annex Crimea, the annexation was in direct response to fall of Pro-Russian government in Ukraine).

17. JONATHAN COSGROVE, *THE RUSSIAN INVASION OF THE CRIMEAN PENINSULA 2014–2015: A POST-COLD WAR NUCLEAR CRISIS CASE STUDY 1*, 10 (Johns Hopkins Applied Physics Lab'y ed. 2020), <https://www.jhuapl.edu/sites/default/files/2022-12/RussianInvasionCrimeanPeninsula.pdf>.

18. Steven Pifer, *Crimea: Six Years After Illegal Annexation*, BROOKINGS (Mar. 17, 2020), <https://www.brookings.edu/articles/crimea-six-years-after-illegal-annexation>.

19. *Why Was Crimea Taken So Easily? Nine Years in Ukraine*, IMPERIAL WAR MUSEUMS, <https://www.iwm.org.uk/history/why-was-crimea-taken-so-easily> (last visited Jan. 12, 2025).

20. Pifer, *supra* note 18.

21. Masters, *supra* note 3.

22. Lucy Minicozzi-Wheeland, *Russia's Annexation of Crimea*, KYIV INDEP., <https://kyivindependent.com/russias-annexation-of-crimea> (last visited Jan. 12, 2025).

23. *Id.*

were in favor of joining the Russian Federation.²⁴ The annexation was viewed as a violation of international law and an infringement on Ukraine's sovereignty as a state.²⁵ The UN General Assembly passed a resolution affirming "the sovereignty, political independence, unity, and territorial independence of Ukraine . . ." and rejecting any attempts by Russia to "modify Ukraine's borders through the threat or use of force or other unlawful means."²⁶ Despite the international condemnation of the blatant aggression against Crimea's sovereignty, Russia has continued to occupy the territory.²⁷

The annexation of Crimea was soon overshadowed by a larger conflict in Eastern Ukraine's Donbas region.²⁸ The Donbas conflict began locally with anti-government and pro-Russian protests provoked by changes after Yanukovich's removal.²⁹ The protests quickly became an insurrection, with Russian-backed separatists seizing control of the Donetsk and Luhansk regions and declaring them independent of Ukraine in April 2014.³⁰ Russia initially denied involvement despite an active military presence and weapons support to the separatists.³¹ Putin again justified Russia's aggressions and support of the insurgents by claiming the two countries were one people and that the Donbas people wanted to reunite with Russia, even going as far as calling the region "Novorossiya" or "New Russia."³² The pro-Russian separatists held referendums in which they claimed the Ukrainian people voted overwhelmingly for "self-rule."³³ As in Crimea, the results of the referendum are not internationally recognized and showed clear evidence of interference from Russia.³⁴ Armed conflict erupted between Ukrainian forces and Russian-backed troops, with heavy casualties on both sides.³⁵ In September 2014, Ukraine and the separatists signed the first Minsk

24. *Id.*

25. See DINAN ET AL., *supra* note 12, at 3 (discussing international community's negative response to Russia's invasion and annexation of Crimea).

26. G.A. Res. 68/262, ¶ 8, 9 (Mar. 27, 2014).

27. Minicozzi-Wheeland, *supra* note 22.

28. Pifer, *supra* note 18.

29. DARIA PLATONOVA, THE DONBAS CONFLICT IN UKRAINE: ELITES, PROTEST, AND PARTITION 2 (2021).

30. *Conflict in Ukraine's Donbas: A Visual Explainer*, INT'L CRISIS GROUP, <https://www.crisisgroup.org/content/conflict-ukraines-donbas-visual-explainer> (last visited Jan. 11, 2025).

31. *War in Ukraine*, CENTER FOR PROTECTIVE ACTION, <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine> (last updated Jan. 11, 2025).

32. Masters, *supra* note 3.

33. Walker, *supra* note 13, at 15.

34. PLATONOVA, *supra* note 29.

35. See *Conflict in Ukraine's Donbas: A Visual Explainer*, *supra* note 30 (noting that the Donbas conflict claimed heavy casualties even before Russia's major invasion with 14,000 lives lost).

Peace Agreement, but the truce collapsed within days and fighting resumed.³⁶ After increased fighting during the fall and winter, Ukraine, Russia, and the leaders of Donetsk and Luhansk agreed to the Minsk II ceasefire in February 2015.³⁷ Although the Minsk II agreement reduced fighting significantly,³⁸ the ceasefire was never completely implemented as sporadic clashes and casualties continued.³⁹ However, the war mostly stabilized with no major military offenses and few territorial changes⁴⁰ until Russia's major invasion of Ukraine in 2022.⁴¹

The precarious peace from the Minsk II agreement was shattered when Russia began to amass troops near its border with Ukraine in early 2021, claiming it was conducting “training exercises.”⁴² Analysts viewed this escalation as a response to the North Atlantic Treaty Organization's (NATO) gradual expansion into former Soviet blocs.⁴³ In the years prior to the invasion, Ukraine increasingly strengthened its ties with NATO, becoming an enhanced opportunity partner, a special status reserved for NATO's closest non-member allies.⁴⁴ Ukraine repeatedly reaffirmed its goal to obtain full membership, a move Russia vehemently opposed and portrayed as an aggression by NATO.⁴⁵ In the weeks prior to the invasion, Russia demanded that NATO cease its alliance with Ukraine and agree to never extend it membership.⁴⁶ It also demanded that NATO cease all military activity in Ukraine and Eastern Europe.⁴⁷ NATO responded by reaffirming the alliance's open door policy and

36. Walker, *supra* note 13, at 15.

37. CARL HVENMARK NILSSON, REVISITING THE MINSK II AGREEMENT: THE ART AND STATECRAFT OF RUSSIAN-BROKERED CEASE-FIRES 3, CTR. FOR STRATEGIC & INT'L STUD. (ed. 2016), https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/160802_Hvenmark_RevisitingMinskII_Web.pdf.

38. See Igor Lyubashenko, *To Punish or Not to Punish? Ukraine's Approach to Retribution for Crimes Associated with the Donbas Conflict and Its Potential Meaning for National Reconciliation*, 49 NAT'YS PAPERS 1045, 1049, 1054 (2021) (noting that while Minsk II ceasefire agreement ended the most violent clashes, it did not completely end fighting).

39. Lance Davies, *Russia's 'Governance' Approach: Intervention and the Conflict in the Donbas*, 68 EUR.-ASIA STUD. 726, 738 (2016); Report on Preliminary Examination Activities (2016), OFF. OF THE PROSECUTOR (Nov. 14, 2016), at 37, https://www.icc-cpi.int/sites/default/files/iccdocs/otp/161114-otp-rep-PE_ENG.pdf.

40. Davies, *supra* note 39.

41. See WALKER, *supra* note 13, at 21–27 (detailing relatively stable timeline between Minsk II agreement and Russia's offensive preparations and subsequent invasion into Ukraine in 2021 and 2022).

42. *Timeline: The Events Leading up to Russia's Invasion of Ukraine*, REUTERS (Mar. 1, 2022), <https://www.reuters.com/world/europe/events-leading-up-russias-invasion-ukraine-2022-02-28/>.

43. Masters, *supra* note 3.

44. *Id.*

45. *Id.*

46. See WALKER, *supra* note 13, at 27–28 (discussing list of security demands Russia made to NATO in December 2021, two months before the full-scale invasion).

47. *Id.*

insisting that Russia had no right to establish a “sphere of influence.”⁴⁸

In the days preceding the invasion, Putin made a series of baseless claims against Ukraine in an apparent attempt to justify the upcoming aggression.⁴⁹ He claimed the Russian population in the Donbas region were being subjected to a genocide and that the invasion’s goal was a “denazification” of Ukraine.⁵⁰ He also incorrectly claimed Ukraine was housing unauthorized nuclear weapons.⁵¹ Putin announced that Russia would recognize the independence of the Donetsk and Luhansk regions of Ukraine, a violation of the Minsk II agreement.⁵² Despite “eleventh-hour” diplomatic efforts to stop the incoming attack, on the morning of February 24th, 2022, Putin announced a “special military operation” as Russian troops invaded Ukraine.⁵³ Since the invasion launched, tens of thousands have died on both sides, with countless more wounded.⁵⁴

III. THE IMPORTANCE OF PROSECUTING RUSSIAN AGGRESSION

Russia’s invasion was internationally condemned as an unlawful infringement on Ukraine’s sovereignty amounting to the crime of aggression.⁵⁵ The crime of aggression is defined under Article 8 bis of the Rome Statute as 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.⁵⁶

Aggression is a leadership crime, applicable only to those with the authority to order such acts, rather than those who merely carry them out.⁵⁷ It is beyond a doubt that Russia’s invasion and continued use of force constitutes an act of aggression in violation of the prohibition on

48. See Zachary Basu, *NATO Chief: “Russia has no Right to Establish a Sphere of Influence”*, AXIOS (Dec. 1, 2021), <https://www.axios.com/2021/12/01/nato-russia-ukraine-invasion> (discussing NATO’s response to Russia’s demands).

49. See Reality Check Team, *Ukraine Crisis: Vladimir Putin Address Fact-Checked*, BBC (Feb. 22, 2022), <https://www.bbc.com/news/60477712> (discussing Putin’s claims against Ukraine in days leading to invasion).

50. Eichensehr, *supra* note 1.

51. Reality Check Team, *supra* note 49.

52. Eichensehr, *supra* note 1, at 605.

53. *Id.* at 605–06.

54. See *Troop Deaths, Injuries in Ukraine War Nearing 500,000 – NYT Citing U.S. Officials*, REUTERS (Aug. 18, 2023), <https://www.reuters.com/world/europe/troop-deaths-injuries-ukraine-war-nearing-500000-nyt-citing-us-officials-2023-08-18/> (noting that while numbers are impossible to independently verify, Russia’s casualties are estimated to be around 120,000 deaths and Ukraine’s deaths number around 70,000).

55. See *id.* (discussing the UN’s and international community’s overwhelmingly negative response to Russia’s invasion).

56. Rome Statute of the International Criminal Court art. 8 bis, July 17, 1998, 2187 U.N.T.S. 38544 [hereinafter, Rome Statute].

57. *Id.*

force outlined in Article 2(4) of the UN Charter.⁵⁸ It is equally undisputed that Putin exercises nearly total control over Russia's political and military actions and fulfills the leadership criteria.⁵⁹

Prosecuting aggression is crucial for upholding principles of international law and fostering a stable global order.⁶⁰ By actively pursuing legal consequences for acts of aggression, the international community unequivocally conveys that the use of force to resolve disputes, particularly in cases as unsubstantiated as Putin's claims against Ukraine,⁶¹ is unacceptable.⁶² An international prosecution for aggression could deter future aggressors from escalating conflicts or transgressing against the sovereignty of other states.⁶³ Moreover, the prosecution of aggression at the international level promotes accountability, considering that aggression is a leadership crime.⁶⁴ This reinforces that no leader is above the law, cultivating a sense of justice and fairness on the global stage.⁶⁵ Crimes of aggression are recognized as a threat to "the very fabric of international society," extending the impact beyond the afflicted country onto the entire international community.⁶⁶ Holding aggressors accountable sets a precedent that belligerent behavior will not be tolerated and that even world leaders are subject to accountability.⁶⁷

In the broader context, the prosecution of aggression reinforces the foundational principles of international law.⁶⁸ Holding leaders who engage in rogue behavior accountable supports the ideals of peace and security outlined in the UN Charter.⁶⁹ Addressing crimes of aggression through legal mechanisms underscores the international community's commitment to peaceful coexistence and the resolution of conflicts

58. Carrie McDougall, *The Imperative of Prosecuting Crimes of Aggression Committed Against Ukraine*, 28 J. CONFLICT & SEC. L. 203, 204 (2023).

59. *Id.* at 205.

60. David Crane, 'Time and Distraction are Vladimir Putin's Ultimate Weapons' – Former UN Chief Prosecutor David M. Crane on the Imperative of Adjudicating Russian Aggression, JURIST (Dec. 12, 2023), https://www.jurist.org/commentary/2023/12/time-and-distraction-are-vladimir-putins-ultimate-weapons-former-un-chief-prosecutor-david-m-crane-on-the-imperative-of-adjudicating-russian-aggression/#_ftn.

61. See *infra* note 76 for a discussion of Putin's baseless justifications for the invasion.

62. Crane, *supra* note 60.

63. *Id.*

64. Nikola Hajdin, *The Nature of Leadership in the Crime of Aggression: The ICC's Newest Concern?*, 17 INT'L CRIM. L. REV. 543, 545 (2017).

65. *Id.*

66. Dr. Matt Killingsworth, *The Road to the International Criminal Court Remains Narrow for Russian Crimes of Aggression*, AUS. INST. OF INT'L AFF. (Dec. 9, 2022), <https://www.internationalaffairs.org.au/australianoutlook/the-road-to-the-international-criminal-court-remains-narrow-for-russian-crimes-of-aggression>.

67. *Id.*; Hathaway, *supra* note 2.

68. Crane, *supra* note 60.

69. U.N. Charter art. 1.

through diplomatic and legal channels, rather than resorting to force.⁷⁰ This approach aligns with the overarching goal of international criminal law in preventing the consequences of armed conflicts and safeguarding the well-being of victims affected by such actions.⁷¹ The prosecution of aggression contributes to the cultivation of a secure international community where conflicts find resolution through peaceful means, ultimately building increased trust between states and benefiting the global community as a whole.⁷²

Addressing Putin's aggression goes beyond resolving a specific conflict—it involves safeguarding global order itself.⁷³ While his actions against Ukraine predate the 2022 invasion, the latest escalation has drawn widespread international attention, bringing the crime of aggression to the forefront.⁷⁴ Putin's actions are considered particularly egregious for several reasons. First, these acts are blatant violations of international law and an infringement upon Ukraine's sovereignty. States are expected to engage in armed conflict only when necessary and justifiable.⁷⁵ Putin's "justifications" for invading—that the Ukrainian government is run by modern-day Nazis and a NATO-backed Ukraine would eventually attack Russia⁷⁶—are decentered from reality and make a mockery out of international law. This flagrant disregard for the rule of law undermines the very foundations of a rules-based international order.⁷⁷ If Putin can violate another state's sovereignty without facing consequences, the stability of global relations and international order itself is jeopardized.⁷⁸ A lack of a strong response could establish a perilous precedent, empowering other actors to ignore international norms and infringe upon the sovereignty of other states.⁷⁹ Putin himself has shown no limits when it comes to asserting political power, whether through internal

70. Crane, *supra* note 60; Gaiane Nuridzhanian, *Justice for the Crime of Aggression Today, Deterrence for the Aggressive Wars of Tomorrow: A Ukrainian Perspective*, JUST SEC. (Aug. 24, 2022), <https://www.justsecurity.org/82780/justice-for-the-crime-of-aggression-a-ukrainian-perspective>.

71. Crane, *supra* note 60.

72. Nuridzhanian, *supra* note 70.

73. Crane, *supra* note 60.

74. Rebecca Hamilton, *Ukraine's Push to Prosecute Aggression: Implications for Immunity Ratione Personae and the Crime of Aggression*, 55 CASE W. RESV. J. INT'L L. 39, 39 (2023).

75. Irwin Cotler et al., *Russia Must be Held Accountable for Alleged Criminal Aggression in Ukraine: Two Paths to Justice*, JURIST (Nov. 15, 2023), <https://www.jurist.org/commentary/2023/11/russia-must-be-held-accountable-for-alleged-criminal-aggression-in-ukraine-two-paths-to-justice>.

76. See Thomas Sherlock, *Putin's Justification for War is Unraveling*, FOREIGN POL'Y (Aug. 3, 2023), <https://foreignpolicy.com/2023/08/03/russia-ukraine-war-putin-prigozhin-wagner/> (discussing Russia's claims it is "fighting fiercely for its future, repelling the aggression of Neo-Nazis and their masters.").

77. Nuridzhanian, *supra* note 70.

78. *Id.*

79. Crane, *supra* note 60.

measures such as the assassination of opposition leaders or external actions like threatening nuclear war.⁸⁰ The failure of states to hold him accountable for his prior breaches of international law in the 2014 Crimea annexation enabled the persistence of continued aggressions.⁸¹ Continuing to allow such an unrestrained and deranged leader to operate unchecked poses a direct threat to the international community and raises concerns about the potential for even further escalation.⁸²

The particularly reprehensible acts perpetrated during this conflict further underscore the need to hold Putin accountable. Russia's use of force has precipitated a significant humanitarian crisis, marked by extensive loss of life, displacement, and damage to infrastructure.⁸³ To date, over ten thousand civilians have been killed and over nine million displaced.⁸⁴ Disturbing evidence has pointed to Russian troops committing war crimes against civilians, such as executions, torture, and sexual and gender-based violence.⁸⁵ A UN Commission has catalogued this evidence, revealing acts such as civilian bodies with their hands bound behind their backs and sexual assaults on victims as young as four years old.⁸⁶ Because the crime of aggression serves as the catalyst from which all other war crimes flow,⁸⁷ allowing Putin's initial crime to go unanswered not only fails to address the root cause but also perpetuates a cycle of continued violations of humanitarian law and the unabated suffering of civilian lives.

80. See Dasha Litvinova, *Western Officials and Kremlin Critics Blame Putin and his Government for Navalny's Death in Prison*, ASSOC. PRESS (Feb. 16, 2024), <https://apnews.com/article/russia-navalny-death-global-reactions-putin-19e7fd6318763627f6917a92678cd190> (discussing Putin's alleged assassination of imprisoned opposition leader Alexei Navalny by poison); see also Alexandra Sharp, *Putin Threatens Nuclear War if Foreign Troops Deploy to Ukraine*, FOREIGN POL'Y (Feb. 29, 2024), <https://foreignpolicy.com/2024/02/29/putin-threat-nuclear-weapons-nato-warning-war-russia> (discussing Putin's threat to use nuclear weapons against NATO members that deployed troops to Ukraine).

81. Olga Butkeych et al., *International Law in the Face of Russia's Aggression in Ukraine: The View from Lviv*, JUST SEC. (Feb. 22, 2024), <https://www.justsecurity.org/92554/international-law-in-the-face-of-russias-aggression-in-ukraine-the-view-from-lviv/>; Nuridzhanian, *supra* note 70.

82. Nuridzhanian, *supra* note 70.

83. Butkeych et al., *supra* note 81.

84. *Id.*

85. Oksana Kaluzhna & Kateryna Shunevych, *Liability Mechanisms for War Crimes Committed as Result of Russia's Invasion of Ukraine in February 2022: Types, Chronicle of the First Steps, and Problems*, 3 ACCESS TO JUST. E. EUR. 178, 179–80 (2022).

86. Press Release, Office of the High Commissioner for Human Rights, UN Commission Concludes that War Crimes Have Been Committed in Ukraine, Expresses Concern About Suffering of Civilians, U.N. Press Release (Sept. 23, 2022), <https://www.ohchr.org/en/press-releases/2022/10/un-commission-concludes-war-crimes-have-been-committed-ukraine-expresses>.

87. Simon Shuster, *Inside Ukraine's Push to Try Putin for War Crimes*, TIME (Mar. 30, 2023), <https://time.com/6266991/ukraine-push-putin-war-crimes>.

IV. AVAILABLE OPTIONS IN PROSECUTING PUTIN FOR AGGRESSION

A. *The International Criminal Court*

As a court reserved for the gravest international crimes,⁸⁸ dozens of states have urged the ICC to prosecute Putin. However, significant challenges persist regarding the court's effectiveness and application to the crime of aggression.⁸⁹ Neither Russia nor Ukraine are current parties to the Rome Statute governing the court.⁹⁰ The ICC may exercise jurisdiction over activities in Ukraine only if Ukraine consents or the situation is referred by the UN Security Council—a referral that Russia, as a permanent Security Council member, would undoubtedly veto.⁹¹ Despite these challenges, following the Crimea and Donbas conflicts, Ukraine accepted open-ended ICC jurisdiction for war crimes committed on its territory beginning in February 2014.⁹² This means the ICC may exercise jurisdiction in Ukraine for war crimes, crimes against humanity, and the crime of genocide.⁹³

However, the ICC's jurisdiction over the crime of aggression differs and presents a blatant jurisdictional gap.⁹⁴ The aggression amendments to the Rome Statute grant the ICC jurisdiction over a non-State party if the situation is referred by the UN Security Council.⁹⁵ However, Russia's veto power effectively blocks any possibility of such referral.⁹⁶ A state not party to the Rome Statute also cannot grant the ICC temporary

88. See International Criminal Court, HUM. RIGHTS WATCH, <https://www.hrw.org/topic/international-justice/international-criminal-court> (last visited Jan. 13, 2025) (noting that ICC is court of last resort for violations of most serious international crimes).

89. See Situation in Ukraine, INT'L CRIM. CT., <https://www.icc-cpi.int/situations/ukraine> (last visited Jan. 13, 2025) (noting forty-three States' Parties have referred conflict in Ukraine to ICC between March and April 2022).

90. See States Parties – Chronological List, INT'L CRIM. CT., <https://asp.icc-cpi.int/states-parties/states-parties-chronological-list> (last visited Jan. 13, 2025) (listing States Parties to the Rome Statute).

91. Rome Statute, *supra* note 56, at art. 12(3), 13(b); Killingsworth, *supra* note 66.

92. Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: "I Have Decided to Proceed with Opening an Investigation," INT'L CRIM. CT. (Feb. 28, 2022), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-decided-proceed-opening>.

93. Rome Statute, *supra* note 56, art. 5, 12(b).

94. Jennifer Trahan, *Amending the Kampala Amendments: A Proposal to Harmonize the ICC's Jurisdiction*, OPINIOJURIS (Feb. 10, 2023), <https://opiniojuris.org/2023/10/02/amending-the-kampala-amendments-a-proposal-to-harmonize-the-iccs-jurisdiction>.

95. Rome Statute, *supra* note 56, at art. 15(5) bis.

96. Olivier Corten & Vaios Koutroulis, *Tribunal for the Crime of Aggression Against Ukraine – A Legal Assessment*, TRANS-EURO POL'Y STUD. ASS'N, December 16, 2022, at 1, 14.

jurisdiction over aggression as it may with other core crimes.⁹⁷ Even if Ukraine were to join the Rome Statute and ratify the aggression amendments, jurisdiction would not apply retroactively.⁹⁸ Thus, while prosecuting Putin for aggression would be the strongest legal avenue,⁹⁹ the ICC is powerless to do so.¹⁰⁰ The court can freely prosecute three of the four ICC crimes—war crimes, crimes against humanity, and genocide—while its “hands are tied” regarding crimes of aggression, allowing Putin to evade international accountability.¹⁰¹ Some international legal scholars suggest closing this jurisdictional gap by amending the Rome Statute to apply the same jurisdictional rules to aggression as to the other core crimes.¹⁰² This change would enable the ICC to investigate and prosecute aggression related to Ukraine.¹⁰³ However, this would require the cooperation of State Parties, take years to implement, and any amendments would be unlikely to apply retroactively.¹⁰⁴

Although the ICC lacks jurisdiction to prosecute Putin for aggression against Ukraine,¹⁰⁵ it has opted to instead investigate him for a crime within its jurisdiction.¹⁰⁶ In March 2023, the court issued arrest warrants for both Putin and Maria Lvova-Belova, the Russian Commissioner for Children’s Rights, for the war crime of the unlawful deportation and transfer of children.¹⁰⁷ Throughout the Russo-Ukraine

97. Rome Statute, *supra* note 56, at art. 15(3) bis.

98. Kaluzhna & Shunevych, *supra* note 85, at 185.

99. See Hajdin, *supra* note 64, at 545 (noting that crimes of aggression are unique in that it is generally a crime that can only be committed by heads of states, rather than lower-ranking individuals who carry out the aggressions).

100. See Rome Statute, *supra* note 56, at art. 15(5) bis (allowing aggression jurisdiction only when committed by a national of, or on the territory of a State Party); see also States Parties – Chronological List, *supra* note 90 (showing neither Russia nor Ukraine as State Parties to the Rome Statute).

101. Trahan, *supra* note 94.

102. Proposal for the Amendment of the Conditions Under Which the International Criminal Court Exercises Jurisdiction Over the Crime of Aggression, GLOB. INST. FOR THE PREVENTION OF AGGRESSION (Sept. 9, 2023), https://crimeofaggression.info/wp-content/uploads/GIPA-model-amendment-proposal_9-September-2023.pdf.

103. Trahan, *supra* note 94.

104. *Id.*

105. See *supra* notes 94–104 for a discussion on why the ICC lacks jurisdiction over Putin for crimes of aggression.

106. See Henry Ridgwell, *Putin on Trial? Investigation Launched into Russia’s Alleged Crime of Aggression*, VOICE OF AM. (July 4, 2023), <https://www.voanews.com/a/putin-on-trial-investigation-launched-into-russia-s-alleged-crime-of-aggression/7166270.html> (noting that while ICC does not have jurisdiction over aggression crimes, the court has jurisdiction over war crimes, crimes against humanity, and genocide).

107. 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->

War, Russia forcibly transferred thousands of Ukrainian children away from their families, forcibly adopting them into Russian homes and assigning them citizenship.¹⁰⁸ Victims include children whose parents were arrested or killed in the invasion, those taken from state institutions in occupied areas, and those whose parents sent them to Russian “summer camps” from which they never returned.¹⁰⁹ Russia established “ideological re-education” camps to “Russify” children into forgetting their Ukrainian identities and integrating them as Russians,¹¹⁰ even forbidding them to speak in their native language.¹¹¹ Russia has done little to hide these crimes—on the contrary, it has openly showcased its actions, framing them as acts of humanitarian initiative.¹¹² Putin has effectively legalized this crime in Russia’s domestic law by simplifying the granting of Russian citizenship and adoptions of victims, further complicating reunification with Ukrainian families or return to Ukraine.¹¹³ The ICC found a reasonable basis to believe that Putin violated two key provisions of the Rome Statute.¹¹⁴ Under Article 25(3)(a), Putin is accused of directly committing the deportations and unlawful transfers, either by himself, jointly with others, or through

arrest-warrants-against-vladimir-vladimirovich-putin-and.

108. See Anatolii Frantsuz et al., *Abduction of Ukrainian Children During Full-Scale Invasion*, 9 J. INT’L LEGAL COMM’N 16, 17–21 (2023) (discussing Russia’s acts of forcibly removing children from Ukraine, effectively making them denounce their Ukrainian nationality and become Russian citizens. While exact number of deported children is unable to be determined precisely, Ukraine has stated it has data suggesting over 16,000 deportations).

109. See Isobel Koshiw, *Putin’s Alleged War Crimes: Who are the Ukrainian Children Being Taken by Russia?*, GUARDIAN (Mar. 17, 2023), <https://www.theguardian.com/world/2023/mar/17/vladimir-putin-war-crimes-icc-arrest-warrant-ukraine-children> (detailing where Russia abducts Ukrainian children from in order to transfer them to Russia).

110. Frantsuz et al., *supra* note 108, at 20.

111. Meetings Coverage, Security Council, Deportation, Treatment of Ukraine’s Children by Russian Federation Takes Centre Stage by Many Delegates at Security Council Briefing, U.N. Meetings Coverage SC/15395 (Aug. 24, 2023), <https://press.un.org/en/2023/sc15395.doc.htm>.

112. See Marc Santora & Emma Bubola, *Russia Signals It Will Take More Ukrainian Children, a Crime in Progress*, N.Y. TIMES (Mar. 18, 2023), <https://www.nytimes.com/2023/03/18/world/europe/putin-arrest-warrant-children.html> (noting that Russia has used Ukrainian children in photo ops and parades as part of its campaign to gain support for the war).

113. See “LIKE A PRISON CONVOY” – RUSSIA’S UNLAWFUL TRANSFER AND ABUSE OF CIVILIANS IN UKRAINE DURING ‘FILTRATION’ 28 (Amnesty Int’l ed., 2022), <https://www.amnesty.org/en/wp-content/uploads/2022/11/EUR5061362022ENGLISH.pdf> (discussing steps Putin has taken to facilitate Russian integration and adoption of Ukrainian children. Under Putin’s decree, only children aged fourteen to eighteen must consent before Russian citizenship is granted).

114. Press Release, Int’l Crim. Ct., Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, *supra* note 107.

others.¹¹⁵ Additionally, under Article 28(b), he is accused of failing to exercise proper control over subordinates under his authority.¹¹⁶

However, the prospect of bringing Putin to trial at the ICC remains highly improbable.¹¹⁷ The Kremlin has dismissed the arrest warrants as “null and void,”¹¹⁸ and in some ways, they are correct. Because Russia never ratified the Rome Statute, it bears no legal obligation to cooperate with the prosecution and surrender Putin for trial.¹¹⁹ In response to the warrant, Russia listed ICC Prosecutor Karim Khan on a “wanted on felony charges” list for accusing an innocent person of a crime.¹²⁰ The ICC lacks an enforcement body or police force to execute arrest warrants, nor does the court try defendants in absentia.¹²¹ The court instead relies on State Parties’ cooperation to arrest defendants within their borders and transfer them to ICC detention in the Netherlands.¹²² However, many State Parties have previously refused to comply with such obligations.¹²³ For instance, Omar al-Bashir, one of the only other heads of states to be indicted by the ICC, was charged with crimes of genocide, but evaded ICC detention for over a decade—even travelling to a host of ICC member states that simply refused to detain him.¹²⁴ ICC State Party South Africa was poised to host an economic summit that Putin was slated to attend and made clear that it would not detain him,

115. *Id.*

116. *Id.*

117. See *infra* notes 119–44 for a discussion on the challenges of bringing Putin to trial at the ICC.

118. *Kremlin: ICC Warrants Outrageous and Unacceptable, but Null and Void for Us*, REUTERS (Mar. 17, 2023), <https://www.reuters.com/world/europe/russia-warrant-against-putin-meaningless-russia-does-not-belong-icc-2023-03-17>.

119. States Parties – Chronological List, *supra* note 90.

120. Elena Giordano, *Russia Puts War Crimes Prosecutor on ‘Wanted List’*, POLITICO (May 19, 2023), <https://www.politico.eu/article/russia-vladimir-putin-karim-khan-british-icc-prosecutor-karim-khan-on-a-wanted-list>.

121. *How the Court Works*, INT’L CRIM. CT., <https://www.icc-cpi.int/about/how-the-court-works#:~:text=As%20a%20judicial%20institution%2C%20the,%27%20assets%2C%20and%20enforcing%20sentences> (last visited Mar. 1, 2023).

122. See *id.* (discussing how the ICC relies on cooperation from State Parties to obtain custody over defendants).

123. See Anthony Deutsch & Stephanie van den Berg, *Explainer: What Does the ICC Arrest Warrant Mean for Putin?*, REUTERS (Mar. 20, 2023), <https://www.reuters.com/world/what-does-icc-arrest-warrant-mean-putin-2023-03-18> (discussing how several ICC member states declined to detain Omar Al al-Bashir when he was within their borders).

124. See *id.* (noting that Chad, Djibouti, Jordan, Kenya, Malawi, South Africa, and Uganda—all of whom are parties to the Rome Statute—refused to transfer al-Bashir to detention when he traveled to these countries); see also Frankie Wong, *Criticisms and Shortcomings of the ICC*, ACCESS ACCOUNTABILITY (Sept. 26, 2019), <https://accessaccountability.org/index.php/2019/09/26/criticisms-and-shortcomings-of-the-icc/> (noting that nineteen countries have ignored the al-Bashir warrant—including nine countries that are parties to the Rome Statute).

arguing it would be a declaration of war against Russia to arrest Putin.¹²⁵ While the conflict was avoided when Putin instead attended the summit virtually,¹²⁶ South Africa's refusal to cooperate with its enforcement obligations emphasizes the difficulties and foreign policy implications that arise in obtaining custody over a leader such as Putin.¹²⁷ Furthermore, despite the number of parties to the Rome Statute, more than seventy countries, including the United States, China, and India, are not signatories or have not ratified it, leaving them with no legal obligation to enforce the warrant.¹²⁸ Putin has been able to travel freely to non-member states China and Kyrgyzstan without facing any consequences.¹²⁹ As long as he stays within Russia's borders or travels only to friendly states that will not detain him, he is effectively immune from ICC prosecution.¹³⁰

Several other challenges arise with an ICC prosecution of Putin.¹³¹ The court has a limited number of resources and can only investigate and try a number of cases simultaneously.¹³² Prosecuting a head of state like Putin would be exceedingly complex and resource-intensive, likely taking years to complete and potentially diverting time and funds from other cases.¹³³ Gathering evidence from foreign jurisdictions at war is also challenging¹³⁴—evidence will need to be obtained from a variety of

125. Carien Du Plessis, *South Africa asks ICC to Exempt It from Putin Arrest to Avoid War with Russia*, REUTERS (July 18, 2023), <https://www.reuters.com/article/safrica-russia-icc/south-africa-asks-icc-to-exempt-it-from-putin-arrest-to-avoid-war-with-russia-idUSKBN2YY1E7>.

126. Gerald Imray & Mogomotsi Magome, *Putin Denounces Sanctions on Russia During his Speech for a South African Economic Summit*, ASSOC. PRESS (Aug. 23, 2023), <https://apnews.com/article/china-russia-xi-jinping-putin-brics-da5552203262cb5b71598d3f1de5e55e>.

127. Deutsch & van den Berg, *supra* note 123.

128. Wong, *supra* note 124.

129. *Russia's Putin visits Kyrgyzstan in First Foreign Trip Since ICC Arrest Warrant*, REUTERS (Oct. 12, 2023), [https://www.reuters.com/world/russias-putin-visits-kyrgyzstan-first-foreign-trip-since-icc-arrest-warrant-2023-10-12/#:~:text=Putin%27s%20two%2Dday%20trip%20to,as%20Armenia%2C%20is%20under%20pressure; Ryan Woo, Putin Visits 'Dear Friend' Xi in Show of No-Limits Partnership, REUTERS \(Oct. 17, 2023\), https://www.reuters.com/world/putin-visits-dear-friend-xi-show-no-limits-partnership-2023-10-17](https://www.reuters.com/world/russias-putin-visits-kyrgyzstan-first-foreign-trip-since-icc-arrest-warrant-2023-10-12/#:~:text=Putin%27s%20two%2Dday%20trip%20to,as%20Armenia%2C%20is%20under%20pressure; Ryan Woo, Putin Visits 'Dear Friend' Xi in Show of No-Limits Partnership, REUTERS (Oct. 17, 2023), https://www.reuters.com/world/putin-visits-dear-friend-xi-show-no-limits-partnership-2023-10-17).

130. Wong, *supra* note 124.

131. See *infra* notes 132–43 for a discussion of additional issues that hinder an ICC prosecution of Putin.

132. Wong, *supra* note 124; Joanne Park et al., *The Promises and Problems of the International Criminal Court*, COLUM. UNDERGRAD. L. REV. (Jan. 9, 2021), <https://www.culawreview.org/roundtable-1/roundtable-discussion-the-promises-and-problems-of-the-international-criminal-court>.

133. Marti Flacks, *The ICC Wants Putin. Now What?*, CTR. STRATEGIC & INT'L STUD. (Mar. 20, 2023), <https://www.csis.org/analysis/icc-wants-putin-now-what>.

134. Ewelina U. Ochab, *As the International Criminal Court Faces More Challenges, We Need It More Than Ever*, FORBES (Sept. 13, 2020), <https://www.forbes.com/sites/ewelinaochab/2020/09/13/as-the-international->

sources, such as official records, communications, and witness testimony, which can be difficult to obtain during an active conflict.¹³⁵ The enforcement issue arises again—as the ICC does not have the full resources and powers to conduct investigations entirely on its own, it relies on the cooperation of states to assist.¹³⁶ If a state is not cooperating with providing evidence or allowing investigations in its territory, it will be challenging to obtain the support needed for a successful prosecution.¹³⁷ In Putin’s case, Russia will not submit incriminating evidence of his crimes, whether it be evidence of the unlawful deportation of children or for crimes of aggression, over to investigators.¹³⁸ Questions also arise about how to best collect victim testimony, as access to victims of deportation into Russian territory is restricted.¹³⁹ Despite the evidentiary concerns, even if the ICC enforces the arrest warrant and conducts a trial, conviction is uncertain.¹⁴⁰ Although the court has been active for over two decades, of the forty-two defendants that have been indicted, only ten have been convicted and four of those have been acquitted.¹⁴¹ While the arrest warrant limits Putin’s travel and is an important symbol that even the head of a major power is not immune from prosecution,¹⁴² an actual trial is improbable until there is leadership change.¹⁴³

Given the practical issues that arise with enforcing the arrest warrant, along with the resource and evidentiary concerns, the ICC proves

criminal-court-faces-more-challenges-we-need-it-more-than-ever/?sh=6ca2e5641468.

135. See Milena Sterio, *The International Criminal Court: Current Challenges and Prospect of Future Success*, 52 CASE. W. RES. J. INT’L LAW. 467, 469–71 (2020) (discussing evidentiary issues the ICC Prosecutor faced in case against Laurent Gbagbo and how Trial Chamber acquitted defendant after prosecution failed to link him to crimes that took place in Cote d’Ivoire).

136. Kaluzhna & Shunevych, *supra* note 85, at 185.

137. Wong, *supra* note 124.

138. See *Kremlin: ICC Warrants Outrageous and Unacceptable, but Null and Void for Us*, *supra* note 118 (noting that Kremlin has been vocal in its refusal to cooperate with warrant).

139. See *supra* notes 106–16 for a discussion on how Putin and Lvova-Beleva have transferred and deported Ukrainian children into Russia to mold them into Russian citizens and forgo their Ukrainian identities.

140. See Sterio, *supra* note 135, at 468–69 (discussing low conviction rate of the ICC).

141. See Defendants, INT’L CRIM. CT., <https://www.icc-cpi.int/defendants> (last visited Nov. 20, 2023) (listing defendants who have been issued arrest warrants and those who are still at large, those who have been convicted, and those who have been acquitted).

142. *Russia: ICC’s Arrest Warrant Against Putin a Step Towards Justice for Victims of War Crimes in Ukraine*, AMNESTY INT’L (Mar. 17, 2023), <https://www.amnesty.org/en/latest/news/2023/03/russia-iccs-arrest-warrant-against-putin-step-towards-justice>.

143. See *supra* notes 117–30 for a discussion on how Putin will be able to evade ICC prosecution.

insufficient to hold Putin—and other heads of states—accountable for atrocities they have committed. The court may be a proper forum for prosecuting lower-ranking officials for war crimes,¹⁴⁴ but functional issues persist with enforcement and international criminal law would still lack an adequate forum to hold seemingly untouchable heads of states culpable for both war crimes and crimes of aggression.

B. A Hybrid Domestic Court

While Ukraine enjoys territorial jurisdiction and its domestic law permits the prosecution of aggression,¹⁴⁵ Putin holds head of state immunity, protecting him from foreign domestic court prosecution for official acts undertaken as president.¹⁴⁶ To address this, a hybrid “internationalized national court” has been proposed—in other words, a Ukrainian domestic court incorporating international elements such as “substantive law, personnel, information sources, and structure.”¹⁴⁷ This approach has garnered support from the United States and the United Kingdom.¹⁴⁸ An internationalized national court has been suggested to foster cross-regional international backing and demonstrate Ukraine’s commitment to holding Putin accountable for aggression.¹⁴⁹ The court’s composition would include both Ukrainian and international personnel, including international judges and prosecutors, and its location could be within Ukraine or elsewhere in Europe.¹⁵⁰

However, there are challenges to anything short of a genuinely

144. See Sterio, *supra* note 135, at 475 (arguing ICC should first focus on low-level criminals, whose cases will be easier to investigate and prosecute, and how successful convictions of these cases could lead to better accountability of higher-level defendants from the same conflict).

145. Hathaway, *supra* note 2.

146. OPEN SOC’Y JUST. INITIATIVE, IMMUNITIES AND A SPECIAL TRIBUNAL FOR THE CRIME OF AGGRESSION AGAINST UKRAINE 5–8 (Feb. 2023), <https://www.justicinitiative.org/uploads/eb4acc44-b7f3-4026-8c68-3f677a2c4b24/immunities-and-a-special-tribunal-for-ukraine-en-02012023.pdf>.

147. Rebecca Hamilton, *An Assessment of the United States’ New Position on An Aggression Tribunal for Ukraine*, JUST SEC. (Mar. 29, 2023), <https://www.justsecurity.org/85765/an-assessment-of-the-united-states-new-position-on-an-aggression-tribunal-for-ukraine>; Beth Van Schaack, Ambassador-at-Large for Glob. Crim. Just., U.S. Dep’t of State, Ambassador Van Schaack’s Remarks on the U.S. Proposal to Prosecute Russian Crimes of Aggression (Mar. 27, 2023), <https://www.state.gov/ambassador-van-schaacks-remarks>.

148. Ambassador Van Schaack’s Remarks on the U.S. Proposal to Prosecute Russian Crimes of Aggression, *supra* note 147; James A. Goldston & Anna Khalfouli, *In Evaluating Immunities Before a Special Tribunal for Aggression Against Ukraine, the Type of Tribunal Matters*, JUST SEC. (Feb. 1, 2023), <https://www.justsecurity.org/84959/evaluating-immunities-before-a-special-tribunal-for-aggression-against-ukraine-the-type-of-tribunal-matters>.

149. Hamilton, *supra* note 147.

150. OPEN SOC’Y JUST. INITIATIVE, *supra* note 146, at 20.

international tribunal.¹⁵¹ First, a hybrid tribunal presents constitutional challenges as the Ukrainian Constitution prohibits “special and extraordinary tribunals.”¹⁵² While inventive legal arguments may be made around this restriction, the Ukrainian Constitution also prohibits amendments enacted under martial law or emergency situations.¹⁵³ A more significant challenge facing a hybrid tribunal is the question of whether it can overcome head of state immunity, as only international courts can deny personal immunity to state leaders.¹⁵⁴ Thus, the tribunal must strike a balance between Ukrainian domestic elements and sufficient international character to avoid the application of head of state immunity.¹⁵⁵ A tribunal cannot be deemed international simply because it is prosecuting international crimes.¹⁵⁶ It requires substantial international support to be considered as “acting on behalf of the international community” and exercising jurisdiction on behalf of a multitude of states.¹⁵⁷ It cannot be perceived as acting solely on behalf of Ukraine or expressing the will of a select few states.¹⁵⁸ Legal precedent in this area is limited, allowing for considerable interpretation.¹⁵⁹ A notable precedent is the Special Court for Sierra Leone (SCSL), a hybrid tribunal established between Sierra Leone and the UN.¹⁶⁰ The SCSL was initiated following a formal request from the Sierra Leonean government for UN for assistance in establishing a tribunal to address the war crimes committed during the Sierra Leone Civil War.¹⁶¹ In response, the UN Security Council passed Resolution 1315, which authorized the Secretary-General to negotiate the establishment of the court with Sierra Leone.¹⁶² The resolution demonstrated a unified stance among UN member states on the necessity of addressing the situation and ensuring accountability and justice.¹⁶³ However, given that Russia holds veto power in the Security Council, any future attempts to establish a similar hybrid tribunal would be blocked and international support will need to

151. Hamilton, *supra* note 147.

152. *Id.*

153. *Id.*

154. *Id.*

155. Goldston & Khalfaoui, *supra* note 148.

156. OPEN SOC’Y JUST. INITIATIVE, *supra* note 146, at 10–12.

157. *Id.* at 11–12.

158. *Id.* at 19.

159. *See id.* at 3, 15 (noting that prior case law does not identify how many states must be involved for a court to be considered international).

160. *See* Lansana Gberie, *The Special Court for Sierra Leone Rests – For Good*, AFR. RENEWAL (April 2014), <https://www.un.org/africarenewal/magazine/april-2014/special-court-sierra-leone-rests—good>.

161. Permanent Rep. of Sierra Leone to the U.N. Sec. Council, Letter dated Aug. 9, 2000 from the Permanent Rep. of Sierra Leone to the United Nations addressed to the President of the Security Council, U.N. Doc., S/2000/786 (Aug. 10, 2000).

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

163. *Id.*

be gauged through alternative methods.¹⁶⁴

One option is to establish the tribunal through a multilateral treaty between Ukraine and other willing states.¹⁶⁵ A key benefit of this approach is its avoidance of Russia's Security Council veto.¹⁶⁶ It also circumvents the political gridlock and challenges associated with the two-thirds majority required in the UN General Assembly for such a referral.¹⁶⁷ Creating a tribunal through a multilateral treaty also provides greater flexibility in defining the tribunal's structure, composition, and jurisdiction.¹⁶⁸ States involved in the process can structure the tribunal to meet specific needs, such as addressing aggression and appointing a diverse judiciary.¹⁶⁹ However, the level of international backing for this initiative remains uncertain.¹⁷⁰ Concerns also arise about legitimacy and impartiality, as the court may be perceived as unfairly influenced by the interests of the states that initiated its creation, potentially undermining its credibility.¹⁷¹

In the event of a lack of UN General Assembly support, which would provide the strongest basis for an international tribunal,¹⁷² a hybrid tribunal could also be formed through an agreement between Ukraine and a regional organization, such as the Council of Europe (CoE) or the EU.¹⁷³ While this approach may be considered as a variation of an international court, personal immunity issues have never been litigated within the framework of a tribunal for international crimes established by an organization other than the UN.¹⁷⁴ Thus, there is no precedent to assess the grounds on which a regional tribunal could qualify as an international court with the authority to deny personal immunity.¹⁷⁵ The CoE is preferred over the EU, given its larger membership supports the claim that the tribunal acts not only in Ukraine's interests but in the

164. OPEN SOC'Y JUST. INITIATIVE, *supra* note 146, at 15.

165. Cotler et al., *supra* note 75.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. See Anton Korynevych & Anastasiia Mochulska, *Ukraine: Why a Special Tribunal is Crucial*, INST. WAR & PEACE REPORTING (Oct. 4, 2022), <https://iwpr.net/global-voices/ukraine-why-special-tribunal-crucial>; see also Patrick Wintour, *ICC 'Turf War' Blocking Ukrainian Bid to Have Top Russians Tried, Advocate Says*, GUARDIAN (Feb. 6, 2024), <https://www.theguardian.com/law/2024/feb/06/icj-ukraine-russia-prosecutions-philippe-sands> (noting that although majority of UNGA member states condemned Russia's invasion as an act of aggression, less than one hundred members states supported a register of damages caused by Russia).

171. Cotler et al., *supra* note 75.

172. See *infra* notes 234–42 for a discussion on why a UN General Assembly created tribunal is the optimal choice for prosecuting Putin for aggression.

173. OPEN SOC'Y JUST. INITIATIVE, *supra* note 146, at 17.

174. *Id.*

175. *Id.*

interests of an entire region affected by Russia's aggressions.¹⁷⁶ However, the qualification of a tribunal created by either of these regional organizations as an international court remains unclear.¹⁷⁷ Additionally, the establishment of a tribunal by the CoE or EU could further exclude the global south from the Western-dominated international law system.¹⁷⁸

C. An Ad Hoc International Tribunal

In light of the ICC's inability to try Putin for aggression and the uncertainties of other forums, calls have been made to create a specialized ad hoc international tribunal, akin to the Nuremberg Tribunal or the International Criminal Tribunal for the Former Yugoslavia, to try Putin for aggression and other war crimes.¹⁷⁹ Initial steps towards creating such a tribunal have already begun.¹⁸⁰ The Parliamentary Assembly of the Council of Europe (PACE) advocated for the tribunal's creation shortly after the invasion commenced.¹⁸¹ PACE's unanimously adopted resolution emphasized that the tribunal should "apply the definition of the crime of aggression" per customary international law without being restricted by state, head of State, or other government official immunity.¹⁸² NATO, the European Parliament, and Ukraine have also supported the tribunal's creation.¹⁸³ Ukraine has even initiated the drafting of necessary documents to prepare for its creation.¹⁸⁴ Efforts to collect evidence for the tribunal have also commenced.¹⁸⁵ In early 2023, the EU established the International Centre for the Prosecution of Crimes of Aggression Against Ukraine as a prerequisite to gather evidence that will be used in an eventual tribunal prosecuting Putin.¹⁸⁶

176. *See id.* at 17–19 (noting the Council of Europe has forty-six member-states compared to the EU's twenty-seven, which may be too small to qualify as international tribunal).

177. *Id.* at 17.

178. Wintour, *supra* note 170; Crane, *supra* note 60.

179. Oleksandra Drik, *New Tribunal Announced to Prosecute Russian Crime of Aggression in Ukraine*, VISEGRAD INSIGHT (Mar. 8, 2023), <https://visegradinsight.eu/new-tribunal-announced-to-prosecute-russian-crime-of-aggression-in-ukraine>.

180. *See infra* notes 183–88 on the efforts to create an international tribunal to prosecute Russian crimes of aggression.

181. *See* PACE Calls for an Ad Hoc International Criminal Tribunal to Hold to Account Perpetrators of the Crime of Aggression Against Ukraine, COUNCIL OF EUR. (April 28, 2022), <https://www.coe.int/en/web/portal/-/pace-calls-for-an-ad-hoc-international-criminal-tribunal-to-investigate-war-crimes-in-ukraine> (discussing PACE's calls on its members to set up tribunal that is mandated to investigate and prosecute Russian crimes of aggression).

182. *Id.*

183. Corten & Koutroulis, *supra* note 96, at 2.

184. Kaluzhna & Shunevych, *supra* note 85, at 186.

185. Drik, *supra* note 179; Ridgwell, *supra* note 106.

186. Drik, *supra* note 179; Ridgwell, *supra* note 106.

The primary argument for such a tribunal lies in its ability to prosecute the crime of aggression, a power the ICC lacks concerning Putin.¹⁸⁷ The tribunal will be able to fill the gap in the ICC's jurisdiction.¹⁸⁸ Although other war crimes should also be prosecuted to the full extent of international criminal law, aggression poses a threat to "the very fabric of international society" and extends beyond the suffering country to the entire international community.¹⁸⁹ Prosecuting those responsible becomes crucial to preserving international order and preventing Putin from setting a dangerous precedent.¹⁹⁰ The crime of aggression is the "international crime from which all others flow"—were it not for Putin's aggressions against Ukraine, there would be no other war crimes committed.¹⁹¹ Given the limitations of other courts to prosecute aggression, ensuring international accountability for Putin and deterring future conflicts necessitates establishing an ad hoc tribunal.¹⁹²

A specialized ad hoc tribunal would concentrate its attention and resources solely on the Russo-Ukraine War, avoiding the resource constraints faced by the ICC.¹⁹³ While prosecuting a head of state is complex and evidence-intensive, a prosecution team able to dedicate its full time and resources to this conflict increases the chances of conviction.¹⁹⁴ The investigation and trial would be streamlined compared to ICC investigations which can take years to complete.¹⁹⁵ Though the focus is often on Putin, an ad hoc tribunal for the Russo-Ukraine War could also potentially be used for the numerous other crimes committed by lower-level government officials and military generals. Over ten thousand civilians have been reported killed, with the actual number likely to be higher.¹⁹⁶ In the digital age, ample evidence exists of on-the-ground Russian forces targeting civilians, medical facilities and civilian infrastructure, and engaging in torture and rape.¹⁹⁷

No trial setting is without limitations—challenges also emerge with this approach. The establishment of an ad hoc tribunal that targets a sitting head of state, particularly one as powerful as Putin, will involve numerous challenges, such as geopolitical tensions and issues of international support and cooperation.¹⁹⁸ Unlike ad hoc tribunals for

187. Hathaway, *supra* note 2.

188. Drik, *supra* note 179.

189. Killingsworth, *supra* note 66.

190. Hathaway, *supra* note 2.

191. *Id.*

192. *Id.*

193. Wong, *supra* note 124.

194. Flacks, *supra* note 133.

195. Wong, *supra* note 124.

196. *Ukraine: Report Reveals War's Long-Term Impact Which Will Be Felt For Generations*, U.N. (Feb. 22, 2024), <https://news.un.org/en/story/2024/02/1146842>.

197. Killingsworth, *supra* note 66.

198. *Id.*

Yugoslavia and Rwanda backed by the UN Security Council, Russia would use its veto power to block any Security Council measures for a tribunal.¹⁹⁹ A UN General Assembly supported tribunal has also been suggested, but the level of international support remains uncertain.²⁰⁰ The criminalization of aggression is relatively new in international law.²⁰¹ Throughout history, wars have been viewed as legitimate means of foreign policy when the international community feels the conflict is justified.²⁰² The reluctance among many ICC member states to ratify the aggression amendments²⁰³—out of fear they themselves will be unable to use legitimate tools of statecraft—underscores the shaky ground the prosecution of aggression rests on.²⁰⁴ Many states fear the precedent an aggression tribunal would set.²⁰⁵ Putin’s friendly relations with powerful states such as China and India further complicate this scenario as it is unclear how his allies would respond to his prosecution.²⁰⁶ Additionally, prosecuting Russian leaders for aggression may complicate future diplomacy on the conflict itself as Russian leaders will likely seek criminal immunity as part of any peace settlement.²⁰⁷ The creation of a tribunal has the potential to disrupt peace negotiations and inadvertently extend the duration of the war.²⁰⁸

The enforcement issue also applies to an ad hoc tribunal setting as it remains unclear how a tribunal would obtain custody over Putin.²⁰⁹ Questions again arise on whether States would cooperate in detaining and transferring him into custody.²¹⁰ A state’s detention could be seen as an act of war by Russia and have detrimental foreign policy

199. *Id.*

200. *Id.*

201. Drik, *supra* note 179.

202. *See id.* (discussing that war can sometimes positively affect international law and noting that World War II and the Nuremberg Trials resulted in the criminalization of aggression and sparked new developments in international criminal law).

203. *See* Amendments on the Crime of Aggression to the Rome Statute of the International Criminal Court, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-10-b&chapter=18&clang=_en (last visited Jan. 16, 2025) (listing the member states that have ratified the 2010 Aggression Amendments—only forty-five member states have ratified as of April 2023).

204. Drik, *supra* note 179.

205. Hamilton, *supra* note 74.

206. Ridgwell, *supra* note 106.

207. *A New Court to Prosecute Russia’s Illegal War?*, INT’L CRISIS GROUP (Mar. 29, 2023), <https://www.crisisgroup.org/global-ukraine/new-court-prosecute-russias-illegal-war>.

208. Shuster, *supra* note 87.

209. Katrine Antonsen & Kjersti Lohne, *Will Putin be Prosecuted for War Crimes?*, UNIV. OF OSLO (Mar. 27, 2023), <https://www.jus.uio.no/ikrs/english/research/news/2023/will-putin-be-prosecuted-for-war-crimes.html>.

210. *Id.*

implications.²¹¹ Unlike the Nuremberg Tribunal, where defendants were detained by the victors during a widespread war,²¹² the Russo-Ukraine War is considerably contained, making it unlikely for Ukrainian forces to detain Putin given his nearly permanent residence in Moscow.²¹³ While prosecuting Putin sets a precedent that aggressions against another state's sovereignty will not be tolerated, it may cause more tension in the international community than necessary.²¹⁴ It may take internal dissension in Russia or a loss of power for the government to extradite Putin—the first sitting head of state to be indicted for war crimes, Slobodan Milošević, was not extradited to ICTY detention until his overthrow as president of Yugoslavia.²¹⁵ Other high-ranking officials indicted by international criminal tribunals were able to escape detention for years while living as fugitives.²¹⁶ Scholars have suggested that it will take a new regime in Russia that desires a more positive relationship with the West and will consider it politically strategic to extradite Putin.²¹⁷ Nevertheless, for many, the global significance of an aggression indictment for Putin outweighs practical considerations of securing custody.²¹⁸

V. RECOMMENDATIONS FOR AN AD HOC TRIBUNAL

Despite the questions raised, an ad hoc tribunal is necessary to ensure Putin is held criminally accountable.²¹⁹ It is important that the international community create the right tribunal.²²⁰ First, the tribunal

211. INT'L CRISIS GROUP, *supra* note 207.

212. IRYNA MARCHUK, *THE FUNDAMENTAL CONCEPT OF CRIME IN INTERNATIONAL CRIMINAL LAW: A COMPARATIVE LAW ANALYSIS* 74 (2014).

213. James D. Zirin, *How to Bring Putin to Justice*, THE HILL (July 10, 2023), <https://thehill.com/opinion/international/4088828-how-putin-can-be-brought-to-justice>.

214. INT'L CRISIS GROUP, *supra* note 207.

215. Hiram Abtahi & Grant Dawson, *Anatomy of the Milošević Trial*, J. INT'L HUMANITARIAN ACTION, 2016, at 1, 3.

216. See Julian Borger, *Radovan Karadžić, Europe's Most Wanted Man, Arrested for War Crimes*, GUARDIAN (July 21, 2008), <https://www.theguardian.com/world/2008/jul/22/warcrimes.internationalcrime> (discussing a former Bosnian Serb leader's arrest after twelve years on the run from ICTY indictment); see also Julian Borger, *14 Years a Fugitive: The Hunt for Ratko Mladić, the Butcher of Bosnia*, GUARDIAN (Jan. 21, 2016), <https://www.theguardian.com/world/2016/jan/21/14-years-fugitive-hunt-for-ratko-mladic-butcher-of-bosnia> (discussing former Bosnian Serb general's arrest and transfer to ICTY after fourteen years as fugitive).

217. Antonsen & Lohne, *supra* note 209.

218. Hamilton, *supra* note 74, at 56.

219. See *supra* notes 187–92 for a discussion on why an ad hoc tribunal is required to prosecute Putin for the crime of aggression as ICC jurisdiction is lacking in this area.

220. MARCHUK, *supra* note 212, at 74 (discussing how creation of Nuremberg Tribunal revolutionized international criminal law and opened door to later ad hoc international tribunals).

must be international in character, rather than domestically based in Ukraine or elsewhere where Putin and other high-ranking Russian officials could assert head of state or diplomatic immunity.²²¹ Such immunities do not apply in an international tribunal.²²² The reasoning for an international tribunal is also symbolic—aggression is seen as a crime committed against not only the victimized state, but the entire international community.²²³ Holding the aggressor of the bloodiest conflict in Europe since World War II²²⁴ accountable in an international tribunal sends the message that this behavior will not be tolerated and that even the head of a major world power cannot escape accountability.²²⁵ Another objection to the tribunal has centered around its potential cost.²²⁶ Nevertheless, considering the importance of establishing a precedent against aggression, it becomes imperative to prioritize trying Putin on the global stage.²²⁷ Prosecuting Putin in an international setting would further delegitimize him as a world leader, making it difficult for states friendly to him, such as China, to appear neutral,²²⁸ and providing an incentive for those remaining in the Kremlin to offer Ukraine leverage in future negotiations.²²⁹ Should Putin remain in power, the issuance of an international arrest warrant for aggression still curtails Russia’s ability to assert itself as a world power.²³⁰ Ukrainian officials have also suggested that convicting Russian officials for the crime of aggression will aid Ukraine in its efforts to seek reparations.²³¹

The ad hoc tribunal should also be created through the UN with the support of the General Assembly. Having UN support is the “ideal scenario.”²³² While the General Assembly lacks the full power to mandate a tribunal for Ukraine, it can authorize the Secretary General to establish a tribunal to which Ukraine can voluntarily consent to through an international agreement.²³³ Ukraine’s strong support for a specialized

221. Corten & Koutroulis, *supra* note 96, at 26; Hathaway, *supra* note 2.

222. INT’L CRISIS GROUP, *supra* note 207; 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>.

223. Killingsworth, *supra* note 66; Hathaway, *supra* note 2.

224. Masters, *supra* note 3.

225. Killingsworth, *supra* note 66; Hathaway, *supra* note 2.

226. McDougall, *supra* note 58, at 224.

227. *Id.* at 225.

228. *Id.* at 210.

229. INT’L CRISIS GROUP, *supra* note 207.

230. McDougall, *supra* note 58, at 225.

231. INT’L CRISIS GROUP, *supra* note 207.

232. Drik, *supra* note 179.

233. Corten & Koutroulis, *supra* note 96, at 17; Hathaway, *supra* note 2.

tribunal ensures consent will not be an issue.²³⁴ Establishing the tribunal through the General Assembly, rather than an ad hoc coalition of states who choose to participate, allows the entire international community to reaffirm the international law norm that Russia has violated.²³⁵ Such a tribunal, symbolic in nature, sends the message that aggression is a crime whether committed in Europe or elsewhere in the world.²³⁶ Focusing on the crime of aggression in relation to Putin, rather than other war crimes he has committed, aims to “repair [the] international system that Russia has now damaged.”²³⁷ This repair is limited if it only applies to Europe and does not include the support of the rest of the international community.²³⁸ Creation by the General Assembly would also signify widespread global support—such endorsement would enhance the legitimacy of the tribunal as an international court, where Putin would not be entitled to personal immunity.²³⁹ Russia’s veto power on the UN Security Council is also not available in a General Assembly created tribunal, preventing it from blocking such a scenario.²⁴⁰

The tribunal should maintain a narrow focus solely on the crime of aggression and refrain from prosecuting other war crimes. While prosecuting war crimes or crimes against humanity is valuable, it is not a substitution for the unique gravity of the crime of aggression.²⁴¹ As the “supreme international crime,” it is imperative that aggression be given special attention.²⁴² The tribunal should be able to dedicate its full resources exclusively to its prosecution to ensure the best chances of conviction.²⁴³ Given the magnitude and nature of Putin’s blatant violations of international law, accountability for such acts is essential.²⁴⁴ Crimes of aggression are the catalyst for all war crimes as the decision to invade Ukraine is Russia’s “original crime.”²⁴⁵ Aggression poses a threat to the sovereignty of every country and it is imperative to establish a precedent that ensures it does not continue.²⁴⁶ Furthermore, the victims

234. Kaluzhna & Shunevych, *supra* note 85, at 186.

235. Hathaway, *supra* note 2.

236. *Id.*

237. *Id.*

238. *Id.*

239. OPEN SOC’Y JUST. INITIATIVE, *supra* note 146, at 16; Cotler et al., *supra* note 75.

240. Hamilton, *supra* note 74, at 46; Cotler et al., *supra* note 75.

241. 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), <http://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>.

242. Hathaway, *supra* note 2.

243. McDougall, *supra* note 241.

244. *Id.*

245. Shuster, *supra* note 87.

246. *Id.*

of aggression are not just Ukrainian civilians—victims extend to include Ukrainian soldiers and Russian troops forced to fight an internationally illegal war.²⁴⁷ Other victims include those who have been impacted by the energy and food crises resulting from the conflict.²⁴⁸ A prosecution for crimes other than aggression overlooks the justice owed to the more indirect victims of the war.²⁴⁹ Limiting the tribunal's jurisdiction exclusively to aggression also ensures the ICC's authority is not undermined and allows the two courts to work complementary to one another.²⁵⁰ This approach allows the tribunal to have a specialized focus while leaving the prosecution of other core international crimes to the ICC.²⁵¹

The success of an ad hoc tribunal is likely contingent upon the conclusion of wide-scale hostilities and the initiation of a post-conflict settlement plan.²⁵² Regardless of the war's outcome, the tribunal will likely require a degree of cooperation from Russia to extradite Putin and other leaders and provide evidence.²⁵³ The practical implementation of the tribunal may hinge on the military resolution of the war as negotiation and surrender options could vary based on unfolding events.²⁵⁴ Ukraine may seek Putin's extradition as part of a peace settlement depending on its success in the war and whether Putin remains in power.²⁵⁵ If Putin is removed from power, an international tribunal's arrest warrant, enforceable by multiple states, would encourage a new government to extradite him.²⁵⁶ International sanctions could also play a crucial role in ensuring Russian cooperation.²⁵⁷ An ad hoc tribunal also provides the option to first try defendants in absentia, with a subsequent trial when and if Putin is eventually apprehended.²⁵⁸ Regardless of the practical enforcement considerations, it is likely the tribunal will need to await the war's conclusion to effectively prosecute Putin.

247. McDougall, *supra* note 58, at 227.

248. *Id.*

249. *Id.*; Nuridzhanian, *supra* note 70.

250. McDougall, *supra* note 241; David Crane et al., *Working Together Toward Accountability: How the International Criminal Court and a Special Tribunal on Aggression Can Work Together on the Ukraine Conflict*, JURIST (April 19, 2023), <https://www.jurist.org/commentary/2023/04/un-icc-ukraine-aggression>.

251. McDougall, *supra* note 241.

252. *Id.*

253. Oleksandr Moskalenko, *Who is to Judge Mr. Putin?*, CNTR. FOR EURO. POL'Y ANALYSIS (July 25, 2023), <https://cepa.org/comprehensive-reports/who-is-to-judge-mr-putin/>.

254. *Id.*

255. *Id.*

256. McDougall, *supra* note 241.

257. Moskalenko, *supra* note 253.

258. Ambassador David Scheffer, *The Case for Creating a Special Tribunal to Prosecute the Crime of Aggression Committed Against Ukraine (Part IV)*, JUST SEC. (Sept. 28, 2022), <https://www.justsecurity.org/83290/tribunal-crime-of-aggression-part-four-2>.

VI. CONCLUSION

The Russo-Ukraine War has not only underscored the urgent need for accountability in the face of international crimes but has also highlighted the limitations of existing mechanisms. The calls for prosecuting Putin for the crime of aggression illuminates the challenges posed by crimes committed by powerful leaders and the inadequacy of the ICC and other courts in addressing such cases. The proposal for the establishment of a specialized ad hoc international tribunal emerges as the most compelling solution to the constraints faced by the current international criminal law system. This tribunal, exclusively dedicated to prosecuting Russian crimes of aggression, would address the unique nature of the accusations against Putin. By creating an international body through the UN General Assembly, potential issues related to immunity are circumvented and an important precedent is set, asserting that acts of this nature will not go unpunished. As the international community contemplates this tribunal, it is crucial to note its success may hinge on the conclusion of hostilities and the cooperation exerted by Russia for extradition. Despite the challenges and complexities involved, pursuing the establishment of an ad hoc international tribunal is a decisive step towards holding Putin accountable, preserving international legal order, and adapting to the unique challenges of contemporary international conflicts.