

International Legal Options for Prevention and Justice in Ukraine

International Criminal Justice

The **International Criminal Court (ICC)**—the world’s first permanent court established to prosecute those responsible for the gravest of international crimes—is actively investigating whether war crimes, crimes against humanity, or genocide have been committed in Ukraine since November 21, 2013. Despite neither Russia nor Ukraine having ratified the Rome Statute—the treaty that established the ICC—the ICC is empowered to investigate and prosecute those alleged to be responsible for these crimes committed on Ukrainian territory. This is because Ukraine voluntarily accepted the ICC’s jurisdiction in 2014 and again in 2015, and in March 2022, 39 countries referred the Situation in Ukraine to the Court. This allows the ICC’s prosecutor to proceed with opening an investigation without seeking judicial approval. While this is encouraging, there are challenges ahead for those hoping for justice in the form of criminal convictions. Most immediately, the ICC is likely to find it difficult to arrest alleged perpetrators. Second, even where arrests are made, the resulting trials and any eventual appeals are likely to take many years.

The Rome Statute recognizes the crime of aggression, which is defined as the “use of armed force by a State against the sovereignty, territorial integrity or political independence of another State.” The ICC cannot, however, adjudicate whether Russia committed the crime of aggression against Ukraine because neither country has accepted the ICC’s jurisdiction over this crime. Some international experts have argued that the **United Nations General Assembly (UNGA)**—the UN’s most representative decision-making body—could work with Ukraine to establish an *ad hoc court* to prosecute individuals believed to be responsible for the crime of aggression and other international crimes.

Criminal cases could be filed in countries that have accepted **universal jurisdiction** over international crimes including genocide and crimes against humanity, such as France, Germany, the UK, Sweden, the Netherlands, and Argentina. Countries such as these have recently tried and are currently trying cases under the principle universal jurisdiction for crimes committed in Myanmar, Syria, and elsewhere.

In March 2022, the **United Nations Human Rights Council** established an International Independent **Commission of Inquiry (COI)** to investigate crimes committed in the context of Russia’s aggression on Ukraine. The COI will investigate all alleged abuses of international criminal law, establish the facts, circumstances, and causes of such crimes, and make recommendations with respect to future potential accountability mechanisms, among fulfilling other responsibilities. The COI is mandated to “collect, consolidate and analyse evidence [...] in order to maximize the possibility of its admissibility in any future legal proceedings.”

Prevention

On February 27, 2022, Ukraine filed an application with the **International Court of Justice (ICJ)**—the organ of the United Nations (UN) which has the authority to settle disputes between UN member states. It does not have the authority to investigate, prosecute, or punish individuals. Ukraine’s application asserts that Russia launched its military operation in Ukraine under the false pretense that Ukraine had breached its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide. On March 16, 2022, the ICJ issued a provisional measures order to Russia requiring it to “immediately suspend the military operations.” However, the ICJ lacks real enforcement power so the measures will likely not have an impact on the arc of the conflict now or in the near future.

The **European Court for Human Rights**—which can adjudicate cases brought by individuals and States involving alleged violations of the European Convention on Human Rights—received a request from Ukraine on February 28, 2022 to issue urgent interim measures against Russia to end “massive human rights violations” being committed by Russian troops in Ukraine. However, on March 16, 2022 the Council of Europe expelled Russia from the organization and suspended current cases against it.