



The Role of International Tribunals in the Response to the Invasion of Ukraine

March 8, 2022

The Ukrainian government and [much](#) of the international community contend that actions taken by Russian forces during Russia’s invasion of Ukraine violate international law. A number of officials have also expressed concern that actions during the invasion may amount to [war crimes and crimes against humanity](#); others, including the [Secretary General of the United Nations](#) (U.N.) and the [U.S. Secretary of State](#) have claimed that the situation in Ukraine is leading to increased human rights violations. This Sidebar addresses the role of international tribunals in addressing issues involving international humanitarian and human rights law.

Individual and Russian Accountability for Actions in Ukraine

Several international tribunals may play a role in addressing Russia’s actions in Ukraine, chiefly the International Court of Justice (ICJ), International Criminal Court (ICC), and European Court of Human Rights (ECHR). This section provides an overview of current and prior disputes involving Ukrainian allegations against Russia or individuals connected to Russian actions in Ukraine.

International Court of Justice

Two days after the Russian invasion began, Ukraine filed an [application](#) with the ICJ to initiate proceedings against Russia under the [Convention](#) on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”). [Article II](#) of that Convention defines genocide as certain wrongful acts—such as killing, causing serious bodily harm, or deliberately inflicting conditions calculated to bring about physical destruction—when committed with the intent to destroy a national, ethnic, racial, or religious group. In its ICJ filing, Ukraine [contends](#) that Russia premised its invasion on fabricated claims of Ukrainian genocide against Russians or Russian-speakers in Ukraine, which Ukraine [“emphatically denies.”](#) Ukraine [argues](#) “Russia has turned the Genocide Convention on its head—making a false claim of genocide as a basis” to justify its own “grave and widespread” human rights violations.

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Discussed in this [Legal Sidebar](#), the ICJ is the U.N.'s [principal judicial organ](#), but it does not have jurisdiction over all disputes between U.N. members. Unless a country submits to the ICJ's [compulsory jurisdiction](#), which Ukraine and Russia [have not](#), the court has jurisdiction only on a treaty-by-treaty basis. Ukraine and Russia [have submitted](#) to the ICJ's jurisdiction for disputes under the Genocide Convention, which may explain why Ukraine has presented its case as a question of the Genocide Convention's interpretation. ICJ cases ordinarily take years to resolve; however, Ukraine also [seeks](#) provisional measures, which can be granted swiftly because they have [priority](#) on the ICJ's docket. [Provisional measures](#) are temporary but [binding](#) measures designed to preserve the parties' rights while a case is pending. Among other provisional requests, Ukraine [asks](#) the ICJ to direct Russia to suspend its military operations immediately. Oral argument on the request for provisional measures was [held](#) on March 7, 2022. Russia [did not appear](#) for that argument, nor has it submitted objections or responsive pleadings thus far.

This case is not the first against Russia arising out of its military actions in the region. In 2017, Ukraine filed an ICJ application [asserting](#) that Russia's annexation of Crimea, and subsequent acts of "cultural erasure" of [ethnic Ukrainians and the Tatar community](#), violated the International Convention on the Elimination of All Forms of Racial Discrimination ([CERD](#)). Ukraine also [alleges](#) in its 2017 case that Russia violated the International [Convention](#) for the Suppression of the Financing of Terrorism by supporting violent separatist groups in eastern Ukraine. The ICJ [granted](#) (or "[indicated](#)" in the language of the ICJ statute) a portion of Ukraine's request for provisional measures in 2017. The court [held](#) in 2019 that it had jurisdiction to hear the claims under both treaties, and the merits case is ongoing.

Additionally, in 2008, Georgia instituted ICJ [proceedings](#) after Russian forces entered its territory leading to a [five-day war](#). The suit [alleged](#) Russia committed ethnic cleansing in Georgia's [South Ossetia and Abkhazia regions](#) in violation of the CERD. The ICJ initially [indicated](#) provisional measures against Russia, but later [held](#) it lacked jurisdiction because Georgia did not satisfy the CERD's preconditions to filing suit.

Although the U.N. Charter provides that each member state "[undertakes to comply](#)" with ICJ decisions, the court may lack the independent ability to enforce its rulings. Member states can [request](#) the Security Council to take enforcement action, but Russia and any other [permanent member](#) of the Security Council can [veto](#) those proposals.

International Criminal Court

On February 28, 2022, the Prosecutor of the ICC [announced](#) that his office "decided to proceed with opening an investigation into the Situation in Ukraine." Specifically, the Prosecutor indicated that the evidence collected with regard to the 2014 conflict between Russia and Ukraine showed there was a "reasonable basis" to believe that war crimes and crimes against humanity had been committed in Ukraine and, given the escalation of the conflict in February 2022, the "investigation will also encompass any new alleged crimes."

The ICC has jurisdiction to investigate [four categories of crimes](#) that fall within the ambit of international humanitarian law: (1) [genocide](#); (2) [crimes against humanity](#); (3) [war crimes](#); and (4) [the crime of aggression](#). Unlike many other tribunals, the ICC focuses on holding *individuals* accountable for these crimes, as opposed to a nation-state. Individuals found guilty of any of these crimes face [penalties](#) including imprisonment, fines, and forfeiture.

The ICC's jurisdiction generally extends only to those countries that have agreed to become parties to the [Rome Statute](#) establishing the ICC. Neither Ukraine nor Russia are [parties](#) to the Rome Statute. Thus, in general, the ICC lacks jurisdiction over actions within the territories of either country. (Contrast this to cases involving parties to the Rome Statute, such as the [investigation](#) into alleged crimes against humanity and war crimes committed in Georgia, which became a party in 2003, during the 2008 conflict

with Russia.) However, the ICC may exercise jurisdiction if the specific requirements of [Article 12\(3\)](#) are met. First, a country must submit a declaration with the Registrar of the ICC accepting the exercise of the ICC's jurisdiction "with respect to the crime in question." Second, the case must be one that the Prosecutor (a) self-initiated or (b) initiated at the request of a country.

In this case, Ukraine filed a declaration in 2014 accepting the ICC's jurisdiction for the period of November 21, 2013, to February 22, 2014, and also [requested](#) that the ICC investigate [alleged crimes against humanity](#) committed in its territory during this time period. Based on this declaration and referral, the Prosecutor [opened](#) a preliminary investigation. Ukraine filed a second declaration in 2015, extending its acceptance of the ICC's jurisdiction from February 25, 2014, to an undetermined date. In 2020, the ICC Prosecutor concluded her [preliminary examination](#) of the evidence, stating there is a "reasonable basis at this time to believe that a broad range of conduct constituting war crimes and crimes against humanity within the jurisdiction of the Court have been committed in the context of the situation in Ukraine." As indicated by the ICC Prosecutor, given Ukraine's open-ended acceptance of the Court's jurisdiction and the 2022 escalation of the conflict in Ukraine, the Prosecutor intends to expand the ongoing investigation to include alleged new crimes that may occur during this time.

European Court of Human Rights

On February 28, 2022, Ukraine applied to the ECHR for interim measures in response to "massive human rights violations being committed by the Russian troops in the course of the military aggression against the sovereign territory of Ukraine." The Court [granted](#) these measures, directing Russia to "refrain from military attacks against civilians and civilian objects, including residential premises, emergency vehicles and other specially protected civilian objects."

The ECHR adjudicates claims involving alleged violations of the Convention for the Protection of Human Rights and Fundamental Freedoms, known as the [European Convention on Human Rights](#) ("Convention"). Currently, 47 countries are [parties](#) to the Convention, including Russia and Ukraine. Two types of claims may be lodged with the ECHR: inter-state disputes and disputes brought by individuals against a state. Both types of disputes involve allegations that a *state* has violated human rights protected by the Convention. The human rights protected by the Convention are distinct from international humanitarian law violations that may be heard by other tribunals, including the ICC. Human rights [protected](#) by the Convention include, among others, the right to life and a prohibition on torture and inhuman or degrading treatment. Although human rights violations are distinct from international humanitarian law violations, actions that violate Convention-protected rights may occur during the same events that also give rise to alleged war crimes or crimes against humanity charges. In cases alleging an imminent risk of irreparable harm, the ECHR may [issue](#) interim measures directed to the state allegedly committing human rights violations. Ukraine has requested and been granted interim measures in light of the February 2022 invasion. In the public notice on the interim measures, the Court indicated that it considers Russia's actions to present "a real and continuing risk of serious violations of the Convention rights of the civilian population, in particular under Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment or punishment), and 8 (right to respect for private and family life)." The interim measures directing Russia to refrain from actions that may violate human rights are legally binding.

In addition to its February 28 application for interim measures, Ukraine has taken other legal actions against Russia that may provide some insight regarding how a future complaint might be framed. Currently, Ukraine has [four](#) inter-state claims against Russia before the ECHR (and over 7,000 individuals have also [filed](#) claims against Russia). Of particular relevance is Ukraine's March 2014 complaint involving Russia's invasion of Crimea. In that dispute, Ukraine alleged Russia's conduct amounted to "administrative practices" (i.e., a pattern of acts that are officially tolerated) that violated numerous Convention provisions, including the right to life; prohibition on torture, inhuman or degrading treatment;

prohibition on unlawful detention; freedom of religion; and prohibition of discrimination. The Court granted Ukraine's request for interim measures, [directing](#) Russia to "refrain from measures which might threaten the life and health of the civilian population on the territory of Ukraine." In addition, in a decision released in January 2021, the Court [found](#) the complaint partially admissible (i.e., the complaint met the requirements for the Court to consider the merits of almost all of Ukraine's allegations). No decision on the merits has been issued.

Events in Ukraine may unfold differently in 2022 than in 2014, leading to different factual circumstances and different allegations. Nonetheless, a complaint alleging wide-scale human rights violations may benefit from the judicial approach taken by the ECHR in Ukraine's 2014 complaint and other cases (e.g., [Georgia v. Russia \(I\)](#)). These cases hold that the complaining nation need not exhaust domestic remedies before the ECHR may consider the case if the complaining nation sufficiently alleges administrative practices that amount to systemic violations of the Convention. They also hold that the complaining state need not prove every single instance of human rights violations as would be required in individual cases, which may reduce certain evidentiary obstacles that can arise in cases involving allegations of large-scale human rights violations.

Other International Tribunals

Other international tribunals may also play a role in disputes addressing alleged violations of human rights occurring during Russia's military action, particularly the right to property. For example, after the 2014 annexation of Ukraine, [several Ukrainian investors](#) brought claims against Russia under a 1998 bilateral investment treaty between Ukraine and Russia, seeking compensation for expropriated property at the Permanent Court of Arbitration and in other arbitration fora. Investors have been awarded significant amounts of compensation in some cases (e.g., [Everest Estate LLC et al. v. Russia](#); [PJSC Ukrnafta v. Russia](#); [Stabil LLC v. Russia](#)). Other disputes remain ongoing.

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