



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

Updated October 21, 2022

The Ukrainian government and [much](#) of the international community contend that actions taken by Russian forces following its February 2022 invasion of Ukraine violate international law. At the outset of the invasion, a number of officials expressed concern that actions during the invasion 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](#) claimed that the situation in Ukraine led to human rights violations. Since the initial invasion, Ukrainian [officials](#) and third party [observers](#) have reported evidence of alleged [atrocity crimes](#) perpetrated by Russian personnel on a regular basis. 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

On February 27, 2022, 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](#) that “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.

Congressional Research Service

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LSB10704

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. ICJ cases ordinarily take years to resolve; however, Ukraine [sought](#) 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 [asked](#) the ICJ to direct Russia to suspend its military operations immediately. In March 2022, the ICJ [granted](#) Ukraine’s request for provisional measures while reserving final judgment on jurisdiction and the merits. The Court [ordered](#) Russia to (1) suspend its military operations and (2) ensure military and irregular armed units cease actions to further the military operations. The Court also directed both states to “refrain from any action which might aggravate or extend the dispute.”

Although the U.N. Charter provides that each member state “[undertakes to comply](#)” with ICJ decisions, the Court lacks the independent ability to enforce its rulings, including its provisional measures. 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.

Russia initially did not participate formally in the ICJ proceedings or [appear](#) for oral argument regarding the request for provisional measures, but it eventually filed [preliminary objections](#) to the ICJ’s jurisdiction (which have not been made public) in October 2022. The ICJ issued an order directing Ukraine to respond to those objections by February 3, 2023. On September 7, 2022, the United States filed a declaration of intervention in support of Ukraine’s interpretation of the Genocide Convention. As of the date of this Sidebar, more than [20 countries](#), including the United States, have also filed declarations of intervention with the ICJ. When an ICJ case concerns a treaty, like the Genocide Convention, other parties to the treaty have a [right to intervene](#) in the proceedings, but any portion of the final ICJ judgment that interprets the treaty in question legally binds the intervening countries. In its Declaration of Intervention, the United States [asserts](#) that the Genocide Convention does not authorize Russia to commit aggression against Ukraine under the pretext of preventing or punishing genocide.

This case is not the first filed with the ICJ 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 [alleged](#) 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.

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.” 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 become parties to the **Rome Statute** establishing the ICC. Neither Ukraine nor Russia are **parties**, and 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 over non-parties for most crimes 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 self-initiated or initiated at the request of a party to the Rome Statute.

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's February 28, 2022 announcement, 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 preliminary investigation to include alleged new crimes that may occur during this conflict. Subsequently, more than forty parties to the Rome Statute **requested** that the Prosecutor open an investigation into the situation in Ukraine.

As of October 2022, the ICC is collecting evidence of potential crimes in Ukraine, but it has not formally announced charges or issued arrest warrants related to the invasion. Instead, invasion-related prosecutions have taken place in Ukraine's domestic courts under its **domestic law**. Ukraine has documented at least 34,000 cases of war crimes, and Ukrainian courts have convicted ten Russian service members for war crimes or related offenses, according to statements from Ukraine's Prosecutor General in **September and October 2022**. The United States is working with Ukraine to support its investigations and prosecutions, and the two countries **signed** a memorandum of understanding in September 2022 formalizing a framework for cooperation. While Ukraine has successfully pursued some cases in its domestic courts, the gap between the number of alleged offenses and number of convictions has led some **observers** to question whether Ukraine's judicial system has the capacity to provide accountability.

The ICC's jurisdiction is "**complementary**" to each country's domestic criminal jurisdiction—meaning the ICC only is to intervene in cases that Ukraine is not equipped to prosecute or able to pursue. In its role as a "**court of last resort**," the ICC could backstop Ukraine's criminal justice system, but there is at least one prominent limit to the ICC's jurisdiction. Under **Article 15 bis** of the Rome Statute, the ICC does not have jurisdiction over Russian nationals for the crime of aggression.

As discussed in this **Legal Sidebar**, the crime of aggression, in its broadest sense, is the act of starting an armed conflict that is prohibited under the U.N. Charter. The crime is **defined** to capture the conduct of a country's senior-most decisionmakers that control and direct military action, which potentially could include Russian President Vladimir Putin. Ukraine **prohibits** aggression in its domestic criminal code, and media outlets **report** that Ukrainian prosecutors have filed over 600 aggression charges against Russian nationals. There are practical and legal limitations, however, to prosecuting aggression in domestic courts. For example, one country's head of state and senior foreign officials generally are **immune** from

prosecution in another country's domestic courts, but that immunity may not apply equally in international tribunals.

According to some [observers](#), limitations on domestic prosecutions coupled with the ICC's inability to prosecute Russian nationals for the crime of aggression results in a risk that no court—international or domestic—can prosecute high-level Russian officials for aggression. To address this issue, Ukrainian President Volodymyr Zelenskyy has [called](#) for the creation of a new special (or [ad hoc](#)) international tribunal that would focus on the crime of aggression and supplement the efforts of the ICC and Ukraine's domestic courts. Some [observers](#) argue that a special tribunal would fill an important gap in the international legal regime. Others [contend](#) it would have limited usefulness because any legal advantages would be untested and the new tribunal likely would lack the ability to collect evidence in Russia or secure physical custody of high-level Russian officials.

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 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”). At the time of filing, 47 countries were [parties](#) to the Convention, including Russia and Ukraine, but Russia has since withdrawn from the Convention, as discussed below.

Two types of claims may be lodged with the ECHR: inter-state disputes and disputes brought by individuals against a state. 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 violations of international humanitarian law (also called the law of armed conflict or law of war), 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.

In March 2022, the Court [granted](#) Ukraine's request for provisional measures and directed Russia to “refrain from military attacks against civilians and civilian objects, including residential premises, emergency vehicles and other specially protected civilian objects.” The ECHR later [expanded](#) its interim measures by directing Russia to allow civilians to use evacuation routes. 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, although enforcement may be difficult, especially in inter-State disputes. If the Court finds a violation of the ECHR, it is to declare a violation; award compensation where appropriate; and potentially indicate other remedial actions that the respondent State must take.

In addition to its February 2022 application for interim measures, Ukraine has taken other legal actions against Russia. Currently, Ukraine has [four](#) inter-state claims against Russia before the ECHR (and more than 8,500 individuals have [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 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.

On March 15, 2022, Russia [communicated](#) its withdrawal from the Council of Europe and intent to denounce the Convention. The Council of Europe [passed](#) a resolution stating that Russia “ceases to be a member” as of March 16, 2022. Any state may [denounce](#) the Convention and thereby cease to be bound by it. States who cease to be part of the Council of Europe also cease to be bound by the Convention. However, the Convention continues to apply to the withdrawing state for all acts that occur before the denunciation becomes legally effective. Russia’s withdrawal from the Convention [took effect](#) on September 16, 2022, but the Court may still consider cases filed against Russia that involve allegations of ECHR violations if the alleged violations occur before withdrawal became effective.

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.

Acknowledgment

Former CRS attorney Nina H. Hart co-authored prior versions of this product.

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