

# Project Syndicate

## Summon a Special Tribunal for Putin's Crimes in Ukraine

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LONDON – It is nearly a year since Russia, backed by Belarus, launched one of the largest ground invasions in Europe since World War II's end.

Since then, thousands of Ukrainian civilians have been killed or injured, eight million people have been internally displaced, with another eight million becoming refugees. Civilian infrastructure and economic assets worth tens of billions of dollars have been destroyed or plundered. Irreplaceable cultural monuments have been reduced to rubble. Large swathes of Ukrainian territory remain under occupation or attack.

If proven in court, these acts of aggression could constitute what the post-WWII Nuremberg trials termed the “supreme international crime.” For it is the crime of aggression from which most other international crimes – war crimes, crimes against humanity, and genocide – often flow.

The International Criminal Court (ICC) has powers to investigate any act of genocide, war crimes, and crimes against humanity committed on the territory of Ukraine. But the ICC cannot exercise its jurisdiction in relation to the crime of aggression if the act of aggression is committed by a state that is not party to the statute of that court, unless the United Nations Security Council refers the matter to it. Since Russia has not ratified that statute and would exercise its veto in the Security Council against a referral, the ICC cannot, as things stand, investigate crimes of aggression against Ukraine.

So to complement the actions now underway before the ICC, a special tribunal with a limited focus on the crime of aggression is needed. The Special Tribunal for the Crime of Aggression against Ukraine can be set up at pace. During WWII, nations met in London in 1941 to draft a declaration on Nazi war crimes which led, at the end of the conflict, to the creation of an International Military Tribunal and the Nuremberg trials.

The Special Tribunal should be constituted – on the same principles that guided the Allies in 1941 – to investigate the acts of aggression by Russia, aided by Belarus, in Ukraine and whether they constitute a crime of aggression. As well as investigating and indicting President Vladimir Putin, the tribunal could also hold to account the members of Russia's, and possibly Belarus's, national security council, as well as the political and military leaders of this manifestly illegal war. The tribunal would draw on international law which proscribes aggression and the domestic law of Ukraine – which enshrines aggression as a criminal offence – and respond to a direct request from President Volodymyr Zelensky and the Ukrainian Parliament to take forward this initiative. Thankfully, support for a Special Tribunal has steadily grown since it was first proposed by Philippe Sands in February, and backed by over 150 leading international lawyers and world leaders – including Ukrainian Foreign Minister Dmytro Kuleba – in a public declaration.

But three recent developments have increased the momentum for it. On November 30, EU Commission President Ursula von der Leyen announced the Commission's support for the Special Tribunal, arguing that “Russia must pay for its horrific crimes, including for its crime of

aggression against a sovereign state.” That same day, the French foreign ministry, which had been reticent to commit to a Special Tribunal, said that it was working with its European partners on the proposal. And on December 12, Dutch Foreign Minister Wopke Hoekstra said that the Netherlands would be willing to host the Special Tribunal. This adds to significant support for the Tribunal among states in Eastern Europe.

Given its global influence and historic leadership on human rights issues, the United Kingdom could play a vital role in further galvanizing international backing for the proposal. We are therefore calling for the UK government to support a Special Tribunal for the Crime of Aggression being committed in Ukraine. By doing so, we can act in solidarity with Ukraine and its people, signal our resolve that the crime of aggression will not be tolerated, and ensure that those who have unleashed the atrocities we have witnessed over the past ten months will be brought to justice under the law.

*This commentary is signed by: Dapo Akande, Faculty of Public International Law, University of Oxford, Member of the UN International Law Commission 2023-27; Lord David Alton, KCSG, KCMCO, former MP 1979-97, former Professor of Citizenship, and Independent Crossbench Member of the House of Lords; James D. Bindenagel, US Ambassador for Holocaust Issues 1999-2002; Cherie Blair KC, International Human Rights Barrister, Founder of Omnia Strategy; Sir Nicolas Bratza, former President of the European Court of Human Rights; Dame Nicola Brewer Former UK High Commissioner, Former Chief Executive of the Equality and Human Rights Commission; Bill Browder, CEO and co-founder of Hermitage Capital Management; Michelle Butler, Barrister; Toby Cadman, Barrister, Co-founder of The Guernica37 Group, Joint Head of Guernica37 Chambers; Alistair Carmichael, MP for Orkney and Shetland; Wendy Chamberlain, MP for Fife North East; The Lord Bishop of Coventry; Daisy Cooper, MP for St Albans, deputy leader of the Liberal Democrat parliamentary party; Sir Edward Davey, MP Leader of the Liberal Democrats; Jonathan Djanogly, MP for Huntingdon; Stephen Doughty, MP for Cardiff South and Penarth, Shadow Minister for International Development; Sir Iain Duncan Smith MP for Chingford and Woodford Green, Former Leader of the Conservative Party; Tatyana Eatwell, Barrister, Doughty Street Chambers; Dr Mark S. Ellis, Executive Director, International Bar Association; Tim Farron, MP for Westmorland and Lonsdale; Mark Fenhalls KC, Barrister; Jan Fisher, former Prime Minister of the Czech Republic 2009-10; Tom Fletcher, CMG Principal, Hertford College Oxford; Nick Flynn, Head of Legal at Avaaz; Richard Foord, MP for Tiverton and Honiton, Liberal Democrats Defense Spokesperson; Rt. Hon. Lord Foulkes of Cumnock, former International Development Minister, currently Member of the Parliamentary Assembly of the Council of Europe; Stephen Fry, Writer; Rt. Hon. Lord Garnier KC, former MP 1992-2017, former Solicitor General for England and Wales, member of the House of Lords; Rt. Hon. Baroness Mary Goudie, Member of the House of Lords; Sarah Green, MP for Chesham and Amersham; Rt. Hon. Baroness Harris of Richmond, Former Deputy Speaker in the House of Lords, member of the House of Lords; Rt. Hon. Lord Toby Harris, Member of the House of Lords; Mia Hasenson-Gross, Executive Director; Rene Cassin, The Jewish Voice for Human Rights; John Healey, Shadow Secretary of State for Defence, MP for Wentworth and Dearne; Toomas Hendrik Ilves, former President of Estonia 2006-16; Andrew Hilland, Lawyer, Policy Advisor; Wera Hobhouse, MP for Bath; Rt. Hon. Lord David Howell of Guildford, former MP 1966-97, former Secretary of State for Energy and Transport, former Deputy Leader of the House of Lords, Chair of the House of Lords International Relations Committee, member of the House of Lords; Murray Hunt, Director, Bingham Centre for the Rule of Law, British Institute of International and Comparative Law, Visiting Professor in Human Rights Law, University of Oxford; Christine Jardine, MP for Edinburgh West; Rt. Hon. The Lord Hylton, Member of the House of Lords; Rt. Hon. Professor Carwyn Jones, former First Minister of Wales; Rt. Hon. Baroness Helena Kennedy KC, Director, International Bar Association’s Human Rights Institute, Barrister and Member of the House of Lords; Kerry Kennedy, President, Robert F. Kennedy Human Rights; Francesca Klug, Faculty of Law, Human Rights, LSE; Samantha Knights KC, Barrister; David Lammy, MP for Tottenham, Shadow Secretary of State for Foreign, Commonwealth and Development Affairs; Pauline Latham, MP for Mid Derbyshire; Philip Leach, Faculty of Human*

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