Ukraine and the Limits of International Justice

28 FEBRUARY 2026

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Introduction

Russia's full-scale invasion of Ukraine on 24 February 2022 has generated one of the most significant stress tests for contemporary international law. Moscow attempted to justify its use of force by alleging that Ukraine had committed genocide in the Donbas since 2014. That justification was indefensible. Article 2(4) of the United Nations Charter prohibits the use of force except in narrow circumstances, principally self-defence, Security Council authorisation, or intervention validly requested by a State. None

applied here. The entities in Donetsk and Luhansk were not sovereign States capable of lawfully inviting Russian military intervention, and Russia could not plausibly rely on Article 51 of the Charter. The invasion therefore constituted a manifest breach of the prohibition on the use of force (International Court of Justice [ICJ], 2024; United Nations General Assembly [UNGA], 2022).

At the same time, Russia's reliance on genocide rhetoric created a useful jurisdictional opening. Ukraine used the Genocide Convention as the basis for proceedings before the International Court of Justice (ICJ), arguing not that Russia had committed genocide under the Convention, but that Russia had abused the concept of genocide as a legal pretext for aggression. The move exemplified lawfare: the strategic use of legal mechanisms to achieve political and normative objectives. Yet the ICJ's 2024 judgment on preliminary objections also showed the limits of that strategy. The Court confirmed that the Genocide Convention cannot be used as a general vehicle to adjudicate the legality of the use of force. International litigation could expose the weakness of Russia's legal claims, but it could not erase the jurisdictional boundaries imposed by State consent (ICJ, 2024, para. 145).

Legal Innovation and The Accountability Gap

The war has promoted the creation of new accountability mechanisms designed to compensate for structural weaknesses in existing institutions. One of the most important is the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine, established within the Council of Europe framework in 2023. Its legal significance is substantial but limited; the Register receives claims, organises evidence, and assesses eligibility for recording, but it does not determine Russia's responsibility and does not itself award reparations. It is therefore best understood as an evidentiary and administrative foundation for a future compensation mechanism rather than as a tribunal or claims commission in its own right (Council of Europe, 2023).

This distinction is key, because documentation is indispensable in mass-claims contexts, but documentation alone is not justice. Earlier international compensation models demonstrate that recording loss does not guarantee payment. The Register's value lies in preserving evidence, structuring claims, and preventing legal fragmentation while political negotiations over compensation continue. At the same time, criticism of the mechanism, especially allegations of selectivity, cannot simply be dismissed. Several States argued that creating a compensation-related structure for Ukraine while comparable mechanisms were absent in other conflicts risked reinforcing perceptions of double standards. Even where such objections are politically opportunistic, they still illuminate a broader legitimacy problem within the international legal order (Council of Europe, 2023; UNGA, 2022).

A second innovation is the Special Tribunal for the Crime of Aggression against Ukraine. Its emergence responds to the most obvious accountability gap in the Rome Statute system: although aggression is listed within the International Criminal Court's subject-matter jurisdiction, the Court cannot exercise that jurisdiction in the Ukraine situation absent a Security Council referral, because neither Russia nor Ukraine was a State Party bound by the Kampala regime when the invasion began. The bilateral agreement signed by Ukraine and the Council of Europe in June 2025 attempts to close that gap by creating a tribunal specifically mandated to prosecute aggression (Council of Europe & Ukraine, 2025).

The design of the Special Tribunal is legally sophisticated. Rather than claiming an autonomous international criminal jurisdiction, it is built upon a delegation of Ukraine's territorial jurisdiction. That structure aims to reduce objections based on consent and competence. Its Statute also draws an important distinction between criminal responsibility and the procedural obstacles created by immunity. Official capacity does not extinguish liability, even if the exercise of certain offices may temporarily affect the execution of an indictment. In that respect, the Tribunal reflects the ICJ's reasoning that immunity is procedural rather than substantive: it may postpone prosecution, but it does not erase responsibility (Council of Europe & Ukraine, 2025; ICJ, 2002, para. 60).

ICC Jurisdiction and The Putin Warrants

The International Criminal Court has nevertheless remained central to the legal response. Although Russia was not a State Party to the Rome Statute, Ukraine accepted the Court's jurisdiction through two declarations under Article 12(3), covering first the period from November 2013 to February 2014 and then crimes committed on Ukrainian territory from February 2014 onwards. Ukraine's later ratification of the Rome Statute, which entered into force for it on 1 January 2025, reinforced that jurisdictional basis but was not the source of the Court's original competence over the current conflict. Through Article 12(3), the Court obtained jurisdiction ratione loci and ratione temporis over war crimes, crimes against humanity, and genocide committed on Ukrainian territory (International Criminal Court [ICC], 2025).

The Prosecutor's investigation moved unusually quickly. A collective referral by thirty-nine States Parties allowed the investigation to proceed without prior authorisation from the Pre- Trial Chamber, signalling an exceptional degree of political alignment behind accountability efforts. On 17 March 2023, Pre-Trial Chamber II issued arrest warrants for Vladimir Putin and Maria Lvova-Belova for the war crimes of unlawful deportation and unlawful transfer of Ukrainian children from occupied territory to the Russian Federation (ICC, 2023).

These warrants were historically significant. For the first time, the head of a permanent member of the Security Council became the subject of an arrest warrant issued by an international criminal court. The legal importance of the warrants also lies in the mode of liability alleged. In Putin's case, the Court relied not only on direct individual responsibility under Article 25 but also on superior responsibility under Article 28(b), emphasising failures of control over subordinates operating under effective authority. Equally notable was the decision to publicise the warrants. The Court justified publication on the basis that the

conduct appeared ongoing and that public awareness could contribute to prevention. The warrants thus carried both punitive and preventive logic (ICC, 2023).

The episode also mattered institutionally. For much of its existence, the ICC was criticised as a court that was effective against weak actors but hesitant when confronted with major powers. The Ukraine warrants did not eliminate that critique, but they substantially weakened it. They showed that the Court was prepared to confront the leadership of a nuclear-armed State and a permanent member of the Security Council, even though the likelihood of arrest remained uncertain (Fernandez, 2023).

Enforcement, Immunities, and Political Constraint

The fundamental weakness of international criminal justice remains enforcement. The ICC has no police force and depends entirely on State cooperation under Articles 86 and 89 of the Rome Statute. The resulting tension is clear: the Court's authority is legal, but its effectiveness is political. This becomes most acute when the suspect is a sitting head of State from a non-party State.

Article 27 of the Rome Statute provides that official capacity does not exempt an individual from criminal responsibility before the Court, while Article 98 recognises that States may also owe obligations under international law concerning immunities. The ICC's Appeals Chamber in *Al-Bashir* adopted a broad view, holding that personal immunities do not bar the Court from proceeding against a head of State before an international criminal tribunal. Yet this position remains deeply contested. Many States and commentators maintain that customary international law has not clearly evolved to remove the personal immunities of leaders of non-party States in all such circumstances. The ICJ's case law is more cautious, and State practice remains divided (Ascensio, 2019; ICC, 2019).

Ukraine therefore exposes a doctrinal fault line at the heart of international law. On one side stands the aspiration to universal accountability for international crimes; on the other stands a legal order still shaped by sovereignty, consent, and unequal power. This tension explains why some States may invoke immunity arguments when refusing cooperation. Such claims may be politically convenient, but they are not always legally frivolous.

Even so, arrest warrants can produce meaningful effects without immediate custody. The clearest illustration came before the 2023 BRICS summit in South Africa. As a State Party, South Africa faced intense legal and domestic pressure over whether it would arrest Putin if he attended. He ultimately did not travel, and Russia sent its foreign minister instead. The warrant therefore constrained diplomatic mobility even without enforcement. Yet the opposite example followed in 2024, when Putin travelled to Mongolia, also a State Party, without arrest. The gap between legal obligation and political reality could scarcely have been sharper (Rebut, 2023).

The problem deepens when powerful States do not merely evade accountability but actively retaliate against the institutions pursuing it. Russia responded to the warrants by opening criminal investigations against ICC officials and placing several of them on wanted lists. More broadly, the Court has also faced coercive pressure from other powerful States when its

investigations touched sensitive geopolitical interests. Such reactions reveal the fragility of institutional independence in international criminal justice. Courts may articulate norms and issue warrants, but their capacity to act depends on political space that major powers can narrow or threaten (Nollez, 2023).

Conclusion

The legal response to Russia's war in Ukraine is both impressive and incomplete. On one level, it demonstrates considerable creativity and resilience. Ukraine and its partners have used the ICJ, the ICC, the Register of Damage, and a Special Tribunal for aggression to push accountability further than many believed possible against a major power. On another level, the conflict has laid bare the structural weaknesses of the system: treaty-based jurisdiction remains bounded by consent, aggression jurisdiction under the Rome Statute remains incomplete, immunities remain contested, and enforcement still depends on States whose legal duties often collide with their political interests.

Ukraine is therefore more than a single case study in wartime accountability. It has become a test of whether international law can move from documentation to enforcement and from condemnation to credible restraint. If the current mechanisms are supported politically and materially, they may mark a turning point in the practice of international justice. If not, they risk confirming a harsher conclusion: that international law can describe, record, and denounce violations with precision, yet still struggle to coerce the most powerful actors into submission.

References

Ascensio, H. (2019). L'immunité du chef d'Etat devant les juridictions pénales internationales. *Annuaire français de droit international, 65*, 395-413.

Council of Europe. (2023, May 17). *Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine*. https://rm.coe.int/0900001680ab2595

Council of Europe, & Ukraine. (2025, June 25). *Agreement between the Council of Europe and Ukraine on the Establishment of the Special Tribunal for the Crime of Aggression against Ukraine*. https://rm.coe.int/agreement-and-statut-english/1680b66127

Fernandez, J. (2023, March 20). *Mandat d'arrêt contre Vladimir Poutine : la Cour pénale internationale a-t-elle franchi le Rubicon ?* Le Rubicon.

International Court of Justice. (2002, February 14). *Arrest warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), judgment*. https://www.icj-cij.org/case/121

International Court of Justice. (2024, February 2). *Allegations of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation; 32 intervening States), preliminary objections, judgment*. https://www.icj- cij.org/case/182/judgments

International Criminal Court. (2019, May 6). *Judgment in the Jordan referral re Al-Bashir appeal*. https://www.icc-cpi.int/court-record/icc-02/05-01/09-397-0

International Criminal Court. (2023, March 17). *Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*. https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against- vladimir-vladimirovich-putin-and

International Criminal Court. (2025). *Ukraine*. https://www.icc-cpi.int/situations/ukraine Nollez, R. (2023). Sanctions russes contre la Cour pénale internationale : le Président de la

CPI placé sur la liste des "personnes recherchées". *Le Club des juristes*.Rebut, D. (2023, March 21). *Mandat d'arrêt émis par la CPI contre Vladimir Poutine : quelles conséquences ?* Le Club des juristes.

United Nations General Assembly. (2022, November 14). *Furtherance of remedy and reparation for aggression against Ukraine* (A/ES-11/L.6). https://undocs.org/en/A/ES-11/L.6