

**House Foreign Affairs Committee
Tom Lantos Human Rights Commission**

**Hearing
on
Accountability for Russia's War Crimes and Aggression against Ukraine**

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**Holding Putin and his Regime Accountable: Mutually Reinforcing
Accountability Pathways**

Introduction

The brave people of Ukraine are enduring horrific atrocities in an unprovoked war of aggression launched by Vladimir Putin. Brutal Russian attacks are destroying residences, hospitals, shelling cities and humanitarian corridors, killing and displacing civilians, including children, women, men – ordinary Ukrainians who simply want to live in peace in their country.

The unprovoked aggression ordered by Putin [violates](#) the UN Charter's fundamental prohibition on "the threat or use of force against the territorial integrity or political independence of any state." Targeting of civilians and civilian objects, and indiscriminate attacks, are all war crimes, and those responsible must be held accountable.

Indeed, failure to stand up to those who order and commit such crimes only emboldens their sense of impunity. Putin's past aggressive acts and atrocities – in Chechnya, Aleppo Syria, in parts of Ukraine, and elsewhere – have only emboldened him.

Ukrainian President Zelensky is calling upon the world to take effective action to assist Ukraine – to stand up for the most fundamental shared values and principles enshrined in the UN Charter, International Humanitarian Law, and the Universal Declaration of Human Rights. Ukraine's Foreign Minister, Dmytro Kuleba, [said](#): "We are fighting against an enemy that is much strong than us. But international law is on our side, and hopefully it will make its own contribution to help us prevail. The question now is how the international community will respond."

An Accountability Strategy

What we need is a strategy of “**mutually reinforcing accountability**” – that is, accountability through multiple **complementary** mechanisms grounded in the fundamental principles of international law. These include individual criminal accountability as well as state responsibility. I will address each.

This is not an either/or choice. A number of mechanisms can provide value-added. Currently, the International Criminal Court, and the potential work of the UN Human Rights Council’s newly created Commission of Inquiry, are particularly promising avenues for accountability. Domestic investigations and potential prosecutions can also contribute. Moreover, the US government can take concrete measures now to support and assist with documentation and evidence gathering, along the lines suggested by Secretary of State Blinken in [recent remarks](#).

Taking concrete steps now on accountability can supplement the many other urgent measures underway to support the Ukrainian people: economic, diplomatic, military, and humanitarian.

Individual Criminal Accountability

Individual criminal accountability for egregious international crimes must be at the heart of this strategy. Three mechanisms, in my view, can play particularly central roles.

First, the International Criminal Court (ICC)

The ICC has jurisdiction over war crimes, crimes against humanity, and genocide committed on the territory of Ukraine. Ukraine declared its acceptance of the ICC’s jurisdiction eight years ago following violence during the Maidan protests and again following Russia’s intervention in Crimea and the Donbas. The second of these declarations was open-ended in terms of the timeframe, so the ICC has [jurisdiction](#) over both past crimes since November 21, 2013 and ongoing current crimes on the territory of Ukraine.

Furthermore, 39 ICC member countries (including 25 NATO nations and 26 EU member states) [referred](#) the situation in the Ukraine to the ICC. This number has [grown](#) further. This strong and unprecedented referral by such a large number of ICC member states is a clear signal of the urgency and gravity of the situation in Ukraine and states’ shared support for the ICC.

Given its jurisdiction and this strong support, the ICC is in the best position to investigate and potentially indict and prosecute individuals for any war crimes, crimes against humanity,

and acts of genocide committed on the territory of Ukraine. Another important potential benefit of proceeding before an international court such as the ICC is that heads of state and other officials do not enjoy immunity before such courts (Art. 27), so the prospect of ultimately being able to indict Putin and others in his regime may be greater.

ICC Prosecutor Karim Khan has [commenced](#) an investigation and sent investigators to the region. In so doing, the Prosecutor – in real-time – is putting potential offenders [on notice](#) of their obligations under international humanitarian law and their risks of investigation and prosecution if they commit crimes under the Court’s jurisdiction.

Although these important statements will likely have no direct impact on Putin himself, forces on the ground – many of which were conscripted and told falsehoods about their mission – military leaders in Moscow, and commanders in the theater of war may ultimately decide they are unwilling to risk war crimes prosecutions in connection with Putin’s disastrous war. There is no statute of limitation for these crimes, so a clear message is being sent to all those who commit such abuses that justice may one day catch up with them.

Admittedly, the work of investigating, building cases, developing indictments, and issuing arrest warrants takes time and resources. Prosecutor Khan has emphasized that he and his team will be independent, objective, and meticulous in evaluating and sifting through the evidence. He has also asked states for [assistance](#), including resources, information sharing, and gratis personnel.

What can and should the US do? While the US has had a complicated relationship with the ICC and is not a member state, the US has recognized the value of the ICC’s work in numerous situations, and very tangibly, offered rewards for and [helped transfer](#) two defendants to the ICC. In short, the US has provided some assistance, consistent with US law, on a case-by-case basis in specific instances determined to be in the US national interest. **The situation in Ukraine is just such an instance.**

Sharing Documentation and Evidence: The US should explicitly decide to help and could be especially useful in providing evidence regarding possible war crimes and crimes against humanity being committed on the territory of Ukraine and **linking** those crimes to specific responsible individuals. Protocols for such assistance to other tribunals (e.g. the ICTY) could be useful reference points. Provision of such assistance is consistent with the [Dodd Amendment](#) which makes clear that the United States can “render[] assistance to international efforts to bring to justice ... foreign nationals accused of genocide, war crimes or crimes against humanity.”

Secretary of State Antony Blinken [told](#) CNN on March 6: “[W]e’ve seen very credible reports of deliberate attacks on civilians, which would constitute a war crime.” He added: “What we’re doing right now is documenting all of this, putting it all together, looking at it, and making sure that as people and the appropriate organizations and institutions investigate

whether war crimes have been or are being committed, that we can support whatever they're doing."

Second, the UN Human Rights Council's creation of a Commission of Inquiry: Supporting Accountability through Documentation and Evidence Gathering

On March 4, with Ukraine's strong support, the UN Human Rights Council [decided](#) "to urgently establish an independent international commission of inquiry" with a mandate to "investigate all alleged violations and abuses of human rights and violations of international humanitarian law, and related crimes, in the context of the Russian Federation's aggression against Ukraine," to consolidate and preserve evidence, and to "cooperate with judicial and other entities, as appropriate."

Standing up this mechanism urgently and effectively is a very important step that warrants strong practical support from the United States. Very tangibly, the US could provide documentation and evidence of crimes; voluntary funding; diplomatic good offices to facilitate access to neighboring countries; expertise in the most advanced technological tools possible to sort through massive amounts of information (including videos, social media, etc.) to identify relevant evidence and weed out misinformation; among other ways to assist.

This COI can and should work in a mutually supportive way with the ICC and with the huge number of civil society organizations engaged in documentation. With strong leadership and experienced personnel, it could help set standards for NGOs gathering evidence, and serve as a crucial storing house for consolidating and preserving evidence of violations of human rights and of international humanitarian law and related crimes to a criminal law standard. It can complement and build upon the work of the UN Human Rights Monitoring Mission in Ukraine ([HRMMU](#)) of the Office of the High Commissioner for Human Rights, with field offices in seven Ukrainian cities and preexisting ties to Ukrainian civil society organizations there.

The COI can also develop well-informed recommendations on access to justice that include **victim-centered approaches** aimed at **supporting and empowering** those most directly affected by the harms of this horrific war.

Third, National Justice Proceedings: Another Element in the Web of Accountability

Domestic prosecutions in national courts can be an important component in justice for international crimes, building **a wider web of accountability** that is complementary to international justice. Many European courts can exercise jurisdiction over war crimes, crimes against humanity and even the crime of aggression, so there may be some prospects

for cases in national courts. Ukraine itself has incorporated some international crimes, including the [crime of aggression](#) and war crimes, into its domestic criminal code, and also established a specialized unit of war crimes prosecutors who commenced a number of domestic criminal proceedings involving Crimea and the Donbas. The US Government is helping to build capacity of Ukrainian prosecutors, with funding from the State Department's Office of Global Criminal Justice and the leadership of two former US Ambassadors at Large for War Crimes Issues.

These important Ukrainian national efforts are continuing, and US and EU support for Ukrainian investigations of war crimes in the current conflict is all the more urgent, even if actual criminal proceedings may not be possible right now. Moreover, other national courts in Europe with jurisdiction over international crimes also hold out the possibility of future [action](#).

The potential for future prosecutions in different national courts provides at least some ability to send a message to those who commit war crimes or crimes against humanity that they can run but they can't hide. And that they will enjoy no safe haven abroad.

The prospects for national proceedings in US courts are currently limited, however. The US could take steps to [broaden](#) the applicability of its War Crimes Statute to cover non-nationals present in US territory. It could also enact a domestic Crimes Against Humanity Statute along the lines [proposed by](#) Senator Durbin.

State Responsibility

In addition to individual criminal accountability, **holding the Russian state accountable for human rights abuses and other violations of international law is another important piece of a robust accountability strategy.** In this regard, Ukraine has initiated proceedings before the International Court of Justice (ICJ) and the European Court of Human Rights – two courts with **civil** jurisdiction over **states** – seeking rulings subjecting the conduct of Putin and his government to legal accountability.

First, the International Court of Justice: Potential Accountability for Falsely Claiming Genocide as a Pretext for Aggressive War

Outraged by Putin's specious claims of genocide as a pretext for aggression, Ukraine has [invoked](#) the ICJ's jurisdiction under Art. IX of the Genocide Convention. Ukraine seeks a ruling that Russia is abusing the concept of genocide to justify a lawless and aggressive war, contrary to the object and purpose of the Genocide Convention. Ukraine is also [seeking](#) urgent provisional measures of protection against Russia, including an order to immediately

suspend the military actions it commenced on February 24, 2022. The ICJ held a [hearing](#) in this matter on March 7 at which Russia failed to appear.

This is a very important accountability case in many respects. All too often aggressive states (such as Hitler's Nazi regime) have peddled pretextual justifications for launching wars of aggression. The ICJ has the opportunity in this case to address these issues. Other states can intervene and file briefs in these proceedings, and the US should consider doing so.

Second, the European Court of Human Rights: State Accountability for Human Rights Abuses

On March 1, the European Court of Human Rights ordered interim measures in proceedings brought by Ukraine against Russia for violations of the European Convention on Human Rights. The Court's interim measures indicated to the Government of Russia that it [should "refrain](#) from military attacks against civilians and civilian objects such as schools and hospitals, and ... ensure immediately the safety of the medical establishments, personnel and emergency vehicles within the territory under attack or siege by Russian troops."

In addition, following numerous requests from individuals in Ukraine fearing for their lives, the European Court also determined that the Russian Government "[should ensure](#) unimpeded access of the civilian population to safe evacuation routes, healthcare, food and other essential supplies" and "rapid and unconstrained passage of humanitarian aid and movement of humanitarian workers."

With mounting instances of Russia's ongoing human rights violations against civilians in Ukraine, additional political, economic and other measures are clearly needed to truly protect against egregious violations of the European Convention on Human Rights. But in stipulating necessary measures – including genuine humanitarian corridors – the European Court's supervision can at least help focus attention on urgently needed responses to Russia's ongoing violations of human rights.

Additional Paths for Accountability

There are additional paths for accountability as well. Supporting civil society actors in Russia by keeping space open for truthful information and potential political accountability is essential.

The human rights situation within Russia is increasingly dire. Courageous Russian citizens who have protested against the war have been arrested by the thousands. Independent Russian journalists and media outlets have been threatened or shut down; criminal prosecution has been threatened for truthful reporting [under "fake news" and "treason"](#) charges.

The ability of the Russian people to gain accurate information about the conflict and to speak out is being thwarted systematically by the Russian authorities in what a coalition of human rights organizations [calls](#) “[a] fully-fledged witch hunt against independent groups, human rights defenders, media outlets and journalists, and political opposition” which “is decimating civil society and forcing many into exile.” Meanwhile, Russian citizens are fed nothing but propaganda from state-controlled media outlets.

Ukrainian President Zelensky has appealed directly to the Russian people, recognizing how they have been misled by Putin’s lies in this deeply tragic war pitting families and brother nations against each other.

The US and Russia’s European neighbors need to do what they can to support a range of efforts to get accurate information about the war into the hands of the Russian people. These efforts are especially important as Russian society becomes more isolated in the face of wide-ranging sanctions and as Putin increasingly cracks down on accurate information and dissent. The strong personal connections between many Russians and Ukrainians – and the universal human desire for dignity and basic human rights – are powerful forces in this effort. Truthful information about what Putin has unleashed against the courageous people of Ukraine may ultimately be one of the best prospects for achieving Putin’s accountability by his own people.

Finally, **additional accountability proposals** warrant close examination, particularly those that might fill gaps in the jurisdiction of existing institutions – for example, by potentially creating a hybrid tribunal with Ukrainian consent via an agreement with the UN for the [crime of aggression](#).

Conclusion

Clearly, the devastating unprovoked war in Ukraine launched by Vladimir Putin – and the mounting horrors and attacks against civilians he has unleashed – demand accountability. President Zelensky and the Ukrainian people have shown exceptional courage in fighting for their country – for freedom, democracy and self-determination, and fundamental human rights. They are right [that](#) “international law is on [their] side” -- and it is vital that the United States stands up for accountability effectively in response to those, like Putin, who has for too long enjoyed impunity.

The US can and must take a leadership role in supporting **mutually reinforcing mechanisms** to build a robust **web of accountability** that can give effect to the fundamental principles of international law on which peace and freedom depend. In this endeavor, the State Department’s Office of Global Criminal Justice has a vital role to play, working with partners in the United States, Ukraine, and around the world.