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# FCIL-SIS DEI Presents: What in the World is Happening... in the Russian War against Ukraine and Global Accountability



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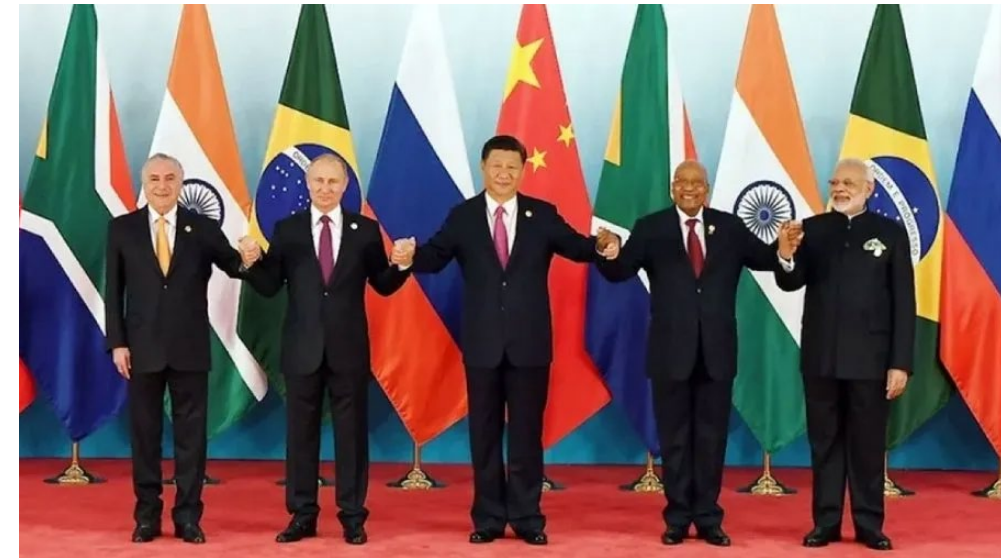
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- The context
    - Rise and fall of global powers
    - Russian narratives in the context of global realignment
  - *Jus ad bellum* and global accountability
  - *Jus in bello* and global accountability
  - Conclusion and Q&A



# Rise and fall of global powers

Contemporary realignment revolves around shared values, marking a shift in focus from resources and assets to ideological principles

**Authoritarianism vs. Democracy**



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# **Jus ad bellum and *Russian aggression against Ukraine***

Charter of the UN

Definition of Aggression

General Assembly Resolution 3314 (XXIX),

14 December 1974.

Rome Statute Art. 8.

- **March 2014 Russia annexed Crimea**
  - **Spring-Summer:**
    - seizure of the governmental buildings in Donetsk and Luhansk; proclamation of Donetsk and Luhansk People's Republics; *de-facto* control over the occupied territories by Russian military/special forces personnel and local separatists
    - July 17, 2014: the downing of a civilian aircraft on an international flight Malaysia Airlines flight MH17 with the loss of all 298 passengers and 15 crew members on board
  - **February 24, 2022: full scale Russian military invasion on the land, in the sky and at sea**
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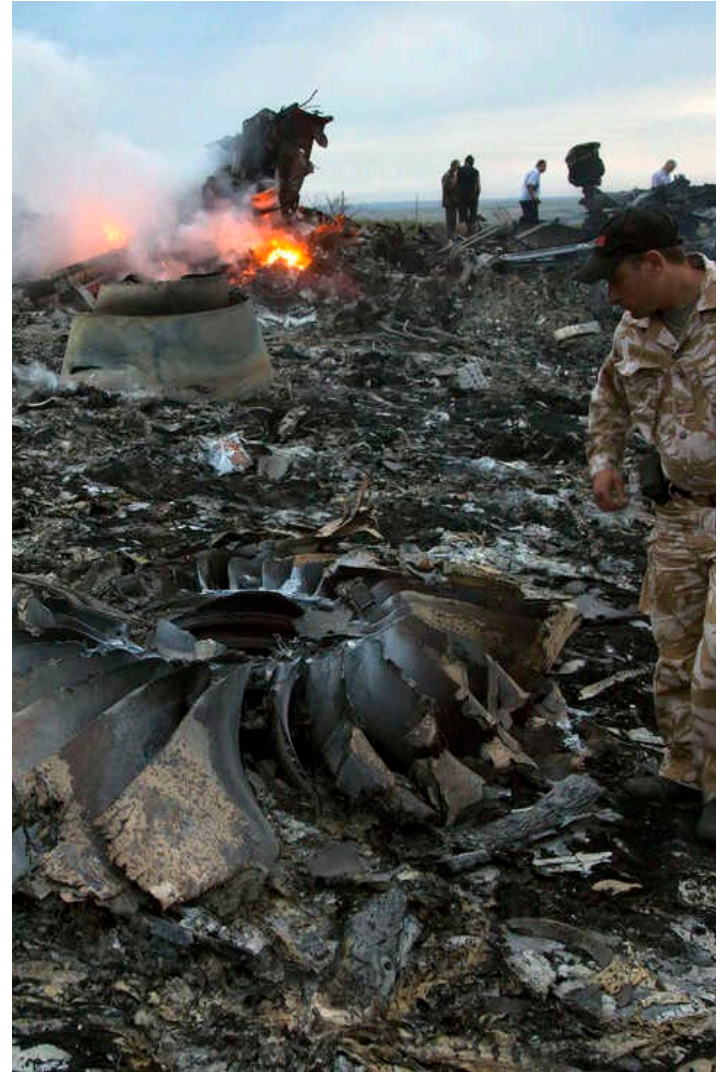
# *Jus ad bellum and the United Nations*

- UNGA, A/RES/68/262, March 27, 2014, Resolution on “Territorial integrity of Ukraine” by 100-11-58, 80th plenary meeting
- UNSC, 21 July 2014 Resolution 2166 (2014) On downing of Malaysia Airlines flight MH17 on 17 July in Donetsk Oblast, Ukraine

Picture 1. Occupation of Crimea



Picture 2. The debris at the crash site of Malaysia Airlines flight MH17 near the village of Grabovo, Ukraine, on July 17, 2014.



Picture 3. “Green men”



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# *Jus ad bellum and the International Court of Justice*

- ICJ, Jan. 2017 – Jan. 2024: Application of The International Convention For The Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all Forms of Racial Discrimination (*Ukraine v. Russian Federation*)
  - ICJ, Feb. 26, 2022: Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*).
    - dispute at issue concerns the falsity of allegations of genocide, and unlawful measures that have been undertaken on the basis of such false allegations. Request for the indication of provisional measures and to call upon Russia immediately to halt all military actions in Ukraine.
    - Provisional measures, March 16, 2022: The RF shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine; RF shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point 1 above; both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.
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## *Jus ad bellum and UN General Assembly 1<sup>st</sup> emergency special session:*

- SC/14809, Feb.27, 2022 Security Council Calls Emergency Special Session of General Assembly on Ukraine Crisis, Adopting Resolution 2623 (2022) by 11-1-3
- ES11/1 GA/12407, March 2, 2022 “Aggression against Ukraine” demanded a full withdrawal of Russian forces and of reversal of its decision to recognize the self-declared People's Republics of Donetsk and Luhansk by 141-5-35
- A/RES/ES-11/2, MARCH 24, 2022 “Humanitarian consequences of the aggression against Ukraine” by 140- 5- 38
- A/RES/ES-11/3, April 7, 2022 Suspension of the rights of membership of the Russian Federation in the Human Rights Council by 93-24-58
- A/RES/ES-11/4, Oct. 13, 2022 Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations by 143-5-35
- A/RES/ES-11/5, Nov. 15, 2022 Furtherance of remedy and reparation for aggression against Ukraine by 94-14-73
- A/RES/ES-11/6, March 2, 2023 Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine by 141-7-32

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## *Jus ad bellum and Accountability for the Crime of Aggression*

Crime of aggression:

planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

Per article 8bis(1) of the Rome Statute.



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## *Jus ad bellum and Accountability for the Crime of Aggression*

### *Special Tribunal*

- The UN Human Rights Council, a “Group of Friends of Accountability following the aggression against Ukraine”, consisting of **49 Member States** and the **European Union**
- “Core Group” of 40 states explores legal options for accountability and establishment of a Special Tribunal
- June 3, 2023: The International Center for the Prosecution of the Crime of Aggression against Ukraine (Hague, Netherlands)
  - investigation into Russia’s crime of aggression against Ukraine
  - facilitation in case building for future trials
  - supports and enhances ongoing and future investigations into the crime of aggression
  - contribution to the exchange and analysis of evidence gathered since the start of the Russian aggression.



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## *Jus ad bellum*

### *Accountability for the Crime of Aggression*

#### *Special International Tribunal to Prosecute the Crime of Aggression against Ukraine*

##### **POSSIBLE FORMS UNDER DISCUSSION:**

- Amendments to the Rome Statute which would allow referrals by the UN General Assembly to prosecute aggression
- An international tribunal established by the UN General Assembly
- Based on interstate multilateral treaty
- Hybrid Court within the judicial system of Ukraine
- A third state

##### **MAIN CONCERNS:**

- Political will to support and reinforce ICC
  - Legitimacy:
    - UN General Assembly *v.* Security Council
    - Support in General Assembly for a special tribunal
    - Selective justice
    - Ukrainian Constitutional framework of judiciary
  - Immunity concerns
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## *Jus ad bellum* Accountability for the *Crime of Aggression*

- Domestic prosecution:

Criminal Code of Ukraine, Art. 437. **Planning, preparation and waging of an aggressive war.** 1. Planning, preparation or waging of an aggressive war or armed conflict, or conspiring for any such purposes, - shall be punishable by imprisonment for a term of seven to twelve years 2. Conducting an aggressive war or aggressive military operations, - shall be punishable by imprisonment for a term of ten to fifteen years.

- Ukrainian Prosecutor General Kostin: 600 people suspected, among them 312 are indicted because of their involvement in the crime of aggression
- List of suspects in the main case of "24th February"  
<https://gp.gov.ua/detectable>



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## ***Jus in bello* and global justice: Domestic and international investigation and prosecution**

- Crimes and atrocities:
- Mass graves—with both Ukrainian civilians and prisoners of war—in newly liberated territories; in the Ukrainian towns and cities of Bucha, Irpin, Izyum, Lyman, Kherson, and Mariupol
- Murder, arbitrary detentions, forced disappearances, interrogations, and reprisals against Ukraine’s civilian population
- More than 91% of civilian detainees held by the RF were subjected to torture and ill-treatment, including sexual violence
- Interrogation in “filtration camps” with further relocation
- Sexual violence
- Abduction of children
- Mistreating prisoners of war (POWs): execution, torture, malnourishment, and other abuse
- Strikes on Civilian Targets: indiscriminate attacks and precise shelling and bombardment of civilian objects





OTP received referrals of the situation in Ukraine from the **39 ICC States Parties** and opened an investigation

2 Mar. 2022

ICC Office of the Prosecutor became a participant in the Joint Investigation Team (JIT) on alleged core international crimes committed in Ukraine

25 Apr. 2022

25 Mar. 2022

Joint Investigation Team under the auspices of Eurojust was set up by Lithuania, Poland and Ukraine; later joined by Estonia, Latvia, Slovakia

17 May 2022

ICC deployed a team of 42 investigators, forensic experts and support personnel to Ukraine, the largest in the organization's history

24 Apr. 2014

Initial Ad Hoc Declaration

8 Sep. 2015

Second Declaration

11 Dec. 2020

Conclusion of the preliminary examination on the situation in Ukraine

28 Feb. 2022

Decision to seek authorization to open investigation into the situation in Ukraine

17 March  
2023

Warrants of arrest for Mr V. Putin and Ms M. Lvova-Belova for war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation (under articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute).

March 5  
2024

Warrants of arrest of S. Kobylash, a Lieutenant General in the Russian Armed Forces (at the time Commander of the Long-Range Aviation of the Aerospace Force, and V. Sokolov, an Admiral in the Russian Navy, (at the time Commander of the Black Sea Fleet for the 1) the war crime of directing attacks against civilian objects (article 8(2)(b)(ii) of the Rome Statute); 2) the war crime of causing excessive incidental harm to civilians or damage to civilian objects (article 8(2)(b)(iv) of the Rome Statute); and 3) the crime against humanity of inhumane acts under article 7(1)(k) of the Rome Statute



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## *Jus in bello* and global justice: Domestic and international investigation and prosecution

- Unprecedented international collaboration
  - OSCE Office for Democratic Institutions and Human Rights (ODIHR); Independent International Commission of Inquiry on Ukraine; EUROJUST; Joint Investigation Team; ICC; Core International Crimes Evidence Database (CICED); Atrocity Crimes Advisory Group (ACA) for Ukraine; Mobile Justice Teams; War Crimes Accountability Team; the Conflict Observatory, housed at Yale University.
- OPG War Crimes Unit and regional prosecutors: Ukraine has launched investigations into more than **122,000** suspected cases of war crimes since the beginning of Russia's full-scale invasion Ukraine (2022)  
<https://warcrimes.gov.ua/en>
- Identified 511 perpetrators; 80 convictions in Ukrainian courts, mostly in absentia
- More than 45 NGOs are helping on war crimes accountability.
- Opora: <https://warcrimescenter.org/en/>
- Reckoning project: <https://iwpr.net/projects/focus/reckoning-ukraine>





## **New trends and experience**

- Environmental crimes, ecocide
- Cyber attacks as war crimes. Prosecution in partnership with Palantir, Microsoft
- Application of AI in investigation: hundreds of terabytes of photo, video, voice, etc.
- Core International Crimes Evidence Database (CICED), supports joint investigations

<https://www.eurojust.europa.eu/core-international-crimes-evidence-database>

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# *Jus in bello* and global justice

- **Universal Jurisdiction:**

Lithuania, Latvia, Estonia, Poland, Romania, and Slovakia, Germany, Sweden, Spain, and Switzerland, Canada



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# Support of the USA

- Beth Van Schaak, the US Ambassador at Large for Global Criminal Justice
  - Cooperation with ICC, international organizations and institutions
  - Support investigations and prosecutions for core international crimes: war crimes, crimes against humanity, genocide, and aggression
  - Atrocity Crimes Advisory Group (ACA); USAID's Justice for All; technical cooperation and capacity building for the OPG; War Crimes Accountability Team; the Conflict Observatory; training, documentation; media operation, and others
  - S.4240 - Justice for Victims of War Crimes Act
  - Dec. 2023, the Justice Department filed the charges of torture, inhumane treatment, and unlawful confinement of a U.S. national in Ukraine following Russia's full-scale invasion of Ukraine in February 2022 against four Russia-affiliated military personnel.
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