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## **The ICC indictment against Vladimir Putin reinforces the case for prosecuting him for the crime of aggression, says international lawyer and noted author Philippe Sands.**

By Philippe Mottaz

On Friday, February 28, 2022, barely four days after Russia's invasion of Ukraine, Philippe Sands, a professor of law at University College London, an international lawyer and the [author](#) of *East West Street: on the Origins of Genocide and Crimes against Humanity*, published an opinion piece in the Financial Times under the title "Putin's use of military force is a crime of aggression." In the 700-word op-ed, commissioned by the newspaper two days before, he laid out the rationale for the creation of a special tribunal that would prosecute Vladimir Putin for the crime of aggression.

Noting that the jurisdiction of the International Criminal Court (ICC) in the Hague does not extend to the crime of aggression, Sands decided to float the idea by putting it into the public sphere. "Why not create a dedicated international criminal tribunal to investigate Putin and his acolytes for this crime?" he asked—noting the irony that it was the Soviets who, in Nuremberg, pushed for the insertion of the crimes of aggression into the tribunal statutes, while the US, UK, and France were dead set against it.

"It's the gap in the international law architecture that I wanted to address in writing this piece. I just couldn't imagine that some young soldier or junior officer would face trial in The Hague but that we could not focus on the top of the table and go after the leadership," Sands tells me, sitting at Geneva's Société de Lecture, where a few moments before, early in the afternoon, he had held an audience of about 80 students in rapt attention with his exhortation never to take the "easy road" in life, and about to go for an evening encore discussing his new [book](#), *The Last Colony*, before a packed room.

"The FT piece went viral. Within a few hours and over the coming days, I received hundreds of emails, and the Twittersphere went crazy, from all sorts of people, all over the world," he tells me, grabbing his laptop, excitedly showing me the dedicated folder in his mail application labeled 'Special Tribunal.' "I never thought it would happen. That's the truth," he says. Among the first messages, one is from Gordon Brown, the former British Prime Minister who had supported the war in Iraq. "I didn't know him, but he's telling me that the idea of such a special tribunal is a [good idea](#) and that it should happen. He also tells me he is writing on behalf of two other former British Prime Ministers." Another message among the first that landed in his mailbox came from Kyiv, from the office of Dmitry Kuleba, the Ukrainian Foreign Minister. And Kuleba wants to talk. "What I didn't know at the time was that Kuleba himself is an international lawyer and that as a student, he wrote a paper on the [1942 declaration](#)

of St. James, where the European leaders in exile called for a mechanism to prosecute party leaders.”

A week later, Chatham House organized a Zoom conference. “I am told that with about 1500 hundred people attending, it was the largest ever—huge,” Sands tells me. “Elisabeth Wilmhurst, the legal adviser of the British Foreign Office who resigned in 2003 because of the illegality of the war in Iraq, put it together. For a lot of people in Britain, she is a heroic figure.” The Chatham House meeting and declaration led to the creation of a core group of about 15 people, former presidents and prime ministers from Eastern Europe, who then got in touch with the current leaders of their countries to push for the idea. “It was completely fascinating,” Philippe Sands tells me, “some of these Eastern European leaders were telling us that there were things we couldn’t see in the television appearances of Vladimir Putin and the Russian leaders, but that they could because [they] grew up in the Soviet era, and [could] see the differences of positions in the way there are talking. And what [they could] see, they told us, was that there was dissent in the Kremlin.”

I come back to Sands’ FT op-ed and ask him what he thought, while writing it, would be the biggest obstacle to prosecuting Vladimir Putin and his entourage for the crime of aggression. “I’d always thought that [for it] to happen, it would have to have the support of many countries, including France, the UK, and the US, and that without their support, it would be impossible. Their fear, of course, is that it would create a precedent. They worry that if you have done it once, what do you do next time the UK and the US invade Iraq, or France intervenes in Mali?”

Now, a little over a year later, since he published his piece, Europe, France, the UK, and the US are all supportive. Washington’s support for such a tribunal came just three days before Sands’ visit to Geneva.

On Monday, March 27, Beth Van Schaak, the US Ambassador at Large for Global Criminal Justice, said that Washington supported the establishment of “an internationalized national court” to assist Ukraine in prosecuting Russian leaders for the crime of aggression, clearly a major development towards the creation of such a tribunal.

With the US supportive position now public, Sands puts the chances of a special tribunal being created at about 99%. “The only question that remains is its form and nature. And here you have two extreme positions: Ukraine wants a full international tribunal [while] some countries [want] a more limited mechanism.”

A full international tribunal, Sands explains to me, would be created between Ukraine and an international organization, preferably the UN, and if not, a European organization such as the Council of Europe.

Is he worried that, as some legal experts have expressed, the US position may leave the possibility that Vladimir Putin could claim immunity? “No, I wouldn’t worry about that now because I think it’s an issue that should be addressed later on.”

And what about the recent indictments issued by the International Criminal Court? I raise the hypothesis, offered by legal experts, that the ICC warrants might have been

issued to slow down the creation of a special tribunal. “Firstly, let me say this, I welcome the ICC’s work. I welcome the indictment of Mr. Putin. But I am puzzled about a number of things. Why was it made public? Why is it limited to the deportation of children? And I suspect that the focus on Mr. Putin, coupled with the decision to make it public, may have been intended to slow down the onward march to a special tribunal on the crime of aggression. But the moment I saw the decision, I recognized that it would have precisely the opposite effect: it would underscore the vital importance of focusing on the leader.”

I have a last question before he leaves: what does he take away from this whole experience? “That we still live in a moment where ideas matter and putting words to paper can influence change. That’s a positive thing. I like that.”

He is not alone, I tell myself.

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