

OPINION

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Benjamin Ferencz, 102, the last surviving prosecutor of the Nuremberg trials, at home in Delray Beach, Fla. SAUL MARTINEZ FOR USA TODAY

How to put Putin on trial for a war crime

Russia’s attack on Ukraine is the most egregious crime of aggression in decades



Benjamin Ferencz
Prosecutor at Nuremberg

Russia’s full-scale invasion of Ukraine has caused immeasurable suffering and destruction. Already, extensive documentation indicates the Russian military is responsible for war crimes and crimes against humanity.

Indiscriminate attacks on civilians, sexual and gender-based violence, executions and other international crimes committed in Bucha, Mariupol, Kharkiv, Chernihiv and many other locations are now being investigated so that the direct perpetrators and architects of these crimes can be prosecuted.

Ukraine’s prosecutor general has taken prompt action, opening 15,000 investigations so far into these atrocities.

The international community’s response toward justice and accountability also has been swift and focused, with the International Criminal Court (ICC) and war crimes prosecutors in at least 10 countries making significant efforts to open investigations.

I know firsthand of the magnitude of efforts required to put war criminals on trial. Seventy-five years ago, I put 22 Nazi officers on the stand for their role in killing more than a million men, women and children in cold blood in towns and villages across Eastern Europe.

The evils that I saw

The legacy of Nuremberg – of which I am the last living prosecutor – is to have shown the world that it is possible to form a court that prosecutes heads of states, who often are immune to the rule of law, for extreme, wide-scale crimes.

Before heading to Nuremberg, I was a sergeant in the U.S. Army Infantry, and I was sent to the concentration camps as American forces were liberating them, to collect evidence of the war crimes.

The ground was covered with dead bodies and people almost dead, their eyes pleading for help. It was horror.

Sadly, the evils that I saw there, and that I sought to correct at Nuremberg, are still with us today.

My life’s work has consisted of trying to deter the types of atrocities I prosecuted in Nuremberg. This is why I believe that, in addition to prosecuting



Nuremberg, Germany, was the site of war-crime trials of Nazi officials, held after World War II. HULTON-DEUTSCH COLLECTION/CORBIS VIA GETTY IMAGES



An array of photos from Ferencz’s life and legal career.
SAUL MARTINEZ FOR USA TODAY

war crimes and crimes against humanity, it is critically important to prosecute the crime that was called “the supreme international crime” by the International Military Tribunal, which tried 21 surviving leaders of Nazi Germany: the crime of aggression.

Russia’s unprovoked military attack on Ukraine is the clearest and most egregious instance of the crime of aggression in decades.

Building a solid case against President Vladimir Putin and other senior Russian officials is feasible, as shown by a model indictment published by the legal advocacy group Open Society Justice Initiative.

This also is the most straightforward basis on which to prosecute Putin because the crime of aggression focuses on state leaders, where in cases of war crimes or crimes against humanity, prosecutors must prove the linkage between the crimes carried out on the ground in Ukraine and faraway commanders in Moscow.

Ukraine announced a joint investigation team with prosecutors from Ukraine, Lithuania and Poland that focuses, in part, on gathering evidence to

ward Russia’s crime of aggression.

Estonia, Latvia and Slovakia joined the joint investigation team as well.

While the ICC has joined the joint investigation team and opened an investigation into crimes committed in Ukraine, because of a limitation in its statute, the ICC does not have jurisdiction over the crime of aggression committed by Russian nationals.

Prosecuting the crime of aggression will require a unique court capable of handling such a trial, characterized by two crucial features:

- **First, it must be capable of circumventing legal immunities that could apply to Putin and other top officials.** This would be the case for international courts and those formed with the support of the international community, where such immunities do not apply. Experts who support the formation of a tribunal correctly make a priority of options for an internationally backed court to prosecute Russia’s crime of aggression.
- **Second, such a court must have substantive real and perceived legitimacy.** An internationally backed tribunal, such as through the United Nations General Assembly, would bolster impartiality and independence.

This could be reinforced by ensuring that Ukrainian and international prosecutors and judges play a meaningful role.

Crimes against humanity

Such a tribunal also could include a broader mandate to cover war crimes and crimes against humanity cases not handled by the ICC.

That is why states must come together to join the Ukrainian government in supporting the creation of a special tribunal to prosecute Putin and his inner cadre for the crime of aggression.

This would provide a powerful demonstration of the international community’s resolve to condemn Russia’s invasion of Ukraine and to insist that acts of aggression be prosecuted.

Ben Ferencz, 102, is the last living prosecutor at Nuremberg. In 1947, he was chief prosecutor for the United States in the Einsatzgruppen case, which charged 22 Nazi officers with murdering more than a million people across Eastern Europe. The Associated Press called it “the biggest murder trial in history.”