The war in Ukraine, the evolution of international criminal law and the crumbling of the rule of law in Russia

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Background information on the evolution and current status of international criminal law

The wise lawmaker of ancient Athens *Solon* is quoted as saying that no penalty at all should be laid down in law for patricide, because the crime is too enormous for man to comprehend and come up with a suitable punishment. The same could be argued for war crimes and crimes against humanity. They can be so horrendous that it seems impossible to find a fitting punishment. What could possibly be a just punishment for someone who has killed, raped and tortured dozens, perhaps hundreds of innocent civilians?

It is important to realise that international criminal law deals with issues that are truly extraordinary. Can it even be considered fair for a supranational court to hear criminal cases? Should international law not be valid law when it comes to relationships between sovereign nations? Can an international criminal court self-appoint itself as the competent court, and should it be possible for international criminal law to be applied and enforced despite the objections of certain states? Can an individual be held responsible for breaking international law?

The international community has long recognised that even serious crimes rarely lead to consequences in practice. This has created a culture of impunity, which has cast a shadow on the very notion of why law matters. Why investigate regular crimes and punish ordinary offenders if the biggest criminals of all get off scot-free because, for example, they still have status and are still in power?

International criminal law was conceived as a reaction to the massive injustice that such impunity is perceived to be. The question how criminal liability could be enforced more effectively is also controversial and difficult to answer. The concept of individual criminal responsibility is already well established and widely accepted.

Experience from recent years shows that the least that can be done is to demonstrate that criminal justice is served in as fair and just a way as possible. In the context of international criminal law, it is not the severity of the punishment that matters but the fact that there is a

trial in the first place.[1] The role of trials is to lay bare the offences and events and to give those affected a voice.

Traditionally only the losing party has been held accountable for war crimes. At the end of World War II, the victors created mechanisms to ensure that the leaders of Germany and Japan could be brought to justice. This was, of course, before the advent of the United Nations. The League of Nations had broken down. Incidentally, one of the League's final acts was to expel the Soviet Union. The reason for the expulsion was the Soviets' violation of international law by invading Finland in November 1939.

The Soviet Union ultimately found itself among the victors of the war, dealing out punishment to the losers. The Soviets' own war crimes were never investigated and at least the most serious never made it to court. The Soviet Union's security agency massacred practically the entire officer corps of the captured Polish army in a forest near Katyn in 1940. This may well be one reason why to this day there is very little sympathy among the Polish for Russia's actions in Ukraine. They are all too familiar with the reprehensible war tactics for which both the Soviet Union and Russia are known.

War crimes are among the oldest core crimes under international criminal law. Their history goes back hundreds of years. The documentation of trials began to become more common in the 19th century. There are, for example, records of cases involving the protection of Red Cross personnel in war zones dating from the 1800s. The 1907 Hague Conventions respecting the laws and customs of war on land and at sea were important milestones, as were the Geneva Conventions negotiated in the aftermath of World War II. The rules designed to limit the effects of armed conflict on the civilian population are referred to as international humanitarian law.

International humanitarian law is distinct from human rights in that it is intended to kick in during times when the national government cannot give its people the usual protections due to, for example, war or other armed conflict, and instead the people are at the mercy of those participating in the war or armed conflict. The rules of war also regulate the conduct of war. For example, the use of chemical, biological and nuclear weapons is prohibited.

Crimes against humanity, distinct from war crimes, are a relatively new concept devised in connection with the Nuremberg trials. Crimes against humanity refer to specific crimes committed in the context of a systematic attack targeting civilians. The third core crime under international law is genocide, which was first defined in an international convention in 1948. Both of these crime categories came about as a result of international lawmaking.

Crimes against humanity are the work of leading international lawyer *Hersch Lauterpacht*, and the concept of genocide was coined by *Raphael Lemkin*. Both were Jewish lawyers and scholars from Eastern Europe, and both studied in the University of Lviv, which is now in Ukraine.[2] The idea that aggression in itself should be considered a crime against peace was proposed in the Nuremberg trials and even before by a Russian Jew called *Aron Trainin*, who was influential in the early decades of the Soviet Union. He is likely to have been rather selective in his definition of the actual offence, however. Trainin's expertise lay more in criminal law than in international law. In any case, it is astonishing to think that the key concepts of international

[1] *David Luban*, Fairness to rightness: Jurisdiction, legality, and the legitimacy of international criminal law. In The Philosophy of International Law, (eds) Samatha Besson – John Tasioulas. OUP 2010.

[2] *Ana Filipa Vrdoljak*, Human Rights and Genocide: The Work of Lauterpacht and Lemkin in Modern International Law. The European Journal of International Law Vol 20 No 4, 1163–1194.

criminal law are this firmly rooted in the work of Eastern European Jewish intellectuals. Trainin was born in Vitebsk, in what is now Belarus.

The development of international criminal law stepped up a gear in the 1990s when the UN Security Council took a surprisingly determined stance in the aftermath of the war that led to the breakup of Yugoslavia. The war in Europe had shaken everyone in the West and the international community in general. The Security Council decided to establish a special ad hoc court to prosecute the war crimes that had allegedly been committed by the various parties involved. A similar model was also used in the legal aftermath of the bloody Rwandan Civil War. Russia, China and the United States presented a unified front in the UN Security Council.

Talks about establishing a permanent International Criminal Court began in the 1990s, although the superpowers of the world had serious doubts about the project. They would have much rather had the UN Security Council handle these kinds of issues selectively and on a case-by-case basis. The talks nevertheless resulted in the signing of the 1998 Rome Statute, albeit that practically none of the superpowers was among the signatories. The Rome Statute came into effect in 2002. This created a peculiar situation as there was now a supranational court competent to prosecute the most serious international crimes, but big names including Russia, China, India and the United States were not involved.

It is curious how staggering the contrast is between the conception of the International Criminal Court and the UN Security Council's active role in the fight against terrorism. Perhaps this is because each of the superpowers already had, and still has, its own terrorist enemies on which to focus. Counter-terrorism was not seen as restricting sovereignty but actually to give it new emphasis.

The International Criminal Court (ICC) was given jurisdiction over war crimes, crimes against humanity and genocide, and it was agreed that the crime of aggression would be added to its competence once the parties could agree on its definition. A Review Conference was held in Kampala to this end in 2010. The necessary amendments were ultimately ratified. New provisions on crimes of aggression and the preparation of crimes of aggression were added to the Criminal Code of Finland in 2015.

Crimes of aggression can only be committed by those with the power to shape a state's policy. There are no restrictions relating to the immunity of sitting government leaders in respect of the ICC, and even a serving head of state can be charged with any crime over which the Court has jurisdiction.

Of the around 200 countries in the world, 123 have signed and ratified the treaty establishing the ICC. The signatories recognise the jurisdiction of the Court and have an obligation to facilitate its work. Considerably fewer parties to the statute have ratified the amendments on the crime of aggression. The ICC is, in practice, completely dependent on the support of the parties, as it has no other resources than what delivering its main function requires. The official seat of the Court is in The Hague, Netherlands.

On the criminal responsibility of Russian soldiers, military leaders and state government based on the war in Ukraine

It should be clear to everyone that Russia's actions since February 2022 constitute a crime of aggression within the meaning of international law and the Charter of the United Nations. Russia has actually not even tried to justify its attack, except for some vague claims about a genocide against Russian speakers in eastern Ukraine. It was not that area that Russia targeted, however,

invading instead large parts of Ukraine's territory where people were leading perfectly normal lives. One of the targets of Russia's attack was Kyiv. As this article is being written, Russia has backed off from Kyiv and appears to be preparing for another large-scale attack in the east.

The great majority of the members of the United Nations General Assembly condemned Russia's actions as violating international law immediately after the attack. A total of 141 countries voted in favour of the UN General Assembly resolution 'deploring' Russia's aggression, and only five voted against, including Russia itself.

Russia refused to accept this and appealed to the UN Security Council to pass a resolution that did not acknowledge its culpability. Russia's resolution was backed by China, which had abstained from voting in the General Assembly. However, the Charter of the United Nations includes a standing mandate for a General Assembly debate when a veto is cast in the Security Council. The General Assembly therefore reconvened on this basis, and the resolution condemning the attack and defending the sovereignty of Ukraine was once again backed by 141 countries.[3]

Assigning blame for this crime of aggression will be difficult, however, and the perpetrators are unlikely to be brought to justice until power changes hands in Russia. Liability for punishment for crimes of aggression can only be assigned to the highest level of a state's leadership. The 1996 Criminal Code of Russia and more specifically its chapter 34 on 'Crimes Against Peace and Mankind's Security' criminalises aggression along with the other core crimes under international law. It should be obvious, however, that the Russian authorities cannot investigate and prosecute these crimes without the government's approval and support.

Crimes of aggression can only be brought before the International Criminal Court based on a resolution of the UN Security Council, which will naturally not happen in this case while Russia's current government remains in power, or if the aggressor is a signatory that accepts the Court's jurisdiction. Neither of these routes is possible at the moment. It is hard to say whether the UN General Assembly could offer a way out of this impasse, but there is certainly no easy solution.

Another interesting hypothesis is whether Russia's crimes of aggression could be prosecuted in Finland based on our national Criminal Code. Although the Criminal Code of Finland now includes the necessary provisions on the criminalisation of such offences, Finland has not asserted universal jurisdiction over criminal matters. For acts of aggression to be prosecutable in Finland, they therefore must have a link to Finland, Finns or Finnish interests. It is unlikely that a strong enough link could be established in this case. Finland intentionally excluded the application of universal jurisdiction when the provisions on crimes of aggression were added, as the development of international law in this area is still in its infancy. It could also be argued that national courts are unnatural forums for prosecuting these kinds of crimes in which the perpetrator is actually a state and which are almost by definition political, albeit that they can be legally defined as crimes of aggression.

Finland, similarly to, for example, Germany, has chosen to limit its jurisdiction in criminal matters. Aggression by the leaders of another country could therefore only really be prosecuted in Finland if they attack Finland or if the attack is otherwise targeted at Finland's interests. The most obvious scenario in which the provisions could become applicable is in fact Finland's attacking its neighbour. The Finnish state leadership could then be charged with crimes of ag-

[3] This process is described in great detail on the United Nations' website.

gression in Finland. This would most likely require the concentration of power in the hands of a very small group, which could ultimately find itself facing criminal penalties after, for example, a change of power or a lost war. In other words, Finland is actually setting an example and advocating the elimination of war of aggression from the arsenal of international politics altogether.

A country would have to be very progressive indeed to justify giving its national criminal courts universal jurisdiction over crimes of aggression. However, crimes of aggression still do not have a particularly strong status as core crimes under international law, which could also make universal jurisdiction somewhat difficult to justify from the perspective of international law. Perhaps the ICC or an ad hoc court of some kind could ultimately gain enough esteem to become an expedient forum for trials against heads of state.

Even if Russia's current leadership is unlikely to ever be brought to justice for its crimes, the status of crimes of aggression under international law is growing stronger all the time. Russia's attack has united the international community in condemning it. That is why the evolution of international criminal law should be viewed as a long-term project. I find it completely possible, although not certain, that the rate of development will now increase.

It should be pointed out, however, that the definitions of war crimes also have references to offences committed in connection with armed attacks. In the case of war crimes, this naturally refers to something slightly different, i.e. concrete military assaults rather than the initial border violation or similar. Looting of towns or other settlements in the midst of an attack counts as a war crime, as do assaults that result in loss of life or damage to the natural environment that is clearly excessive in relation to the military advantage anticipated. Aggression of this kind is one of the most typical categories of war crime cases. The link is no coincidence; war crimes and crimes against humanity often occur in connection with large-scale wars on land, and it therefore stands to reason to prohibit the instigation of wars of aggression altogether.

What about the other core crimes under international criminal law? Are other war crimes, crimes against humanity and genocide, for example, any easier to prosecute? The law in these areas is more advanced, which makes it infinitely more likely for the aggressors to be ultimately brought to justice for such crimes.

National courts are once again one possibility. Finland has followed the example of many other countries and applied the principle of universal jurisdiction to these crimes, as it is allowed to do under international law. Obstacles for trying these cases in Finland are therefore, for the most part, practical. National criminal procedures play a key role in the totality of the international criminal justice system.

It should again first be pointed out that Russian courts are unlikely to systematically come after Russian leaders for any war crimes and crimes against humanity that they may have committed, unless there is first a clear change of power. At the time of writing this article, Russia has not even admitted that it is at war but calls its assault a 'special military operation'.

While neither Russia nor Ukraine is a party to the Rome Statute that established the ICC, the Court undeniably has jurisdiction to prosecute any war crimes, crimes against humanity and genocide committed on Ukrainian territory since the Government of Ukraine declared in 2015, after the 2014 armed conflicts in Crimea and eastern Ukraine, that it would accept ICC jurisdiction with respect to these crimes. This has proven to have been a wise decision.

The Court decided in March of 2022 to launch a probe into the situation in Ukraine. 'Situation' in this context refers to a long chain of events to which the alleged offences relate. The probe covers offences committed after 21 November 2013.

It was launched after 41 countries that are parties to the Rome Statute that established the ICC petitioned the Court to begin an investigation shortly after Russia's latest assault. The ICC Prosecutor has said that he will 'immediately proceed' with the investigation. The Court has established an online portal where information about individual alleged crimes can be reported. The Court has also already sent a team to the region to begin collecting evidence.

The quality of evidence that can be obtained on any alleged crimes is always crucial in practice. This, in turn, depends on various factors, such as how well organised society is and how complex the conflict itself. In the case of the Syria/Iraq Conflict, for example, there were multiple armed forces involved, and investigators did not have access to the area controlled by ISIS, even afterwards. The situation in Ukraine is more straightforward at least in respect of the war of aggression itself. The ICC Prosecutor *Karim A A Khan* visited Ukraine and Poland in March of 2022, and he has tried to reach out to the Russian authorities to gain their support for his investigations.

Any speculation of the kinds of charges that could be brought on the basis of the war in Ukraine and against whom is probably impractical at this stage. The news media are painting a picture of indiscriminate acts of violence against innocent civilians. Russia has intimated that its goal is to destroy Ukraine completely. All this will become clear as the investigation progresses. The ICC ultimately decides whether, and whom, to prosecute. It would also be the Court itself that would issue international arrest warrants for the individuals that it wishes to hear.

The ICC's jurisdiction is secondary, which means that at least any charges brought against individual citizens of Russia or Ukraine would need to also be tried and convicted by the national courts of these countries. Both Ukraine and Russia undoubtedly have the capacity to do this. The exercise of primary jurisdiction does not preclude prosecution in the ICC, if the national proceedings are non- genuine. The Rome Statute provides for this eventuality.

The UN is constantly exploring and experimenting with new hybrids of national and international courts. This would work as long as national courts still always have primary jurisdiction. If the relevant national court system is functional, capable and able to deal with these criminal cases, special arrangements can be made to help the competent national courts to exercise their powers.[4] This model was employed, for example, in the aftermath of the Sierra Leone Civil War and in Cambodia, by setting up a Special Court to prosecute the most serious war crimes. However, not even the hybrid court model can solve the dilemma of how Russian suspects can be brought to court to answer for their crimes.

The overarching architecture of the international criminal justice system therefore consists of national authorities, courts and legal systems on the one hand and international bodies and courts delivering international justice on the other. National courts can also be seen to be acting as international courts when they prosecute the core crimes under international criminal law or attend to duties that relate to assisting the authorities of another country or, for example, the ICC. It is too early to speculate how those responsible will be brought to justice based on the current investigations. Information published in the media suggests that we should not be surprised to see charges brought for crimes other than just war crimes.

I based my article on the premise that international law is moving more and more towards condemning wars of aggression altogether. It could even be said that aggression's constituting a

[4] See, e.g., *Taru Kuosmanen*, Bringing Justice Closer. Hybrid Courts on Post-Conflict Societies. Erik Castrén Institute of International Law and Human Rights, 2007.

crime against peace is now an established fact. The current debate in the sphere of international law is in fact more focused on whether starting a war could nevertheless be justified in certain exceptional circumstances to prevent a great injustice, such as a genocide, or to secure the military support of the target of the attack for the attacker's own aspirations. States are naturally very adept at making their actions at least seem legitimate and justified.

While the idea that starting a war is against international law has gained ground, there is increasing support for interpreting crimes of aggression as crimes against peace. Although wars and armed conflicts have always been a constant in our world, the wide support received by the UN General Assembly's resolution condemning the actions of Russia shows that this kind of conduct is no longer seen as a conventional way to settle international disputes.

What makes this situation unique is the fact that Russia is a permanent member of the UN Security Council and therefore has veto power on its resolutions. Russia has a history of using its position to block resolutions disadvantageous to itself. During the Syrian civil war, Russia repeatedly vetoed the UN Security Council's efforts to condemn the actions of Syria's leadership and, for example, prohibit the use of illegal chemical weapons against its own citizens. It must be said in this context, however, that the United States have also engaged in warfare that is problematic from the perspective of international law. The Iraq War succeeded in deposing President Saddam Hussein, but the alleged weapons of mass destruction, which the United States had used as justification for the war, were never discovered.

In other words, the world is not perfect, and international law sometimes has to be flexible and bow to the interests of the superpowers. All this naturally also has implications for the current situation. Can it be that the guilty will once again go unpunished? Is it possible that we are still a long way away from bringing to justice those who break international law, or even national criminal law?

The war in Ukraine already has all the indications of becoming a real litmus test of the efficacy of not just international law but also international criminal justice. The esteem and status that they both currently enjoy could crumble if the international community fails to demonstrate their significance. This brings us to one of the most fundamental concepts of the philosophy of law: the intrinsic value of the law lies in the principles on which it is based. The instrumental value of law is completely secondary. If we stop believing that wars of aggression should be illegal or that violations of international humanitarian law matter, we will find ourselves looking at a whole new world order. We will enter a world in which everything is about the balance of power, where power is not restricted by law but by another power, and ultimately weapons.

A somewhat similar concept was discussed in connection with counter-terrorism, when there was a debate about whether torture should be allowed if it can reveal information that can help to prevent terrorist acts. The question was about compromise: should the focus be on what is useful or on what is right?

What we know about Russia's war of aggression so far appears to reflect an interpretation of the law whereby a state with power has the right to set its own rules and trust that any violations will ultimately go unpunished. Even Russia's own Criminal Code does not seem to matter to the state government and military leaders.

Russia is challenging some very fundamental principles of the European philosophy of law. The Ukrainian army's attempts to thwart the success of what is undeniably an aggressor are therefore helping to defend not only Ukraine itself but also these tenets of European and international law. National criminal law traditionally accepts self-defence against an aggressor as

justification for the use of force not only in order to protect oneself but also to protect the legal system against unlawful attacks.

In terms of the evolution of international criminal law, this is a huge challenge. The ICC was established in order to give more legitimacy to the prosecution of war crimes; the ICC is a permanent court that makes the world less reliant on the ability and willingness of the UN Security Council to set up special ad hoc war tribunals.

The Russian war – which is in fact a more accurate name for the conflict than the war in Ukraine – is a litmus test in the sense that if the ICC fails to make progress here, it will lose a considerable chunk of its credibility. Such a failure would demonstrate that the Court is only able to intervene in crimes perpetrated by suspects and defendants who are associated with a state that accepts the Court's jurisdiction or is too weak to stop it from intervening. In other words, this is a chance for the ICC to either deliver on the perhaps overly ambitious expectations that have been associated with it, or to let the world down and leave everyone once again facing the same old question: how can international criminal law be enforced and the selectiveness of international criminal justice prevented in the real world? It is probably not too far-fetched to assume that the leaders of many traditionally authoritarian countries are keeping a keen eye on how the situation unfolds. There are still plenty of motives for conflicts and war in the world.

The crumbling of the rule of law

What makes the case of Russia special and particularly significant is the fact that its decision to go to war was preceded by decades of gradual decline in democracy, the rule of law and human rights. The Russian government has severely restricted the freedom of the press, shut down non-governmental organisations as 'foreign agents', sought to repress the political opposition, assassinated or attempted to assassinate political rivals, and made life extremely difficult for sexual minorities. The government has turned the national legal system into a mechanism of such persecution, as the Council of Europe also found in the case of *Aleksey Navalny*.

Finland and the rest of Europe had since the 1990s been living in the hope that Russian society would move closer to the European model. Russia's joining the Council of Europe in 1996 was seen as a positive sign and an indication that Russia wanted to make a commitment to fundamental European values: human rights, democracy and the rule of law.

However, there was always tension in the relationship, and some argue that this led to the emergence in Russia of a dual legal state that deals differently with ordinary and what are labelled 'political' cases. The government was not prepared to relinquish its tight rein on politically sensitive matters. The rule of law could not take root in a society that lacked the historical and cultural support for the concept. The courts and authorities saw themselves as cogs in the government machinery, and coupled with the country's largely instrumental view of the law, the existing legal institutions were unable to achieve what we understand by the rule of law.[5]

A speech made by President *Putin* upon his re-election in 2013 was telling: in it he portrayed himself as a defender of conservative values against the more liberal views that had become mainstream. The change in direction was facilitated by Russia's tradition of mechanical application of the law, whereby the courts and authorities enforce any enacted legal obligations without

[5] *Muravyeva, M.* (2019), Is There Rule of Law in Russia: Revisiting the Concept and Practice. Review of Central and East European Law, *44*(3), 269–274. DOI: https://doi.org/10.1163/15730352-04403007.

questioning their content. The legislature's conservative reforms therefore went unchallenged and led to, for example, new curbs on human rights, a resurgence of traditional values and sexual repression, and the criminalisation of any attacks on Russia's national heritage. Non-governmental organisations were labelled 'foreign agents', which made it significantly more difficult for them to operate in Russia. The Constitutional Court of Russia introduced new restrictions on citing international sources of law and justified this by the superiority of the Russian constitution. This undermined the applicability of the European Convention on Human Rights (ECHR), in contravention of the signatories' obligations under the Convention.

Various scholars of Russian law have drawn attention to the emphasis given to conservatism in Russian jurisprudence and especially the interpretations of the Constitutional Court. The Court's highlighting the superiority of national laws over the ECHR and the case law of the European Court of Human Rights (ECtHR) is just one example. The Constitutional Court took the approach that, if the ECtHR when interpreting the ECHR in relation to a specific case adopts an unusual interpretation of the Convention's text, then the state in relation to which the decision is made has a right to refuse to implement the decision as it goes beyond the scope of responsibilities originally assumed by the state when the Convention was ratified.[6] There are plenty of other instances of Russia's unilaterally relaxing its legal obligations under international treaties. This has also been pointed out by the Venice Commission of the Council of Europe.[7]

Media reports suggest that the military operation in Ukraine was not the will of the Russian people, although it now appears to have found at least partial support among the public. It seems that the decision to attack was made by the president and the president alone. It is still much too early to speculate how decisions were made about the style of war, and whether responsibility for any war crimes that have been committed can be extended to the state leadership. The criminal trials held in the aftermath of the events in former Yugoslavia saw charges of war crimes and genocide being brought against, among others, the Serbian President *Slobodan Milošević*, who nevertheless died while the trial was in progress.

While it is not yet possible to say much at this stage, the course of events in Russia and its culmination in war justify pointing out that the growing authoritarianism in the country's government and the weakness of the rule of law may have contributed to making the decision to go to war possible. There are, of course, examples of democratic societies instigating wars of aggression, but the link between rising authoritarianism and the start of the war is plain to see in Russia's case.

Control of the media has enabled government-led propaganda to prepare the nation for war and paint such an evil picture of the enemy that even blatant wrongs now appear justified to the people. This is reminiscent of both the wars that led to the breakup of Yugoslavia and the Rwandan genocide. Dehumanising the enemy and portraying them as an evil aggressor with only destructive objectives is a very effective propaganda technique. In fact, it appears that the renewed appreciation of Russia's past glories goes hand in hand with real or perceived fears of attacks on the notion of Russia as an imperial, eternal power.

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[6] *Marianna Muravyeva* (2017), Conservative Jurisprudence and the Russian State. Europe-Asia Studies, 69:8, 1145–1152, DOI: 10.1080/09668136.2017.1377504.

[7] *Lauri Mälksoo,* Current developments. International law and the 2020 amendments to the Russian Constitution. The American Journal of International Law, 115:1, pp. 78–93.

The evolution of Russia will undoubtedly be the subject of many a historical and political study and interpretation.[8] I expect these analyses to find that Russia's history has long been characterised by a highly concentrated system of government, high rates of inequality and, from a European perspective, a relatively weak and undeveloped civil society.[9] Serfdom was not abolished until the 19th century. Having only just left behind a backward system of estates, the country jumped straight into soviet socialism. The society that emerged from the ruins of the Soviet Union was incapable of building internal controls on government, and the Council of Europe and other similar institutions, such as the Organization for Security and Cooperation in Europe (OSCE), were not able to do so either. Decisions on social development have been left to an increasingly select elite. The Russian economy, which is almost exclusively based on energy exports, is tightly controlled by the government and presents plentiful opportunities for corruption. Perhaps more worrying is the fact that weeding out corruption does not even seem that important to the Russian people.

Russia's interpretation of the rule of law is characterised by an almost total lack of limits on the powers of the government and very weak protections for constitutional rights, which, along with the poor standard of the criminal procedure, lower Russia's rankings in international comparisons. Russia fairs somewhat better in respect of, for example, the openness of government.

It is tempting for Europeans to see the rule of law, democracy and human rights as the holy trinity, and to believe that one cannot exist without the other two. In many ways this is true. However, it could equally be argued that this kind of a project of national conservatism can become genuinely popular with the public, especially if and when there is no background and history of a pluralistic social dialogue. Russia's ancient empire, and the role of the Russian Orthodox Church in it, provides a natural framework for a national story of greatness and Russia's right to follow rules of its own that would not be possible in smaller European countries. From a European perspective, it may be easier to look at the mutual dependencies between different countries and nations. It is these interdependencies that are also largely to thank for the entire concept of international law: the principles of modern international relations are often said to have originated in the Peace of Westphalia, which brought to a close a calamitous period of European history.

There are distant echoes of the wars that led to the breakup of Yugoslavia in Russia's current campaign. Russia is trying to justify the invasion by claiming that Ukraine is not a real nation but an artificial construct. This could be broadly interpreted as meaning that Ukraine belongs to Russia, as it has done at various times in history, especially during the Soviet era. The Russian leadership therefore feels as if Ukraine has betrayed Russia by turning to the West while Russia has expressly sought to distance itself from Europe, which it considers too secular and politically and militarily aligned with the United States. It is possible that Russia is in fact actively aiming to destroy the kind of Ukraine that dares to make political decisions about its own fate that are separate from, and contrary to, Russia's policies.

If this is how Russia sees the situation, getting to the bottom of the conflict is likely to take decades and perhaps several generations. We could have a project similar to the reconstruction

[8] See, e.g., *Timothy Snyder*, The Road to Unfreedom. Russia, Europe, America. Tim Duggan Books 2018.

[9] *Daron Acemoglu — James A. Robinson*, The Narrow Corridor. States, Societies, and the Fate of Liberty. Penguin Press 2019.

of Germany after World War II on our hands. Germany still has not come to terms with its past even though 80 years will soon have elapsed since the events of the war.

I find myself thinking once again about the huge influence that Eastern European Jewish scholars have had on the theoretical development of international criminal law. It is time to dust off their works and really focus on finding a way to make the countries of the world accept the actually very small concessions that international criminal justice and international humanitarian law require of them. The perpetual peace that *Immanuel Kant* dreamt about may not be achievable, but we could have a world in which the most heinous crimes at least can be avoided.