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Editors: Jarosław Cwiek-Karpowicz, Wojciech Lorenz

Seeking Justice: Medvedev and Mishustin, the Prime Ministers of War

Agnieszka Legucka

Szymon Zaręba

The aggression against Ukraine is a blatant violation of international law committed by the Russian Federation. Due to the political system in Russia, the decision to start it belongs to President Vladimir Putin. However, the responsibility for Russia's crimes, including the crime of aggression, also lies with the broader Russian ruling elite. Two Russian prime ministers, first Dmitry Medvedev (2012-2020) and then Mikhail Mishustin (2020-present), also bear direct responsibility. Holding them accountable for the aggression against Ukraine will be important for the future of the international legal order and European security.

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The Aggression Against Ukraine

Russia's war against Ukraine violates the norms of international law that form the basis of the international order that emerged following the Second World War. It constitutes a use of force against the territorial integrity and political independence of another state contrary to Article 2(4) of the UN Charter, and it is an armed attack entitling Ukraine to individual and collective self-defence under Article 51 of the Charter. It also contradicted the principles of the Statute of the Council of Europe and the obligations expressed, among others, in the Helsinki Final Act and the Charter of Paris for a New Europe of the CSCE/OSCE, and the Budapest Memorandum on Security Assurances.

Russia's war against Ukraine is an act of aggression, which the international community deems "the most serious and dangerous form of the illegal use of force".

However, what is most important in the context of individual criminal responsibility is that it is also an act of aggression, which the international community deems "the most serious and dangerous form of the

illegal use of force".¹ While the act of aggression may be committed by a state, it is simultaneously a grave crime for which senior state officials can be held accountable. Interestingly, in contrast to the other violations already indicated, there is currently no single legally binding instrument that defines and prohibits this act.² This is because the prohibition of aggression primarily exists in international customary law, that is, as an international obligation arising from established, general practice accepted as law by states. Evidence of the existence of such custom includes a short reference to the act of aggression as one of the challenges to international peace and security in Article 39 of the UN Charter, a number of sentences for waging aggressive war issued in trials before the international tribunals at Nuremberg and Tokyo after the Second World War, adoption of the UN General Assembly Resolution 3314 on the definition of aggression in 1974, and the establishment of the jurisdiction of the International Criminal Court (ICC) over the crime of aggression following the Kampala Review Conference in 2010. The crime of aggression—frequently termed an "aggressive war"—is also punishable under the legislation of numerous countries, including Russia, Ukraine, Belarus, and Poland.³

The most widely accepted and authoritative definitions of aggression are contained in Articles 1 and 3 of Resolution 3314 and Article 8 *bis* of the ICC Rome Statute⁴ (RS), which are identical in content. They define aggression as "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations", and give several examples of how it can be carried out (e.g., invasion, attacks on armed forces, military occupation). The ICC Elements of Crimes, which aim to clarify interpretation of the Rome Statute, add that such an act should, by its character, gravity, and scale, constitute a manifest violation of the Charter of the United Nations.⁵ Although Russia is not a party to

¹ As expressed, e.g., in the landmark UN General Assembly Resolution 3314. Definition of Aggression, adopted on 14 December 1974, UN Doc. A/RES/3314(XXIX).

² The crime of aggression is different from, e.g., the illegal use of force by states, which is prohibited by the UN Charter.

³ Article 353, The Criminal Code of the Russian Federation No. 63-FZ of 13 June 1996, as amended; Criminal Code of Ukraine, No. 2341-III of 5 April 2001, as amended; Article 122, Criminal Code of the Republic of Belarus, No. 275-Z of 9 July 1999, as amended; Article 117, Act of 6 June 1997, Penal Code, Dz.U. 1997 nr 88 poz. 553, as amended.

⁴ Although only 123 out of 193 states are parties to the Rome Statute of the ICC, together with the Kampala Amendments it is the most widely known and respected binding source of written norms on criminal responsibility for the crime in question.

⁵ See Article 8 *bis* in both International Criminal Court, "Rome Statute of the International Criminal Court" (RS) and "Elements of Crimes" (EC), <https://www.icc-cpi.int/>.

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the Rome Statute and does not consider itself bound by its provisions,⁶ the Soviet Union (to which Russia is now legally a continuing state) never seriously questioned the definition contained in Resolution 3314. In the absence of other, more authoritative sources, the aforementioned identical definitions may thus serve as a point of reference.

Even Russia's armed attack on Ukraine in 2014, during Medvedev's term in office, already met the necessary conditions for aggression.

Seen in this light, even Russia's armed attack on Ukraine in 2014, during Medvedev's term in office, already met the necessary conditions for aggression. It included the occupation and annexation of part of Ukraine's territory (Crimea), bringing about the *de facto* secession of most of Donbas from Ukraine, as a result of which two Russian-backed, so-called "people's republics" were established,

and the deployment of Russian armed forces to Crimea in violation of the agreement on the use of the military base in Sevastopol.⁷ The 2022 invasion during Mishustin's term of office was an even clearer case, as it involved virtually all forms of aggression described in Article 8 *bis* RS. In addition to the attack by armed forces on Ukrainian territory and the occupation and annexation of further parts of its territory (the Donetsk, Kherson, Luhansk, and Zaporizhzhia oblasts), it included, for example, the bombardment of Ukrainian territory by the Russian military, blockades of ports, and attacks by armed forces on the land, sea, and air forces of Ukraine.⁸

As will be proven below, individual responsibility for the crime of aggression on Ukraine lies not only with Putin as Russia's leader but also with a number of other top Russian officials, including the two prime ministers Medvedev and Mishustin, who can be regarded as personally responsible. The choice to analyse their roles in this context relates to Russia's legal system in which the prime minister holds executive powers, second only to the president. The defining trait of both Medvedev and Mishustin is their unwavering loyalty to Putin. Despite their different paths to power and distinct governing styles—Medvedev's being highly public and Mishustin's more technocratic—their actions, shaped by their roles within the system, have supported and furthered Putin's policies, directly contributing to the Russian aggression against Ukraine.

Individual responsibility for the crime of aggression on Ukraine lies not only with Putin as Russia's leader.

In the following analysis, the norms of the Rome Statute on individual criminal responsibility will be used as a point of reference, as there is no better, more comprehensive and more up-to-date set of rules. The adoption of this approach is motivated by a desire to avoid impunity for those who have committed the crime of aggression due to the lack of formal means of enforcing their responsibility. Ultimately, in order to hold these and possibly other individuals accountable, steps must be taken to implement the proposal to establish a tribunal on the crime of aggression against Ukraine,⁹ which was put forward by Ukraine and some experts in 2022 and which so far has been supported by the parliamentary assemblies of the Council of Europe, the EU, and NATO, among others.

⁶ Since Ukraine has submitted to the jurisdiction of the ICC and Russia's military actions have effects on Ukrainian territory, Russian officials can be prosecuted for war crimes, crimes against humanity, and genocide. Still, this does not apply to the crime of aggression, as the Rome Statute explicitly excludes the ICC's jurisdiction over the crime of aggression when committed by nationals of a state that is not a party to the Rome Statute, see Article 15 *bis* (5) of the Rome Statute.

⁷ Violation of Articles 8 *bis* (2)(a), 8 *bis* (2)(g) and 8 *bis* (2)(e) RS, respectively.

⁸ Violation of Articles 8 *bis* (2)(a), 8 *bis* (2)(b), 8 *bis* (2)(c) and 8 *bis* (2)(d) RS, respectively.

⁹ See, e.g., S. Zareba, "The Fight for Justice: Ukraine's Legal Steps in Its Defence Against Russian Aggression," *PISM Policy Paper*, No. 3 (211), June 2022, www.pism.pl.

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Political Careers of Medvedev and Mishustin

In Russia's power system, whether formal or informal, both Medvedev and Mishustin play an important role. Medvedev's entry into politics was closely tied to Putin, as he worked as a consultant during Putin's time in the Saint Petersburg city administration in the 1990s. By contrast, Mishustin's rise was more bottom-up, and for years Mishustin focused on modernising the Russian tax system far away from the Kremlin's political life. He became a prominent figure in politics only when he succeeded Medvedev as prime minister in January 2020.

Medvedev initially presented himself as a liberal reformer, emphasising cooperation with the West. However, his image changed during the Russia-Georgia conflict in 2008 when he signed a decree recognising Abkhazia and South Ossetia, aligning himself more closely with Russia's aggressive foreign policy. His presidency was also defined by the so-called "Putin-Medvedev switch", by which he endorsed Putin's return to the presidency in 2012, a move that led to widespread protests across Russia due to perceived political manipulation. Medvedev's popularity waned, and although he served as prime minister again from 2012 to 2020, his influence was significantly reduced, particularly following corruption allegations in 2017, when his popularity fell to just 38% by the time he resigned as prime minister in 2020. Despite this, Medvedev remains within Putin's inner circle, having been appointed as deputy chairman of the Russian Security Council, a constitutional advisory body to the president (who is its chairman) that coordinates decision-making on issues concerning national interests and security. A year after the full-scale invasion of Ukraine, in an article for the government's *Rossiyskaya Gazeta* newspaper, Medvedev wrote that "the confrontation will be very long and it is too late to tame the recalcitrant (i.e., U.S.)" and that it "will last for decades".¹⁰ This put Medvedev at the forefront of the information war with Ukraine and the West.

Mishustin's leadership style, by contrast, has been technocratic and results-driven. His expertise lies in the bureaucracy and management of state institutions, particularly in the area of tax policy. His appointment as prime minister was less about ideology and more about his ability to manage the economy and implement reforms. Mishustin has largely avoided public controversies. His work has been characterised by an efficient, low-profile management of state programmes, and his appointment as prime minister came at a time when Russia needed a stabilising, technocratic figure to manage the economy. While Medvedev was often in the public eye, Mishustin's role has been more administrative, focusing on technological solutions to state management issues.

Medvedev's and Mishustin's Involvement in Aggression

Medvedev and Mishustin are not only officials loyal to Putin but also actively involved in the preparation, coordination, and implementation of Russia's occupation of Ukraine since the annexation of Crimea in 2014. As prime minister, Medvedev organised on 31 March 2014 for the first time a Russian cabinet meeting in the newly annexed Ukrainian territory¹¹ and then oversaw the

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implementation of the annexation of part of Ukrainian territory to Russia, including as the person responsible for overseeing the activities of the Federal Ministry for Crimea Affairs, established specifically for this purpose (in existence in 2014-2015). On 8 August 2014, Medvedev issued

¹⁰ "Статья заместителя председателя Совета безопасности РФ Дмитрия Медведева, опубликованная в «Российской газете»" (by Deputy Chairman of the Security Council of the Russian Federation Dmitry Medvedev), *Rossiyskaya Gazeta*, 5 June 2023.

¹¹ "Dmitry Medvedev visits Crimea as Russia's army begins border withdrawal," *The Guardian*, 31 March 2014, <http://www.guardian.com>.

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Government Decree No. 790, approving the so-called Federal Target Programme of Social and Economic Development of the Republic of Crimea and the City of Sevastopol for the period up to 2020. It allocated almost RUB 247 billion (about \$6.8 billion at the exchange rate effective on 8 November 2014) for the construction of the bridge connecting Crimea to the Russian mainland and auxiliary infrastructure.¹²

Both politicians participated in the 21 February 2022 meeting of the Russian Security Council in the Kremlin, where they supported the proposal to recognise the independence of the so-called Donetsk People's Republic (DPR) and the Lugansk People's Republic (LPR). Then, Mishustin took an active role in the Russian invasion of Ukraine as prime minister. On 23-27 September 2022, in the occupied territories of Ukraine, Russia held what it called "referendums" on annexation.¹³ Mishustin participated in the implementation of policy to make the Russian occupation of these territories permanent. He has claimed that "the Donetsk and Lugansk people's republics, Zaporizhzhia and Kherson regions became part of Russia. The President instructed us to integrate them into Russia's common socioeconomic space and bring them to the national level in all respects. We have launched a comprehensive development programme for these regions".¹⁴ That programme included the economic development, healthcare, education, and infrastructure.¹⁵

On 21 October 2022, Mishustin was appointed head of the "Government Coordination Council on the needs of the Russian Armed Forces, other troops, military formations, and bodies", an institution set up by the president to improve the coordination of the entire system of public administration in order to meet the needs arising during what the Putin regime calls the "Special Military Operation" (SMO) in Ukraine.¹⁶ Among other things, the Council was tasked with ensuring the supply of weapons, the organisation of logistics, and the construction of military infrastructure facilities in the "new territories". From October 2022 to June 2024, the Council, chaired by Mishustin, met 20 times (initially twice a month and, from 2023, once a month or less often). The Council took care of the logistical and social security needs of SMO participants and their families. Mishustin claimed that, "we have taken measures to significantly boost production of the most in-demand weapons systems" (31 March 2023). At the 19 February 2024 meeting, Mishustin asserted that, thanks to government support in the "new territories", 18,000 facilities were "restored" there, including 6,500 residential buildings and social institutions, as well as more than 2,000 km of roads.¹⁷

On 30 May 2023, Mishustin said that the primary focus of the government's work is to integrate the "new" regions of the Russian Federation and achieve an all-Russian level of socio-economic development in them within the next eight years.¹⁸ He argued that Russia's social programmes had been extended to the newly annexed territories, claiming that, "we have extended maternity capital to the Donetsk and Luhansk People's Republics, Zaporizhzhia, and Kherson regions".¹⁹ Additionally, since April 2023 Mishustin has managed a portion of the funds allocated to the combatants in the

¹² Government of Ukraine, "Russia is building an illegal link to Crimea," 15 May 2018, <https://rusaggression.gov.ua>.

¹³ A. Legucka, M. Piechowska, "Russia Conducts Pseudo-Referendums in Ukraine," *PISM Spotlight*, No. 124/2022, 28 September 2022, www.pism.pl.

¹⁴ "Meeting of the Government Coordination Council on the needs of the Russian Armed Forces, other troops, military formations, and bodies," 19 February 2024, <http://government.ru>.

¹⁵ Правительство Российской Федерации Распоряжение от 29 мая 2023 г., № 1404-р, <http://static.government.ru>.

¹⁶ Указ Президента Российской Федерации от 21.10.2022 № 763 "О Координационном совете при Правительстве Российской Федерации по обеспечению потребностей Вооруженных Сил Российской Федерации, других войск, воинских формирований и органов," <http://publication.pravo.gov.ru>.

¹⁷ "Meeting of the Government Coordination Council ...," *op. cit.*

¹⁸ "Мишустин заявил о цели вывести новые регионы на общероссийский уровень за восемь лет," *Ведомости*, 30 May 2023, www.vedomosti.ru.

¹⁹ "Главные цифры из отчета Мишустина в Госдуме," РБК, 23 May 2023, <https://www.rbc.ru>.

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SMO.²⁰ On 15 February 2024, Mishustin signed a decree to allocate an additional RUB 18 billion to the “Defenders of the Fatherland” fund (the State Support Fund for the Participants of the SMO).²¹

As prime minister of Russia, Mishustin is also responsible for issuing legislation to support Russia’s military efforts, including Resolution No. 2515 of 29 December 2022, simplifying the import of dual-use electronic equipment into Russia, and Resolution No. 2084 of 17 November 2022, on tax and customs exemptions for critical goods imported into Russia, including categories used for warfare (electronics, metallurgy). In addition, Mishustin is co-responsible for some of the legislation issued by President Putin himself for the implementation of aggression in the security sphere and supporting the conduct of military operations. This includes, for example, regulations increasing the budget of the Ministry of Defence and military spending. As already noted, according to Russian legislation, it would not be possible to make changes in this area without Mishustin’s involvement.

During the full-scale invasion, with Mishustin as PM, Medvedev also played an important role in Russia waging warfare. On 26 December 2022, he was nominated by Putin as First Deputy Head of the Military Industrial Commission.²² In this role, he has been responsible for holding meetings with military-industry companies and creating councils and working groups within the Commission,²³ as well as the day-to-day management of its work. The first meeting of the working group of the Military Industrial Commission was on 10 January 2023, and was devoted to “monitoring the production of in-demand weapons, military and special equipment and weapons”.²⁴ On 24 January 2023, Medvedev held another group meeting at one of the largest enterprises in the Russian defence industry, the Kalashnikov Corporation in Izhevsk, where he examined samples of weapons, equipment, and technology developed and manufactured by the corporation.²⁵ According to Medvedev, Russia was increasing the production of weapons, including the latest types, based on new physical properties.²⁶ Since then, Medvedev has chaired nine working-group meetings of the Military Industrial Commission of the Russian Federation on Monitoring the Production of In-Demand Weapons, Military And Special Equipment and Weapons.²⁷

²⁰ Указ Президента РФ от 03.04.2023 N 232 “О создании Государственного фонда поддержки участников специальной военной операции „Защитники Отечества” (с изменениями и дополнениями),” 3 April, 2023, <https://base.garant.ru/>.

²¹ Правительство Российской Федерации, Распоряжение от 15 февраля 2024 г. № 358-р, <http://static.government.ru>.

²² The Military Industrial Commission is a permanent body that was established to organise state policy in the sphere of the defence industry complex, military-technical support for defence, national security, and law enforcement. It is headed by Vladimir Putin. See: “Указ Президента Российской Федерации от 26.12.2022 № 960 ‘О внесении изменений в Положение о Военно-промышленной комиссии Российской Федерации, утвержденное Указом Президента Российской Федерации от 10 сентября 2014 г. № 627, в состав Военно-промышленной комиссии Российской Федерации и состав коллегии Военно-промышленной комиссии Российской Федерации, утвержденные Указом Президента Российской Федерации от 10 сентября 2014 г. № 628’, Указ Президента Российской Федерации от 26.12.2022 № 960,” <http://publication.pravo.gov.ru/>.

²³ “Putin creates new position for Medvedev, appointing him first Deputy Chairman of the Military-Industrial Commission,” *Meduza*, <https://meduza.io>.

²⁴ “Deputy Chairman of the Security Council of the Russian Federation Dmitry Medvedev chaired a meeting of the working group of the Military-Industrial Commission of the Russian Federation on monitoring the production of in-demand weapons, military, special equipment and weapons, 10 January 2023,” Security Council of the Russian Federation, <http://www.scrf.gov.ru>.

²⁵ “Medvedev: This year, Russian military-industrial complex enterprises will supply thousands of weapons for the needs of the RF Armed Forces,” *Top War*, 24 January 2023, <https://en.topwar.ru>.

²⁶ “Medvedev: Russia is increasing production of the most powerful weapons, including those based on new physical principles,” *Top War*, 11 December 2022, <https://en.topwar.ru>.

²⁷ See: “Совет Безопасности Российской Федерации (Security Council of the RF),” <http://www.scrf.gov.ru/>.

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Medvedev was also responsible for the control of the process of recruitment of contract servicemen into the Russian army. According to Medvedev, thanks in part to his efforts, every day in October 2023 more than 1,600 individuals were signing contracts for service in Ukraine.²⁸ On 1 December 2023, at a meeting about the reconstitution of the Armed Forces of the Russian Federation,

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Medvedev noted that from 1 January to 1 December of that year, more than 452,000 troops had been recruited for military service.²⁹

During the war in Ukraine, Medvedev has become one of Russia's leading politician-propagandists. On a Telegram channel he set up for this purpose, he rallied Russians to the military effort by comparing the ongoing war to the Great Patriotic War (World War II). He has repeatedly threatened not only Ukraine but also the West with nuclear war unless NATO countries bow to Russia and Putin's demands. He negated Ukraine's existence as a sovereign state and stated: "as long as I'm alive, I'll do anything I can to make them disappear". He threatened to seize Ukrainian cities, including Kyiv and Odesa. He argued that "Ukraine is Russia", denying Ukraine's right to a sovereign existence. Medvedev stated that he believes the military operation in Ukraine should end with Ukraine's complete surrender. He argued that "demilitarisation of the country", as well as "the international community's recognition of the *Nazi* nature of the political regime in Kyiv and the forced *denazification* of all authorities in the former Ukraine" are needed.

Legal Assessment

In the case of aggression, unlike other crimes, the perpetrator must be a person "in a position effectively to exercise control over or to direct the political or military action of a State" that has committed the act of aggression.³⁰ In this respect, it should be stressed that the position of prime minister in Russia remains one of the most important state functions and has considerable powers. The prime minister leads the government and organises its work, represents the government externally, presides over its meetings with a casting vote, signs all governmental acts, including resolutions and orders, assuming political responsibility for their content. This person also temporarily performs the duties of the president if the latter is incapacitated and is formally the second in command of the State. Following the constitutional changes of 2020, the formal status of the Russian prime minister has been weakened, in favour of the president, but it still remains substantial. The Russian prime minister is personally responsible for the functioning of civilian ministries, including determining the direction of their activities, supervising and regulating them, and determining their budget, although technically these decisions are taken by the whole government.³¹ He exerts strong influence on Russian state apparatus, especially in the "civilian" sectors that support the war effort, and both Medvedev and Mishustin have had wide latitude to shape state policy.

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²⁸ Telegram: Contact @medvedev_telegram.

²⁹ "Заместитель Председателя Совета Безопасности Российской Федерации Дмитрий Медведев провел совещание по вопросам доукомплектования Вооруженных Сил Российской Федерации в ходе рабочей поездки в Новосибирск, December 1, 2023," <http://www.scrf.gov.ru>.

³⁰ See Article 25 (3 *bis*) RS. See also Article 8 *bis* EC.

³¹ The analysis in this and the preceding chapter is based on the Constitution of the Russian Federation of 12 December 1993, as amended up to 2014; the Constitution of the Russian Federation of 12 December 1993, as amended until 2020; the Federal Constitutional Law No. 2 of 17 December 1997 on the Government of the Russian Federation; and the Federal Constitutional Law No. 4 of 6 November 2020 on the Government of the Russian Federation, <http://ips.pravo.gov.ru>.

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In order to establish a person's responsibility for the crime of aggression under the Rome Statute, it is also necessary to determine the form of the perpetrator's participation in the crime, that is, whether they planned, prepared, initiated, or executed an act of aggression.³²

Medvedev, as prime minister took active measures to implement the annexation of part of Ukrainian territory to Russia.

As indicated above, in the case of Medvedev, as prime minister he took active measures to implement the annexation of part of Ukrainian territory to Russia and oversaw the activities of the Federal Ministry for Crimea Affairs established for this purpose. These actions exhaust the definition of the perpetration of aggression under Article 25(3)(a) RS.

Moreover, although he could have taken action to try to remove the heads of the "power ministries" from their posts, he did not do so, even though they were carrying out Russia's aggression against Ukraine in 2014 and he must have known that. In this respect, he may be considered as a person who contributed to the commission of the crime of aggression, in accordance with Article 25 (3)(d) RS. As deputy chairman of the Russian Security Council, he presided over a number of its meetings and influenced key decisions regarding the invasion, military occupation, and the annexation of parts of Ukraine. This is an additional argument for considering him as one of the persons who committed the crime of aggression within the meaning of Article 25(3)(a) of the Statute. Another reason is his direct involvement in actions aimed at consolidating Russian control and extending its authority over the occupied Ukrainian territories. As first deputy head of the Military Industrial Commission, Medvedev also was the key person responsible for creating state policy on the functioning of the military-industrial complex, the core of the Russian war machine. Although he was only the deputy head, he actually directed much of the work of the commission because the head, who was formally Putin, greatly relied on Medvedev to carry out related tasks. It can therefore be concluded that he aided and abetted the commission of the crime of aggression, including by providing the means for its commission, which fulfils the criteria of Article 25(3)(c) RS. Finally, Medvedev may also be considered to have incited or induced the crime of aggression against Ukraine through his repeated calls for Russian citizens to join the armed forces and his propaganda activities aimed at denying Ukrainian statehood and undermining Ukraine's territorial integrity and political independence. He therefore fulfils the conditions of Article 25(3)(b) RS.

Medvedev also was the key person responsible for creating state policy on the functioning of the military-industrial complex, the core of the Russian war machine.

Mishustin also actively supported the Russian military effort, particularly in the economic and administrative spheres. Not only did he secure financial resources and maintain the economic stability of the state, but in his role as chairman of the Government Coordination Council he was responsible for coordinating activities that directly contributed to improving Russia's military

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capabilities, such as the supply of arms or the construction of military facilities and logistics. He therefore aided and abetted or otherwise contributed to the commission of the crime of aggression, including the provision of the means to commit it, as Article 25(3)(c) RS requires. In addition, Mishustin personally

directed many activities related to the implementation of the administration of Ukrainian territories and their annexation to Russia. And, as a member of the Russian Security Council and President Putin's innermost circle of advisors, he was involved in the formulation of key decisions regarding the invasion, military occupation, and annexation of parts of Ukraine. He can therefore also be

³² Articles 8 *bis* (1) RS and EC.

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considered as one of the perpetrators of the crime of aggression within the meaning of Article 25(3)(a) RS.

Finally, in order for a person to be held criminally responsible, it is also necessary to prove intentionality, that is, that the person committed certain acts with knowledge and intent.³³ The perpetrator must be aware of the facts constituting a manifest violation of the UN Charter, but does not have to make his own assessment of the lack of legality or the flagrant nature of the violation.³⁴

Medvedev must have known that Russia's actions were regarded as aggression and a violation of the UN Charter, *inter alia*, by the UN General Assembly.

In the case of the military actions taken by Russia in 2014, as prime minister Medvedev must have had knowledge of the adoption and the main content of, among others, the resolutions of the OSCE and Council of Europe parliamentary assemblies,³⁵ which explicitly characterised the Russian actions as aggression (and in the case of the latter, also a violation of the UN

Charter). The same is valid for the full-scale invasion in 2022, in which case, as deputy chairman of Russia's Security Council, Medvedev must have known that Russia's actions were regarded as aggression and a violation of the UN Charter, *inter alia*, by the UN General Assembly³⁶ and by the Council of Europe Parliamentary Assembly,³⁷ as well as in numerous sanctions packages against Russia adopted by, *inter alia*, the European Union and the United States. The latter, in particular, have often been the subject of Security Council deliberations. By virtue of his position, Mishustin must also have been aware that the actions carried out by Russia were characterised as such by the above-mentioned international bodies and in numerous sanctions packages, the effects of which Mishustin sought to counteract.

Mishustin must also have been aware that the actions carried out by Russia were characterised as such by the international bodies and in numerous sanctions packages.

Conclusions and Recommendations

Responsibility for the Russian aggression against Ukraine should not be limited to Vladimir Putin, as this is not just "Putin's war", but one that has been directly supported by the Russian elite and the

Responsibility for the Russian aggression against Ukraine should not be limited to Vladimir Putin, as this is not just "Putin's war", but one that has been directly supported by the Russian elite and the passive majority of Russians.

passive majority of Russians. Medvedev and Mishustin are among the people personally most responsible for the crime of aggression against Ukraine. Despite the differences in their roles in Russia's political system and constitutional changes when they were in power, both Medvedev and Mishustin have shaped state

³³ Article 30 RS. It is also necessary to establish that there are no grounds for excluding criminal responsibility (e.g., a mental disease, acting in self-defence)—see Articles 31-33 RS. It does not appear possible to prove the existence of any of these in the case of Medvedev and Mishustin, so they will not be discussed in detail.

³⁴ Article 8 *bis* (2) and (4) EC.

³⁵ OSCE Parliamentary Assembly "Resolution on Clear, Gross and Uncorrected Violations of Helsinki Principles by the Russian Federation," 1 July 2014, www.osce.org and Parliamentary Assembly of the Council of Europe, Resolution 1988 (2014) "Recent developments in Ukraine: threats to the functioning of democratic institutions," 9 April 2014, www.coe.int.

³⁶ United Nations General Assembly, Resolution A/RES/ES-11/1, 2 March 2022, www.un.org.

³⁷ Parliamentary Assembly of the Council of Europe, *Resolution 2433 (2022), Consequences of the Russian Federation's continued aggression against Ukraine: role and response of the Council of Europe*, 27 April 2022 and *Resolution 2482 (2023), Legal and human rights aspects of the Russian Federation's aggression against Ukraine*, 26 January 2023, www.coe.int.

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policy with regard to numerous issues related to the implementation of the Russian occupation of Ukraine, the annexation of part of its territory, and the support of the military effort.

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The potential for punishment of such individuals depends on the circumstances. In the event of the collapse of Putin's regime in Russia, the removal of the current elite from power and a thorough reform of the judiciary, it would be possible for them to be punished by courts in Russia itself on the basis of current Russian criminal law, since, as mentioned, this also prohibits the initiation and waging of aggressive wars. Depending on

the legal classification, though, it would then be possible to sentence them to a maximum of 15-20 years in prison. The key problem, however, is that the end of the Putin regime is not yet in sight, so this would mean a postponement of justice indefinitely.

Although the bringing to justice of those responsible for aggression is also provided for in the criminal codes of other countries, including Poland, individual actions by states in this direction would most likely not be effective. Leaving aside the difficulties of apprehending the individual persons sought, proceedings before national courts would raise the possibility of violating norms concerning the immunities of the highest state functionaries. Under international law, they protect the president, the prime minister, and the foreign minister³⁸, but some national courts have also applied it to defence ministers, among others.³⁹ This would mean that it could be difficult to hold accountable some Russian officials who effectively control or direct Russia's political or military actions, and paradoxically mostly those who had the most influence on the decision to launch and carry out the aggression against Ukraine.

A solution to the problems identified would be the establishment of an international tribunal for the crime of aggression in Ukraine, along the lines of other tribunals operating in such cases, such as the Nuremberg and Tokyo international military tribunals. It could begin its activities regardless of the continuation of Putin's regime, and, depending on its statute, it could impose longer sentences than those provided for in national legislation, while at the same time its activities would not conflict with the personal immunities of top state officials. This is because the practice of international courts generally indicates that personal immunity does not apply before international courts and tribunals, provided that they are "sufficiently international".⁴⁰ The establishment of a tribunal is all

A solution to the problems identified would be the establishment of an international tribunal for the crime of aggression in Ukraine.

³⁸ See, e.g., ICJ, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment of 14 February 2002, ICJ Reports 2992, p. 3 et seq.

³⁹ See, e.g., *Re General Shaul Mofaz (Minister of Defence of Israel)*, Bow Street Magistrates' Court, United Kingdom, judgment of 12 February 2004, reproduced in *International and Comparative Law Quarterly* 2004, vol. 53, Issue 3, p. 771; *Re Bo Xilai (Minister for Commerce and International Trade of China)*, Bow Street Magistrates' Court, United Kingdom, judgment of 8 November 2005, reproduced in *International Law Reports* 2006, vol. 128, p. 713; *Association Fédération nationale des victimes d'accidents collectifs (Minister of Defence)*; Court of Cassation, Criminal Chamber, France, judgment of 19 January 2010, reproduced in *Bulletin des Arrêts, Chambre criminelle*, 2010, No. 1, p. 41.

⁴⁰ In the *Arrest Warrant* case (cited above), the ICJ stated that even an incumbent or former minister of foreign affairs could face criminal action "before certain international criminal courts, where they have jurisdiction", mentioning the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the ICC. This reasoning was also applied in a number of decisions of the ICC (e.g., on Sudan's president Al-Bashir) and by the Special Court for Sierra Leone in its decision on the immunity of Liberia's president, Charles Taylor, see *Special Court for Sierra Leone, Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-I, Appeals Chamber, Decision on immunity from jurisdiction, 31 May 2004*.

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the more important in the context of discussions on possible peace negotiations and an end to the war in Ukraine, as it would not allow the international order based on international law to be undermined and would prevent a dangerous signal being sent that aggression can go unpunished.

The chances of gaining broad, universal support for the creation of a separate UN tribunal for crimes of aggression against Ukraine are limited by the scepticism of a significant number of developing countries enjoying remarkable voting power in the UN General Assembly. Meanwhile, the adoption of an appropriate resolution by this organ would be necessary, given the impossibility of establishing such a tribunal through the UN

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Security Council resolution due to the certain exercise of Russia's veto. However, such a tribunal could operate under the Council of Europe, as an organisation with strong authority to ensure respect for the rule of law and human rights in the European dimension. The alternative options for establishing it under the auspices of other organisations seem less favourable. Given that the EU's membership includes far fewer states of the continent, the tribunal's "sufficiently international" profile and legitimacy could be questioned, and in the OSCE it would not have been possible to build

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the consensus needed to make this happen because of the inevitable refusal to support any decision by Russia, and possibly also Belarus. The fact that Russia is not a member of the Council of Europe (it has been expelled) need not be an obstacle to the establishment of such a court—the Nuremberg and Tokyo tribunals were also established without the direct participation of the states whose citizens committed aggression

before and during the Second World War. It would also be advisable to create the possibility for third countries that are not members of the Council to join such a court, which would make its support cross-regional and further enhance its legitimacy.

For the time being, the International Centre for the Prosecution of the Crime of Aggression (ICPA) against Ukraine, established in 2023 under the aegis of the EU, should continue its active investigations until a dedicated tribunal is established, as it will then be able to transfer the evidence it has collected to the newly established body. Poland's continued cooperation with the ICPA and participation in the Joint Investigation Team (JIT) established to prosecute international crimes committed in Ukraine are essential. It would be also useful to draw up, together with other countries opposed to the aggression against Ukraine, a list of those potentially responsible for it before the future tribunal, including the two prime ministers, whose involvement has been analysed above. Also, using diplomatic means together with such countries and the EU to try to convince some Council of Europe member states seemingly reluctant to support it, such as Armenia, Bosnia and Herzegovina, or Türkiye, would be advisable.