

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2207](#): I demand the Scottish Parliament create a pilot court to try Russian war criminals with Ukraine, lodged by Sviatoslav Rozenko

Brief overview of issues raised by the petition

The petition calls for the Scottish Government to establish a pilot court to try Russian war criminals in cooperation with Ukraine and international bodies.

The petitioner states that this would make Scotland a centre of international justice, ensure punishment for the guilty, protection of victims and adherence to international law.

They go on to state that international tribunals, including the International Criminal Court in The Hague, and Ukrainian national courts are physically and procedurally unable to efficiently handle all cases, especially against mid- and lower-level command personnel. Therefore, Ukraine needs partners to transfer some cases to expedite justice and protect victims' rights.

Universal jurisdiction

The [principle of universal jurisdiction](#) gives countries jurisdiction over crimes against international law (including war crimes, torture, crimes against humanity and genocide) even where the person is not a national of that country or where the crime occurred elsewhere. It is intended to be used where the state where the crimes were committed is unable or unwilling to conduct an effective investigation and trial.

The UK Government published a [Note on the investigation and prosecution of crimes of universal jurisdiction](#) in 2018. While much of this is specific to the process within England and Wales, a section is included which refers to Scotland (pp 5-6).

It notes that Scottish courts have recognised the concept of universal jurisdiction under common law, and that it also has universal jurisdiction by virtue of some UK statutes enacted prior to the Scotland Act 1998 coming into force (including the 1949 Geneva Conventions and the 1984 UN Convention against Torture).

It states that:

"If an allegation of war crimes were to be made against any individual in Scotland, or anticipated as visiting Scotland, the Specialist Case Division of PSoS [Police Scotland] would seek direction and guidance

from the Specialist Casework Division of COPFS [Crown Office and Procurator Fiscal Service].” [emphasis added]

The Note highlights that the Lord Advocate has not issued specific guidance in relation to the investigation of war crimes, but that prosecutors are required to comply with the [Scottish Prosecution Code](#). Therefore, proceedings should only be initiated where there is sufficient evidence and there is a public interest in doing so.

The Center for Constitutional Rights (CCR) [Factsheet on universal jurisdiction](#) provides details of actions that the CCR and their partners have initiated in Canada, France, Germany, Spain and Switzerland. Some of these have involved actions against former leaders or high-ranking officials who were either in, or due to visit, the country in which the action was raised.

In Germany, a complaint was brought on behalf of 12 torture victims (12 Iraqi citizens who were held at Abu Ghraib prison and one Guantánamo detainee) and in Spain an action was raised in terms of alleged torture and abuse of four former Guantánamo detainees. It does not state in these actions whether the defendants were due to visit the countries.

The CCR Factsheet states that neither the International Criminal Court (ICC) nor the international courts and tribunals have sufficient resources to investigate or prosecute all alleged perpetrators. They go on to note that the Office of the Prosecutor of the ICC had indicated that there was a “risk of an impunity gap”, meaning some human rights violators may fall through the legal cracks, unless “national authorities, the international community, and the ICC work together to ensure that all appropriate means for bringing other perpetrators to justice are used”.

International Criminal Court

The [International Criminal Court \(ICC\)](#) has jurisdiction where genocide, crimes against humanity or war crimes were committed after 1 July 2002 and the following applies:

- the crimes were committed by a State Party national, or in the territory of a State Party, or in a State that has accepted the jurisdiction of the Court; or
- the crimes were referred to the ICC Prosecutor by the United Nations Security Council (UNSC) pursuant to a resolution adopted under chapter VII of the UN charter.

The ICC can only investigate or prosecute where states are unable or unwilling to do so themselves.

The ICC has an ongoing investigation in Ukraine which opened on 2 March 2022. The focus of the investigation is alleged crimes committed in the context of the situation in Ukraine since 21 November 2013.

There are six defendants listed as part of this investigation, who are all still at large. They are:

- Maria Alekseyevna Lvova-Belova, the Commissioner for Children's Rights in the Office of the President of the Russian Federation
- Sergei Ivanovich Kobylash, Lieutenant General in the Russian Armed Forces, who at the relevant time was the Commander of the Long-Range Aviation of the Aerospace Force
- Sergei Kuzhugetovich Shoigu, Minister of Defence of the Russian Federation at the time of the alleged conduct
- Viktor Nikolayevich Sokolov, Admiral in the Russian Navy, who at the relevant time was the Commander of the Black Sea Fleet
- Valery Vasilyevich Gerasimov, Chief of the General Staff of the Armed Forces of the Russian Federation and First Deputy Minister of Defence of the Russian Federation at the time of the alleged conduct
- Vladimir Vladimirovich Putin, President of the Russian Federation.

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The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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