

The indictment of Vladimir Putin for crimes committed on his orders in Ukraine is a key issue at this conference and for the world as a whole. The brutal attempted murder of the Ukrainian nation and the likely resulting suicide of the Russian Federation stains the history of our century.

I want to thank the Institute for this important event and my colleagues Dominika Natasha and Jacob my collaborators in preparing this presentation, for which I alone am responsible.

This afternoon I want to do three things.

1. Pick up some themes of the conference
2. Discussion of Head of State personal and functional immunity of leaderships
3. To point more widely at the use of the practice of states in the UN War Crimes Commission for Ukraine.

Some themes:

First: themes we have to talk about Iraq. Most of the world thinks that it is absurd self-righteous and racist to pursue Russia in the courts but to ignore the illegal American British invasion of Iraq whose casualties and impact are vast.

In Poland actually we can see a continuing in WW2 legal action by the Polish government in the London and the Communist led government of the later 1940s.

Head of State immunity: If you have your devices I would ask you to look up UNWCC.org

On the one hand we can accept the view of the International Court of Justice that it is well established that Heads of State are immune from legal action by other states for any actions they may carry out.

On the other hand the UK House of Lords had a different view, arguing that the UK could prosecute Chile's Pinochet for his actions in office. The United States and Canada have legislated against the Venezuela President Maduro. The EU and states have various sanctions and corruptions based laws targeting senior officials.

I want however to concentrate on the ICJ and will demonstrate that it is false and that presumably the ICJ was unaware of the cases I will present.

The personal and functional immunity of Heads of State and senior officials from prosecution is controversial in statutory international criminal law, in state practice and in customary international criminal law.

The International Law Commission has had exhaustive and inconclusive debates and an acute shortage of state law and practice.

However, in 1948 the British Government published an analysis of the ongoing war crimes trials and the international diplomatic body – the United Nations War Crimes Commission. The UNWCC. Its Chairman Sir Cecil Hurst had been President of the International Court of Justice.

In Chapter 10 of this book by a senior British judge it is explained with formal references to the Commission's meetings and decisions it is recorded that the Allies supported indictments against a Head of State.

The German Head of State, Adolph Hitler, it was publicly recorded in 1948 had been indicted by Czechoslovakia, by Poland and by Belgium.

The Commission listed Hitler and his officials as Accused War Criminals subject to arrest by its 16 member states. The former President of the ICJ Sir Cecil Hurst presided over the Commission's meetings and it his signature that can be found on the minutes of the Commission throughout 1944.

Sir Cecil Hurst was a member of the Permanent international court at the Hague from 1929 until 1945. That is – held this office while Chairing the UN War Crimes Commission. From 1934-1936 Sir Cecil Hurst was President of the international court.

The minutes that Sir Cecil Hurst a serving member of the international Court, signed show that

The United States of America endorsed these national indictments of Hitler.

The United Kingdom endorsed these indictments of Hitler.

France endorsed these indictments of Hitler.

India endorsed these indictments of Hitler.

China endorsed these indictments of Hitler.

The Netherlands endorsed these indictments of Hitler.

Norway endorsed these indictments of Hitler.

Luxemburg endorsed these indictments of Hitler.

Greece endorsed these indictments of Hitler.

Yugoslavia endorsed these indictments of Hitler.

The History of the Commission published by His Majesty's Stationary Office in 1948 which discusses these decisions does not appear to have been noticed by the ICJ or other legal and historical scholars including the International Law Commission. It was written by the English Law Lord Wright. The minutes of the Commission in government archives have not been made use of.

For a decade the UNWCC minutes have been available online at the Legal Tools cite of the ICC Prosecutors Office. For some 5 years the hundreds of pages of indictments of Hitler made by Belgium, Czechoslovakia and Poland have been publicly available and indeed they are held by the Pilecki Institute. They have also been available at my website unwcc.org

In 2017 the Associated Press published that my book on this organization showed that at the time of his death Adolph Hitler was an indicted war criminal.

My website carries a copy of one the charge sheets against him.

None of this factual information has influenced the debates of the ICJ and the ILC or produced enquiries from any legal body.

The facts are inconvenient to some, challenge received wisdom and are an example of group-think.

For those anxious to find legal authority to indict Vladimir Putin and other leaders who have invaded other states, the Hitler Indictments are a rich source of law and state practice.

The states mentioned above endorsed the charges brought against Hitler by Czechoslovakia, by Poland and Belgium which were developed in considerable detail.

Approved Charges against Hitler and his government included International Law, drawn from the Hague Conventions and from the Committee on Responsibilities at Versailles.

Charges also drew on the Domestic Legislation of the Czechs, Poles and Belgians. Each of these governments in exile in London had passed laws on war crimes in 1943 that they then put to use.

Crimes included the creation of illegitimate courts, murder and systematic terrorism including the murder of the Jews.

It is open to friends of Ukraine to cross reference the crimes of which Hitler was accused of with those alleged against Vladimir Putin and his officials.

The documents are publicly available.

It is open to friends of Ukraine to seek the endorsement for such indictments from the states listed above, individually and collectively in the organisations to which they belong. Four are now permanent members of the UN Security Council. Many are members of NATO and the European Union.

The state practice of these nations was to support the indictment of the German Head of State and thereby the use of the laws used in those indictments. These same states need now to explain to Ukraine whether they support the use of such practice today.

Let us look in a little more detail at these indictments and the work of the UNWCC on the website.