

## Is a war crimes tribunal in Putin's future? | Column

Historically, most sitting heads of state have avoided legal accountability for their actions. Yet, this has been changing.



Russian President Vladimir Putin chairs a meeting with members of the government via teleconference in Moscow, Thursday, March 10, 2022. (Mikhail Klimentyev, Sputnik, Kremlin Pool Photo via AP) [ MIKHAIL KLIMENTYEV | AP ]

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In response to Russian forces shelling a maternity hospital in Mariupol in early March, Ukrainian President Volodymyr Zelenskyy declared that Russian President Vladimir Putin and other Russian leaders “will definitely be prosecuted for complicity in war crimes ... (and) ... will be hated by Russian citizens.” British Prime Minister Boris Johnson agreed tweeting, “There are few things more depraved than targeting the vulnerable and defenseless,” adding that Putin will be held “to account for his terrible crimes.” And Wednesday, after remarks at the White House, President Joe Biden said bluntly: “I think he is a war criminal.”

Voices from around the world have called for judicial accountability for the war crimes committed by Putin in his unprovoked war in Ukraine. War crimes investigations are already underway.



William Felice [ UNKNOWN | Photo: Courtesy ]

Forty-five out of the 57 members in the Organization for Security and Co-operation in Europe (OSCE) defied Russia and approved plans in March to dispatch a team of OSCE experts to document potential war crimes. Incidents already documented include Russian's targeting of schools and hospitals in residential areas inside Ukraine with missiles, bombs and artillery. Russia is also accused of using cluster munitions and thermobaric rockets, both prohibited under international arms treaties.

The UN Human Rights Council voted to establish a commission to investigate violations committed by Russia's military invasion of Ukraine. The mandate of the independent international Commission of Inquiry includes investigating all alleged rights violations and abuses and recommending accountability measures. In addition, 70 Human Rights experts affiliated with the UN's Office of the High Commissioner for Human Rights have articulated the long-lasting consequences from Russian aggression for all human rights in Ukraine, including the forced displacement of millions and the destruction of essential infrastructure for water, food, education and health care.

The International Court of Justice (ICJ) in The Hague held a hearing on Ukraine's request to order Russia to “immediately suspend the military operations” launched in February arguing that Russia is already committing widespread war crimes and “resorting to tactics reminiscent of medieval siege warfare in its military onslaught.”

But, perhaps the most significant accountability action toward Putin personally was taken by Karim Khan, chief prosecutor at the International Criminal Court (ICC). Khan launched an ICC investigation into all these alleged atrocity crimes committed by Russia in Ukraine. The ICC is the only global tribunal that has the jurisdiction to hold individuals, including army soldiers, rebel fighters and heads of state, accountable for war crimes, crimes against humanity, aggressive war, and genocide. Will Putin eventually face an ICC War Crimes Tribunal? Is this something he should fear?

While 123 countries have ratified the ICC Statute and accept ICC jurisdiction over war crimes, neither Russia nor Ukraine has taken this step. Yet, nonmembers may accept the court's jurisdiction over a defined range, which Ukraine has done twice. As a result of this request from the Ukrainian government, the ICC now exercises jurisdiction over anyone suspected of abuses within Ukraine, regardless of their nationality, which includes Ukrainians, Russians and Putin.

In addition, Khan received referrals from 39 countries, nearly one-third of ICC's members, to proceed with opening an investigation of war crimes and crimes against humanity in Ukraine. This was an historic “mass referral” and could be a demonstration of the global community's resolve to prosecute Putin and his war crimes.

If the ICC investigation uncovers significant crimes, Khan could in theory charge Putin himself with war crimes and crimes against humanity. Historically most sitting heads of state have avoided legal accountability for their actions. Yet, this has been changing.

Dictators and heads of state — from Augusto Pinochet (Chile) to Slobodan Milosevic (former Yugoslavia) to Charles Taylor (Liberia) to Omar al-Bashir (Sudan) — have faced criminal trials for brutality toward their citizens. It is obviously a political minefield and an uphill battle to bring powerful autocrats to justice. But, as vividly demonstrated at the Nuremberg Tribunal, such a legal process striving towards justice is exactly what separates liberal democracies from dictatorships and fascist regimes.

One of the highlights of my 30-year teaching career, was to be able to take my international law students to attend the war crimes tribunal of Charles Taylor, the former president of Liberia, in The Hague. This head of state was convicted of war crimes including rape, torture and the murder of women and children. After observing the sentencing of Taylor, one of my students wrote me the following: “Oftentimes, international law is criticized for being weak and spineless due to its lack of enforcement mechanisms and lack of international consent. However, Charles Taylor's sentencing of 50 years serves as an apt repudiation of those criticisms. ... Personally to witness this historic occasion fosters an appreciation for humanity at large because it seems that a global citizenry is finally being established that respects the intrinsic value of the human being.”

The global community should support the ICC's judicial proceedings on war crimes in Ukraine and once again affirm the “intrinsic value of the human being.”

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