

Should Russia's President Putin be charged with war crimes?

What they said...

'He [Putin] is a war criminal ... He should be held accountable'

United States president, Joe Biden

'This [condemnation] is hardly acceptable from a president of the United States, a country that has committed well-known crimes in recent times'

Kremlin spokesman, Dmitry Peskov

The issue at a glance

On February 24, 2022, Russian forces invaded Ukraine.

On February 28, 2022, Karim Ahmad Khan, a prosecutor for the International Criminal Court, announced that he would begin an investigation into alleged war crimes committed by Russian forces in Ukraine.

<https://www.theguardian.com/world/2022/feb/28/ukraine-russia-belarus-war-crimes-investigation-the-hague>

On March 15, 2022, in apparent response to a reporter's question, United States president, Joe Biden, stated that Russia's president, Vladimir Putin, was a war criminal.

<https://www.politico.com/news/2022/03/16/biden-russian-president-vladimir-putin-war-criminal-00017896>

On March 15, 2022, the United States Senate passed a resolution unanimously declaring Russia's leader

Vladimir Putin a war criminal. <https://www.reuters.com/world/us/us-senate-unanimously-condemns-putin-war-criminal-2022-03-15/>

There has since been extensive debate around whether President Putin has committed war crimes and whether, if that is the case, he will ever be charged and brought before the International Criminal Court to be tried for this offence.

Background

The information below is an abridged version of that published in the BBC 'Ethics guide'. The BBC's guide has been archived and is no longer updated. It can be accessed at

https://www.bbc.co.uk/ethics/war/overview/crimes_1.shtml

War crimes

At the heart of the concept of war crimes is the idea that individuals can be held criminally responsible for the actions of a country or its soldiers.

War crimes and crimes against humanity are among the gravest crimes in international law.

They are considered so serious that there is no period of limitation for such crimes - which means that those who commit them can be prosecuted and punished no matter how much time has elapsed since the crimes were committed.

Historical note

The concept of war crimes is a recent one. Before World War II, it was generally accepted that the horrors of war were part of the nature of war, and recorded examples of war crimes go back to Greek and Roman times.

Before the twentieth century armies frequently behaved brutally to enemy soldiers and non-combatants alike - and whether there was any punishment for this depended on who eventually won the war.

Commanders and politicians usually escaped any punishment for their role in war - or, if they lost, were summarily executed or imprisoned.

There was no structured approach to dealing with 'war crimes' nor any general agreement that political and military leaders should take criminal responsibility for the acts of their states or their troops.

Attitudes changed during World War II when the murder of several million people - mainly Jews - by Nazi Germany, and the mistreatment of both civilians and prisoners of war by the Japanese, prompted the Allied powers to prosecute the people they believed to be the perpetrators of these crimes.

These trials provide the main precedents for cases being heard by tribunals in this century, among them the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague. From 2002, trials of individuals charged with war crimes have been conducted before the International Criminal Court (ICC) in The Hague. https://en.wikipedia.org/wiki/International_Criminal_Court

Victor's justice

People are usually only tried for war crimes if their country loses the war - a victorious nation rarely tries its own people for war crimes - with the result that war crimes trials can look like revenge trials and be seen as acts of injustice themselves.

But this is not always the case - several Americans were tried for war crimes committed in the Vietnam conflict, and the war crimes trials relating to conflict in the former Yugoslavia is likely to be a significant exception to this tradition.

What acts are war crimes?

War crimes are defined by the Geneva Conventions, the precedents of the Nuremberg Tribunals, an older area of law referred to as the Laws and Customs of War, and, in the case of the former Yugoslavia, the statutes of the International Criminal Tribunal in The Hague (ICTY).

War crimes fall into four groups (if genocide is included)

1. Crimes against peace (Planning and preparing for an illegal war)

- planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances
- participation in a common plan or conspiracy for the accomplishment of any of the above

2. War crimes (crimes committed during a war against non-combatants and captured combatants)

Violations of the laws or customs of war, including:

- Atrocities or offences against persons or property, constituting violations of the laws or customs of war
- murder, ill treatment or deportation to slave labour or for any other purpose of the civilian population in occupied territory
- murder or ill treatment of prisoners of war or persons on the seas
- killing of hostages
- torture or inhuman treatment, including biological experiments
- plunder of public or private property
- wanton destruction of cities, towns or villages
- devastation not justified by military necessity

3. Crimes against humanity

Atrocities and offences committed against any civilian population, before or during the war, including:

- murder
- extermination
- enslavement

- deportation
- mass systematic rape and sexual enslavement in a time of war
- other inhumane acts
- persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

4. Genocide

Genocide is considered one of the most severe crimes against humanity. It means the deliberate attempt to destroy a national, ethnic, racial, or religious group.

The term was coined in 1943 by the Jewish-Polish lawyer Raphael Lemkin who combined the Greek word 'genos' (race or tribe) with the Latin word 'cide' (to kill).

After witnessing the horrors of the Holocaust - in which every member of his family except his brother and himself was killed - Dr Lemkin campaigned to have genocide recognised as a crime under international law. His efforts led to the adoption of the UN Convention on Genocide in December 1948, which came into force in January 1951.

Definition of genocide

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- killing members of the group
- causing serious bodily or mental harm to members of the group
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- imposing measures intended to prevent births within the group
- forcibly transferring children of the group to another group

Individuals are chosen as victims purely, simply, and exclusively because they are members of the target group, and not because of anything an individual has done.

Genocide is a crime under international law even if it is not a crime in the country where it takes place, and incitement to commit genocide is also a crime.

Responsibility for such crimes

Leaders, organisers, instigators, and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the crimes above are criminally responsible for everything done by anyone in carrying out such a plan.

Superior orders

The fact that a person was obeying an order of his government or of a superior does not free him from responsibility but can be considered and may reduce the appropriate punishment.

A very detailed list of crimes against humanity and war crimes can be found in articles 7 and 8 of the Rome Statute of the International Criminal Court, which is online at the United Nations website.

https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-10&chapter=18&clang=en#top

Internet information

On April 14, 2022, ABC News published a report titled ‘Putin's propaganda playbook shows how an army of fake fact-checkers is sowing doubt and confusion in Ukraine’ which details Russia’s campaign of misinformation regarding the war in Ukraine.

The full text of this report can be accessed at <https://www.abc.net.au/news/2022-04-14/putin-disinformation-fake-war-ukraine-syria/100988412>

On April 13, 2022, ABC News published a report by Catherine Taylor titled ‘How to catch a war criminal: Investigators are building a case against Putin in Ukraine's killing fields.’ The report details the various obstacles that need to be overcome in order to establish the case that war crimes have been committed.

The full text can be accessed at <https://www.abc.net.au/news/2022-04-13/putin-war-crimes-ukraine-war/100985398>

On April 13, 2022, The Washington Post published a report by Adela Suliman, Bryan Pietsch and Claire Parker titled ‘Russia’s attacks on civilians in Mariupol are “war crimes,” OSCE says’. The report details the findings of the Organisation for Security and Cooperation in Europe (OSCE), after investigating alleged abuses of Ukrainians by Russian troops between February 24 and April 1, 2022.

The full text can be accessed at <https://tinyurl.com/3bna4v9z>

On April 11, 2022, The Jacobin Magazine published an opinion piece by Branko Marcetic titled ‘Holding Putin Accountable Would Require an Actual Rules-Based World Order’. The comment argues against the inconsistent manner in which the international rule of law has been applied and argues that a wider reform is necessary if violators such as Vladimir Putin are to be brought to justice.

The full text of the article can be accessed at <https://jacobinmag.com/2022/04/vladimir-putin-rules-based-world-order-international-criminal-court-us-ukraine-russia-war-crimes>

On April 8, 2022, The Washington Post published a report by Louisa Loveluck and Serhiy Morgunov titled ‘In Bucha, the story of one man’s body left on a Russian killing field’ which details the work of a team of Washington Post investigative reports examining the evidence of atrocities committed by Russian forces in Bucha.

Warning: the material in this report is graphic and distressing.

The full text can be accessed at <https://tinyurl.com/3t8r7ake>

On April 8, 2022, Deutsche Welle (DW) Germany’s state-owned international broadcaster published a report titled ‘How Russia could get away with attacks on Ukraine hospitals.’ The report details the range of circumstances that make it difficult to prove that Russian forces attacked hospitals in violation of international law.

The full text can be accessed at <https://www.dw.com/en/how-russia-could-get-away-with-attacks-on-ukraine-hospitals/a-61383117>

On April 7, 2022, BBC News published a report by Jeremy Bowen titled ‘Ukraine War: “Russian soldiers held us as human shields”’ which details firsthand accounts from Ukraine citizens of being taken hostage by Russian soldiers to be used as human shields.

The full text can be accessed at <https://www.bbc.com/news/world-europe-61020565>

On April 5, 2022, BBC News published a report by legal correspondent Dominic Casciani, titled ‘What is a war crime, and could Putin be prosecuted over Ukraine?’ which detailed many of the Russian actions condemned as ‘war crimes’ or ‘crimes against humanity’.

The full text can be accessed at <https://www.bbc.com/news/world-60690688>

On April 5, 2022, news.com.au published a report titled 'Ukraine leader breaks down as satellite images reveal truth about what happened in Bucha' which details the apparent atrocities revealed after Russian troops withdrew from Bucha and the distressed reaction of the Ukrainian president.

The full text can be accessed at <https://www.news.com.au/world/europe/ukraine-leader-breaks-down-as-satellite-images-reveal-truth-about-what-happened-in-bucha/news-story/a8e1dc061a0747006e335fc2f9dc9753>

On March 25, 2022, the Turkish newspaper The Daily Sabah published a comment and analysis by Bukra Goktas titled 'Behind the rhetoric: Putin's justification'. The article gives a detailed analysis of Russia's violations of international law and ties them to President Putin's justifications for his actions, relating these directly to the relevant articles of the United Nations Charter.

The full text can be accessed at <https://www.dailysabah.com/opinion/op-ed/behind-the-rhetoric-putins-justification>

On March 16, 2022, The New Atlanticist published a comment by Gissou Nia and Jomana Qaddour titled 'Punish Putin for past and present crimes'. The authors of this opinion piece state that had Putin been held internationally accountable for his earlier acts of aggression he may not have invaded Ukraine.

The full text of this article can be accessed at <https://www.atlanticcouncil.org/blogs/new-atlanticist/punish-putin-for-past-and-present-crimes/>

On March 10, 2022, the Polar Research and Policy Initiative published a comment by Professor Rachael Johnston titled 'Ukraine: why this war is different'. Professor Johnston argues that Russia's attack on Ukraine is such a flagrant instance of territorial aggression undertaken by a nuclear superpower that the world cannot afford not to attempt to bring its perpetrators to justice.

The full text of the article can be accessed at <https://polarconnection.org/ukraine-war-different-2/>

On March 8, 2022, The Intercept published a comment by Jeremy Scahill titled 'Putin's Criminal Invasion of Ukraine Highlights Some Ugly Truths About U.S. and NATO'. This opinion piece outlines some of the war crimes alleged against the United States and other NATO powers and suggests that these undermine the moral authority of these states to call for charges to be laid against Russia and Vladimir Putin.

The full text of the article can be accessed at <https://theintercept.com/2022/03/07/ukraine-russia-nato-kosovo-war-crimes/>

On March 8, 2022, the South African newspaper, Daily Maverick, published a comment by Rebecca Davis titled 'Untangling the narrative web surrounding South Africa's stance on the Russia-Ukraine conflict'. The opinion piece examines the possible reasons for South Africa's neutral stance on Russia's invasion of Ukraine, including the allegation that the position of the United States and NATO is hypocritical.

The full text of the article can be accessed at <https://www.dailymaverick.co.za/article/2022-03-08-untangling-the-narrative-web-surrounding-south-africas-stance-on-the-russia-ukraine-conflict/>

On March 3, 2022, ABC News published a report titled 'Inside Donetsk, the separatist republic that triggered the war in Ukraine'. The report gives interviews with several Donbas separatists who see themselves as living in an independent state under attack by Ukraine. It also details some of Ukraine's historical and current connections with Nazism.

The full text of the article can be accessed at <https://www.abc.net.au/news/2022-03-03/inside-the-separatist-republic-that-triggered-the-war-in-ukraine/100871262>

On March 2, 2022, The Conversation published a comment and analysis by Ben Saul, Professor of International Law, Sydney Centre for International Law at the University of Sydney, titled 'Civilians are being killed in Ukraine. So, why is investigating war crimes so difficult?' The article analyses the various factors, physical, political, and legal, which make investigating war crimes difficult.

The full text of this article can be accessed at <https://theconversation.com/civilians-are-being-killed-in-ukraine-so-why-is-investigating-war-crimes-so-difficult-178155>

On February 26, 2022, The Washington Post published a report by Isabelle Khurshudyan, Siobhán O'Grady and Loveday Morris titled "'Weapons to anyone': Across Ukraine, militias form as Russian forces near" which details the formation of Ukrainian citizen militias in response to Russia's invasion of Ukraine. The full text of the article can be accessed at <https://tinyurl.com/22xz8ykv>

On February 25, 2022, The Guardian published a report titled 'Ukraine fighting to stop "a new iron curtain" after Russian invasion' which gives details of Ukraine's early resistance to Russian invasion. The full text of the article can be accessed at <https://www.theguardian.com/world/2022/feb/24/russia-attacks-ukraine-news-vladimir-putin-zelenskiy-russian-invasion>

On February 24, 2022, The New Yorker published a comment by Evan Osnos titled, 'What Is China Learning from Russia's Invasion of Ukraine?' in which he warns that lukewarm response to Russia's invasion of Ukraine could encourage China to attempt to take over Taiwan.

The full text of this article can be accessed at <https://www.newyorker.com/news/daily-comment/what-is-china-learning-from-russias-invasion-of-ukraine>

President Putin should be charged with war crimes

1. Russia's actions in Ukraine and elsewhere appear to fit the definition of war crimes

Though the accusations of war crimes would have to be tested before the International Criminal Court, many commentators have alleged that Russia's recent actions in Ukraine clearly constitute war crimes. Russia has been condemned for committing actions which are 'war crimes' because they 'violate the customs and conventions of war' and which are 'crimes against humanity' because they target civilian populations.

A BBC News report by legal correspondent Dominic Casciani published on April 5, 2022, detailed many of the Russian actions condemned as 'war crimes' or 'crimes against humanity'. Investigators and journalists have found what appears to be evidence of the deliberate killing of civilians in Bucha, a town on the outskirts of Kyiv, and other nearby areas. Ukrainian forces say they have found mass graves and there is evidence of civilians having been shot dead after their feet and hands were bound. In March, the United States Secretary of State, Antony Blinken, said Russia had 'destroyed apartment buildings, schools, hospitals, critical infrastructure, civilian vehicles, shopping centres, and ambulances' and that these actions amounted to 'war crimes.' Earlier that month, a Russian strike on a theatre in Mariupol appeared to be the first confirmed location of a mass killing. The word 'children' was written in giant letters outside the building. Ukraine previously called Russia's air strike on Mariupol's hospital a war crime.

<https://www.bbc.com/news/world-60690688>

On visiting Bucha after the Russian withdrawal, Ukraine's president Volodymyr Zelensky stated that what he saw there was clear evidence of war crimes. The president stated, 'It's very difficult to talk when you see what they've done here... These are war crimes, and it will be recognised by the world as genocide... You stand here today and see what happened. We know that thousands of people have been killed and tortured with extremities cut off, women raped, children killed... It's genocide.' The Ukrainian prosecutor general Iryna Venediktova later said that 410 civilian bodies had been recovered in the wider Kyiv region after Russian troops pulled back. In Bucha, the local mayor said 280 people were buried in mass graves because they could not be buried in cemeteries that were within firing range.

<https://www.news.com.au/world/europe/ukraine-leader-breaks-down-as-satellite-images-reveal-truth-about-what-happened-in-bucha/news-story/a8e1dc061a0747006e335fc2f9dc9753>

There has also been condemnation of the type of weapons being used by Russia against Ukraine. There is mounting evidence that cluster bombs - munitions that separate into lots of bomblets - have been used by

Russian forces in civilian areas of Kharkiv. The UK has claimed that Russia has also used thermobaric explosives, which create a massive vacuum by sucking up oxygen. Because of their capacity to inflict indiscriminate loss of life, the deliberate use of such weapons near civilians would almost certainly break the rules of war. <https://www.bbc.com/news/world-60690688>

Ukraine has denied Russian allegations that it has used non-combatants as human shields and that this is what accounts for Russia's attacks on civilian populations. On April 7, 2022, BBC News reported clear evidence of Russian troops rounding up Ukrainian civilians and using them as human shields has been found by the BBC. In multiple interviews in Obukhovychi, villagers say they were taken from their homes at gunpoint and held in a school by Russians trying to stop advancing Ukrainian forces. Local people also gave accounts of Russian troops shooting civilians and holding others captive in and around Ivankiv, the neighbouring town. <https://www.bbc.com/news/world-europe-61020565>

It is claimed that the very act of invasion is a war crime as it is an unprovoked assault against another sovereign state. Ukraine presents the Russian invasion as a war of aggression and disputes that a significant portion of its population wants to return to Russian control. On December 22, 2021, The Conversation published a report by Jacob Lassin and Emily Channell-Justice titled 'Why Putin has such a hard time accepting Ukrainian sovereignty' which explained that for four centuries Ukraine has been trying to gain independence from Russia and that when Ukrainians voted for independence from the Soviet Union in 1991, during the disintegration of the Soviet Union, all of its 24 'oblasts,' or regions – including Donetsk and Luhansk (the now-contested regions in the Donbas) and Crimea (an area since annexed by Russia) – supported independence. The large minority of ethnic Russians – 17.3 percent of the population at Ukraine's last census in 2001 – were included as Ukrainian citizens in an independent state. For the most part, they too voted for independence. <https://theconversation.com/why-putin-has-such-a-hard-time-accepting-ukrainian-sovereignty-174029> Ukraine's president, Volodymyr Zelensky, has declared that his people will resist Russian occupation. Immediately after Russia's attacks began, he stated, "This is the sound of a new iron curtain, which has come down and is closing Russia off from the civilised world. Our national task is to make sure this curtain does not fall across our land."

<https://www.theguardian.com/world/2022/feb/24/russia-attacks-ukraine-news-vladimir-putin-zelenskiy-russian-invasion>

2. Putin is a dictator whose monopoly on power leaves him largely responsible for the conduct of Russia's armed forces

Critics of President Putin argue that his regime has become progressively more dictatorial and that his enormous control over the state apparatus makes him legally and practically responsible for the invasion of Ukraine and the atrocities that have been claimed to have occurred as a result.

On November 13, 2021, The Economist published an analysis and commentary on Putin's regime titled 'Vladimir Putin has shifted from autocracy to dictatorship'. The article traces the course of Putin's progression toward dictatorship. He has discredited and imprisoned his political opponents, one of whom, Alexei Navalny, an opposition leader, was poisoned in August 2020 and jailed in 2021. Mr Navalny's organisation has been crushed and declared 'extremist'. His entire team has been forced out of the country; their remaining relatives have been harassed and persecuted. The father of Ivan Zhdanov, one of Mr Navalny's right-hand men, was put on trial in October 2021. On November 9th Liliya Chanyшева, a 39-year-old politician who ran one of Mr Navalny's regional offices, was arrested on a charge of 'extremism', which carries a ten-year prison term. Thousands of potential candidates are denied the right to stand for election because of their supposed association with Mr Navalny. <https://tinyurl.com/5ezbmr9>

The Economist claims that Putin has shown a shift from wanting to contain political threats to wanting to eliminate them. It further claims that political power has moved from civilian technocrats to militarised and often uniformed 'securocrats' who are prepared to use violence to obtain their political objectives. The

Economist article notes, 'The regime has moved from being a consensual autocracy supported by co-option and propaganda to a dictatorship resting on repression and fear.' It cites a poll, conducted by the Levada Centre, which appears to demonstrate that 'the fear of repression, now shared by 52 percent of Russia's population, and of state violence (58 percent), are at all-time historic highs, affecting more respondents than the fear of losing a job, falling into poverty, or being struck by natural disaster.'

<https://tinyurl.com/5ezbmr9>

In April 2021, Vladimir Putin signed a law that will allow him to run for the presidency twice more in his lifetime, potentially keeping him in office until 2036. Presidential terms have also been lengthened to six years. This ended a year-long process to 'reset' his presidential terms by rewriting the constitution through a referendum-like process that his critics have called a crude power grab. If Putin remains in power until 2036, his tenure will surpass that of Joseph Stalin, who ruled the Soviet Union for 29 years, making him the longest-serving Moscow leader since the Russian empire. After serving his first two terms in office, Putin assumed the post of prime minister in 2008 due to term limits but nonetheless remained the country's de facto leader. He returned to the presidency in 2012, provoking protests among his critics on the left and right that were put down. <https://www.theguardian.com/world/2021/apr/05/vladimir-putin-passes-law-that-may-keep-him-in-office-until-2036>

In an article published in Politico on March 17, 2021, it was noted the extent to which political messaging about the war against Ukraine has become progressively more publicly focused on President Putin. The article states that initially Putin was shown each evening on state-run national television conferring with his advisers, who appeared on a bank of TV monitors in front of him, with no advisers physically present. More recently, however, they have been symbolically reduced to an even less significant position, with not a single member of Russia's National Security Council shown on the screen. Putin is now delivering the message alone. <https://www.politico.com/news/magazine/2022/03/17/putin-russia-state-tv-news-00018304> This development suggests the extent to which the war in Ukraine is centralised on the person of and under the control of the Russian president.

It has been argued that President Putin could be charged as a war criminal through the legal doctrine of command responsibility. If commanders order or even know or are able to know about crimes and did nothing to prevent them, they can be held legally responsible.

This doctrine has been used previously to make accusations against President Putin in relation to Russian and Syrian warplanes attacking civilian infrastructure in Idlib province, in Syria, without warning or a legitimate military target. Human Rights Watch, an international, non-government organisation that seeks to protect human rights, argued in 2020 that there were ten Russian and Syrian officials who under the doctrine of command responsibility knew or should have known about the abuses against civilians and failed to prevent them or punish those responsible. Human Rights Watch has stated, 'There's evidence that [these ten officials] were heavily involved in the development of the strategy, that they regularly requested updates on it and that they were provided with notice that these war crimes and violations are being committed — and apparently did nothing to stop them.' At the head of this list of officials was President Putin. <https://www.al-monitor.com/originals/2020/10/syria-idlib-russia-civilians-human-rights-watch-responsible.html> No action has yet been taken against President Putin for his actions in Syria; however, the Syrian conflict has not attracted the degree of international attention focused on Ukraine. Ukraine may prove a modern test case for the use of the doctrine of command responsibility as a means of holding political leaders to account for war crimes.

On March 16, 2022, United States president, Joe Biden, accused President Putin of being 'a murderous dictator, a pure thug who is waging an immoral war against the people of Ukraine.' The day before Biden had called Putin a 'war criminal'. The United States president seemed to be implying a link between being a dictator and being held accountable for an 'immoral war'. <https://edition.cnn.com/2022/03/17/politics/biden->

putin-pure-thug/index.html President Biden appeared to be making a connection between Putin's absolute power within his country and his responsibility for his country's war crimes.

3. Early investigations of Russian forces' actions in Ukraine have supplied detailed confirmation of war crimes

Those calling for President Putin and Russian forces and their leaders to be charged with war crimes claim that early investigations into apparent atrocities in Ukraine confirm that war crimes have been committed.

A report from the Organisation for Security and Cooperation in Europe (OSCE), released on April 13, 2022, appears to confirm beyond doubt that Russian forces and their leaders currently seeking to occupy Ukraine have committed war crimes. The report tracked alleged abuses from February 24, 2022, the day Russia invaded, to April 1, 2022. It does not include a later missile strike on a train station in the eastern city of Kramatorsk that killed over 50 people, including children, or atrocities recently reported in Bucha, a suburb of the capital, Kyiv. The Vienna-based security body's report stated there was clear evidence that Russian forces had targeted hospitals, schools, residential buildings, and water facilities in its military operations, leading to civilian deaths and injuries. <https://tinyurl.com/3bna4v9z>

The report concluded that the airstrike that partially demolished a maternity hospital in Mariupol on March 9 was a Russian attack. The report states, 'Based upon Russian explanations, the attack must have been deliberate...No effective warning was given and no time-limit set. This attack therefore constitutes a clear violation of International Humanitarian Law and those responsible for it have committed a war crime.' The OSCE report also found that the assault on the Mariupol Drama Theater, where hundreds of civilians were sheltering as the building was attacked, 'was most likely an egregious violation of international humanitarian law and those who ordered or executed it committed a war crime.'

<https://tinyurl.com/3bna4v9z>

The OSCE report recommended that the events in Bucha, which it did not investigate, deserve 'a serious international enquiry, on the spot, with forensic experts,' and stated that 'evidence points to a major war crime and a crime against humanity committed by the Russian forces.' <https://tinyurl.com/3bna4v9z>

Subsequent investigations have found evidence of what appears to be torture perpetrated by Russian forces against some of the citizens of Bucha. The body of one Ukrainian man was found with 'bullet holes in his calves and his arms were stretched out at strange angles between slats of wood with nails through them.' During seven days of reporting in this town, Washington Post reporters documented 208 bodies in graves or lying in the street. In scores of interviews with residents, prosecutors, police, and coroners, as well as a review of photographs, video and archived Telegram chat logs between residents, The Post documented how for nearly a month in March, Bucha's residents were subjected to systematic abuse and torture.

<https://tinyurl.com/3t8r7ake>

The interviews and evidence suggest that many murders were sadistic and premeditated. Near a glass factory in Bucha, which became a Russian base, a security guard was shot dead, then beheaded. The killers burned his head and left it out for other Ukrainians in the area to see. Close by, the body of a 2-year-old man, bore signs of torture and several gunshots, and had been booby-trapped with a tripwire to explosives intended to kill anyone who tried to collect him. <https://tinyurl.com/3t8r7ake>

The evidence shows that Russian soldiers beheaded, burned, sexually abused, and fired upon Ukrainian civilians from the early days of the occupation of Bucha. According to those interviewed, Russian soldiers went house to house confiscating cellphones to keep residents from sharing troop locations or taking photos or videos of the Russian excesses. However, many people managed to keep devices hidden so there is a photographic record of the abuse. <https://tinyurl.com/3t8r7ake>

On April 7, 2022, German former Justice Minister Sabine Leutheusser-Schnarrenberger and former Interior Minister Gerhart Baum filed a 140-page criminal complaint with German prosecutors over Russia's invasion of Ukraine. The week before the German weekly newspaper, Der Spiegel, reported that Germany's foreign intelligence agency has intercepted radio messages between Russian soldiers discussing the killings of civilians in Ukraine. The German former ministers have said they want to use German laws allowing prosecution of serious crimes committed abroad to bring to justice those they consider responsible for atrocities in Ukraine. Lawyer Nikolaos Gazeas, who compiled the criminal complaint on their behalf, said it targets not just Putin's Russian leadership and the 32 members of his security council, but also 'a whole series of members of the Russian military.' <https://tinyurl.com/yfz5pam>

4. Russia has spread deliberate misinformation about its actions in Ukraine

Those who believe that Russian forces and their leader President Putin should be charged with war crimes argue that the campaign of misinformation that Russia has spread regarding the war in Ukraine demonstrates its awareness of its own criminal actions. They claim that Russia has been conducting an elaborate propaganda campaign to disguise its own guilt and to present its opponents as the criminals. They further claim that this has been done to influence public opinion in Russia and around the world.

It has been reported that prior to the invasion of Ukraine, on February 18, 2022, Russia released recorded misinformation purporting to demonstrate that Ukraine was planning to attack the two separatist regions in the Donbas. A week before the Ukrainian capital of Kyiv came under Russian shelling, an alarming video announcement was circulating on encrypted messaging app, Telegram. The video announcement had pro-Russian separatist leaders of the self-declared Donetsk (DPR) and Luhansk People's Republic (LPR) warning the Ukrainian military were in the process of invading the regions on the order of President Volodymyr Zelensky. The video announcements, including their recordings of supposed Ukrainian shelling, were shown to be false when analysis of their metadata revealed the videos had been produced several days before their claimed date. They were later condemned as an attempt to use falsified evidence of supposed Ukraine attacks on the Donbas to justify Russia's invasion of Ukraine. <https://www.abc.net.au/news/2022-04-14/putin-disinformation-fake-war-ukraine-syria/100988412>

Since the fighting has begun, Russia appears to be spreading misinformation about what is occurring in the Ukraine, including making false accusations about Ukrainian misinformation. For example, Russia has claimed that video images of pregnant women being rescued from the shelled rubble of a maternity hospital in Mariupol on March 16 were of actors whom the Ukrainians had employed to create the impression that there were patients in the hospital when it came under attack. Russia has also claimed that burnt bodies shown in the wreckage of a TV tower destroyed in Kyiv were staged and claimed that the bodies had been taken from a local morgue and used in falsified images. <https://www.abc.net.au/news/2022-04-14/putin-disinformation-fake-war-ukraine-syria/100988412>

Many of these Russian accusations have been actively debunked by western media outlets. After its forces withdrew from Bucha, Russia has claimed that the bodies of civilians lying dead in the streets of the town were planted by the Ukrainians. The Russian defense ministry wrote on its Telegram channel that the videos were 'a staged production and provocation.' The Russian embassy in Germany claimed that the photos and videos had been staged by the 'Kyiv regime for the Western media.' The Russian foreign ministry spokeswoman Mariya Sakharova further claimed that the United States and NATO had 'ordered' the footage so that Russia could be accused of war crimes. Research by the New York Times using satellite images that the bodies seen in the Bucha media footage on April 2 were already lying there on March 19 and, in some cases, as early as March 11. A before-and-after comparison of satellite images taken on March 19 and on April 2 shows that the bodies were in exactly the same position on the road. These images refute Russian claims that the corpses only appeared on the road after the withdrawal of Russian troops on March 30. <https://www.dw.com/en/fact-check-atrocities-in-bucha-not-staged/a-61366129>

It has also been reported that Russia is vigorously restricting freedom of information within its own borders to shape Russians' views of what is happening in Ukraine. On March 15, 2022, NPR published a report which states, 'Russia has cracked down on free speech and placed strict propaganda controls on what citizens see and hear about the brutal war in Ukraine. Earlier this month, Russian President Vladimir Putin signed into law a rule that criminalises reporting that contradicts the Russian government's version of events. The law has forced many independent media outlets to leave the country, shut down — or face potential lengthy prison terms.' The NPR report quotes Julia Ioffe, a reporter and founding partner of the media company Puck. Ioffe states, '[Russians] are being told that Russian soldiers are extremely decorous and careful about preserving Ukrainian civilian life, that they're being greeted as liberators, that everybody wants to live under Russian rule, and that there are no civilian casualties on the Ukrainian side.'

<https://www.npr.org/2022/03/15/1086705796/russian-propaganda-war-in-ukraine> In the days that followed Russian troops' withdrawal from Bucha, video of civilian victims in Bucha, always labeled 'fake,' were played repeatedly on Russian state television programs. A new conspiracy theory has been presented to Russian viewers: that the dead bodies were not those of actors but of local residents who had welcomed the Russian occupation and were then killed by the Ukrainian army when it regained control of the city. <https://theintercept.com/2022/04/12/bucha-massacre-russia-tv-fake-ukraine-war/>

5. That Russia is not alone in committing war crimes does not remove its guilt or the need to act against it. Those who maintain that Putin and others within Russia, including many Russian soldiers fighting in Ukraine, should be charged with war crimes argue that the fact that Russia's accusers may also be guilty of war crimes does not remove Russia's guilt. Some also maintain that Russia's attack on Ukraine is such a serious and flagrant violation of international law that it cannot be ignored. It has been argued that it is particularly important that Russia be discouraged from further acts of aggression and that China be made aware that such acts will not be accepted by the international community.

It has been claimed that the likely guilt of many of those parties making allegations against Russia and Putin does not absolve Russia (and in particular its leader) of the requirement to face criminal charges for the illegal actions they have taken. Rebecca Davis in an article published in the South African Daily Maverick on March 8, 2022, states, 'Two things can be true at the same time. Yes, the West's response to Putin reeks of selective outrage and double standards. Simultaneously, Putin's invasion of Ukraine is an unjustifiable and illegal onslaught on a sovereign state.' <https://www.dailymaverick.co.za/article/2022-03-08-untangling-the-narrative-web-surrounding-south-africas-stance-on-the-russia-ukraine-conflict/>

It has also been argued that Russia's attack on Ukraine represents a particularly heinous assault on the principles of international law and so make it necessary that action be taken against it. On March 10, 2022, the Polar Research and Policy Initiative published a comment by Professor Rachael Johnston in which she states, 'From the international perspective, the Russian aggression and invasion of Ukraine is of a different nature. Each war is unique in its own terrible way, but the offensive against Ukraine shakes international law to the core. A State in possession of thousands of nuclear weapons and 900,000 active military troops is attacking its smaller neighbour without any possible legal justification.' Professor Johnston further explains, 'Past wars have stretched the legal norms of the use of force in the absence of Security Council authorisation. Debates continue today regarding the validity of humanitarian intervention (Kosovo 1999 and Crimea 2014) and self-defence (Afghanistan 2001 and Iraq 2003). However, in each of these cases, while there could be reasonable disagreement on the facts as to whether the threshold for the use of force was met... Furthermore, there was an expectation that the parties using military force would respect the principle of proportionality, using a minimum of force to achieve their ends, and then withdraw...

Russia's breach of the most fundamental principle of international law – the prohibition of the use of force – is so flagrant and its purported justifications so poor that it threatens not only Ukraine but the system by which our chaotic world is made a little less chaotic... It is inconceivable that Putin's advisors and legal experts consider any of their arguments credible. Instead, the invasion of Ukraine signals that Russia is

thumbing its nose at international law. Today's war in Ukraine is different. This is not a war of Russia v Ukraine, Russia v NATO or even Russia v 'The West'. This is a war of Russia against the very foundations of international law.' <https://polarconnection.org/ukraine-war-different-2/>

It has been claimed that if the world had acted against earlier instances of Russian territorial ambition and violations of international law, then the atrocities being committed in Ukraine may have been prevented. On March 16, 2022, The New Atlanticist published a comment by Gissou Nia and Jomana Qaddour titled 'Punish Putin for past and present crimes'. The authors of this opinion piece state in relation to Putin's earlier crimes, 'If he had been stopped after Grozny, would he have unleashed brutal force in Aleppo? And had the world collectively held Putin accountable for his military's abuses in Syria, would he have felt emboldened enough to bomb Ukrainian cities?' <https://www.atlanticcouncil.org/blogs/new-atlanticist/punish-putin-for-past-and-present-crimes/>

Finally, it has been argued that if the rest of the world does not act against Russia's aggression this could encourage other leaders with territorial ambitions to behave as Russia has. There has been particular concern that Russia's invasion of Ukraine could encourage China's leader Xi Jinping to attempt to annex Taiwan. On February 24, 2022, The New Yorker published a comment by Evan Osnos in which he states, 'The more immediate risk, in the eyes of some in Taiwan and Washington, is that China will see Putin's venture as a step toward the normalizing of more aggressive pressure tactics... An ineffectual and half-hearted response by the West toward Putin's invasion couldn't but feed into Xi's existing belief that America and its allies are weakening and divided.' <https://www.newyorker.com/news/daily-comment/what-is-china-learning-from-russias-invasion-of-ukraine>

President Putin should not be charged with war crimes

1. President Putin disputes that what has occurred in Ukraine constitutes war crimes

President Putin claims that Russia's invasion of Ukraine and subsequent attacks on the country are not a war crime. He has argued that they are legitimate actions under international law, taken to defend those living in Russian territories inside Ukraine from what he has described as 'genocide' and to protect Russia and the world against what he claims is the influence of Nazism in Ukraine. Putin has also argued that Russia's military actions against civilians in Ukraine have been necessitated by Ukraine using non-combatants to disguise its military operations.

Putin has argued that the invasion of Ukraine is justified by the right to (collective) self-defence. The U.N. Charter grants states the right to defend other states, i.e., collective self-defence. Putin asserts that Ukraine is committing 'genocide' against the Russian-speaking population in Eastern Ukraine's Donbass region, where the Ukrainian army has been fighting Russia-backed separatists since 2014. Russia claims its right to collective self-defence alongside the separatist groups. Russia recognised the two separatist regions in Donbass on February 22, 2022. This has been claimed to have legitimised the official presence of Russian troops in rebel-held territories. Putin argues that Russians living within these newly declared states are in constant danger of extermination, that is, are facing genocide, and that Russia is obligated to protect them. Russia further states that the whole of the Donbass region has voted to be separate from Ukraine. The Donbass status referendum was held in 2014, following Russia's annexation of Crimea. According to Roman Lyagin, head of the Donetsk election commission, 89 percent of voters favoured independence from Ukraine. <https://www.dailysabah.com/opinion/op-ed/behind-the-rhetoric-putins-justification>

Putin has linked his defence of the Donbass separatists with a fight against Nazism, stating that Russia is seeking to 'protect people who have been bullied and subjected to genocide by the Kyiv regime for eight years... For that, we will strive to de-militarise and de-Nazify Ukraine and will bring to justice those who committed multiple bloody crimes against civilians, including Russian citizens.'

<https://www.abc.net.au/news/2022-03-03/inside-the-separatist-republic-that-triggered-the-war-in-ukraine/100871262>

He has addressed a mass rally standing in front of banners reading 'For a world without Nazism'. Taking to the stage Putin insisted that Russian actions were necessary to prevent Nazi 'genocide'.

<https://fortune.com/2022/03/19/world-without-nazism-putin-appears-rally-troops-attack-ukraine-moscow-zelenskyy/> These accusations recall Ukraine collaboration with Germany during World War II.

<https://tinyurl.com/mr2x9556> Russia lost an estimated 27 million people in World War II while fighting against German invasion in the later stages of the war, though it had earlier allied itself with Germany. Anti-Nazi feeling remains strong in Russia. Though Putin's accusations that current leaders of Ukraine are Nazi sympathisers appear unfounded, there is evidence to suggest there is a growing number of neo-Nazis within the Ukraine.

<https://apnews.com/article/russia-ukraine-putin-israel-europe-tel-aviv-54f1524afdf732d1716782e01acc089> In recent years, Ukraine has erected a large number of statues of Ukrainian nationalists from WWII who had Nazi connections. Neo-Nazis are also part of some of Ukraine's growing ranks of volunteer battalions currently fighting against the Russians. One of these is the Azov Battalion, founded by a white supremacist who claimed Ukraine's national purpose was to rid the country of Jews and other inferior races. Azov is now an official member of the Ukraine National Guard.

<https://www.nbcnews.com/think/opinion/ukraine-has-nazi-problem-vladimir-putin-s-denazification-claim-war-ncna1290946>

Putin has further argued that recent Russian attacks against civilian facilities have only occurred because Ukraine has used these facilities to mask military operations. Urban warfare has been televised from Ukraine, in apparent contravention of UN prohibitions, as Russia has bombed Ukrainian cities. This has included the recent bombing of a maternity hospital. Putin has stated that 'Ukraine is taking civilians and foreigners hostage to use them as human shields.' According to this claim, civilians in the Mariupol hospital were human shields being held by the Ukrainian regime.

<https://www.dailysabah.com/opinion/op-ed/behind-the-rhetoric-putins-justification> On March 8, 2022, Business Standard published an allegation by the head of the National Defence Control Centre of Russia, Mikhail Mizintsev, that Ukrainian battalions were holding more than 4.5 million civilians in Ukraine as human shields. Mizintsev also claimed that about 2,000 foreign citizens, who expressed a desire to evacuate to safe places, are also being held. Mizintsev also reported that there had been cases of discrimination by neo-Nazis Ukrainians against human rights on racial grounds.

https://www.business-standard.com/article/international/russia-says-ukraine-holding-more-than-4-5-mn-civilians-as-human-shields-122030801422_1.html On March 3, 2022, First Post reported that Russia had claimed its military was doing everything possible to ensure the safe removal of Indians from the 'war zone' but alleged that the Ukrainians were holding a group of Indian students hostage to use them as human shield. The Russian Embassy in India claimed that the Ukrainian forces were using every possible way to prevent them from leaving for Russia.

<https://www.firstpost.com/world/russia-ukraine-conflict-shines-light-on-human-shields-what-is-this-inhumane-practice-and-is-it-punishable-by-law-10425131.html>

2. It is difficult to establish that soldiers have committed war crimes

Those who argue that Putin and Russian forces more generally should not be charged with war crimes, stress how difficult it is to determine what constitutes a war crime in the current conflict.

It can be difficult to establish that soldiers killing civilians have committed a war crime. International humanitarian law tolerates some collateral damage to civilians. It can be lawful to attack civilian facilities, such as a school or a hospital, if these are also being used for military purposes in which case, they then become a military target. Since invading Ukraine, Russian armed forces have hit nearly 100 medical facilities. Mariupol's children's hospital and maternity ward were shelled by Russian forces on March 9, 2022. However, Russian officials had claimed that the hospital was a legitimate target, alleging that a Ukrainian battalion was operating there. Regarding attacks on other hospitals, the Russian armed forces have repeatedly claimed that the hospitals they have destroyed across Ukraine were being used for military purposes. Establishing the truth in such a situation where accusations and counteraccusations are traded between conflicting parties can be extremely difficult.

<https://www.dw.com/en/how-russia-could-get-away-with-attacks-on-ukraine-hospitals/a-61383117>

The need to prove that civilian facilities are not being used for military purposes makes conviction for this war crime problematic. The German investigative media outlet, DW, could not find a single international attempt to prosecute wartime attacks on hospitals in the nearly three decades since the International Criminal Tribunal for the former Yugoslavia (ICTY) was established by the United Nations in 1993. During that time, thousands of medical facilities have come under attack in conflicts — from the Balkan wars in the 1990s to the Afghanistan and Syria conflicts of the 21st century. Legal experts have stated that, despite public outcry, attacks on hospitals are rarely prosecuted as war crimes due to the legal protections afforded suspected perpetrators. <https://www.dw.com/en/how-russia-could-get-away-with-attacks-on-ukraine-hospitals/a-61383117>

A further complicating factor is that civilians forfeit the protection of international law as soon as they take up arms. A US ABC news report published on March 15, 2022, noted that the distinction between armed forces and civilians can be difficult to ascertain in a war such as that occurring in the Ukraine. The report states, 'Making matters murkier is the issue of civilians taking up arms to resist the Russian advance and the fact that the front lines often disappear in the realm of urban warfare.'

<https://abcnews.go.com/International/civilians-war-amid-ukraine-conflict/story?id=83178098> Ukraine has relied heavily on citizen volunteers to defend itself against Russia. President Volodymyr Zelensky tweeted at the start of the conflict, 'We will give weapons to anyone who wants to defend the country. Be ready to support Ukraine in the squares of our cities.' Washington Post commentators warned at the time that this would lead to an extension of urban warfare and allow Russia to sanction haphazard, whole scale killing. On February 26, 2022, Isabelle Khurshudyan, Siobhán O'Grady and Loveday Morris of the Washington Post stated, 'Arming civilians, many of whom have little training, risks exacerbating the violence in cities across Ukraine and potentially giving the Russian military more pretext to fire indiscriminately.'
<https://tinyurl.com/22xz8ykv>

The distinction between civilians and armed forces in the Russia-Ukraine conflict is made difficult to draw because Ukraine has encouraged all male citizens below the age of 60 to fight against the Russians. On February 25, 2022, the Ukrainian president Volodymyr Zelensky stated, 'In particular, it is forbidden for men aged 18-60, Ukraine citizens, to leave the borders of Ukraine... This regulation will remain in effect for the period of the legal regime of martial law. We ask the citizens to take this information into consideration.'
<https://www.usatoday.com/story/news/world/2022/02/25/russia-invasion-ukraine-bans-male-citizens-leaving/6936471001/> Despite exemptions being made available under some circumstances, most Ukrainian men are reported to have stayed and many, irrespective of age are taking part in the conflict. On February 26, The Washington Post interviewed a 70-year-old helping to organize others joining a citizen militia. He stated, 'I'm too old to run with a gun, but I can sit and shoot... We will shoot, we will make molotov cocktails, we will do everything... We'll fight them with pitchforks!' <https://tinyurl.com/22xz8ykv>

Ukraine has organised its entire population to support the war effort. Those who cannot fight are bringing soldiers food, constructing and delivering armour and coordinating the transfer of medicine and clothes to remote and inaccessible areas. <https://www.aljazeera.com/features/2022/3/23/the-civilian-fighters-taking-up-arms-on-ukraines-front-lines> Gender is also not a barrier to fighting. Large numbers of Ukrainian women have joined the volunteer forces. According to media reports, women constitute as much as 15 percent to 17 percent of the Ukrainian fighting force.. <https://theconversation.com/ukraines-women-fighters-reflect-a-cultural-tradition-of-feminist-independence-179529> What this almost total integration of the Ukrainian population into the resistance against Russia has meant is that it is difficult to charge Russian soldiers with killing civilians. Acts such as torture and rape remain war crimes, but the distinction between combatants and non-combatants has been blurred.

It is also the case that where civilian facilities have been destroyed and where members of the civilian population have been killed, prosecutors seeking to establish war crimes must prove that this destruction and

death were caused deliberately. Wars are inevitably brutal and chaotic and not all the mayhem they cause is planned and intended. Civilian lives can be taken, and civilian property destroyed because they have literally been 'caught in the crossfire'. An article published by ABC News on April 13, 2022, quotes Professor Ben Saul, the Challis Professor of International Law at the University of Sydney, who states, 'It's not enough to find a dead body... You've got to figure out when they were killed, how they were killed and what Russian units can be linked to that killing, what individuals and what part of that unit was involved and what their intent was.' <https://www.abc.net.au/news/2022-04-13/putin-war-crimes-ukraine-war/100985398>

3. It is difficult to prove that leaders such as President Putin are responsible for any potentially criminal action their countries' soldiers commit

Those who argue against President Putin being charged with war crimes argue that it would be a futile exercise as it would be very difficult to establish that he was responsible for any war crimes committed in Ukraine.

First there is the difficulty of determining whether any of the actions performed by Russian troops are in fact war crimes. The killing of supposed civilians is hard to prove as a war crime in this conflict. Marco Sassoli, a professor of international law at the University of Geneva, has stated, 'In this war it could also be complicated by the fact that Ukraine has encouraged civilians to make home-made explosives. And if they throw them at Russian soldiers, they will be legitimate targets of attack under international humanitarian law (IHL)' <https://www.swissinfo.ch/eng/will-russia-s-leaders-be-brought-to-justice-for-ukraine-war-crimes--/47416668>

Establishing leaders' direct responsibility in the commission of war crimes is also problematic. While establishing command responsibility for military commanders can be based on proof of the commander's actual knowledge of and involvement in crimes, the ICC imposes a heightened standard for civilian commanders such as President Putin. The Court requires that civilian leaders either knew or 'consciously disregarded information that clearly indicated that the subordinates were committing or about to commit war crimes' <https://www.justsecurity.org/81050/should-we-worry-that-the-president-called-putin-a-war-criminal-out-loud/>. In a comment and analysis published by AXIOS on April 5, 2022, Laurin-Whitney Gottbrath explained, 'High-profile leaders often aren't at the scene of alleged war crimes, making them harder to prosecute.' Alex Whiting, a Harvard Law School visiting professor and deputy specialist prosecutor at the Kosovo Specialist Prosecutor's Office in The Hague further explained, 'In Bucha, for example, where reports have emerged of a mass grave and bodies of civilians strewn in the city's streets, the main challenge for investigators is determining who is responsible and how high up the chain of command the responsibility goes.' <https://www.axios.com/putin-war-crimes-charges-punishment-0a6275ca-daa5-4fa2-9296-2b9e1348661e.html> In the case of Putin, the court would have to prove he knew of and sanctioned the crimes being investigated or had a reasonable expectation they would occur, yet took no action to prevent them. <https://www.abc.net.au/news/2022-04-13/putin-war-crimes-ukraine-war/100985398>

The amount of misinformation circulating around the war in Ukraine could provide a further defence for Putin. United States intelligence has claimed Russian officials are 'too afraid' to tell President Putin how the war in Ukraine is progressing. <https://www.nbcnews.com/news/world/live-blog/russia-ukraine-war-live-updates-russian-units-reportedly-forced-turn-n1293624?featureFlag=false#ncrd1293658> Currently the Kremlin is denying such reports and stating that the United States knows nothing about the internal operations of the Russian government. <https://www.nbcnews.com/news/world/blog/russia-ukraine-war-live-updates-biden-could-announce-major-release-n1293717> Despite this statement, at a later date Putin may well claim that he was misled about the nature and progress of the war. This could act as a defence against charges of war crimes.

Whether the leader's ignorance was deliberately engineered by those around him or not, it can still act as a defence. An editorial published in the Japan Times on April 8, 2022, states, 'Finding those up the chain of

command who issued the orders... as guilty as those who pulled the trigger, will be harder still. There has to be “knowing” violation of the law of war. A policy that licenses indiscriminate violence is hard to prove; officials can claim ignorance of what happened down the chain of command... Proving [Putin’s] knowledge of war crimes will be extremely difficult; heads of criminal organizations rarely communicate such orders directly. Winks and nods send messages but in a way that ensures deniability.’

<https://www.japantimes.co.jp/opinion/2022/04/08/editorials/russian-war-crimes/>

4. The International Criminal Court is unlikely to be able to take effective action against President Putin. It has been argued that even if charges of war crimes are eventually brought against President Putin, the International Criminal Court is unlikely to be able to try him.

The ICC is a permanent international criminal court based in The Hague. Its legal basis is the Rome Statute of 1998, and it is responsible for four core crimes: genocide, crimes against humanity, war crimes and crimes of aggression. On May 2, 2022, the chief prosecutor of the International Criminal Court (ICC) has announced an investigation into Russian President Vladimir Putin over possible war crimes in Ukraine. The members of the court include 123 countries. Were a formal charge of war crimes ever to be brought against President Putin, the largest challenge facing the International Criminal Court would be getting Putin to appear before it. <https://www.aljazeera.com/news/2022/3/7/is-putin-likely-to-face-the-icc-over-russias-actions-in-ukraine>

President Putin could only be tried if he were to attend the Court. In an analysis published in Vox on April 9, 2022, Ellen Ioanes explained, ‘The ICC doesn’t try defendants in absentia, or if they’re not present at the court. And because the court doesn’t have a mechanism like a police force to enforce its arrest warrants, Putin could evade capture as long as he stays in Russia or other friendly nations — and in power.’

<https://www.vox.com/23017838/international-criminal-court-icc-putin-war-crimes> Kelebogile Zvobgo, assistant professor of government at the College of William & Mary, has stated, “I don’t really see the mechanism for holding Putin criminally accountable...The US and allies, I don’t think it’s possible that they will seize Putin.’ <https://www.vox.com/23017838/international-criminal-court-icc-putin-war-crimes>

Whatever the political and practical difficulties of the United States taking Putin into custody on behalf of the ICC, this would be difficult as the United States does not itself recognise the jurisdiction of the Court. In 2021, current United States Secretary of State, Antony Blinken, reiterated America’s ‘longstanding objection to the Court’s efforts to assert jurisdiction over personnel of non-States Parties.’ As US member of the House, Ilhan Omar, wrote in an opinion piece published in The Washington Post on April 14, 2022, ‘If we oppose investigations into countries, like our own, that haven’t joined the ICC, how can we support an investigation into Russia, another country that hasn’t joined the court?’ <https://tinyurl.com/4jxfkyhd>

Like the United States, Russia also does not acknowledge the jurisdiction of the Court. Russia withdrew from the ICC in 2016 after the court published a report classifying the Russian annexation of Crimea as an occupation. However, if a state is not a party to the ICC, its individual citizens cannot be prosecuted by the court for the offence of aggression. The only exception is that the UN security council can refer a non-party to the ICC for this specific offence, but Russia, as a permanent member of the council, holds a veto, and is extremely unlikely ever to refer its president or (once Putin is no longer in office), its former president to the Court. https://www.theguardian.com/world/2022/mar/02/could-international-criminal-court-bring-putin-to-justice-over-ukraine?ref=upstract.com&curator=upstract.com&utm_source=upstract.com

It has been suggested that only a complete regime change, and one highly hostile to President Putin, could result in his being handed over to what many Russian citizens would regard as their country’s enemies. Gary Solis, a retired law professor at West Point has stated, ‘It would be very difficult to drag Putin before a tribunal unless he’d lost the war or been ousted from power...It would also help if a Kremlin insider flipped on his erstwhile boss, testifying against him and handing the prosecutor incriminating documents.’ All these scenarios currently seem unlikely. <https://slate.com/news-and-politics/2022/03/russia-war-crimes-putin-prosecute.html>

President Putin is only likely to come before the ICC if he were taken into custody in another country not allied to Russia. Olympia Bekou, professor of public international law at the University of Nottingham, has stated, 'At the moment, the likelihood of Putin appearing before the ICC is limited as he is unlikely to leave Russia in the foreseeable future. It is also hard to determine whether a complete change in government in Russia will occur soon.' <https://www.aljazeera.com/news/2022/3/7/is-putin-likely-to-face-the-icc-over-russias-actions-in-ukraine>

5. Some of the nations demanding Putin's prosecution are themselves accused of war crimes
Some critics of the international demands that Putin be prosecuted for war crimes do not dispute that these crimes have been committed. Instead, they are concerned about what they see as the hypocrisy of these demands.

Both the United States and Britain are leaders in calling for Putin to be prosecuted for war crimes. President Biden was among the first to suggest that Putin had committed war crimes and should be punished for them <https://www.cbsnews.com/news/ukraine-russia-war-crimes-what-are-they-and-could-putin-be-prosecuted/> while British Prime Minister Boris Johnson has made similar demands. It has even been claimed that without the United States joining the International Criminal Court there is no chance that Putin will ever be prosecuted. <https://www.msnbc.com/the-reidout/reidout-blog/icc-putin-war-crimes-ilhan-omar-rcna24562> The implication is that it will take the international status and power of the United States, as a member of the Court, for it to have any likelihood of being able to try Putin.

Critics say that this reliance on the leadership of the United States and Britain is a concern because both countries have been accused of taking the same sort of actions for which they are currently condemning the Russian leader. These accusations of war crimes against the United States and Britain have been made particularly regarding the war in Iraq. The Iraq war is now widely condemned as an unjustified invasion of a sovereign state and the United States and Britain have been criticized for having instigated it. The European Centre for Constitutional and Human Rights states, 'The US/UK-led invasion of Iraq in spring 2003 is a crime. Hundreds of thousands of people died in the armed conflict that spanned more than thirteen years. All parties, including the USA and the UK, committed war crimes including massacres and torture on a massive scale.' <https://www.ecchr.eu/en/publication/the-iraq-invasion-is-a-crime/>

Some critics claim that having the United States and Britain play a major role in demanding the prosecution of Vladimir Putin casts a significant shadow over the process. They state that it is open to being seen as a biased exercise of justice, where charges are only brought depending on the international standing of the states involved. Thus, the potentially criminal actions of the United States appear to go without significant challenge while those of Russia do not. On March 8, 2022, The Intercept published a comment by Jeremy Scahill in which he observes, 'While many statements from Western leaders may be accurate regarding the nature of Russia's actions, the U.S. and other NATO nations are in a dubious position to take a moralistic stance in condemning Russia. That they do so with zero recognition of their own hypocrisy...is deeply problematic.' <https://theintercept.com/2022/03/07/ukraine-russia-nato-kosovo-war-crimes/>

Scahill focuses on the United States condemnation of Russia for the use of cluster bombs against Ukrainian civilians. He criticises the hypocrisy of this position, stating, 'The U.S. has repeatedly used cluster bombs, going back to the war in Vietnam and the "secret" bombings of Cambodia. In the modern era, both Presidents Bill Clinton and George W. Bush used them. President Barack Obama used cluster bombs in a 2009 attack in Yemen that killed some 55 people, the majority of them women and children. Despite the ban, which was finalized in 2008 and went into effect in 2010, the U.S. continued to sell cluster bombs to nations like Saudi Arabia, which regularly used them in its attacks in Yemen...What goes virtually unmentioned in much of the reporting on this topic is that the U.S., like both Russia and Ukraine, refuses to

sign the Convention on Cluster Munitions [which bans their use].’

<https://theintercept.com/2022/03/07/ukraine-russia-nato-kosovo-war-crimes/>

Similar criticisms have been made by Rebecca Davis in an article published in the South African Daily Maverick on March 8, 2022. Davis states, ‘Has the West’s response to the Ukraine invasion been hypocritical? Unequivocally: yes. The West’s horror at Putin’s actions should be placed in the context of the shameful history of Western powers’ involvement in illegal wars. In the past, NATO has engaged in exactly the same tactics — for instance, killing civilians — for which it now condemns Putin.’

<https://www.dailymaverick.co.za/article/2022-03-08-untangling-the-narrative-web-surrounding-south-africas-stance-on-the-russia-ukraine-conflict/>

It has been claimed that the United States has not joined the International Criminal Court precisely because it does not want to be held accountable for its own war crimes. In a study published by the American University, Washington, College of Law, in 2000, Teresa Young Reeves claimed that the United States had refused to join the International Criminal Court ‘because of its concern that it might one day have to surrender a citizen, particularly a member of its government or armed forces, to the jurisdiction of the...Court.’ <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1472&context=hrbrief>

In an article published in the Jacobin Magazine on April 11, 2022, Branko Marcetic argued that the United States long-standing opposition to the International Criminal Court and its absolute refusal to allow any of its citizens to be called before it both undermines the Court and America’s current calls for President Putin to appear before it. Marcetic states, referring to the manner in which the United States and other powerful nations appear to have avoided having their potential war crimes challenged, ‘The “rules-based international order” is [one] whose rules only apply to countries without a whole lot of power.’

<https://jacobinmag.com/2022/04/vladimir-putin-rules-based-world-order-international-criminal-court-us-ukraine-russia-war-crimes>

Critics claim that the United States cannot legitimately call for Vladimir Putin to be judged by a court from whose authority it is protecting its own citizens and leaders.

Further implications

There is widespread agreement within the western world that the brutal actions taken by Russia and its president, Vladimir Putin, against Ukraine, and its civilian population, are war crimes. What has surprised some is this very unanimity and the force with which the United States, Britain and a range of other powers have called for action against these crimes.

This surprise has been expressed for a variety of reasons. It has been noted by some that Russia’s previous war crimes, particularly those committed in Syria over the last eleven years, have not meet with the same strength of response. In 2020, a UN investigation into atrocities committed in Syria accused Russia, for the first time, of direct involvement in war crimes over the indiscriminate bombing of civilian areas.

<https://www.theguardian.com/world/2020/mar/02/russia-committed-war-crimes-in-syria-finds-un-report> For over ten years Russia has been part of an attack on resistance forces in Syria which has involved the widespread shelling and bombing of hospitals, medical facilities, schools, and residential neighbourhoods. In 2016, a U.N. humanitarian convoy bringing food and assistance to a besieged part of Aleppo was deliberately targeted. <https://www.npr.org/2022/03/20/1087783750/lessons-from-russias-role-in-syria-war> The 2020 UN accusation against Russia was a long time coming and has not received the weight of international backing and demands for subsequent action that Russia’s invasion of Ukraine has provoked in under a month.

There has been concern expressed that the current justifiable outrage over the death and destruction being inflicted on Ukraine reveals a Western, Eurocentric bias among the world’s most prominent media outlets

and the world's most powerful nations. <https://www.thedailystar.net/opinion/closer-look/news/russias-invasion-ukraine-why-our-perspective-human-suffering-so-eurocentric-2973571> Many of the comments published in reaction to the invasion of Ukraine reveal this bias. Daniel Hannan, a reporter tweeting for the British newspaper The Telegraph, wrote, 'They [Ukrainians fleeing Russian forces] seem so like us. That is what makes it so shocking. Ukraine is a European country. Its people watch Netflix and have Instagram accounts... War is no longer something visited upon impoverished and remote populations.' <https://twitter.com/telegraph/status/1497652701890555914?lang=en> Similarly, Ukraine's Deputy Chief Prosecutor, David Sakvarelidze, stated, 'It's very emotional for me because I see European people with blue eyes and blonde hair being killed every day with Putin's missiles and his helicopters and his rockets.' <https://twitter.com/ankaraford06/status/1498130195408388096>

Some observers have noted that the Western response to Ukraine's invasion has been viewed sceptically by many in Africa, India, the Middle East, and Asia. As Ishaan Tharoor noted in a comment published in The Washington Post on April 4, 2022, 'Critics point to a long tradition of Western double standards on the world stage. The Russian invasion elicited a Western response that was swift and all-encompassing — Ukrainian refugees were welcomed, while governments imposed crippling sanctions on Russia for its violation of international law. Where was such action in other contexts, they argue, including those where the United States and allies were complicit in ruinous wars and occupations?' In some quarters recent events have prompted memories of the 31 nations (led by the United States and Great Britain) that invaded Iraq in 2003. <https://tinyurl.com/378e49jj>

Looking beyond the double standards and racial bias shown in current reactions to the war in Ukraine, it may also mark a turning point in international attitudes to territorial aggression and war crimes. Members of the Syrian Civil Defence force, known as the White Helmets, are giving their assistance to Ukraine, sharing their expertise in the gathering of evidence of war crimes and their knowledge of coping with chemical weapons attacks. Emile Hokayem, an analyst at the London-based International Institute for Strategic Studies, has observed, 'Syrians are keen to embrace the cause of Ukraine because it helps revive fading international attention to their own tragedy and to tell Westerners: "We warned you, but you preferred to look away."' <https://www.timesofisrael.com/syrians-seek-to-aid-ukrainians-citing-shared-suffering-under-russian-military/>

It has also been suggested that the current situation might mark a watershed in the United States' attitude to war crimes and to the International Criminal Court, the body founded in 1998 (and formally established in 2002) to try individuals accused of war crimes. The United States has stood apart from the Court and has refused to have its citizens tried by it. In April 2021, almost exactly a year before President Biden denounced President Putin as a dictator, John Feffer, director of Foreign Policy in Focus at the Institute for Policy Studies, stated, 'Americans can't pretend to support the rule of law, to loudly promote it around the world, and then turn around and say: Oh, well, it doesn't apply to us.' https://www.faiobserver.com/region/north_america/john-feffer-icc-news-international-criminal-court-us-sanctions-joe-biden-administration-news-86919/