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The U.S. celebrates the charges against Putin, but pressures the ICC to refrain from prosecuting Israelis and Americans.



Karim Ahmad Khan, the Prosecutor of the International Criminal Court, visits Kyiv and territories which were occupied by Russia in Ukraine, April 14, 2022.

Sergii Kharchenko / NurPhoto via Getty Images

On March 17, a little more than one year after Russia's invasion of Ukraine, Karim Khan, chief prosecutor of the International Criminal Court (ICC), announced that the Pre-Trial Chamber (PTC) had issued an arrest warrant for Russian President Vladimir Putin for the commission of war crimes in Ukraine. The PTC also issued an arrest warrant for Maria Lvova-Belova, commissioner for children's rights in the Office of the President of the Russian Federation, for the same war crimes.

While the U.S. celebrates the arrest warrant against Putin, it has pressured the ICC to refrain from prosecuting Israelis and Americans. There is a double standard in the ICC's treatment of the situations in Ukraine and Palestine. This is largely due to political coercion by the United States, which isn't even a party to the ICC's Rome Statute.

The PTC confirmed that there are "reasonable grounds" to believe that Putin and Lvova-Belova unlawfully deported and transferred "at least hundreds of" Ukrainian children from occupied areas of Ukraine to the Russian Federation, in violation of [article 8\(2\)\(a\)\(vii\) and article 8\(2\)\(b\)\(viii\) of the Rome Statute](#).

Khan had opened an investigation into the situation in Ukraine on February 28, 2022, finding a "[reasonable basis to believe that both alleged war crimes and crimes against humanity have been committed in Ukraine](#)". The arrest warrants were issued one year later — lightning speed for the ICC.

Contrast that with the ICC's handling of the investigation of war crimes in Palestine.

After Seven Years of Investigating Israeli War Crimes, Still No Charges

After a five-year preliminary examination, former ICC chief prosecutor Fatou Bensouda found there was a [reasonable basis](#) to believe that [Israeli leaders committed war crimes and crimes against humanity in Palestine](#), including willful killing, willfully causing serious injury, disproportionate use of force, and transfer of Israelis into Palestinian territory. Bensouda also found a reasonable basis to investigate possible war crimes by Palestinian leadership, including intentional attacks against civilians, using civilians as human shields, and torture and willful killing. The ICC opened a formal investigation two years ago.

But no arrest warrants have issued and there has been no visible progress toward accountability for Israeli leaders, including Prime Minister Benjamin Netanyahu. One of the war crimes the ICC is investigating is Israel's unlawful transfer of Israeli Jews into settlements located on Palestinian land.

In December 2022, three leading Palestinian human rights organizations issued a [joint statement](#) to the Assembly of States Parties to the Rome Statute (the management arm of the ICC), stating, “We have not seen any concrete step in this investigation, no action by the Prosecutor to break the vicious cycle of impunity.”

The rights groups distinguished the ICC prosecutor’s inaction on Palestine from the situation in Ukraine. “It is also crucial that the same level of attention, activity, and resources is applied to other situations including Palestine, to avoid perceptions of selectivity and politicization,” the groups wrote. “Victims should not be competing for justice and double standards should not have a place in justice.”

US Derailed ICC Investigation of US Leaders for War Crimes in Afghanistan

The United States derailed an attempt to prosecute U.S. officials for war crimes and crimes against humanity committed during the war in Afghanistan. The preliminary examination was opened in 2007, but the authorization for an official investigation took 13 years.

In March 2020, the ICC finally authorized a formal investigation of U.S., Afghan and Taliban officials for war crimes committed in the “war on terror.” The ICC prosecutor found reasonable grounds to believe that, pursuant to a U.S. policy, members of the CIA had committed war crimes. They included torture, cruel treatment, outrages upon personal dignity, rape and other types of sexual violence against people held in detention facilities in Afghanistan, Romania, Poland and Lithuania.

In September 2021, three months after assuming the post of chief prosecutor of the ICC, Khan narrowed the focus and dropped the investigation of U.S. leaders and their allies. He limited the probe to crimes committed by the Taliban and ISIS’s affiliate in Afghanistan. When the Biden administration lifted the sanctions that Donald Trump had levied on ICC personnel, “it did so with the tacit understanding that the court’s probe on U.S. crimes wouldn’t resume,” [Alice Speri wrote](#)

at
The Intercept.

“This was clearly a political decision — there’s really no other way it can be interpreted,” [Jennifer Gibson, a lawyer with the human rights group Reprieve, said](#). “It gave the US, the UK and their allies a get out of jail free card.”

Both Russia and the US Threaten the ICC

Although the ICC doesn’t have a police force, the 123 parties to the Rome Statute have an obligation to arrest Putin and Lvova-Belova if they travel to their countries. Although it’s unlikely they will be arrested, the possibility of arrest will likely hinder their international travel.

Former Russian President Dmitry Medvedev (and deputy chair of Russia’s security council) warned that any attempt to arrest Putin would constitute a “[declaration of war](#)” against Moscow. He invoked the threat of a “nuclear apocalypse” and said, “It’s quite possible to imagine a hypersonic missile being fired from the North Sea from a Russian ship at the [ICC’s] Hague courthouse.”

The U.S. government has also [threatened the ICC](#). In 2002, the George W. Bush administration removed the U.S. signature from the Rome Statute and the following year, Congress passed the [American Service-Members’ Protection Act](#). It contains a clause called the “Hague Invasion Act,” which states that if a U.S. or allied national is detained by the ICC, the U.S. military can use armed force to extricate them. This would apply to close U.S. ally Israel.

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Furthermore, the Bush administration effectively blackmailed 100 countries that were parties to the Rome Statute by forcing them to sign [bilateral immunity agreements](#) in which they promised not to turn over U.S. persons to the ICC or else the United States would withhold

foreign aid from them.

Moreover, the United States, which refuses to join the ICC, expressed “ [serious concerns about the ICC’s attempts to exercise its jurisdiction over Israeli personnel](#) .” Although Israel isn’t a party to the Rome Statute, the ICC found that it has jurisdiction over war crimes committed in Palestine. In 2012, the UN General Assembly recognized Palestine as a [non-member observer state](#) in the United Nations. Palestine acceded to the Rome Statute, thereby becoming a member of the States Parties of the ICC.

Medvedev called the ICC a “ [legal nonentity](#) .” But even though neither Russia nor Ukraine are parties to the Rome Statute, [Ukraine has accepted the ICC’s jurisdiction](#) to prosecute crimes in its territory.

UN Independent International Commission Found Evidence of War Crimes by Russia and Ukraine

On March 16, the day before Khan announced the issuance of the arrest warrants, the Independent International Commission of Inquiry on Ukraine released an [18-page report](#) to the UN Human Rights Council. It documents war crimes committed by Russian forces and, to a lesser extent, by Ukrainian forces.

The Commission report contains the following findings:

UN Office of the High Commissioner for Human Rights (OHCHR) recorded 8,006 civilians killed and 13,287 injured in Ukraine since February 22, 2022. As of February 21, 2023, there were 8 million refugees from Ukraine throughout Europe, about 90 percent of whom are women and children. About 5.4 million people are displaced across Ukraine and nearly 18 million people in Ukraine are in need of humanitarian assistance.

The Commission found “reasonable grounds to conclude that the invasion and Russian armed forces’ attacks against Ukraine’s territory and armed forces qualify as acts of aggression against Ukraine.”

“Waves of attacks” by Russian forces on “Ukraine’s energy-related infrastructure and the use of torture by Russian authorities may amount to crimes against humanity.” The Commission recommended further investigations.

Russian forces targeted the infrastructure of Ukraine. “The disruption of electric substations, power plants, and other installations which produce the energy and the heating indispensable to the survival of the population, has inflicted significant harm to civilians.” These attacks constituted the war crime of excessive incidental death, injury or damage.

In addition, “the attacks have been widespread and systematic and may amount to the crime against humanity of other inhumane acts.” Further investigation is necessary.

Russian military operations near or within the Zaporizhzhia Nuclear Power Plant “significantly endangered the plant, prompting the risk of a serious nuclear incident.” It caused a fire to break out and military equipment was located less than 150 meters from a reactor.

There was a widespread pattern of summary executions by Russian forces. Many were preceded by detention, interrogation, torture or ill-treatment. Torture and the willful killing of civilians constitute war crimes.

Torture was used by Russian authorities “in a systematic and widespread manner.” This could amount to crimes against humanity and should be further investigated.

Indiscriminate attacks against civilians and civilian objects that intentionally target civilians constitute war crimes. The majority of attacks by Russian forces were indiscriminate.

Russia's widespread uses of explosive weapons, especially in densely populated areas, were "indiscriminate" and "disproportionate" because "they were initiated with an apparent disregard for the presence of . . . civilians."

The bombardment and siege of Mariupol may amount to a crime against humanity. Further investigation, with access to Donetsk (including Mariupol), is recommended.

In addition, the commission detailed willful killings, torture, unlawful confinement, rape, sexual and gender-based violence by Russian forces. The commission found a "widespread pattern of torture and inhuman treatment committed by Russian authorities against the people they detained" and rapes "committed at gunpoint, with extreme brutality and with acts of torture, such as beatings and strangling."

Russia unlawfully annexed the occupied regions of Donetsk, Luhansk, Kherson and Zaporizhzhia, according to the commission. It referred to the "so-called referendums" that were held in those regions about incorporation into the Russian Federation.

The commission also found unlawful transfers and deportations of children in Russian-controlled areas of Ukraine. Russian and Ukrainian officials reported that hundreds of thousands of children were transferred from Ukraine to the Russian Federation since February 24, 2022.

"In a limited number of cases, the Ukrainian armed forces were likely responsible for violations of international humanitarian law and human rights law, and for some incidents which qualify as war crimes," including indiscriminate attacks, in violation of international humanitarian law. They likely used cluster munitions and rocket-delivered antipersonnel landmines. Ukraine, like Russia, is a party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction, which bans all use of anti-personnel landmines.

The ICC Could Bring Additional Charges Against Putin and Lvova-Belova

In spite of many other crimes that could have been charged, the ICC limited its allegations against Putin and Lvova-Belova to unlawful deportations and the transfer of children.

“Given the politically charged situation, the prosecutor could have been looking for a limited charge which was, in his view, winnable,” Beth Lyons, a defense counsel at the ICC, told *Truth out*.

“His March 17, 2023, statement of the arrest warrants against Putin and Lvova-Belova is a very political statement. In it, he acknowledges that the context of his application is Russia’s acts of aggression against Ukraine. However, he doesn’t focus on Russia’s violation of the UN Charter and aggression, but rather on attacks against a sympathetic and vulnerable group (children). The case could be seen as a metaphor for the overall situation — the attack by Russia on the sovereignty of Ukraine.”

At the end of Khan’s statement, [he wrote](#) , “Ukraine is a crime scene that encompasses a complex and broad range of alleged international crimes. We will not hesitate to submit further applications for warrants of arrest when the evidence requires us to do so.”

“It is possible for the ICC to issue an arrest warrant and later the prosecutor can make a request to amend it to include additional charges,” Lyons said.

Since Russia is not a party to the Rome Statute, [Russian leaders can’t be charged in the ICC with the crime of aggression](#) . A group of more than 30 countries is planning to create [a special tribunal](#) to prosecute Russian officials for aggression.

Meanwhile, fearful of setting a precedent that could result in future indictments of Americans, [the Pentagon is blocking U.S. efforts to share evidence with the ICC](#) to assist in its case against Putin and Lvova-Belova. The U.S. Department of Justice is [helping Ukrainian prosecutors](#) with logistical assistance, training and direct assistance in prosecuting Russian war crimes in Ukraine’s courts.

Although the United States refuses to join the Rome Statute, it cheers the ICC’s prosecution of

Putin. But when it comes to accountability of Israeli leaders for war crimes in Palestine, or U.S. officials for war crimes and crimes against humanity in Afghanistan, that's a different story.

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