



Karim Khan, chief prosecutor for the International Criminal Court, speaks at a Parliament Hill news conference during his first official visit to Canada in May 2023. THE CANADIAN PRESS/Spencer Colby

Canada's war crimes investigation may not deter Russia, but it matters to Ukrainians

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In June 2022, United States Attorney General Merrick Garland travelled to Ukraine to call for the prosecution of Russian war crimes.

“The United States is sending an unmistakable message” to those who have committed atrocities, he said. “There is no place to hide.”

There's only one problem: American hands are tied when it comes to the international prosecution of war crimes. That's because it opted out of the International Criminal Court (ICC) due to objections over the court's jurisdiction that allows it, under certain conditions, to pursue people outside their own state borders.

Russia has also withdrawn from the ICC. Ukraine isn't a member; it signed but didn't ratify the court's statute.

That means it will fall to third-country signatories to the ICC like Canada to investigate and prosecute Russian war crimes in Ukraine.

Institutionalizing war crimes

Around the First World War, the great powers began codifying the laws of war in several conventions and treaties.

Building on centuries of law, these agreements specified when countries could go to war and under what conditions, spelled out the treatment of both combatants and non-combatants and limited the use of weapons and other practices during warfare.

These fledgling agreements did little to prevent the outbreak of another global conflict, but they did provide the foundation for the world's first international tribunals in Tokyo and Nuremberg following the Second World War.



Notorious Nazi Hermann Goering stands in the prisoner's dock at the Nuremberg war crimes trial in Germany in November 1945. (AP Photo)

That marked a decisive moment for international law, representing the first time national leaders were held accountable for war crimes on the world stage.

Under American stewardship, the immediate post-Second World War period witnessed a massive expansion of international law.

New treaties were drafted criminalizing genocide and crimes against humanity. New organizations like the United Nations were born.

A liberal rules-based international order began to emerge, setting fundamental limits on state sovereignty – particularly in the conduct of war, and even within national boundaries.

But this progress halted with the start of the Cold War; the standoff between the Soviet Union and the U.S. put the prosecution of war crimes on ice.

Few leaders were held accountable for their crimes as superpowers shielded them from prosecution.

UN creates the ICC


Following the Soviet collapse, and the emergence of the U.S. as the sole remaining global superpower, the UN Security Council organized international tribunals to address genocide, war crimes and other atrocities committed during conflict.

These tribunals were situational, focused on conflicts in Rwanda and the former Yugoslavia. The UN then used its renewed power to formalize them in the Rome Statute, the founding document of the ICC.

This was made possible by a legal innovation: the creation of a permanent international tribunal that would enable signatories to bring war criminals to justice.

Even third parties, with no apparent interest, could investigate and refer war criminals to the international body under certain circumstances.

But in a dramatic about-face, the George W. Bush administration withdrew the U.S. from the ICC, fearing the court might complicate its so-called war on terror.


George W. Bush speaks by telephone from the Oval Office at the White House in Washington to New York officials two days after the Sept. 11, 2001, terrorist attacks. (AP Photo/Doug Mills)

Nevertheless, the ICC came into existence in 2002, and the court began issuing arrest warrants and prosecuting war criminals.

Without the U.S., however, its activities remained restricted. For the next decade, prosecutions were limited to the African continent, leading to allegations of systemic bias.

There are still questions about whether the ICC can hold war criminals to account more broadly – and they've only intensified during the war in Ukraine.

Canada's role

In March 2022, 39 countries, including Canada, referred the war in Ukraine to the ICC. At the same time, the RCMP launched an investigation into alleged war crimes committed by Russia in Ukraine.

This is the first real-time war crimes investigation in Canada's history, and one of the first globally.

The ICC has laid charges against Russian President Vladimir Putin, accusing him of human rights abuses in Ukraine.



Lloyd Axworthy, Canada's foreign minister at the time, addresses delegates about the launch of an International Criminal Court in September 2000 at the United Nations. (AP Photo/Shawn Baldwin)

These developments mark a major change in Canada's appetite for investigating war crimes. Before joining the ICC, Canada had a checkered history of holding war criminals accountable, even when they arrived on its shores. Canada was accused, for example, of providing shelter to Nazi war criminals and collaborators.

Canada's probe into alleged ongoing war crimes in Ukraine suggests it now has the political will to investigate these atrocities even when they happen outside of its borders.

Given Canada's role in the creation of the ICC, the country's leadership on this front is appropriate.

Efforts to hold Russia accountable have also engaged a keen and highly activist group: Ukrainian Canadians.

As they welcome refugees and lobby the government, Ukrainian Canadians have helped collect war crimes testimonials that could one day be used to prosecute Russia.

Newly arriving Ukrainians to Canada are greeted by posters and pamphlets printed in English, French, Russian and Ukrainian asking them to report their recollections to the RCMP while their memories are still fresh.

Nonetheless, despite the unprecedented steps Canada and other states are taking to put Russia on notice, it's doubtful they'll ultimately result in any concrete forms of Russian accountability.

Creating a historical record

Although some of these measures have apparently made top Russian officials more circumspect when travelling internationally, it's highly unlikely alleged Russian war criminals will end up before Canadian courts.

Globally, the impact also seems limited. Russia remains a nuclear power and UN Security Council member, further underscoring the improbability of future prosecutions.



A Ukrainian fleeing the ongoing war in Ukraine is hugged as she arrives in Montréal in May 2022. THE CANADIAN PRESS/Graham Hughes

However, the RCMP investigation is important. It signals a new path for Canada that prioritizes international law and corrects for past policy failures that saw the country provide safe harbour to war criminals.

For Ukrainian-Canadians, the investigation validates their experiences. Canada is helping create a historical record. The investigation will form one of the pre-eminent repositories of testimonials from recently arrived refugees.

Canada has taken on the sacred duty of creating and safeguarding a dark moment in Ukrainian history – and this matters to the victims of Russia’s war.

As Alexandra Chyczij, president of the Ukrainian Canadian Congress, told us in an interview:

“What is important today is that the massive evidence of the myriad, systemic Russian crimes against humanity, war crimes and terrorism – committed under the direction of the Russian political leadership – be documented, collected and preserved.”