

1. Mark your confusion.
2. Show evidence of a close reading.
3. Write a 1+ page reflection.

Who Is a ‘War Criminal,’ Legally Speaking?

Source: Colleen Long, Mike Corder, and Eric Tucker, Associated Press, March 17, 2022

President Biden on Wednesday flatly called Russia’s Vladimir Putin a “war criminal” for the unfolding onslaught in Ukraine, where hospitals and maternity wards have been bombed. But declaring someone a war criminal is not as simple as just saying the words. There are set definitions and processes for determining who’s a war criminal and how they should be punished.

The White House had been avoiding applying the designation to Putin, saying it requires investigation and an international determination. After Biden used the term, White House Press Secretary Jen Psaki said the president was “speaking from his heart” and renewed her statements that there is a process for making a formal determination.

In popular usage, though, the phrase has taken on a colloquial meaning as a generic term for someone who’s awful.

“Clearly Putin is a war criminal, but the president is speaking politically on this,” said David Crane, who has worked on war crimes for decades and served as chief prosecutor for the United Nations’ Special Court for Sierra Leone, which tried former Liberian President Charles Taylor.

The investigations into Putin’s actions already have begun. The U.S. and 44 other countries are working together to investigate possible violations and abuses, after the passage of a resolution by the United Nations Human Rights Council to establish a commission of inquiry. There is another inquiry by the International Criminal Court, an independent body based in the Netherlands.

“We’re at the beginning of the beginning,” said Crane, who now heads the Global Accountability Network, which works with the international court and United Nations, among others. On the day Russia began its invasion of Ukraine, his group set up a task force compiling criminal information for war crimes. He’s also drafting a sample indictment against Putin. He predicted an indictment of the Russian president could happen within a year. But there is no statute of limitations.

Here’s a look at how this all works:

Who is a war criminal?

The term applies to anyone who violates a set of rules adopted by world leaders known as the law of armed conflict. The rules govern how countries behave in times of war.

Those rules have been modified and expanded over the last century, drawn from the Geneva Convention in the aftermath of World War II and protocols added later.

The rules are aimed at protecting people not taking part in fighting and those who can no longer fight, including civilians such as doctors and nurses, wounded troops and prisoners of war. Treaties and protocols lay out who can be targeted and with what weapons. Certain weapons are prohibited, including chemical or biological agents.

What specific crimes makes someone a war criminal?

The so-called grave breaches of the convention that amount to war crimes include willful killing and extensive destruction and appropriation of property not justified by military necessity. Other war crimes include deliberately targeting civilians, using disproportionate force, using human shields and taking hostages.

The International Criminal Court also prosecutes crimes against humanity committed in the context of “a widespread or systematic attack directed against any civilian population.” These include murder, extermination, forcible transfer, torture, rape and sexual slavery.

The most likely way that Putin could face prosecution as a war criminal is through the widely recognized legal doctrine of command responsibility. If commanders order or know or are in a position to know about crimes and did nothing to prevent them, they can be held legally responsible.

What are the paths to justice?

Generally, there are four paths to investigate and determine war crimes, though each one has limits. One is through the International Criminal Court.

A second option would be if the United Nations turns its work on the inquiry commission over to a hybrid international war crimes tribunal to prosecute Putin.

A third would be the creation of a tribunal or court to try Putin by a group of interested or concerned parties, such as the North Atlantic Treaty Organization, the European Union and the U.S. The military tribunals at Nuremberg after World War II against Nazi leaders are an example.

Finally, some countries have their own laws for prosecuting war crimes. Germany, for example, is already investigating Putin. The U.S. doesn't have such a law, but the Justice Department has a special section that focuses on acts including international genocide, torture, recruitment of child soldiers and female genital mutilation.

Where might Putin be put on trial?

It's unclear. Russia does not recognize the jurisdiction of the International Criminal Court and would not send any suspects to the court's headquarters in The Hague. The U.S. does not recognize the authority of the court either. Putin could be tried in a country chosen by the United Nations or by the consortium of concerned nations. But getting him there would be difficult.

Have national leaders been prosecuted in the past?

Yes. From the post-World War II tribunals in Nuremberg and Tokyo to more recent ad hoc tribunals, senior leaders have been prosecuted for their actions in countries including Bosnia-Herzegovina, Cambodia and Rwanda.

Former Yugoslav leader Slobodan Milosevic was put on trial by a U.N. tribunal in The Hague for fomenting bloody conflicts as Yugoslavia crumbled in the early 1990s. He died in his cell before the court could reach a verdict. His Bosnian Serb ally Radovan Karadzic and the Bosnian Serb military leader, Gen. Ratko Mladic, were successfully prosecuted and are both serving life sentences.

Liberia's Taylor was sentenced to 50 years after being convicted of sponsoring atrocities in neighboring Sierra Leone. Chad's former dictator Hissene Habre, who died last year, was the first former head of state to be convicted of crimes against humanity by an African court. He was sentenced to life.

Possible Response Questions

- What are your thoughts about trying Putin as a war criminal? Explain.
- Did something in the article surprise you? Discuss.
- Pick a word/line/passage from the article and respond to it.
- Discuss a “move” made by the writer in this piece that you think is good/interesting. Explain.