



## Forum for American Leadership

### **Buyer Beware: The ICC is the Wrong Venue to Hold Russia Accountable for its Crimes in Ukraine**

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Russian President Vladimir Putin and forces under his direction have engaged in horrific and senseless crimes following their aggression against Ukraine, including forced [deportation](#) of Ukrainian children to Russia, indiscriminate and [deliberate](#) attacks against civilians, torture, and other war crimes and [crimes against humanity](#). It is imperative that the United States and its allies and partners seek accountability for Vladimir Putin and culpable Russian forces for these heinous acts by bringing them to justice, such as through an ad hoc international legal tribunal.

But pursuing these goals through the International Criminal Court (ICC)—as some have advocated—risks boomeranging against the United States. The ICC is an unaccountable, activist-prone international body that has in the past sought to target U.S. military personnel and remains eager to undermine the sovereignty of the United States and our key allies, such as Israel.

The ICC’s basic, persisting flaw—a structure that lacks any meaningful oversight or accountability—guarantees that it is only a matter of time before the ICC once again turns its sights against the United States with renewed resources and fervor. The United States should resist the temptation presented by Ukraine to legitimize and embolden such efforts, when alternative courses exist.

**The ICC is deeply flawed, with a history of investigations against the United States and Israel.**

The ICC was created by the [Rome Statute](#) in 1998, but the United States and many other countries, including Israel, have never joined the court nor recognized its jurisdiction over their personnel. One of the ICC’s unstated goals is to constrain the United States and its allies. It has sought to do so repeatedly and in the process has violated national sovereignty by claiming jurisdiction over non-state parties.

- **Afghanistan Probe:** In 2020, the ICC [authorized](#) a probe into alleged war crimes in Afghanistan by U.S. personnel, the Taliban, and the Afghan military, despite the fact that the United States is not a party to the treaty that established the ICC, and despite the fact that the government of Afghanistan objected to that probe. The ICC also pursued this course notwithstanding that under the Obama Administration the U.S. government thoroughly and publicly [investigated](#) all credible allegations of war crimes through its own sovereign legal process, thereby satisfying the court’s “complementarity” requirement—that the ICC should only step in when national legal systems fail to effectively investigate and prosecute alleged war criminals. At the behest of international activists and anti-U.S. state parties, the ICC pursued the United States anyway. The court

has since appointed a new prosecutor, who has [said](#) that the Afghanistan investigation will deprioritize its focus on the United States.

- **Targeting U.S. Allies:** The ICC [led](#) a years-long preliminary examination into alleged war crimes by British forces in Iraq. In addition, in 2021, the ICC opened an investigation into alleged Israeli war crimes in the “State of Palestine”. However, Palestine is not a sovereign state, and Israel is, like the United States, not a party to the Rome Statute. Indeed, anti-Israel non-governmental organizations [lobbied](#) the ICC for years to open such a probe despite these obvious jurisdictional deficiencies. International organizations have long unfairly singled out Israel, and the ICC is no different.
- **Flawed Structure:** The ICC’s structure is fundamentally at odds with the U.S. justice system. The ICC prosecutor exercises both executive and judicial authority, without any meaningful checks and balances on his discretion. It is this near-unchecked authority to initiate cases that leads to the sort of politicized prosecutions detailed above and threatens the sovereignty of the United States and its allies.
- **Budget and Record:** The ICC has an abysmal, quixotic record of punishing atrocities compared to its bloated budget. Since its establishment in 2002, the ICC has [issued](#) ten convictions, principally focused on actors in Africa. Over that same period of time, the Court has [spent](#) more than \$2.3 billion, and the ICC’s 2023 budget is roughly [\\$186 million](#).

### **The ICC investigates Russia.**

Following Russia’s renewed invasion of Ukraine in 2022, the ICC opened an investigation into Russia’s action, including by [issuing](#) an arrest warrant for President Vladimir Putin and another Russian official involved in the deportation of Ukrainian children to Russia. Despite long-time statutory restrictions on U.S. cooperation with the ICC, in December 2022, Congress [authorized](#) the sharing of information with the ICC to assist in its Russia investigation. This has, in turn, triggered an interagency [debate](#) as to whether to provide such information pursuant to the authorization—with the Defense Department reportedly objecting to such cooperation due to the long-term threat the ICC poses to U.S. military personnel.

If the United States supports the ICC’s Russia probe by lending U.S. prestige and credibility to the effort, it will only be more difficult in the future for the United States to make principled objections to politically-motivated ICC efforts to exercise jurisdiction over the United States and its personnel.

### **There are better, less risky options for accountability through prosecution.**

As the U.S. government rightly seeks to hold Putin and other Russian culprits accountable, it should be careful not to legitimize and bolster a politicized, unaccountable institution like the ICC.

There are other promising options to bring Kremlin decision-makers to justice—each with different benefits and limitations. The most obvious is to support the Ukrainian justice system in its ongoing efforts to collect evidence and prosecute Russian war criminals under Ukrainian law. In past conflicts, for instance in Sierra Leone and Cambodia, local criminal tribunals reinforced by international support have proven at least as effective as international tribunals (such as the UN-created Yugoslavia and Rwanda war crimes tribunals) in holding war criminals accountable. While Russia can prevent the UN Security Council from providing the same kind of support to the Ukrainian judicial system that it provided in Sierra Leone and Cambodia, regional institutions, such as the Council of Europe, with backing from the UN General Assembly, should be able to provide international support that is similarly effective. The United States has also considered support for a [special tribunal](#) to prosecute Russia for the crime of aggression. Depending on how the war ends, it may also be possible to establish an international tribunal modeled after the Nuremberg Tribunal.

The advantage of these models is that they can be designed with proper safeguards and accountability—and can be shuttered when their mission to investigate and prosecute Russia’s horrific crimes in Ukraine is complete.

*This paper is a product of the Forum for American Leadership’s [National Security Law](#) Working Group.*

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