

# Fearing Future Probes of US Atrocities, Pentagon Blocks ICC From Russian War Crimes Evidence

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*The Pentagon is helping to shield Russia from International Criminal Court accountability for its atrocities in Ukraine, fearing such a reckoning could set a precedent allowing the tribunal to prosecute U.S. war crimes, a report published Wednesday revealed.*

[According to](#) *The New York Times*, **Defense Secretary Lloyd Austin III** and other Pentagon brass are blocking the Biden administration from sharing evidence of Russian war crimes in Ukraine gathered by U.S. intelligence agencies with the International Criminal Court (ICC) over the objections of officials in those agencies, as well as in the State and Justice departments.

Neither Russia, the United States, nor Ukraine are party to the Rome Statue, the treaty governing the ICC. However, according to "current and former officials briefed on the matter" who were interviewed by the *Times*, Austin and others are wary of the Hague tribunal targeting the crimes of countries outside its jurisdiction. Ukraine last year accepted the ICC's jurisdiction so the court could [open an investigation](#) of Russia's conduct during the invasion.

"The Pentagon is flouting the rest of the U.S. government to try to block sending evidence of Russian war crimes in Ukraine to the International Criminal Court," [tweeted](#) human rights expert Kenneth Roth. "It fears a precedent: prosecuting non-parties on the territory of governments that accept the ICC."

Author and war correspondent Megan K. Stack [wrote](#) on Twitter that "basically, we want others punished, but not ourselves."

US tensions re The Hague are old; basically we want others punished, but not ourselves. The ICC is now investigating war crimes in Afghanistan. I'm not surprised by Pentagon stonewalling; I'm more intrigued by calls to cooperate, especially from Graham. <https://t.co/cVPXAofXDi>

— Megan K. Stack (@Megankstack) [March 9, 2023](#)

U.S. **Sen. Lindsey Graham** (R-S.C.)—whose resolution urging accountability for Russian war criminals and encouraging ICC member states to investigate documented and alleged atrocities [unanimously passed](#) the Senate last year—[told](#) the *Times*' Charlie Savage that the Pentagon “opposed the legislative change—it passed overwhelmingly—and they are now trying to undermine the letter and spirit of the law.”

“It seems to me that [Department of Defense] is the problem child here, and the sooner we can get the information into the hands of the ICC the better off the world will be.”

Documented and alleged war crimes committed by Russian forces and contractors in Ukraine include—but are not limited to— [massacres](#) and [other murders](#) of civilians and [soldiers](#); [indiscriminate attacks](#) on densely populated areas; [attacking](#) critical civilian infrastructure; bombing [hospitals](#) and [shelters](#); torture; [rape and sexual enslavement](#) of women and children; and [stealing children](#).

American troops and contractors have perpetrated each of those war crimes in U.S. [attacks](#), [invasions](#), [occupations](#), and [peacekeeping operations](#) in the years since the ICC was established in 1998.

A year of war in Ukraine. A year of Russian forces' atrocities. A year of civilian suffering.

In the year since Russia's full-scale invasion of Ukraine, here is a glimpse at some of the war crimes and attacks HRW has documented: <https://t.co/j1R39K4uXF> <pic.twitter.com/c5L4glr2iz>

— Human Rights Watch (@hrw) [February 24, 2023](#)

**President Joe Biden** has [called](#) Russian **President Vladimir Putin** a “war criminal” and demanded he be tried for Russia's atrocities in Ukraine. The Biden administration and Congress [even explored ways](#) of helping the ICC prosecute Russian war crimes without the U.S. being subjected to the tribunal's authority.

As Savage noted:

Lawmakers enacted two laws aimed at increasing the chances that Russians would be held accountable for war crimes in Ukraine.

One was [a stand-alone bill expanding the jurisdiction of American prosecutors to charge foreigners for war crimes](#) committed abroad. The other, a provision about the International Criminal Court embedded in the [large appropriations bill](#) Congress passed in late December, received little attention at the time.

But that provision was significant. While the U.S. government remains prohibited from providing funding and certain other aid to the court, Congress created an exception that allows it to assist with “investigations and prosecutions of foreign nationals related to the situation in Ukraine, including to support victims and witnesses.”

“The Ukrainian people deserve accountability,” Rosie Berman, a project manager at the advocacy group Center for Civilians in Conflict, [asserted](#) via Twitter. “By blocking the sharing of evidence with the ICC, the administration, contrary to its stated position, is undermining it.”

Under a [law](#) signed by former President George W. Bush, not only is the U.S. Congress barred from funding the ICC or from providing other assistance to the court, but the U.S. may use “all means necessary and appropriate”—[including invading NATO ally the Netherlands](#)—to secure the release of any U.S. or allied personnel held by or on behalf of the tribunal.

In March 2020 the ICC, then led by **Prosecutor Fatou Bensouda**, [determined](#) that an investigation into [documented and alleged war crimes](#) committed by all sides in the war in Afghanistan, and at secret CIA prisons in Eastern Europe, could proceed.

In retaliation, the Trump administration [slapped sanctions](#) on Bensouda and other ICC lawyers and investigators, as well as on journalists who provide evidence of U.S. war crimes. A federal judge later [blocked](#) former President Donald Trump’s executive order authorizing sanctions.

In September 2021, human rights defenders were [outraged](#) when the ICC, under new **Prosecutor Karim Khan**, said the investigation would focus only on potential war crimes perpetrated by the Taliban and Islamic State in Afghanistan, while excluding U.S. and allied atrocities.

Last April, progressive U.S. [Rep. Ilhan Omar](#) (D-Minn.) [introduced](#) a resolution calling on the United States to join the ICC, as well as bills that would have repealed the so-called Hague Invasion Act and codified the Office of Global Criminal Justice Act so that the State Department can more effectively respond to crimes against humanity.

“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?” Omar asked at the time.

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