

By weaponizing winter in Ukraine, is Putin committing a crime against humanity?

Michael Byers

Winter has [arrived in Ukraine](#), with temperatures well below the freezing point. [Russian President Vladimir Putin](#) is exploiting the opportunity by [launching missiles](#) against power plants and transformers across Ukrainian territory. Millions of civilians are now at risk of hypothermia, contaminated water supplies, and delays in medical care and emergency response.

[Ukrainian President Volodymyr Zelensky](#) has condemned the targeting of the country's power system as "an obvious crime against humanity." But is he right about this?

Under the international law of armed conflict, there are two tests required to answer this question, the first of which works in Mr. Putin's favour, the second of which does not. Unless Mr. Putin's actions satisfy both tests, they are illegal.

First, in a conflict, a country's power system may be targeted if it constitutes a "military objective," defined by [Protocol I](#) to the 1949 Geneva Conventions as "objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."

Targeting the power system does offer an advantage to the Russian military, by interrupting some of the communications, transportation, and air defences of the Ukrainian military. Moreover, infrastructure can be a military objective even if it has a dual use, in that it also serves civilians.

However, there are reasons why the international law of armed conflict is often called international humanitarian law as well: The second test that Mr. Putin's actions must meet is a requirement of proportionality, between the pursuit of military advantage and the protection of civilians.

Under Protocol I, attacks are prohibited if they can be expected to cause "[incidental loss of civilian life](#)" or "injury to civilians" that is "excessive in relation to the concrete and direct military advantage anticipated."

Targeting the Ukrainian power system in winter has the potential to result in thousands of civilian deaths and a far larger number of serious illnesses. It is also apparent, with Russian forces confined to the far-eastern regions of Ukraine, that strikes against power infrastructure in other regions of the country offer little in the way of "concrete and direct military advantage."

Mr. Putin cannot claim ignorance of these rules. In 2019, he [withdrew Russia from Protocol I](#), which the Soviet Union had ratified three decades earlier, in an apparent effort to shed his obligations to protect civilians. This effort was destined to fail, however, as the rules have become part of customary international law.

Russia's ambassador to the United Nations also understands the rules. Recently, Vassily Nebenzia justified Russia's actions in words that precisely, and therefore deliberately, satisfied the first test for determining legality: "We are conducting strikes with precision weapons against energy and other infrastructure, which is used for the purpose of military supplies to Ukrainian units." Mr. Nebenzia ignored the second test of proportionality, presumably because he knew that it could not be met.

The targeting of the Ukrainian power system in winter involves decision-making at the highest level. These are not crimes committed in the heat of battle by poorly trained troops. They are leadership crimes, committed in full knowledge of the applicable law and the potential for suffering.

Leadership crimes often go unpunished because it is usually difficult to obtain custody of the accused in these matters. But the ebb and flow of international politics can sometimes deliver: Remember the cases of Adolf Eichmann, Augusto Pinochet, Slobodan Milosevic and Charles Taylor.

The International Criminal Court (ICC) already has a team of investigators in Ukraine, and they are not interested in prosecuting front-line soldiers – those potential war crimes will be left to domestic courts.

Instead, the investigators have set their sights on the political and military leaders who make the big strategic decisions and issue the general orders. They are particularly interested in crimes against humanity, defined as inhumane acts, committed as part of a widespread or systematic attack against a civilian population, that intentionally cause great suffering or serious injury.

The decision to target Ukraine's power system at the onset of winter could well be a crime against humanity.

In October, the ICC's chief prosecutor, Karim A.A. Khan, confirmed that Mr. Putin's status as President does not provide him with immunity against such crimes.

Again, we are unlikely to see Mr. Putin in the dock. But the ICC can issue an international arrest warrant. In 1999, Canadian jurist Louise Arbour, as chief prosecutor of the International Criminal Tribunal for the former Yugoslavia, issued a warrant for Mr. Milosevic after the then-Yugoslavian president was accused of crimes against humanity.

Were the ICC to take a similar approach to Mr. Putin, it would send a powerful signal, to the entire world, about the seriousness of weaponizing winter in Ukraine.

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