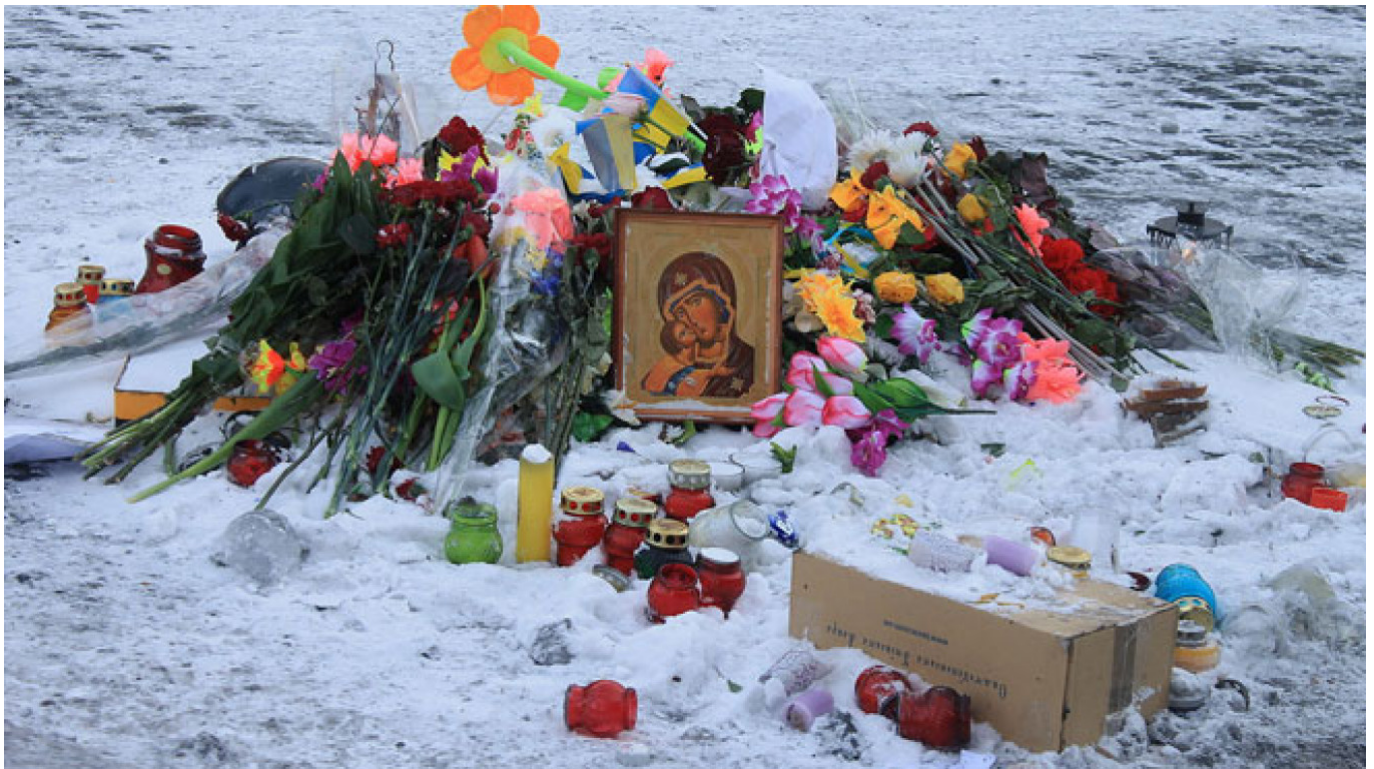


Justice in Maidan Murders May Have to Wait

By [Mark Kersten](#)

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The ongoing crisis in Ukraine has been fuelled by speculation concerning the murder of protestors on Kiev's Maidan Square during pro-European Union demonstrations. Broadly speaking, supporters of Ukraine's turn west have accused police snipers. Those in favour of closer ties to Russia, meanwhile, have said far-right anti-Russian provocateurs, hoping to discredit the then-government, were responsible.

Lost in this turmoil are objective answers about who was responsible for the violence on Maidan and whether or not they will be ever be held to account.

Following a request from the Ukrainian parliament, the International Criminal Court, or ICC, opened a preliminary investigation into alleged crimes committed in Ukraine between 21 Nov. 2013 and 22 Feb. 2014. These dates mark the beginning of protests on Maidan and the Ukrainian parliament's vote to oust pro-Russian President Viktor Yanukovich.

Of course, the ICC's involvement does not mean that any conclusion about the violence

on Maidan will be reached soon.

Opening a preliminary investigation does not, in itself, mean that the court will open an official investigation — let alone issue arrest warrants. Some situations, like the war in Afghanistan or the conflict in Colombia, have toiled for years in the judicial purgatory that is the ICC's preliminary investigation list.

Moreover, the time-period that the ICC can investigate essentially restricts the court to investigating alleged crimes on the Maidan Square in Kiev. If prosecutors find that the time-period referred to the ICC was intended to narrow the court's focus against specific parties, namely former President Viktor Yanukovych and his cronies, then the ICC can and should decide not to proceed. Prosecutors may also fear intervening whilst fragile negotiations between the West and Russia over Ukraine's future are ongoing.

States tend to believe that when they refer themselves to the ICC, they are, in fact, referring their adversaries. While the history of one-sided prosecutions by the ICC in Uganda, the Central African Republic, Libya and elsewhere give credence to their thesis, there is nothing to prevent the ICC from targeting all sides of a conflict.

If ICC prosecutors do proceed, it is hard to imagine that Yanukovych could possibly escape scrutiny. He is, in the eyes of many, the top-prize for justice in Ukraine, accused by some of ordering the police to open fire on the Maidan protestors. The trouble is, after fleeing Kiev and seeking refuge in Russia in late February, Yanukovych is no longer within easy reach. Would Moscow ever hand over their former political proxy? Or is Yanukovych destined to be a fugitive from justice, protected by his Russian patrons?

In the midst of mudslinging rhetoric between the West and Russia over Ukraine and Syria, it may be tempting to believe that Moscow is inherently opposed to an ICC intervention in Ukraine. U.S. Ambassador to the UN Samantha Power recently placed the blame over the failure to refer Syria to the ICC as well as the selectivity of international justice squarely at the feet of the Kremlin. If we are to believe the hype, big bad Russia is a major obstacle to achieving international accountability.

But Russia's relationship with the ICC is far more complicated. The record demonstrates that Moscow is not intrinsically opposed to ICC interventions. In 2005, it allowed the United Nations Security Council to refer the situation in Darfur to the ICC and, in 2011, it voted in favour of referring Libya to the court.

Russia is also deeply involved in the ICC investigation into its 2008 war with Georgia. Convinced that they were both right and legally mandated to protect ethnic Russian civilians in South Ossetia and Abkhazia, Russia insists that Tbilisi bears primary responsibility for any alleged crimes committed in August 2008. Moscow has not expressed opposition to the ICC's involvement in investigating the conflict, likely seeing the court as a means to adjudicate ultimate guilt and responsibility for the war.

Russia may view ICC involvement in Ukraine through a similar lens. Notably, no senior Russian officials are on record opposing an ICC intervention. On the contrary, numerous members of the Duma have reiterated that they would like to see justice served in Ukraine and welcome a role for the court.

Russia would try — as other states have — to shape the prosecution's focus by, for example, swamping the court with evidence under the guise of cooperation. It would be a test of the ICC's independence to resist such pressures. But Moscow could also consider handing over Yanukovych. It might even be the politically wise thing to do.

It is not out of the question that Yanukovych could be eventually tried for his alleged role in ordering the murder of more than a hundred civilians on the Maidan. There is little doubt that harbouring the former Ukrainian president comes at some political cost to Russia. If, in time, that cost exceeds the utility of protecting Yanukovych, Ukraine's former headmaster could very well be surrendered to The Hague — or perhaps to authorities in Kiev.

There is an evident thirst within Ukraine to achieve justice. As the former head of state whose lucrative lifestyle offended many, Yanukovych is now the poster-boy for achieving accountability. Shipping him off to the ICC or to Ukrainian authorities would be a smart move if Moscow is truly interested in rebuilding good relations with its neighbor — and salvaging its international reputation.

Still, it is important to be realistic about the chances of a full-out ICC intervention in Ukraine. The war in Georgia has been under preliminary investigation for six years. The court is no closer to getting the green light to intervene in Syria now than it was three years ago. Some of the most sought-after ICC indictees, like Sudanese President Omar al-Bashir or the Lord Resistance Army rebel chief Joseph Kony, have managed to evade justice for nearly a decade. As the proverb goes, the wheels of justice turn slow. At the moment, there is no reason to suggest they will spin faster for Ukraine.

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