

# The case of Putin's arrest warrant and the judicialization of international relations

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1. On July 17, 1998, at the Conference of Rome, the Statute of the International Criminal Court was unprecedentedly approved with one hundred and twenty favorable votes, seven negative votes, and twenty-one abstentions. On July 1, 2002, the Rome Statute came into force internationally. Nowadays, 123 have ratified the Statute.

2. International Law Commission, Responsibility of States for Internationally Wrongful Acts, UN, 2001, (art 8).

On March 7th, the International Criminal Court (ICC) issued warrants of arrest for Vladimir Vladimirovich Putin, President of the Russian Federation, and Maria Alekseyevna Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation. The ICC had reasonable grounds to hold them responsible for the war crime of deportation of children and the unlawful transfer of them from occupied areas of Ukraine to the Russian Federation. Unprecedentedly, the chief of state of a great power was incriminated by the ICC, whose jurisprudence had only condemned an African leader so far. In the context of the politicization of International Law, the judicialization of international relations is a complementary counterparty.

From its creation in 1998, the ICC arose in a context of criminalization of armed conflicts and serious violations of human rights, alongside penal responsibility directed toward individuals. In the case of international leaders, crimes committed by state representatives are the ones that offend international order, legality and security (JAPIASSÚ, s/d p. 4). From a material perspective, the Statute of Rome<sup>1</sup> defines that the International Criminal Court has jurisdiction over four types of crimes: the crime of genocide, crimes against humanity, war crimes and the crime of aggression. In so, state control and responsibility are interpreted when the conduct of a person or group of persons under international law is in fact under the instructions or the direction or control of, that State in carrying out the conduct<sup>2</sup>.

Even though Vladimir Putin has asserted his country does not recognize the ICC's jurisdiction since the Russian Federation is not a State Party of the Statute of Rome (AL JAZEERA, 2023), the ICC can investigate the Russian president since its jurisdiction is superior and binding. The Republic of Ukraine, where the crimes in question were committed, has also not ratified the Statute - however, in the context of the insurrection of February 2014, the country lodged a declaration accepting the jurisdiction of the ICC

3. States that: If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

over alleged crimes committed on its territory since 21 November 2013 (ICC, 2015). Therefore, based on Article 12 (3)<sup>3</sup> of the Statute, the Court has the authority to investigate and prosecute individuals for crimes committed during the armed conflict in Ukraine.

Before president Putin's warrant, the ICC has had investigations against two chiefs of state in exercise: Omar al-Bashir (Sudan, 2009), and Muammar Gaddafi (Libya, 2011). The first and only arrest warrant issued against a Head of State was against the ex-president of Sudan, al-Bashir, by crimes of genocide committed in the Darfur region. These cases exemplify the nullity of the regime of immunities, which traditionally has protected political and diplomatic figures and is inherently attached to the idea of sovereignty and reciprocity (PIOVESAN, IKAWA, p. 180). However, the war in Ukraine could have provoked a new path for International Law with a relentless proximity to political figures so far impune.

Therefore, we pose the question: what leads the ICC to issue arrest warrants for leaders of State?

The judicialization of international relations: is it stronger in the global south?

Rules, norms, principles and decision-making procedures can mitigate the effects of anarchy and allow states to cooperate regarding the judicialization of international relations (SLAUGHTER, 2000, p. 21). The creation of international courts, therefore, facilitates incrimination.

However, as any hard law mechanism, it also implies loss of sovereignty. In this context, ICC's jurisdiction is superior to national legislation, as well as complementary to it, and with universal pretensions: even if a State did not ratify the Statute of Rome, the Court's decisions are binding to it. From a realist perspective, international law can contribute to international order by stating the basic rules of coexistence among States, only if these rules have some basis in the actual dealing of states with one another (BULL, 1977, p. 143).

However, it is seen that the practice of international law is not as neutral as defined by the treaties that compose and were created by it propose. That is, even though the ICC has faced several challenges in its efforts to prosecute individuals for crimes against humanity, the Court has been biased against African countries, as a majority of its cases have been focused on African nations (GLASIUS, 2002, p. 143).

Regardless of the political motivations behind the ICC's focus on Africa being a pressuring force from Western countries or a desire to maintain control over African nations coming from the global north, Putin's case reveals an unprecedented approximation to the Chief of State of a great power. This could be explained by the intensified attention surrounding discussions on the crime of aggression after the 2022 invasion of Ukraine, which has united the Western world in an ideological war against Russia's actions and discourse. The ongoing deliberations on investigating and prosecuting the invasion, coupled with the relatively restrained reaction from the global south regarding a proposed specialized tribunal for holding Russian leaders accountable for the crime of aggression, illustrate the evolution of diplomatic discourse on this issue over the last twenty years (KERSTEN, 2023).

Since the establishment of the ICC in 2002, there has been significant focus on political and legal initiatives, aimed at criminalizing unlawful warfare. Nonetheless, within its twenty-one operating years, the Court hasn't yet threatened important political figures from the global north - Russia's historical counterpart on the global balance of power, the United States, similarly doesn't recognize ICC's jurisdiction. In both countries, policymakers underestimate the importance of ending impunity for international criminals because the benefits are less tangible than the concrete costs suggested by the accusation (BASS et al, 2000) of, e.g., a powerful president before the ICC.

The debate between constitutionality and sovereignty finds a hindrance when international law is politicized, since little impartiality is seen when only African and Slavic leaders are the main targets of warrants. Is the global south prey for international law to prove its efficacy? Putin's arrest warrant, although instrumentalized by the West, can be a step toward bolder decisions from the Court directed to criminals that carry the title of president.

## Impact of ICC's warrant on Putin and Lvova-Belova for children's rights

First, the ICC issued the warrants based on the violation of two war crimes under the definition of crimes of aggression in the Rome Statute (UN GENERAL ASSEMBLY, 1998): articles 8(2)(a)(vii): "unlawful deportation or transfer or unlawful

confinement'; and 8(2)(b)(viii) "the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory".

As it is clear, even though the war crimes are not specifically directed at children, the ICC understood children as part of a population. While it is an instance of hard judicialization in IR to protect children's rights, it is more of an innovation than a common practice. Which leads to the question: why did the ICC choose specifically these war crimes to issue Putin's warrant?

The most realistic answer regards proof. The ICC needed to demonstrate that Putin was officially involved in the crime, by either committing it himself, ordering it, or "willfully ignoring its commission by subordinates over whom they had effective responsibility and control" (FLACS, 2023). Therefore, it is possible to understand that the deportation of children was the "easiest" way to hold the Russian president responsible since the very title of Maria Lvova-Belova directly links her to him.

Of course, the fact that there is credible horrifying evidence that more than 6000 unaccompanied Ukrainian children were transferred to "re-education" camps in Russia (YALE, 2023) played a role in the prosecution is indisputable. The Commissioner has even bragged about her efforts to "relocate" Ukrainian children, claiming that they are orphans and need to be taken care of.

## Final considerations

One of the main challenges for the applicability of ICC's warrants is the lack of cooperation from states, which hinder investigations and prosecutions (GLASIUS, 2002, p. 144). Concretely, there have already been affirmations of disobedience to ICC's legislation in countries that have ratified the Statute of Rome: on March 2023, Hungarian Prime Minister Viktor Orban's chief of staff, Gergely Gulyas, said that even though Hungary is a signatory to the Rome Statute, and ratified it in 2001, arresting Putin would have no basis in Hungarian law (CNN, 2023). Regardless of Hungary being a NATO member, it agrees with the Kremlin's stance that the warrant is "unacceptable". This exemplifies how unlikely Putin's condemnation is, since he can only be judged when under ICC's custody.

Moreover, the Human Rights Council released a report stating that Russian authorities have committed a wide range of violations of humanitarian international law and human rights, many accounting for war crimes such as wilful killings, attacks on civilians, unlawful confinement, torture, rape, besides the ones that prompted the warrant against Putin and the Commissioner (HUMAN RIGHTS COUNCIL, 2023). One thing is clear: the ICC, whichever its motivations were, indeed gave an opportunity to improve the discussion regarding efforts to protect children's rights worldwide.

On a similar note, the Court is pointing toward bolder decisions when it comes to international relations. Even though it is very inclined for the global north ideology, the symbolic gesture of issuing a warrant for a leader of Putin's relevance finally takes the Court to its universal binding pretensions, and represents the beginning of the end of an era of sectorizing African leaders as more punishable than western ones. Finally, we believe that Russia's president won't be put into the Court's custody as soon as wished, since many pieces need to be solved in this puzzle in order to judicialize international relations without an unequal politicization of international law.

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