

ICC's arrest warrant against Putin may not be a watershed moment in the Russian invasion of Ukraine

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Why did the International Criminal Court issue a show cause notice to Putin?

IN what can be termed a historic move, the International Criminal Court (ICC) issued an [arrest warrant](#) against the Russian President, Vladimir Putin and the Russian Presidential Commissioner for Children's Rights, Maria Lvova-Belova. This is the first time that an arrest warrant against a head of the State of a permanent member of the United Nations (UN) Security Council has ever been issued, and only the third time that a serving president of a country has been

the target of such an arrest warrant. The earlier cases were against [Omar al-Bashir](#) (Sudan) and [Muammar Gaddafi](#) (Libya).

Staying true to the character it has adopted towards international law since the [Russian invasion of Ukraine](#) began last year, the Kremlin has refused to acknowledge the ICC arrest warrant. It terms the warrant as "[void](#)" since Russia is not a party to the [Rome Statute](#) that established the ICC, and does not submit to the jurisdiction of the ICC. Ukraine, on the other hand, has [hailed](#) the warrant as a historic decision for Ukraine.

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It is also pertinent to note that the arrest warrant has been issued for the alleged [war crimes](#) of [unlawful deportation and transfer](#) of population (specifically children) from occupied areas of Ukraine to the Russian Federation.

Ukraine claims that more than [16,000 children](#) have been illegally deported and transferred to Russia or even Russian-occupied territories in Ukraine. The [UN Commission of Inquiry on Ukraine](#) has taken note of this transfer process. While Russia does not refute the claims of transfer of children, it masks them as a "[humanitarian campaign to protect orphans and children abandoned in the conflict zone](#)". Hence, the fact remains that there is a transfer of Ukrainian children across *de facto* and *de jure* borders, even though both sides present their own understandings of one of the most heinous alleged war crimes.

What are the powers and jurisdiction of the ICC?

The Pre-Trial Chamber II of the ICC has based this warrant against both the individuals on having reasonable ground to believe that they have committed the war crime directly/jointly/through others and even for their failure to exercise control over such people who were under their effective control,

considering their superior responsibility. The threshold for [command/superior responsibility](#) exists within the Rome Statute for a reason; however, it has been a rarity that a sitting head of State has actually been prosecuted and also convicted of any of the crimes under this principle.

This problem is compounded by Russia's abject disregard for ICC's jurisdiction and failure to comply with any of the proceedings that have taken place thus far. It will also be impossible to carry out the arrest against Putin or Lvova-Belova, let alone on Russian soil, seeing the command that they both seem to have within their nation.

So what remains to be evaluated is the repercussions of this arrest warrant, considering the powers of the ICC, and what such warrants have reaped in the past. It also becomes equally important to evaluate the selective jurisdiction exercised by ICC and how it can be used by the Russian Federation as a valid defence. But the most important question that remains to be answered is whether this arrest warrant can be enforced, or it is simply a measure of empty promise, considering the prolonged war.

How did other similar cases before the ICC pan out?

The case of al-Bashir, against whom the ICC issued an arrest warrant in 2009 and 2010, is instructive. The case remains in the pre-trial stage, and he has still not been prosecuted due to the lack of arrest and subsequent transfer to the ICC at The Hague in Netherlands. He remains "[at large](#)".

The ICC does not try individuals unless they can be present in the courtroom and defend themselves to adhere to basic principles of natural justice — al-Bashir has been in custody since April 2019 (within Sudan). In a recent development, the Sudanese transitional government agreed to [hand over](#) the ex-ruler of the country to the ICC. However, as of date, the ICC has not received his custody, and the prosecution remains in abeyance.

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failure to exercise control over such people who were under their effective control, considering their superior responsibility.

In another instance, after the ICC issued an arrest warrant against Gaddafi in 2011, it had to **terminate** the proceedings due to his death. Multiple **concerns** have been raised about the circumstances surrounding the death of the ex-Libyan president; however, no serious steps have been taken to investigate the matter.

There have been instances where such proceedings have yielded positive results — such as in the case of former Liberian President Charles Taylor, who was successfully convicted and sentenced to **50 years imprisonment** by the ICC in 2012 for his crimes in Sierra Leone's civil war. Even in the case of Slobodan Milošević, the ex-president of Serbia who was **arrested and transferred** to the detention unit in The Hague for his alleged crimes in Kosovo. However, before the conviction, he was **found dead** in his prison cell in 2006.

Both these cases were heard by special tribunals set up in the wake of civil wars, and were specific in their jurisdiction in terms of the crimes committed as well as the territory where the crime took place. This jurisdiction was given by the UN in tacit compliance with the respective governments.

What are the other limitations in the ICC process?

Apart from the Russian Federations' absolute dismissal of ICC's jurisdiction — under the Rome Statute (Articles 12–14), other factors also stack up against the enforceability of these arrest warrants against Putin and Lvova-Belova.

Firstly, it has been rare for the ICC to be able to exercise jurisdiction over individuals, especially in the absence of ratification of the Rome Statute (both Ukraine and Russia are not parties to the Rome Statute — while Ukraine has previously invoked its jurisdiction twice). Secondly, since the beginning of its operation, the ICC has only managed to **issue ten convictions**, none of which have pertained to heads of States or individuals who yield considerable influence in their respective countries. Thirdly, even if arrest warrants have been issued against heads of States, the ICC has never been able to commence prosecution and yield a conviction. Fourthly, an arrest warrant has never been initiated against a head of a permanent member of the Security Council — who holds veto power at the UN and at the Security Council. Fifthly — which is the

biggest and most important criticism of the ICC — the proceedings have disproportionately prosecuted crimes in the African continent and have been issued disproportionately against citizens of African nations.

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War crimes in the territories of Afghanistan and Syria (both non-signatories to the Rome Statute) obviously highlight the hypocrisy of ICC. There has been a lack of willingness to proceed in these cases. Investigations have been underway for the war crimes and crimes against humanity in [Afghanistan](#); however, nothing conclusive has come out of the investigation yet. The situation is much worse in the case of [Syria](#), where even investigations have not taken place yet.

The ICC's persistent involvement in Africa has been the source of its criticism, especially with a lack of holistic operation in all nations and any crimes within the scope of its jurisdiction. With 123 signatories, the ICC seems to yield considerable international legal influence, yet it falls short at each stage. This is also due to the fact that many notable countries that command political influence — such as China, Russia, the United States and India — have still refused to sign the Rome Statute, claiming an infringement of their sovereignty by their ability to prosecute its citizens under a separate legal regime.

Why is the arrest warrant by the ICC a toothless tiger?

In fact, the President of the ICC himself [stated](#) that the arrest warrants are "*not magic wands*", but can provide a "*deterrence effect*" by acting as a "*sanction*" against such individuals. Hence, the question begs to be asked at this stage — what is even the point of issuing such an arrest warrant?

Considering the lack of ICC's own enforcement mechanism, the answer seems to stem from member State cooperation. It depends on member states (123 nations) to fully cooperate with the court — which pertains to their obligation to [execute arrest warrants](#) issued by the ICC if the arrestee is found on their soil. After the execution of such arrest warrants, the member States are also obligated to extradite the person(s) to The Hague to await trial.

Apart from providing a personal restriction on Putin's movement, it seems like this arrest warrant would not actually result in any substantial outcome, especially pertaining to the war in question. Also, it seems highly unlikely that even these 123 nations would proceed, based on this arrest warrant, and detain and extradite the Russian head of State.

Russia's allies — especially China and India — have not signed the Rome Statute and hence, Putin will be free to travel to these countries apart from the United States as well. At this stage, full-scale prosecution against either of the parties seems highly unlikely. Even if the investigation reveals more crimes committed by either of the parties — the tool of ICC arrest warrant and proceedings overarchingly remains a futile exercise, only to attract international condemnation against the Russian invasion of Ukraine, which has officially surpassed a year.

Considering precedents, it seems impossible to execute this arrest warrant against Putin or Lvova-Belova. It truly seems that this exercise has been a futile attempt to hold them responsible — especially at the cost of resources that could have been directed to similar war crimes elsewhere.