



FORUM

The Weight of Putin's Arrest Warrant and What's To Come

Natalia Lalin

On March 17, the international community was stunned by the significant move made by the International Criminal Court to issue an arrest warrant for Russian President Vladimir Putin and his Commissioner for Children's Rights, Maria Lvova-Belova. The two are charged with orchestrating the systematic abduction and transportation of at least 6,000 children from occupied cities in Ukraine to Russia by means of re-education camps located throughout the country from the Black Sea all the way to Siberia, or through adoption by Russian families. Lvova-Belova herself even recently adopted a 15-year-old child from Ukraine. This act by the Court was the first form of international legal action taken in the context of the Russia-Ukraine War since its start in February 2022, and it is a symbolic acknowledgment of the gravity of the Russian government's crimes and actions in this aggressive dispute. It is also particularly notable for condemning Putin, an acting leader of a world superpower. While he is not the first sitting head of state to be indicted by the International Criminal Court (referred to hereafter as the ICC), as three other leaders have been charged previously, it is the first time the ICC has taken this action against the leader of a Permanent Five member of the United Nations Security Council. Former heads of state Slobodan Milošević of Yugoslavia, Charles Taylor of Liberia, and Ratko Mladić of Bosnia and Herzegovina have all been previously indicted and tried at the Hague while in their positions of power.

Despite all of this, it seems Russian officials are shrugging off the indictment. Kremlin spokesperson Dmitry Peskov proclaimed that "the very question itself is

outrageous and unacceptable. Russia, like a number of other states, does not recognize the jurisdiction of this court, and therefore any of its decisions are insignificant for the Russian Federation from a legal viewpoint.” Further, a Russian Investigative Committee even opened up a retaliatory criminal case against ICC prosecutor Karim Khan and the three judges that made this judgment, claiming that their hostile actions were not just illegal, but also a purely political “attack on a representative of a foreign state enjoying international protection, in order to complicate international relations.”

I. Exploring the Legality of the Arrest Warrants

To better understand the origins of this debate on the legality of the arrest warrants, it is important to review the fundamentals of the ICC itself. The court was created through the Rome Statute, which the United Nations General Assembly adopted in 1998 to end legal impunity for the world’s most severe crimes. The court has official jurisdiction over cases involving genocide, grave war crimes, crimes against humanity, and crimes of aggression. Its jurisdiction is limited to the 123 countries which signed on to the Statute, totaling about two-thirds of the international community. This group famously excludes Russia, the United States, and China, amongst others. Even Ukraine is not a member country of the ICC at this time.

Nevertheless, this alone does not completely protect Putin or Lvova-Belova from the ICC’s reach: it only means Russia does not have to comply with the investigation. Nevertheless, if they were to travel to any of the countries party to the Rome Statute, the countries would be obligated to arrest them and hand them over to the ICC, where they would then be tried for their crimes at The Hague.

The charges have legal footing because Putin and Lvova-Belova are being accused of breaching the Genocide and Geneva Conventions, which Russia actually has signed onto. According to Article 49(1) of the Fourth Geneva Convention, the “forcible transfer or deportation of civilians, including children, is prohibited.” If given a chance, the ICC will prosecute Putin for his direct or joint involvement in these acts under Article 25(3)(a) of the Rome Statute or his failure to exercise control over subordinates who committed these acts under Article 28(b) of the Rome Statute. On the other hand, Lvova-Belova will only be prosecuted for the first accusation of involvement under Article 25(3)(a). While the ICC does not employ the death penalty, the penalty for these charges may include a life sentence.

While these crimes are currently categorized as war crimes, some speculate that they could eventually amount to crimes against humanity or even genocide,

depending on Russian intention. The case would be very different if the children were transported to keep them safe rather than if Russia transported them in an attempt to wipe out the next generation of Ukrainians, as some claim.

II. Feasibility of Actually Seeing Putin Behind Bars

The legality of these charges and the feasibility of a trial in the near future are two different things, mainly because Putin and Lvova-Belova cannot be tried in absentia. The ICC also has no real enforcement mechanism or police force to arrest them. So, if they are to be tried, the ICC is entirely dependent on other countries to hand them over. Otherwise, the trial will not happen. This reliance on catching Putin and Lvova-Belova while they are traveling internationally decreases the possibility of prosecution ever happening because the geographic borders of where they can and cannot go are so explicitly defined. Presumably, Putin would not be so foolish as to travel to a country where he knows he will be immediately handcuffed. This situation is also unprecedented because every other comparable case has involved a sitting head of state of a country that was a member of the ICC. Ultimately, given the implausibility of either Putin or Lvova-Belova facing real legal punishment, I believe that these indictments are key more so in their symbolism than in their potential to convict Russian leadership.

However, it is important to note that even if they are primarily symbolic in nature, these arrest warrants have major potential to effect tangible change. First of all, the nature of the ICC's decision to make the announcement public is effective on many levels, especially since the institution does not normally publicize arrest warrants to protect its investigations. Nevertheless, this decision to go public seemed to differentiate this case from the traditional procedure in an effort to deter the progression of the Russia-Ukraine War. Internationally, the ICC is declaring its intent to hold Russia accountable through this and potentially future charges, despite this country's power. These future charges may be related to aerial bombardment campaigns or attacks on hospitals and other forms of civilian infrastructure, for which Russia must answer. Minimizing Putin's geographic borders by limiting which countries he can travel to may also make it more challenging to conduct diplomatic affairs and matters of the state. Domestically, the public announcement was a strategic move to instill fear in subordinate Russian officials who were implicit in this and other harmful acts. They may now express more resistance knowing that they too can be charged for grave war crimes, just as Lvova-Belova has been. This also could affect the Russian public by making them aware of the exact

tactics being used by their government, which could drum up domestic opposition to the war.

More broadly, these arrest warrants have also reinvigorated conversations around the US's lack of involvement with the ICC. It may even make other powerful countries reconsider their choice not to partner with the international institution if they really do want to see international justice realized. It also warns other human rights violators, like China, that their actions will not go unnoticed. Globally, these arrest warrants seem to have potentially increased the ICC's credibility at a time when it was nearing a legitimacy crisis which could be definitively marked, amidst many years of debate, by the decision of the African Union in 2017 to explore the concept of collectively withdrawing from the institution. Nevertheless, in light of the ICC's willingness to take such a strong stance against a powerful country and a war that has affected the entire international community, perhaps these countries will reconsider.

Concluding Remarks

In conclusion, despite the debate around the legality behind Putin's arrest warrants and claims by Russia that the ICC is illegitimate in its actions, it is seemingly more legitimate than ever. Unfortunately, due to the limitations of the Court, it seems unlikely that we will see Putin behind bars anytime soon; however, these arrest warrants were necessary for sending a message to Russia and initiating the often lengthy process required for international justice. As stated by Payam Akhavan, a former UN Prosecutor, "We have to bear in mind that although the famous expression is that oftentimes justice delayed is justice denied, in international criminal justice, justice delayed very often is justice delivered because those in power today may not be in power tomorrow." Hopefully, in due time, the world can look back at Putin's arrest warrant as the catalyzing legal action that delivered widespread justice to the Ukrainian people and the world at large.