

# Can the International Criminal Court Arrest Putin?

written by Aydan Fuad Aydan Fuad

On 17 March 2023, International Criminal Court Prosecutor Karim Khan announced the issuance of arrest warrants against President of the Russian Federation Vladimir Putin and Commissioner for Children's Rights in the Office of the President of the Russian Federation Maria Lvova-Belova. The statement says there are reasonable grounds to believe that President Putin and Ms. Lvova-Belova bear criminal responsibility for the unlawful deportation and transfer of Ukrainian children from occupied areas of Ukraine to the Russian Federation, contrary to article 8(2)(a)(vii) and article 8(2)(b)(viii) of the Rome Statute.[\[1\]](#) How might this decision affect Putin?

**When was the International Criminal Court established and what is its primary mission?**

On 17 July 1998, a conference of 160 states established the first treaty-based permanent international criminal court. The treaty adopted during that conference is known as the Rome Statute of the International Criminal Court. 123 states have so far adopted and ratified the statute.[\[2\]](#) The International Criminal Court (hereafter "the ICC" or "the Court") aims to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression.[\[3\]](#)

The ICC's mission is to try individuals, but not States, for crimes, and does not replace national criminal justice systems; rather, it complements them, and state parties must

first investigate the crime themselves.[\[4\]](#) It can investigate and, where warranted, prosecute and try individuals only if the state concerned does not, cannot or is unwilling to do so genuinely.[\[5\]](#) It can prosecute state agents, including heads of state, as well, as nonstate actors such as rebel group leaders.[\[6\]](#) A state not party to the Rome Statute may decide to accept the jurisdiction of the Court on its territory in accordance with Article 12.3 of the statute.[\[7\]](#)

Under article 13 of the statute (“exercise of jurisdiction”), the Court may exercise its jurisdiction with respect to a crime in accordance with the provisions of this statute if: “(a) A situation, in which one or more of such crimes appears to have been committed, is referred to the Prosecutor by a State Party in accordance with article 14; (b) A situation, in which one or more of such crimes appears to have been committed, is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.”[\[8\]](#) The Court does not have its own police force, but states that have ratified the Rome Statute are responsible for issuing an order for the detention and surrender of the person to the Court. Accordingly, it relies on states to arrest and surrender suspects.[\[9\]](#)

### **Are Ukraine and Russia parties to the ICC Rome Statute?**

Ukraine is not among the state parties that have ratified the Rome Statute. Although it signed the instrument of accession to the Rome Statute in 2000, the Constitutional Court of Ukraine declined to ratify the Rome Statute in 2001 because it stated that the Rome Statute contradicted Article 124 of the Ukrainian Constitution.[\[10\]](#) However, on 9 April 2014, Ukraine recognized the jurisdiction of the International Criminal Court on its territory on the basis of Article 12(3) of the

Rome Statute. Although during the first adoption, the period from 21 November 2013 to 22 February 2014 was determined for the investigation of the crimes alleged as a result of the “Maidan events,” on 8 September 2015, Ukraine announced a second declaration from 20 February 2014 and accepted the application of the jurisdiction of the International Criminal Court in its territory for a certain period.[\[11\]](#)

On 2 June 2016, the Parliament of Ukraine adopted an amendment to article 124 of the Constitution of Ukraine which stated that the ICC jurisdiction may be recognized by Ukraine.[\[12\]](#) Ukraine has not yet ratified the ICC Rome Statute, although there are no constitutional obstacles to its ratification. Ukraine’s failure to ratify the Rome Statute prevents it from actively participating in the work of the organization. Ukraine cannot be a member of the assembly, which prevents it from raising any issues in prosecutorial or judicial elections or in the assembly.[\[13\]](#) It should be noted the Association Agreement between the European Union and Ukraine imposes the obligation on Ukraine to ratify the Rome Statute through its Art. 8.[\[14\]](#)

Russia has neither ratified the Rome Statute nor consented to its exercise of jurisdiction on its territory. Despite signing the Rome Statute in 2000, it has not ratified the treaty to become a member. The reason for non-ratification was that the Rome Statute contradicted Article 118 of the Constitution of the Russian Federation under which the Constitution of the Russian Federation and the Federal Constitutional Law can administer justice in Russia.[\[15\]](#) However, Russia made no constitutional changes to ratify the Rome Statute. In 2016, Moscow announced it was cutting ties with the international tribunal, withdrawing its signature from the founding treaty. “The court did not live up to the hopes associated with it and did not become truly independent,” Russia’s Ministry of Foreign Affairs explained, after President Vladimir Putin issued a decree announcing his country’s intentions to “no longer be a party” to the ICC’s founding treaty, the Rome

Statute.[\[16\]](#)

## Can the ICC arrest Putin?

On 5 March 2023, ICC prosecutor Karim Khan said that 39 states had asked him under Article 14 of the Rome Statute to investigate the situation in Ukraine.[\[17\]](#) Putin and Belova are charged with crimes under Article 8 of the Rome Statute. Article 8 sets out the following:

1. *The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.*
2. *For the purpose of this Statute, “war crimes” means:*

*(a) Grave breaches of the Geneva Conventions of 12 August 1949, including the following act against persons or property protected under the provisions of the relevant Geneva Convention:*

*...(vii) Unlawful deportation or transfer or unlawful confinement;*

*b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, including the following act:*

*.. (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; [\[18\]](#)*

Since 2013, Ukraine has recognized the jurisdiction of the International Criminal Court on its territory, and, because Putin is a direct suspect in a crime that took place on that territory, the International Criminal Court has legal grounds

to issue this judgment against Putin. However, since Russia has not acceded to the Rome Statute, Putin's arrest is not possible in the current situation. Therefore, Putin currently has immunity as head of state. One reason for the immunity granted to heads of state is to show respect for foreign leaders as a symbol of the sovereign independence of the state they represent, and another reason is to prevent any obstacles to foreign leaders carrying out their diplomatic activities.[\[19\]](#)

In International Criminal Court precedent, a situation similar to Putin's involved Sudanese President Omar Hassan Ahmad Al Bashir. On 4 March 2009, the Pre-Trial Chamber of the ICC issued a warrant for his arrest.[\[20\]](#) Although Sudan was not a party to the Rome Statute, the ICC had jurisdiction over Sudan under Article 13 of the Rome Statute. However, despite the issuance of the arrest warrant, al-Bashir's arrest only became possible after he left office.[\[21\]](#) Moreover, he traveled to a number of countries during his presidency. The African League formally refused to issue an arrest warrant and the African Union, citing Article 16 of the Rome Statute, had asked the UN Security Council to delay al-Bashir's arrest for 12 months.[\[22\]](#)

Under Article 27 (1) Rome Statute ("irrelevance of official capacity"), "official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute," while paragraph 2 thereof states that "immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person."[\[23\]](#) However, Article 98 thereof stipulates that "the Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic

immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.”[\[24\]](#) Thus, under the Rome Statute, states are obliged to surrender (hand over) the person to the Court against whom an arrest warrant has been issued on the basis of a request from the International Criminal Court. However, if they arrest and extradite an official of a state that has not adopted the Rome Statute, they would have not fulfilled their obligations under international law.[\[25\]](#)

Since Russia has not ratified the Rome Statute, it hardly seems possible to hold Putin criminally liable under Article 27 thereof. Unlike Putin, the issuance by the International Criminal Court of an arrest warrant for Sudanese President Al-Bashir was linked to a referral to the Court by the U.N. Security Council invoking Article 13 of the Rome Statute. This referral established the Court’s jurisdiction in Sudan, even though Sudan has not ratified the statute.[\[26\]](#) Because Russia is one of the 5 members of the U.N. Security Council, a similar referral to the International Criminal Court to issue a warrant of arrest for Putin seems unlikely. It also means that the International Criminal Court will not assert jurisdiction over Russia. Furthermore, as Putin is the incumbent president of Russia, it is unrealistic to revoke his immunity as head of state. Issuing a warrant of arrest for Putin should be seen as political pressure rather than suggesting that it will actually be enforced. This is because the warrant involved some 40 countries urging the International Criminal Court to investigate. In short, it is not possible to enforce the arrest warrant during Putin’s tenure as president.

## **Notes and references:**

[\[1\]](#) International Criminal Court, Statement by Prosecutor Karim A. A. Khan KC on the issuance of arrest warrants against

President Vladimir Putin and Ms Maria Lvova-Belova,  
(03.17.2023)

<https://www.icc-cpi.int/news/statement-prosecutor-karim-khan-kc-issuance-arrest-warrants-against-president-vladimir-putin>

[2] International Criminal Court, The State Parties to the Rome Statute <https://asp.icc-cpi.int/states-parties>

[3] International Criminal Court, Understanding the International Criminal Court, 2020, p 10  
<https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>

[4] Simmons, Beth A., and Allison Danner. "Credible Commitments and the International Criminal Court." *International Organization* 64, no. 2 (2010): 225–56. p230, <http://www.jstor.org/stable/40608014>

[5] Arsanjani, Mahnoush H. "The Rome Statute of the International Criminal Court." *The American Journal of International Law* 93, no. 1 (1999): 22–43. P24  
[https://www.jstor.org/stable/pdf/2997954.pdf?refreqid=fastly-default%3Af0b3946f0d75156d1df4d36a83642a79&ab\\_segments=0%2Fbasic\\_search\\_gsv2%2Fcontrol&origin=&initiator=search-results](https://www.jstor.org/stable/pdf/2997954.pdf?refreqid=fastly-default%3Af0b3946f0d75156d1df4d36a83642a79&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=search-results)

[6] Jo, Hyeran, and Beth A. Simmons. "Can the International Criminal Court Deter Atrocity?" *International Organization* 70, no. 3 (2016): 443–75. P 443  
[https://www.jstor.org/stable/pdf/24758127.pdf?refreqid=fastly-default%3A36b800d327d8eea2072d110804db05b1&ab\\_segments=0%2Fbasic\\_search\\_gsv2%2Fcontrol&origin=&initiator=search-results](https://www.jstor.org/stable/pdf/24758127.pdf?refreqid=fastly-default%3A36b800d327d8eea2072d110804db05b1&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=search-results)

[7] Rome Statute of the International Criminal Court, Article 12, (2011)  
<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

[8] Rome Statute of the International Criminal Court, Article 13, (2011)  
<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

[9] International Criminal Court, Understanding the International Criminal Court, (2020) p35 <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>

[10] Pravo, Выпуск №5 (893) – Уголовное право и процесс, <https://pravo.ua/articles/ochevidnoe-i-verojatnoe/>

[11] International Criminal Court, Information for victims, Ukraine <https://www.icc-cpi.int/victims/ukraine>

[12] Ukraine must ratify the Rome Statute: Joint letter to the President of Ukraine, (30.09.2019) <https://www.iphronline.org/ukraine-must-join-the-icc-joint-letter-to-the-president-of-ukraine.html>

[13] Human Rights Watch, Q&A: Justice Efforts for Ukraine (29.03.2023) <https://www.hrw.org/news/2023/03/29/qa-justice-efforts-ukraine>

[14] Parliamentarians for Global Action, Ukraine and the Rome Statute <https://www.pgaction.org/ilhr/rome-statute/ukraine.html>

[15] Constitute, Russian Federation 1993 (rev.2014) [https://www.constituteproject.org/constitution/Russia\\_2014?lang=en](https://www.constituteproject.org/constitution/Russia_2014?lang=en)

[16] Grame, Robbie, Why Russia just withdrew from the ICC <https://foreignpolicy.com/2016/11/16/why-russia-just-withdrew-from-icc-putin-treaty-ukraine-law/>

[17] International Criminal Court, Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>



- [18] Roma Statute of the International Criminal Court, Article 8 <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>
- [19] Tunks, Michael A. "Diplomats or Defendants? Defining the Future of Head-of-State Immunity." *Duke Law Journal* 52, no. 3 (2002): 651–82. P464 <https://doi.org/10.2307/1373165>
- [20] SCHARF, MICHAEL P. "INTRODUCTORY NOTE TO THE INTERNATIONAL CRIMINAL COURT'S ARREST WARRANT FOR OMAR AL BASHIR, PRESIDENT OF THE SUDAN." *International Legal Materials* 48, no. 3 (2009): 463–65. P463 <http://www.jstor.org/stable/20695894>.
- [21] El-Masri, Samar. "The Legality of the International Criminal Court's Decision against Omar Al-Bashir of Sudan." *International Journal* 66, no. 2 (2011): 371–90. P383, <http://www.jstor.org/stable/27976098>
- [22] SCHARF, MICHAEL P. "INTRODUCTORY NOTE TO THE INTERNATIONAL CRIMINAL COURT'S ARREST WARRANT FOR OMAR AL BASHIR, PRESIDENT OF THE SUDAN." *International Legal Materials* 48, no. 3 (2009): 463–65. p464 <http://www.jstor.org/stable/20695894>.
- [23] Roma Statute of the International Criminal Court, Article 27, (2011) <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>
- [24] Roma Statute of the International Criminal Court, Article 98, (2011) <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>
- [25] Akande, Dapo. "International Law Immunities and the International Criminal Court." *The American Journal of International Law* 98, no. 3 (2004): 407–33. p421 <https://doi.org/10.2307/3181639>
- [26] SCHARF, MICHAEL P. "INTRODUCTORY NOTE TO THE INTERNATIONAL CRIMINAL COURT'S ARREST WARRANT FOR OMAR AL BASHIR, PRESIDENT OF THE SUDAN." *International Legal*

*Materials* 48, no. 3 (2009): 463–65. p463,  
<http://www.jstor.org/stable/20695894>