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THE INTERNATIONAL CRIMINAL COURT (ICC) ENFORCEMENT CHALLENGES: THE ARREST WARRANT AGAINST PRESIDENT PUTIN (2023)

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ABSTRACT
This article examines the enforceability of general principles of international law through the analytical lens of the International Criminal Court's (ICC) arrest warrant issued on 17 March 2023 against Russian President Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova in connection with the alleged unlawful deportation of Ukrainian children. Drawing on a theoretical framework that interrogates the longstanding debate between realism and liberal institutionalism, the article evaluates whether international law constitutes genuine law in the absence of a centralised enforcement authority. Key issues examined include the principle of sovereign immunity as applied to a sitting head of state, the jurisdictional reach of the Court over nationals of non-party states, and the structural enforcement constraints embedded in the Rome Statute's cooperative framework. The article draws on documentary analysis of ICC jurisprudence, Security Council dynamics, and empirical evidence of state non-compliance, notably Mongolia's failure to arrest Putin in September 2024, to demonstrate that enforcement outcomes are governed more by political will than by legal obligation. The study concludes that without meaningful reform of the ICC's cooperative and sanctioning mechanisms, the Court's capacity to hold the most powerful state actors accountable will remain structurally compromised.

Keywords: International Criminal Court, Rome Statute, Assembly of States Parties, Enforcement Mechanisms, Sovereign Immunity, Realism, Liberal Institutionalism.

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Introduction

The enforceability of international law has historically occupied the central axis of debates on its legitimacy. As Kirgis (1996) observed in an influential treatment of the problem, the expectation that law must carry coercive consequences to qualify as genuine law creates a paradox when applied to a system premised on the formal equality and sovereignty of states. International law, operating within a horizontal rather than a hierarchical legal order, lacks a centralised enforcement authority analogous to domestic law-enforcement agencies (Shaw, 2021). This structural reality does not, however, render international law normatively hollow; rather, it necessitates the development of cooperative enforcement frameworks through which states collectively assume the obligation to uphold agreed-upon standards of conduct (Cassese, 2013).

This article examines the enforcement dimensions of general principles of international law through the analytical lens of the International Criminal Court's (ICC) arrest warrant issued on 17 March 2023 against Russian President Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova in connection with the alleged unlawful deportation of Ukrainian children to the Russian Federation (International Criminal Court [ICC], 2023). The warrant, issued under Articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute of the International Criminal Court (1998), represents the first instance in the Court's history in which a sitting head of state who is also a permanent member of the United Nations Security Council (UNSC) has been subjected to formal ICC proceedings. This precedent-setting development provides a uniquely instructive case study for evaluating the adequacy of existing enforcement mechanisms and diagnosing structural deficiencies that constrain the ICC's operational effectiveness. The paper is organised as follows: Introduction, organisation of the concept, statement of the problem, theoretical framework, Importance of enforcement in enhancing the legitimacy of the ICC, the Immunity question, Lack of coercive enforcement mechanisms, Putin's travel and state party non-compliance, conclusion and recommendation.

Statement of the Problem

The ICC's arrest warrant against President Putin crystallises a set of structural tensions at the heart of the international legal order. These tensions are not merely theoretical: they manifest in concrete enforcement failures, diplomatic crises, and contested jurisprudential claims that collectively challenge the Court's institutional credibility. Three related research questions guide this article:

1) In the absence of a centralised sovereign authority, what measures could realistically ensure the effective enforcement of international criminal law?
2) What are the principal structural weaknesses of the existing enforcement mechanisms available to the ICC?
3) What explanatory factors account for the enforcement failures of the ICC's cooperative framework, as evidenced by the Putin arrest warrant?

Addressing these questions requires an engagement with both the theoretical literature on international legal obligation and the empirical record of ICC enforcement performance between 2023 and 2025.

Literature Review

The International Criminal Court (ICC)

The ICC was established by the multilateral Rome Statute, which was adopted on 17 July 1998 and entered into force on 1 July 2002. Headquartered at The Hague, Netherlands, the ICC is the world's first and only permanent international tribunal with jurisdiction to prosecute

individuals for genocide, crimes against humanity, war crimes, and crimes of aggression. Operating as a court of last resort, it intervenes only where national legal systems are unable or unwilling genuinely to prosecute. Its establishment represented a watershed moment in international law: 121 states initially accepted the jurisdiction of a permanent international criminal court, signalling a collective resolve to combat impunity for grave crimes. Today 124 the ICC currently has 124 member states.

By centring individual criminal responsibility rather than state culpability, the ICC ensures that political and military leaders cannot shelter behind their office. Although legally independent of the United Nations, the Court operates under a Relationship Agreement with the UN pursuant to Article 2 of the Rome Statute. Unlike the International Court of Justice, a UN organ that adjudicates inter-state disputes, the ICC functions autonomously. Nevertheless, the Rome Statute grants the UNSC two significant powers: under Article 13, the Council may refer situations outside the Court's normal jurisdictional reach, as it did for Darfur and Libya; under Article 16, it may request a twelve-month deferral of investigations. These provisions give the ICC limited enforcement leverage through the UNSC, while simultaneously exposing it to allegations of political selectivity.

International Law

International law is a system of principles and norms governing the relations among states, international organisations, and, increasingly, individual persons (Crawford et al 2023; Shaw, 2021). Its modern foundations are conventionally traced to the Peace of Westphalia of 1648, which consolidated the principle of sovereign statehood and inaugurated the modern state system (Cassese, 2013). A crucial subsequent development was the Treaty of Versailles of 1919, which established the League of Nations and, with it, the first comprehensive attempt to codify international legal obligations relating to war, collective security, and permanent judicial adjudication.

The events precipitating the Russia-Ukraine war and the ICC arrest warrant must be understood against this systemic backdrop. The post-Cold War expansion of NATO and the European Union into former Soviet states generated mounting security anxieties within the Russian Federation, which Moscow ultimately invoked to justify its 2022 invasion a justification widely rejected by the international community as inconsistent with the prohibition on the use of force under Article 2(4) of the UN Charter (Shaw, 2021; Stahn, 2019).

Theoretical Framework

Realism and the Limits of International Law

The realist school of international relations offers the most direct theoretical challenge to the ICC's enforcement ambitions. Rooted in the assumption that the international system is anarchic, characterised by the absence of a supreme authority capable of compelling state compliance, realism holds that states act primarily in pursuit of national survival and power maximisation (Morgenthau, 1948; Waltz, 1979). International organisations and legal institutions, from a realist perspective, are epiphenomenal: they reflect the preferences of dominant powers and wield only such authority as powerful states choose to confer upon them (Krasner, 2002).

Russia's response to the ICC warrant exemplifies the realist logic. Moscow formally rejected the Court's jurisdiction, characterising the warrant as a politically motivated instrument serving Western interests. Russia's Foreign Ministry declared that the warrant has no legal meaning for the Russian Federation, given its non-party status under the Rome Statute. This

posture is reinforced by Russia's structural position as a UNSC permanent member, which effectively insulates it from Security Council-based enforcement referrals.

The realist analysis also illuminates the behaviour of third-party states that declined to execute the warrant. From a realist standpoint, small and medium-sized states that maintain close economic, security, or political ties with Russia face a strategic dilemma in which the costs of compliance with ICC obligations substantially outweigh the reputational benefits of honouring treaty commitments. The result, as the empirical record between 2023 and 2024 demonstrates, is systematic non-compliance by states that formally accept the Court's jurisdiction (Human Rights Watch, 2024).

Liberal Institutionalism and the ICC

Liberal institutionalism provides the normative foundation on which the ICC was constructed. Drawing on Kantian cosmopolitan philosophy and Lockean assumptions about the possibility of rational cooperation under shared rules, liberal theory holds that states can transcend the security dilemma through the creation of international institutions that embed cooperative norms, reduce transaction costs, and generate mutual gains from compliance (Keohane, 1984; Simmons, 2009). The ICC embodies this vision: it rests on the premise that universal accountability for grave crimes is achievable through a treaty-based regime supported by State Party cooperation.

Crucially, the Court's arrest warrant against Putin serves a function that extends beyond the individual case. By formally subjecting a P5 head of state to international criminal proceedings, the ICC seeks to validate the principle that no political actor is above the law, a central tenet of the liberal international legal order (Akhavan, 2009; Stahn, 2019). The reputational and legal consequences of the warrant persist regardless of whether Putin is ever physically surrendered: the warrant functions as a permanent legal disability, circumscribing his diplomatic mobility and generating lasting political costs for Russia.

The theoretical tension between realism and liberal institutionalism is not merely academic; it maps directly onto the enforcement dilemma the ICC faces. The Court operates as a liberal institution within a political environment that is governed, in significant part, by realist dynamics. Reconciling these frameworks requires an assessment of the specific mechanisms through which the Court attempts to bridge the gap between its normative aspirations and the power-political constraints it confronts.

Importance of Enforcement to Enhance the Legitimacy of the ICC

The Enforcement Dilemma and Legal Validity

The persistent challenge of translating legal mandates into concrete state action lies at the heart of scholarly and practitioner debates on the authority of international law. Kirgis (1996), examining the structural paradox of international legal obligation, argued that the absence of a centralised enforcement apparatus does not negate the binding character of international norms but does diminish their deterrent capacity when powerful state actors choose non-compliance. This observation remains acutely relevant to the ICC's predicament in the Putin case: the Court possesses undisputed treaty-based legal authority, yet its operational effectiveness is contingent on voluntary cooperation from sovereign states whose political calculations may conflict with their legal obligations (Bosco, 2014).

The ICC's enforcement architecture rests entirely on the cooperative framework established by Part 9 of the Rome Statute (1998). Under Articles 86 and 89, State Parties are obligated to comply fully with ICC requests for cooperation, including the arrest and surrender of accused persons. The Court itself, however, possesses no independent executive capacity, no

police apparatus, no armed enforcement branch, and no mechanism to compel compliance by recalcitrant states (Scheffer, 2012). This structural dependence on state cooperation transforms every arrest warrant into an exercise in diplomatic persuasion as much as legal compulsion, rendering enforcement outcomes contingent on the political will of states rather than the formal authority of the Court.

The decision by the ICC's Pre-Trial Chamber II to make the Putin arrest warrant public an exceptional prosecutorial decision was itself a strategic act designed to maximise the warrant's deterrent and legitimising functions. By publicising the warrant, the Court signalled that it would not allow the gravity of the alleged offences to be obscured by procedural confidentiality, and it placed ICC State Parties on formal notice of their obligation to execute the warrant should Putin enter their territory (ICC, 2023). This move was consistent with the Court's broader objective of ending impunity for international crimes, as affirmed in the Rome Statute's Preamble (1998), while also acknowledging that symbolic commitment and practical enforcement capacity are not equivalent.

Deterrence, Accountability, and the Rule of Law

Successful execution of the arrest warrant would carry significant systemic consequences for the international legal order. By demonstrating that no political leader, regardless of their state's nuclear status or P5 membership, is beyond the Court's reach, the ICC would substantially bolster the general deterrence function underpinning the Rome Statute system (Akhavan, 2009). The practical implications extend beyond the individual case: successful enforcement would incentivise future State Party compliance, reduce selective non-cooperation, and strengthen the Court's institutional credibility among states that remain outside the Rome Statute (Stahn, 2019).

Even in the absence of physical arrest, the warrant functions as a permanent international legal disability, circumscribing Putin's diplomatic mobility and generating lasting reputational and political costs for Russia (Lutsevych, 2023). This symbolic dimension of ICC proceedings, in its capacity to stigmatise and isolate individuals even when enforcement is incomplete, constitutes an underappreciated dimension of the Court's institutional effectiveness.

The Immunity Question

The immunity dimension of the Putin arrest warrant constitutes perhaps the most jurisprudentially complex element of the case. Under customary international law, sitting heads of state enjoy absolute immunity ratione personae from the civil and criminal jurisdiction of foreign domestic courts a doctrine rooted in the principle *par in parem non habet imperium* (equals have no jurisdiction over equals) and affirmed in the International Court of Justice's judgment in the Arrest Warrant of 11 April 2000 case (Democratic Republic of the Congo v. Belgium, 2002). The critical question is whether this customary immunity norm extends to international criminal tribunals operating on behalf of the international community, or whether the establishment of the ICC through the Rome Statute has modified the customary law position.

The Rome Statute addresses this question directly. Article 27(1) establishes the principle of irrelevance of official capacity, providing that the Statute applies equally to all persons without distinction based on official position. Article 27(2) reinforces this by stating that immunities or special procedural rules attaching to official capacity under national or international law shall not bar the Court from exercising jurisdiction. Together, these provisions represent a deliberate treaty-based departure from customary immunity norms as among State Parties (Akande, 2011).

The complicating factor is that Russia is not a party to the Rome Statute, having withdrawn its signature in November 2016 (United Nations Treaty Collection, 2016). This raises the question of whether Article 27's immunity waiver binding on State Parties by virtue of treaty ratification can be applied to the national of a non-party state. The ICC Appeals Chamber addressed an analogous question in the Jordan Referral re Al-Bashir Appeal (ICC, 2019), holding that no rule of customary international law provides head-of-state immunity from prosecution before international courts, and that State Parties accordingly incur no treaty conflict under Article 98(1) when arresting a foreign head of state pursuant to an ICC warrant (ICC, 2019, para. 113).

Critics of the Al-Bashir ruling have argued that this interpretation renders Article 98(1), which preserves immunity obligations owed by State Parties to third states, substantively redundant, and that it amounts to judicial legislation rather than the application of established custom (Gaeta, 2019; Tladi, 2019). This tension remains unresolved and will require further judicial clarification as the Putin proceedings develop. What is settled, however, is the principle established at Nuremberg that personal immunity and individual criminal responsibility are analytically distinct: immunity may temporarily suspend the exercise of jurisdiction, but it cannot permanently extinguish liability for crimes of the gravest magnitude (International Military Tribunal, 1946; Rome Statute, 1998, Art. 27).

The 2011 Malawi and Chad referral decisions, in which the Court found that customary international law had crystallised a norm permitting State Parties to execute arrest warrants against sitting heads of state for international crimes, provide additional precedential support for the denial of immunity in the Putin case (ICC, 2011a; ICC, 2011b). Together, this body of ICC jurisprudence establishes a coherent if still contested legal basis for subjecting Putin to the Court's jurisdictional authority notwithstanding Russia's non-party status.

Lack of Coercive Enforcement Mechanisms

A foundational constraint on the ICC's practical effectiveness is the complete absence of any autonomous enforcement capacity within the Court's institutional architecture. Unlike domestic courts, which operate within hierarchical legal systems backed by police forces and penal institutions, the ICC functions in a decentralised international legal order in which the execution of its decisions depends entirely on the voluntary cooperation of sovereign states (Bosco, 2014). This structural dependency reflects the deliberate compromise reached during the Rome Conference negotiations, in which states sought to preserve sovereign prerogatives while simultaneously accepting the principle of international criminal accountability (Schabas, 2017).

Part 9 of the Rome Statute (1998) establishes the cooperative framework through which the Court's enforcement functions are theoretically discharged. Under Article 89(1), State Parties are required to comply with requests for arrest and surrender, while Article 86 establishes the general obligation of full cooperation. Critically, however, Articles 87(5) and 87(7) provide the Court's only formal mechanism for addressing non-compliance: referral of non-cooperating states to the Assembly of States Parties (ASP) or, where the UNSC has referred the situation, to the Security Council itself. This mechanism lacks coercive teeth: the ASP has no enforcement powers, and Security Council referral is structurally impeded by Russia's veto authority as a permanent member (Stahn, 2019).

The practical consequences of this enforcement vacuum are illustrated by the prolonged non-execution of the al-Bashir arrest warrants over more than a decade. Despite clear treaty obligations, numerous ICC State Parties, including South Africa at the 2015 African Union summit, declined to arrest al-Bashir during official visits, citing competing diplomatic and

constitutional considerations (Tladi, 2019). South Africa's subsequent domestic court ruling that its failure to arrest al-Bashir constituted a violation of both the Constitution of the Republic of South Africa, 1996, and the Rome Statute Implementation Act 27 of 2002 (Minister of Justice and Constitutional Development v. Southern African Litigation Centre, 2016) demonstrated that domestic legal systems could serve as corrective mechanisms, but only retrospectively and without producing the desired arrest.

In the Putin case, these structural limitations are further exacerbated by geopolitical factors. Russia's status as a nuclear-armed P5 member, combined with its significant economic and diplomatic leverage over many ICC State Parties, materially reduces the willingness of states to risk bilateral relations by executing the warrant (Lutsevych, 2023). The self-enforcing character of international law reliant on reputational incentives, reciprocity, and shared institutional commitment rather than direct coercion may prove insufficient given the asymmetry in power between Russia and most ICC State Parties (Keohane, 1984; Simmons, 2009).

Putin's Travel and State Party Non-Compliance (2023-2024)

The period between the issuance of the ICC arrest warrant in March 2023 and the end of 2024 provided a series of evidence-based tests of the warrant's practical enforceability, as President Putin undertook selective international travel calculated to minimise legal risk. These episodes collectively illustrate the gap between formal treaty obligations and the political realities that govern state compliance with ICC cooperation requests. In October 2023, Putin conducted his first documented foreign travel following the warrant's issuance, visiting Kyrgyzstan, Tajikistan, Kazakhstan, and Armenia, all formally State Parties to the Rome Statute. None of these states initiated arrest proceedings, and none publicly articulated a legal justification for their non-compliance with the obligations established under Article 89 of the Rome Statute (1998). This pattern of tacit non-enforcement reflected the reality that formal treaty membership does not automatically translate into political willingness to execute warrants against major-power heads of state, particularly where the states concerned maintain close political, security, or economic ties with Russia.

The most significant test of the warrant's enforceability occurred in September 2024, when Putin visited Mongolia, a State Party to the Rome Statute, in connection with commemorations of the 85th anniversary of the Battle of Khalkhin Gol (Human Rights Watch, 2024). This visit marked the first documented instance of a head of state subject to an active ICC arrest warrant entering the territory of a State Party without being arrested. The ICC formally condemned Mongolia's non-compliance, and the Office of the Prosecutor subsequently initiated referral proceedings before the ASP (ICC, 2024). Human Rights Watch (2024) characterised Mongolia's failure to act as a significant blow to the Court's enforcement credibility, noting that the non-arrest undermined the deterrent function of the warrant and raised fundamental questions about the ASP's capacity to enforce accountability among its own members.

These episodes collectively illuminate several structural dimensions of the ICC's enforcement crisis. First, they confirm that the Court's dependence on state cooperation is not a theoretical vulnerability but a recurring operational constraint with concrete consequences for justice outcomes. Second, they demonstrate that geopolitical considerations, including states' bilateral relationships with Russia, economic dependencies, and security partnerships, systematically override treaty obligations in cases involving high-profile, politically sensitive warrants. Third, and most fundamentally, they reveal that the ICC's only meaningful response to non-compliant ASP referrals is insufficiently coercive to compel cooperation by states that prioritise their relationships with Moscow over their obligations to The Hague.

The broader implication of these findings for the legitimacy of the Rome Statute system is significant. As Simmons (2009) has argued, the credibility of international legal commitments depends substantially on the consistency with which they are enforced; selective or politically determined enforcement weakens the normative force of the underlying legal rules and emboldens future non-compliance. The ICC's inability to secure Putin's arrest or to impose meaningful consequences on State Parties that have declined to cooperate risks entrenching a two-tier system of international criminal accountability in which the most powerful state actors effectively remain immune from the Court's practical jurisdiction, notwithstanding the formal non-discrimination provisions of Article 27 of the Rome Statute (1998).

Conclusion

This article has examined the enforcement of general principles of international law through the case study of the ICC's arrest warrant against President Putin. The analysis demonstrates that while the warrant is legally grounded, resting on a coherent, if contested, body of ICC jurisprudence regarding individual criminal responsibility and the irrelevance of official immunity, its practical enforceability is severely constrained by the structural architecture of the Rome Statute system itself. The core problem is not one of legal authority but of political will. The Rome Statute's cooperative enforcement framework, which relies exclusively on voluntary state compliance with arrest and surrender obligations, is constitutively ill-equipped to secure the execution of warrants against heads of state of major powers whose geopolitical weight allows them to deter cooperation by third-party states. The empirical evidence examined, spanning the non-arrests in Central Asia, the Caucasus, and Mongolia, confirms that formal treaty membership offers no reliable guarantee of compliance when bilateral political and economic interests conflict with ICC obligations. Theoretically, the case illuminates the enduring tension between the liberal institutionalist foundations of the ICC and the realist dynamics that govern state behaviour in high-stakes enforcement scenarios. The warrant's symbolic and legal value, its capacity to stigmatise and constrain Putin internationally, should not be dismissed; however, it is insufficient as a substitute for structural reform of the Court's enforcement architecture. Without meaningful reforms to the ASP's sanctioning capacity, the legal consequences for non-cooperating State Parties and the political independence of the Court from UNSC veto dynamics, the ICC's aspiration to universal accountability will remain structurally compromised.

Recommendations

Based on the foregoing analysis, the following are hereby recommended:

1) The Assembly of States Parties should be empowered to impose graduated diplomatic and economic measures, including suspension of bilateral aid arrangements and preferential trade agreements against State Parties that fail, without justification, to execute ICC arrest warrants. This would introduce a credible cost for non-compliance that currently does not exist.
2) The OTP should receive sustained funding increases and logistical support, including cooperation with forensic partners in Ukraine, to expedite evidence-gathering and case preparation, thereby reducing the reputational vulnerability created by prolonged pre-trial inaction.
3) Given the UNSC's structural incapacity to act in situations involving P5 states, the ICC should actively cultivate a complementary relationship with the UN General Assembly, whose resolutions, while non-binding, carry significant normative weight and can generate political pressure on non-cooperating states.

4) The contested interpretation of Article 98(1) in relation to non-party state immunities should be resolved through an authoritative ASP declaration or an advisory opinion request to the International Court of Justice, eliminating the legal uncertainty that State Parties have invoked to justify non-compliance.
5) Diplomatic efforts to bring the United States, Russia, China, India, and other major non-party states into the Rome Statute system should remain a long-term institutional priority. Universal or near-universal membership would substantially reduce the political space available to heads of state seeking to evade ICC jurisdiction by travelling exclusively to non-party states.

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