

The ICC Arrest Warrant Against President Vladimir Putin and the Interests of Victims

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What is the ICC?

ICC stands for
International
Criminal Court



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- **An intergovernmental organization**
 - The Assembly of States Parties
 - Meeting of representatives of states
 - Who provide management oversight
 - Elect judges, prosecutor
 - Vote budget
- **An International court**
 - Presidency
 - Judicial divisions: Pre-Trial, Trial and Appeal Chambers
 - Office of the Prosecutor: preliminary examination, investigations and prosecutions
 - Registry: non-judicial activities of the Court
- **A Trust Fund for Victims**
 - Implements Court-Ordered Reparations;
 - Provides physical, psychological and material support to victims and their families





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- **A court of limited jurisdiction: 4 main crimes**
 - Genocide
 - Crimes against humanity
 - War crimes
 - Crime of aggression

Jurisdiction over persons



- Persons subject to jurisdiction of the ICC
 - National of a state Party
 - Over the age of 18
- Persons not subject to the jurisdiction of the ICC
 - Corporations
 - Under the age of 18



Territorial jurisdiction of the ICC

- Crimes committed on the territory of a State Party
- Crimes committed on the territory of a State that accepts the Court's jurisdiction
- Crimes committed on the territory of a State referred by the Security Council






Triggering the exercise of ICC jurisdiction

- A situation is referred to the Prosecutor by a State Party
- A situation is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations;
- The Prosecutor has initiated an investigation

ICC Legal process

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- Preliminary examinations
 - Investigations
 - Pre-trial stage
 - Trial stage
 - Appeals stage
 - Enforcement stage



Overarching principles of the Court functioning

- **Complementarity**
 - ICC prosecutes cases only when national courts are unable or unwilling
- **Cooperation**
 - No own police force or enforcement body
 - Relies on States, International organizations, NGOs to fulfil its mandate
- **Participation of victims**
 - “Where the personal **interests of the victims** are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court...” (art. 68(3) ICC Statute)



The ICC and Ukraine

From acceptance of
Court's jurisdiction to
the issuance of the arrest
warrant



Acceptance of ICC's Jurisdiction

On 8 September 2015, Ukraine, who was not a State Party, decided to accept the jurisdiction of the Court for crimes committed on its territory from 20 February 2014 onwards.

8 Sep. 2015

July 2018

This acceptance does not extend the jurisdiction of the Court to the crime of aggression, in force since July 2018, but only regarding States that accepted Court's jurisdiction over it.



Engagement of the OTP with Ukraine

- 11 December 2020: conclusion of Preliminary examinations on Ukraine, but no request to opening of investigations because of resource constraints
- 25 February 2022: « I am closely following the situation in Ukraine »
- 28 February 2022: « I have decided to proceed with opening an investigation »
 - I have reviewed the Office's conclusions arising from the preliminary examination of the Situation in Ukraine and have confirmed that there is a reasonable basis to proceed with opening an investigation. In particular, I am satisfied that there is a reasonable basis to believe that both alleged war crimes and crimes against humanity have been committed in Ukraine in relation to the events already assessed during the preliminary examination by the Office. Given the expansion of the conflict in recent days, it is my intention that this investigation will also encompass any new alleged crimes falling within the jurisdiction of my Office that are committed by any party to the conflict on any part of the territory of Ukraine.
 - I have already tasked my team to explore all evidence preservation opportunities. The next step is to proceed with the process of seeking and obtaining authorisation from the Pre-Trial Chamber of the Court to open an investigation. An alternative route set out in the Statute that could further expedite matters would be for an ICC State Party to refer the situation to my Office, which would allow us to actively and immediately proceed with the Office's independent and objective investigations.

Engagement of the OTP with Ukraine



- 2 March 2022:
 - “On 28 February, I announced my decision to seek authorisation to open an investigation into the Situation in Ukraine, on the basis of my Office's earlier conclusions arising from its preliminary examination, and encompassing any new alleged crimes falling within the jurisdiction of the International Criminal Court ("ICC" or "the Court").
 - In the same statement, I indicated that active investigations by my Office would be significantly expedited if a State Party to the Rome Statute (the "Statute") were to refer the situation to my Office, as provided in article 14 of the Statute.
 - Today, I can confirm that, my Office has received referrals of the Situation in Ukraine from the following 39 ICC States Parties (...)



Engagement of the OTP with Ukraine

- 11 March 2022:
 - Additional referral from North Macedonia and Japan; Japan being the first non-European country to refer the case of Ukraine to the ICC;
 - Launching of a virtual gateway for the collection of information from any source regarding the situation in Ukraine
 - Deployment of investigative team on the region for evidence collection activities
- I have notified the ICC Presidency a few moments ago of my decision to immediately proceed with active investigations in the Situation. Our work in the collection of evidence has now commenced.

Engagement of the OTP with Ukraine

- 16 March 2022:
 - Field visit to Ukraine and Poland by the Prosecutor of the ICC
 - Meeting with various stakeholders
 - During my visit, I have also had the opportunity to meet with those who have been forced to flee due to the hostilities in Ukraine at Medyka refugee reception centre in Poland. The accounts I have heard from men, women and children have deepened my concern regarding the impact of this situation on the civilian population.
- 25 April 2022
 - The ICC Prosecutor embarked in a Joint Investigation Teams composed of the investigators of Lithuania, Poland and Ukraine to investigate crimes under the jurisdiction of the Court and to share information and evidence collected.
- May 2022
 - Deployment of forensics and investigative teams in Ukraine
 - Ukraine office of the Prosecutor established in Khiev

The narrowing down of investigations on enforced deportation of children

- 22 September 2022 Briefing of the Prosecutor to the UN Security Council:
 - “I am deeply concerned about the allegations and information we are seeing regarding what appear to be reasonable grounds to believe that civilian objects were intentionally targeted and that populations from Ukraine, particularly children, were transferred out of the country.”



Back from the Fourth visit in Ukraine

“Since taking up my position as Prosecutor, I have repeatedly said that children must no longer be the forgotten victims of conflict. My mission to Ukraine has underlined this imperative. In southern Ukraine, two kilometres from the frontlines, I visited a care home for children. The drawings pinned on the wall and the cupboards full of clothes spoke to a context of love and support that was once there. But this home was empty, a result of alleged deportation of children from Ukraine to the Russian Federation or their unlawful transfer to other parts of the temporarily occupied territories. As I noted to the United Nations Security Council last September, these alleged acts are being investigated by my Office as a priority. Children cannot be treated as the spoils of war.” (7 March 2023)



Seeking and obtaining the issuance of the arrest warrant against President Putin

- 17 March 2023

“On 22 February 2023, I submitted **applications to Pre-Trial Chamber II of the International Criminal Court** for warrants of arrest in the context of the Situation in Ukraine. Today, the Pre-Trial Chamber has issued arrest warrants in relation to the following two individuals:

- **Mr Vladimir Putin, President of the Russian Federation; and**
- Ms Maria Lvova-Belova, Commissioner for Children’s Rights in the Office of the President of the Russian Federation.

On the basis of evidence collected and analysed (...), the Pre-Trial Chamber has confirmed that **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 (...) the Rome Statute.

Incidents identified by my Office include the **deportation of at least hundreds of children taken from orphanages and children’s care homes**. Many of these children, we allege, have since been given for adoption in the Russian Federation. The law was changed in the Russian Federation, through Presidential decrees issued by President Putin, to expedite the conferral of Russian citizenship, making it easier for them to be adopted by Russian families.

My Office alleges that these acts, amongst others, demonstrate an intention to permanently remove these children from their own country. At the time of these deportations, the Ukrainian children were protected persons under the Fourth Geneva Convention.”



The interests of victims

Meaning and influence in
the issuance of an arrest
warrant

Meaning of interests of victims

- **A balancing factor in the decision of the Prosecutor to put an investigation on hold:**
 - “The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. **In deciding whether to initiate an investigation, the Prosecutor shall consider whether:**
 - Taking into account the gravity of the crime and **the interests of victims**, there are nonetheless substantial reasons to believe that an investigation would not serve **the interests of justice**”
 - Art. 53(1)c) Rome Statute of the ICC

Meaning of interests of victims

- **A balancing factor in the decision not to prosecute upon investigation**
 - If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because:
 - A prosecution is not in **the interests of justice**, taking into account all the circumstances, including the gravity of the crime, **the interests of victims** and (...)
 - Art. 53(2)c) Rome Statute of the ICC



Meaning of interests of victims

- **Duty owed by the Prosecutor to victims**

- With respect to investigations, the Prosecutor shall:
 - Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect **the interests** and personal circumstances **of victims** and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children;
- Art. 54(1)b) Rome Statute of the ICC


Meaning of interests of victims

- **Right of victims to know the truth about the crimes:**
 - In case of admission of guilt:
 - Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is required **in the interests of justice**, in particular **the interests of the victims**, the Trial Chamber may:
 - (a) Request the Prosecutor to present additional evidence, including the testimony of witnesses; or
 - (b) Order that the trial be continued under the ordinary trial procedures provided by this Statute, in which case it shall consider the admission of guilt as not having been made and may remit the case to another Trial Chamber.
- Art. 65(4) Rome Statute of the ICC



Meaning of interests of victims

- **Trigger of participation rights:**

- “Where the personal **interests of the victims** are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.”
 - Art. 68(3) Rome Statute of the ICC
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Prosecutor's interpretation of « interests of victims »

- In its *Policy on Interests of Justice 2007*, the Prosecutor considers that:
 - He has the obligation to take into account the interests of victims before starting an investigation or prosecution;
 - The interests of victims weigh in favour of investigation and prosecution, hence is included in the interests of justice;
 - “The interests of victims includes the victims’ interest in seeing justice done, but also includes other essential interests such as their protection”
 - The presumption in favour of investigation and prosecution does not prevent to seek the views of victims and their communities

How the interests of victims is ascertains


“In attempting to ascertain the interests of victims, the Prosecutor will conduct a dialogue with the victims themselves as well as representatives of local communities. The Office of the Prosecutor considers that seeking the views of other actors involved in the situation will also be crucial in order to assess the impact for the interests of victims of investigations and prosecutions. Understanding the interests of victims may require other forms of dialogue besides direct discussions with victims themselves. It may be important to seek the views of respected intermediaries and representatives, or those who may be able to provide a comprehensive overview of a complex situation. This may include local leaders (religious, political, tribal), other states, local and international intergovernmental and nongovernmental organizations. (...)” *Policy on Interests of justice 2007*

How this framework was implemented in arrest warrant against President Putin?


- Prosecutor's resolve to investigate and prosecute was apparent from many of his public statements:
 - "we must collectively demonstrate by action, not words, that the law has meaning"
 - UN Security council briefing of 22 September 2022
- **Hence the interests of victims was to seeing justice done?**



What about protection and security concerns?

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- There are guidelines for ongoing risk assessment for victims and witnesses;
 - The protection of victims and witnesses was balanced with the **interests of justice** for preventing future crimes owed to the ongoing nature of the investigated crimes;
 - Therefore the issuance of the arrest warrants is publicized while the warrants remain confidential

How were
the
interests of
deported
children
ascertain?

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- Prosecutor's field visits;
 - Unprecedented deployment of investigators and forensics;
 - Joint investigation team with four other countries of Europe
 - Virtual gateway to receive information from any source

THANK YOU FOR YOUR KIND
ATTENTION

