

4-7-2023

## **Putin's Arrest Warrant: The What and the Why of "Unlawful Deportation of Children"**

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April 7, 2023 [No Comments](#)

# Putin's Arrest Warrant: The What and the Why of "Unlawful Deportation of Children"



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Earlier this year, the International Criminal Court (ICC) [issued an arrest warrant](#) for Vladimir Putin, president of the Russian Federation. The charge: unlawful deportation of children, a war crime. While there have been many calls to prosecute Mr. Putin for alleged war crimes in Ukraine (indeed, the United States even [passed a new law](#) which could allow such a prosecution in the U.S.), some might be wondering what "unlawful deportation of children" exactly entails and why the ICC chose this particular charge.

## What is a War Crime?

Before delving into the specifics of the charges against Mr. Putin, it is important to understand what is – and what is not – a "war crime." Although the phrase is used fairly loosely in popular discourse, "[war crime](#)" is a term of art under international law. It does not, for example, encompass every crime that might be committed during war. It is also separate and distinct from (although related to) [genocide](#) and [crimes against humanity](#). In general, a war crime has [two defining features](#): it must be an intentional and "serious" breach of international humanitarian law, and it must be committed during an armed conflict. The parties involved and the nature of the conflict are also important: certain war crimes, defined by treaties like the [Ottawa Convention](#), are binding only upon the signatories. Some conduct which would be impermissible during an international armed conflict does not constitute a war crime when part of a "non-international" armed conflict (i.e., a [civil war](#)).

There is no exhaustive list of war crimes; violations of the [Geneva Conventions](#) (and their Additional Protocols), [Chemical Weapons Convention](#) (applicable only to signatories), or other international agreements can constitute war crimes. Further, certain acts which do not violate any

specific treaty may still be categorized as war crimes under [customary international humanitarian law](#). One of the most important modern documents on international humanitarian law – and the vehicle through which Mr. Putin has been charged – is the [Rome Statute](#), a 1998 agreement which established the ICC and sets forth its jurisdiction over serious international crimes.

### **Unlawful Deportation of Children: The What**



Photo by [Jose P. Ortiz](#) on [Unsplash](#).

Mr. Putin was charged under two provisions of the Rome Statute: Article 8(2)(a)(vii) (“Unlawful deportation or transfer or unlawful confinement”) and Article 8(2)(a)(viii) (“Taking of hostages”). More specifically, the ICC’s prosecutors believe that Mr. Putin (along with his Commissioner for Children’s Rights) is criminally responsible for [“the unlawful deportation and transfer of Ukrainian children from occupied areas of Ukraine to the Russian Federation.”](#) In essence, Mr. Putin is charged with orchestrating the kidnapping of hundreds of Ukrainian children, many of whom have since been given up for adoption in Russia. This last detail is important; it helps demonstrate that Mr. Putin and those under his command intended to permanently remove the children from their own country.

The underlying facts of the charge have been [extensively documented](#), and Mr. Putin’s co-defendant, Commissioner of Children’s Rights Maria Lvova-Belova, has even claimed to have [adopted a Ukrainian teenager](#) herself. Although the Kremlin contends that relocating the children was a voluntary humanitarian endeavor, the UN [Human Rights Council](#) – and now the ICC – evidently disagree.

## Unlawful Deportation of Children: The Why



Photo by [Sonia Dauer](#) on [Unsplash](#).

The charges leveled against Mr. Putin in the ICC’s warrant are far from the only war crime allegations against Russia. The United Nations Human Rights Council authored [a report](#) detailing a “wide range of war crimes” – including torture and the intentional targeting of civilians – likely committed by Russian forces (as well as a much shorter set of allegations against Ukrainians). Professor [Phillippe Sands](#), the Director of the Centre on International Courts and Tribunals at University College London, has suggested that the entire war in Ukraine constitutes [the crime of aggression](#) (also known as a “crime against peace”). Why, then, has the ICC chosen only to issue a warrant relating to the transfer of children from Ukraine to Russia?

The answer is twofold: jurisdiction and proof.

Russia, like the United States, is [not a party](#) to the Rome Statute. This limits the ICC’s jurisdiction over certain matters. Under [Article 15 bis](#) of the Rome Statute, for example, the ICC may not prosecute nationals of a non-party State for the crime of aggression. This insulates Mr. Putin from liability for the war in Ukraine as a whole. With respect to war crimes, however, the ICC’s jurisdiction (set out in Article 12) is broader: it may prosecute nationals of non-party States if the offence occurred within the territory of either a State Party or a non-party State who has accepted the ICC’s jurisdiction. Although Ukraine is not a State Party to the Rome Statute, it has [accepted the ICC’s jurisdiction](#) over war crimes committed on its territory during the war with Russia.

The jurisdictional element explains the ICC’s decision to focus on war crimes rather than other violations of international law. The specific choice to charge Mr. Putin with deportation of children, however, is more likely a matter of proof. Most of the war crimes documented in Ukraine would have been difficult, if not impossible, to pin on Mr. Putin; it is much more likely that prosecution would be limited to [“his generals and foot soldiers.”](#) With the unlawful

deportation of children, however, ICC prosecutors evidently believe they have found an offence for which evidence can be linked directly to the Russian president.

### **What Happens Now?**

Of course, for an arrest warrant to lead to a conviction, an actual arrest must take place. For the foreseeable future, at least, that seems [unlikely](#). Since Russia is not a party to the Rome Statute, even if he were to fall from power, Mr. Putin could not be arrested on the warrant within his home country. The warrant could, however, limit his future travel, although the Russian president [seldom visits](#) countries that are full-fledged parties to the Rome Statute in any event. While it may seem unlikely now, prosecution at some future point is not a total impossibility: after all, as ICC prosecutor Karim Khan was quick to [point out](#), the trial of Slobodan Milosevic (the former president of Serbia) was once believed to be impossible. Will Mr. Putin follow Mr. Milosevic to the courtroom, or will he remain untouchable? Only time will tell.

*Maxwell Granger*

Maxwell S. Granger is a member of the Class of 2024 at Golden Gate University School of Law. In addition to writing for the Law Review, Maxwell serves as Vice President of the GGU International Law Society and Treasurer of the Student Bar Association. He is also involved with the Public Interest Law Foundation (PILF) and other student organizations. Prior to attending law school, he earned a degree in physics from the University of California, Santa Barbara's College of Creative Studies.