The Paradox of Immunity in Criminal Accountability

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The International Criminal Court (ICC) at The Hague, Netherlands, on July 23, 2024.

1. Introduction

In March 2023, the International Criminal Court issued an arrest warrant for Vladimir Putin, president of the Russian Federation. The warrant alleges his responsibility for the war crime of unlawful deportation of children and their transfer from occupied areas of Ukraine to Russia; there are reasonable grounds to believe Putin committed these acts directly or by working with others, and failed to exercise proper control over civilians and military subordinates who carried out the deportation.

To ensure enforcement of the arrest warrant, the ICC is entirely dependent on state cooperation. All States parties to the Rome Statute are in fact under an obligation to arrest Putin if he enters their territory and to surrender him to the Court.

In September 2024, Mongolia, a State Party to the Statute, failed to carry out this duty by appealing to Putin's immunity as a Head of State established in international law.

While the Court has answered questions on personal immunities before, Mongolia's case highlights an interesting tension entrenched in the Statute itself. To what extent are the contradictions between Articles 27 and 98 of the Rome Statute dealt with by the Court, and how does this discrepancy translate in the execution of arrest warrants?

2. Obligation to surrender

The International Criminal Court has jurisdiction over the most serious international crimes. As it does not have its own enforcement body, it relies on the cooperation of countries worldwide to carry out arrests and enforce sentences. While the Court itself cooperates with both State Parties and non-State Parties, State Parties have a duty to cooperate fully with the Court's investigations and its prosecution of crimes (ICC, 2023).

In particular, in the context of an arrest warrant, the Court may send a request for the arrest and surrender of persons to State Parties and request their cooperation. Under Article 89 of the Rome Statute, State Parties are under an obligation to comply with such a request.

At the beginning of September 2024, President Putin visited Mongolia, a State Party to the Rome Statute, and met publicly with the President of Mongolia, effectively challenging the authority of the ICC. In that instance, Mongolia failed to execute the arrest warrant against the Russian President, invoking Article 98 of the Rome Statute and appealing to their pre-existing obligation under customary international law to respect Putin's immunity (Calò, 2026).

3. Article 27 and criminal liability of third parties

According to customary international law doctrine, sitting Heads of State are entitled to personal immunity (*rationae personae*), usually to avoid any interference in the exercise of their official functions (Kazimi, 2025).

Personal immunity constitutes a big obstacle in the enforcement of international criminal justice.

For this reason, Article 27 of the Statute dictates the principle of irrelevance of official capacity regarding criminal liability for acts within the ICC's jurisdiction. Moreover, it specifically indicates that personal immunities don't prohibit the Court from exercising its jurisdiction over the subject of an arrest warrant (Kazimi, 2026).

In assessing the legality of Mongolia's refusal to cooperate, the Pre-Trial Chamber II (PTC II) provided further insights on the scope of Article 27. Firstly, it reminded Mongolia of the effects of the article, namely to remove any immunity of officials in front of international courts. Secondly, the PTC II reminded Mongolia that the article represents a binding legal obligation

on all State Parties and States that have accepted the Court's jurisdiction (ICC, 2024).

As such, Mongolia is required to arrest and surrender President Putin, irrespective of his official capacity.

4. The Court's interpretation of Article 98

In its refusal to comply with the arrest warrant, Mongolia relied on Article 98 of the Rome Statute as its primary legal basis.

Article 98(1) prevents the Court from proceeding with a request for surrender or assistance that would require a requested State to act inconsistently with its international obligations concerning the immunity of a third State, unless the Court first obtains that State's cooperation in waiving immunity. Whether this provision applies to the arrest of sitting Heads of State of non-parties remains contested.

In its decision, the PTC II addressed Article 98, namely Mongolia's primary legal basis in justifying their failure to surrender, and provided further guidance on the scope and application of the article. It held that Article 98 did not prevent Putin's arrest and surrender.

Specifically, the PTC II stressed that Article 98 does not undermine the fundamental principles on which the Court's system is based upon and it doesn't provide any exceptions to Article 27 of the Statute. Any other interpretation would undermine the system and authority of the Court (ICC, 2024).

As such, an interpretation of the articles which would result in protection of non-State Party nationals, such as President Putin, from the execution of the arrest warrants would compromise the authority of the ICC (Bielby, 2025).

Furthermore, the PTC II emphasized that, in its view, State Parties' obligations under the Statute must prevail over potentially conflicting obligations towards non-member states. This reasoning has been subject to criticism, since it is inappropriate to create a hierarchy between vertical and horizontal obligations of states (Nigro & Scali, 2024).

Nevertheless, in the view of the PTC II, Mongolia failed to comply with its obligations as a State Party to the Rome Statute, consequently preventing the Court from exercising its jurisdiction (ICC, 2024).

5. International law: a product of States' interests

In essence, State Parties to the Rome Statute are confronted with the choice to carry out its obligations to the Court or to respect personal immunity of Heads of non-State Parties as provided by customary international law.

On the one hand, if a State Party arrests President Putin, it will comply with its obligations under the Rome Statute, but it will subject itself to liability for arguably violating the customary international rule on personal immunity. On the other hand, if the State Party refuses to arrest Putin,

it will violate its obligation under international criminal law, albeit while respecting personal immunity of Heads of State (Nigro & Scali, 2024).

As international treaties are drafted by sovereign states, the existence of a safeguard for states' diplomatic interests, such as Article 98, becomes entirely reasonable.

This becomes particularly relevant when states are confronted with arrest warrants of Heads of State of countries with high political influence, such as Russia. In these cases, the influence of states' powers can heavily affect the ability of the ICC to achieve its goals. The Court's system of dependency on State Party cooperation is therefore flawed, as states are often influenced by their own diplomatic interest (Kazimi, 2026).

6. Conclusion

While in theory State Parties to the Rome Statute have a clear obligation to surrender and cooperate in the context of arrest warrants, the reality is much more nuanced.

The Statute itself contains inconsistent rules when it comes to how states should deal with personal immunity of Heads of State, namely in Articles 27 and 98. While the PTC II's decision on Mongolia's failure to arrest Putin is a step forward in identifying that international criminal justice cannot be limited by personal immunities, the road to effective execution of arrest warrants is still long.

This situation reveals the ICC's main weakness: enforcement. The Court could strengthen its effectiveness in delivering justice through building an independent executive system which will no longer depend solely on state cooperation. Without consolidating its enforcement mechanisms, the ICC risks becoming a powerless institution.

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