



PARLIAMENTARY ASSEMBLY OF THE MEDITERRANEAN
ASSEMBLEE PARLEMENTAIRE DE LA MEDITERRANEE
برلمان البحر الأبيض المتوسط

Background Information Note

The Non-Arrest of Individuals Indicted by the International Criminal Court (ICC) by ICC Member States

The Case of Russian Federation President Vladimir Putin's Visit to Mongolia

Update as of 24 October 2024

On 24 October 2024, the Pre-Trial Chamber II of the International Criminal Court (*ICC* or *the Court*) found that, by failing to arrest President Putin while he was on its territory and surrender him to the Court, Mongolia has failed to comply with the Court's request to cooperate in this regard contrary to the provisions of the Rome Statute. In this regard, Mongolia prevented the Court from exercising its functions and powers within the meaning of article 87(7) of the Statute. In view of the seriousness of Mongolia's failure to cooperate with the Court, the Chamber deemed it necessary to refer the matter to the Assembly of States Parties¹.

Overview

1. On 3 September 2024, Russian President Vladimir Putin visited Mongolia, a State Party to the Rome Statute of the ICC, and was not arrested despite an active warrant for his arrest issued by the ICC². The ICC's warrant, which indicts President Putin of war crimes in Ukraine, places legal obligations on ICC Member States to arrest and surrender the fugitive as soon as they enter their territory.
2. As such, the situation calls into question the deterrence, compliance, and efficacy of international legal instruments – including the arrest of Heads of State and Government

¹ *Ukraine situation: ICC Pre-Trial Chamber II finds that Mongolia failed to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and refers the matter to the Assembly of States Parties.* (2024, October 24). www.icc-cpi.int. Retrieved October 25, 2024, from <https://www.icc-cpi.int/news/ukraine-situation-icc-pre-trial-chamber-ii-finds-mongolia-failed-cooperate-arrest-and>

² International Criminal Court. (2023a, March 17). Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova. International Criminal Court. <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>

– when it is perceived to compromise national sovereignty. Mongolia, as a State Party to the Rome Statute, is obligated to cooperate with the rulings of the ICC. However, Mongolia’s considerable economic and diplomatic ties to Russia, as its largest neighbor and important trading partner – seemingly took priority over its legal obligations. As such, arresting President Putin on the basis of its international obligations would have damaged Mongolia’s relations with Russia, and potentially create long-term economic and security risks for the country.

Legal Framework

3. The failure to arrest President Putin has generated a significant debate both within Mongolia and internationally. Domestically, reactions were mixed, with some Mongolian politicians and public figures expressing disappointment in the government’s decision. Others recognized the potential diplomatic and security fallout, leading them to support the non-arrest. Internationally, Mongolia is facing criticism from other State parties to the Rome Statute, alongside human rights advocates who denounce Mongolia’s unwillingness to uphold the principles of international law³. Furthermore, the decision sets a dangerous precedent whereby Heads of State or Government, among others with diplomatic immunity, that are indicted by the ICC can enjoy impunity for committing international crimes.
4. From a legal perspective, Mongolia’s decision lead the focus to broader challenges that exist in the enforcement of international law against individuals enjoying immunity⁴. The ICC’s legal framework is heavily reliant on the cooperation and compliance of member states to arrest and surrender fugitives, as the Court does not possess enforcement powers. Without the cooperation from its Member States, the ICC is left powerless, rendering its rulings largely symbolic in cases where political considerations outweigh legal obligations.
5. According to Article 88 of the Rome Statute, States Parties must establish and introduce domestic procedures under national law for all forms of cooperation with the Court, including the arrest of fugitives. As per Article 87(7), when a State Party does not comply with a request by the Court to do so, the Court may make a finding of non-cooperation, after the requested State is given an opportunity to be heard by a Chamber as to why cooperation did not occur, and the incident may be referred to the Assembly of States Parties, or the UN Security Council⁵.

³ Santos, S. F. (2024, August 30). Ukraine calls on Mongolia to arrest Putin ahead of visit. <https://www.bbc.com/news/articles/c0e852r50x7o>

⁴ Non-State actors playing greater roles in governance and international affairs. (2023, July 5). www.dni.gov. Retrieved September 12, 2024, from https://www.dni.gov/files/ODNI/documents/assessments/NICM-Non-State-Actors_23-01637_05-18-24_.pdf

⁵ The United Nations Rome Statute of the International Criminal Court. Available at: <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>

6. The case also presents significant implications regarding the principles defining the immunities enjoyed by Heads of State and Government, in the framework of international law. Often, various forms of legal immunity have protected state leaders, making it difficult to hold them accountable for crimes committed during their time in office. Although international law has since evolved to challenge this shortcoming – particularly in cases of genocide, war crimes, and crimes against humanity – President Putin’s non-arrest in Mongolia reflects the persistent difficulties in applying these legal standards consistently.
7. Beyond the immediate legal and diplomatic repercussions of Mongolia’s actions, the incident additionally raises broader questions about the role of international organizations like the ICC in enforcing global justice. The ICC was established to ensure accountability for the most serious crimes, yet lacks the necessary enforcement mechanisms. As demonstrated by the case of Sudan’s Omar al-Bashir, who similarly evaded arrest despite an ICC warrant, leaders, witnessed again in the case of President Putin, are able to avoid prosecution due to the political and economic interests of states they engage with. This undermines the core principles on which the ICC and other International Courts were established.
8. On the other hand, Mongolia’s decision could have negative implications on its relations with other nations, especially those that uphold adherence to international law⁶. In return, this may lead to forms of diplomatic isolation or sanctions from other states.

Conclusion

9. The non-arrest of President Putin underscores the challenges faced by geopolitically disadvantaged states like Mongolia in balancing their international legal obligations with their national interests. As a country with significant economic and political ties to Russia⁷, Mongolian state officials were most likely cornered into subordinating international law to the strategic interests of the country, as the arrest of President Putin would result in severe repercussions. In such cases, where smaller states find themselves caught between their commitments to international legal institutions and the practical realities of maintaining favorable relations with powerful neighbors, the international legal framework becomes more and more fragile.
10. In conclusion, Mongolia’s decision not to arrest President Putin during his visit to the country raises important questions about the effectiveness of international law, particularly in cases of holding powerful Heads of State and Government accountable for their international crimes. As a result, the incident highlights the challenges of

⁶ Altanshagai, T. (2024, September 4). Why Mongolia won’t arrest Vladimir Putin. The Diplomat. <https://thediplomat.com/2024/08/why-mongolia-wont-arrest-vladimir-putin/>

⁷ RFE/RL. (2019, September 3). Russia, Mongolia Sign New Treaty to Bring Partnership To “Whole New Level.” RadiofreeEurope/RadioLiberty; RFE/RL. <https://www.rferl.org/a/russia-mongolia-sign-new-treaty-to-bring-partnership-to-whole-new-level-30144655.html>

enforcing ICC arrest warrants where diplomatic and economic considerations often take precedence.

11. Moreover, the Mongolia case highlights the key issues of accountability for each and every States, without exception, in relation to international obligations, such as those enshrined in the UN Charter, and the validity and necessity of the initiative launched by the UN Secretary General in New York, through the organization of the Summit of the Future, in order to revive, reinforce and ensure the credibility of the instrument required to guarantee peace and security through an effective global governance.