

## ARGUMENT

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# It's Easy But Wrong to Be Cynical About Putin's Indictment

The charges may be an important step in pushing global justice forward.

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Cynicism comes especially easy to international law, where the longest-running debates still parse whether or not international law and institutions even “matter” in the first place. Indeed, as a professor of international law for nearly 20 years, I confess I've brought many a student's idealistic dreams of crafting a more just and principled world crashing down upon the harsh rocks of realpolitik.

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So it is not surprising that the arrest warrant for Russian President Vladimir Putin on war crimes charges from the International Criminal Court (ICC) has been met with raised eyebrows. Commentators note—correctly—that since Russia never ratified the 1998 Rome Statute creating the court and does not recognize its jurisdiction, the ICC has no mechanism to force Russia to surrender Putin to The Hague, and even if it did, Russia also wields a veto on the United Nations Security Council that would ensure its president never sees the inside of a courtroom, regardless of the abduction and deportation of some 16,000 Ukrainian children.

The cynical take, then, is that since the political might of the Russian state outweighs the moral authority of the ICC, any indictment amounts to little more than a feel-good gesture of solidarity with the besieged Ukrainians and will have little perceptible effect on future developments.

Perhaps. Yet the ICC's move was hardly empty symbolism: It was a major decision and an impactful one, thoroughly cognizant of both the challenges and the necessity of putting principles ahead of power. Indeed, the ICC's Putin indictment

has the potential to be both dramatic and consequential in ways that might be difficult to foresee.

First the indictment is a Rubicon: a point of no return for Russia and the world, so long as Putin remains in power. Being branded a war criminal by the embodiment of global justice further isolates both Putin and Russia. Gone are the days when Putin basked in the glow of high-level summits from Europe to Latin America, given the elevated risk that he—like former Chilean dictator Augusto Pinochet—might be apprehended immediately upon arrival.

Even fewer foreign heads of state may be willing to travel to visit an increasingly shunned and isolated Putin in the Kremlin. Shaking hands with an accused war criminal is bad optics and not likely to bolster a leader's popularity back home. Alternately, dictators and authoritarian sympathizers the world over may rally to Putin's defense, making Putin's indictment a cause célèbre for opposition to both the ICC and the Western-led, rights-based international order more broadly.

By branding Putin a global outlaw, the ICC indictment is creating a more bifurcated world. By driving a wedge between liberalism and illiberalism, it effectively forces the rest of the world to side with either the Kremlin or the rights-based order. What little wiggle room that existed in between is now gone, complicating matters both for states looking to stay out of the Ukraine-Russia conflict and for traditional mediators like France and Germany attempting to broker political solutions with Putin directly.

Within Russia, the indictment likewise drives a further wedge between active supporters of Putin's war and those only passively acquiescing to it. Many Russian business and political elites have kept their heads down and mouths shut on Ukraine, quietly hoping for a postwar reconciliation with Europe based on shared business interests. That option is likely gone forever. If ever there is a normalization of relations with Russia, it will be a Russia without Putin, which—however unlikely—may change the political calculus of support among Putin's network of loyalists and cronies.

The magnitude of these consequences may vary from decisive to negligible in importance. And if history proves them to be negligible, then the ICC warrant will indeed look like little more than a futile, symbolic protest against Russian aggression. Yet simply assuming the indictment will be a nothingburger based on realist dismissiveness toward international law ignores one big problem: What happens if international law actually does matter?

How—or even whether—international law influences the decisions of states is both the core question in the study of international law and also an enduring source of cynicism toward it. Avoiding this bog of cynicism is a constant challenge to proponents of international law, especially in the United States. Frustratingly—

from Nicaragua and Iraq to Abu Ghraib and Guantanamo Bay—the U.S. government has frequently snubbed international law when politically expedient. The trick is to recall Martin Luther King Jr.’s adage that “the arc of the moral universe is long, but it bends toward justice.” This means considering long-term horizons: not days or weeks, but decades and centuries.

After World War I, did the establishment of the League of Nations, the Permanent Court of International Justice, and the Kellogg-Briand Pact outlawing war prevent the horrors of World War II and the Holocaust? No. But afterward, they were replaced with something better: United Nations institutions and treaties affirming universal human rights.

Did the war crimes tribunals in Nuremberg and Tokyo deliver perfect accountability for World War II atrocities? No, but they ended the notion of wartime impunity for combatants and leaders alike.

Did the ad hoc criminal tribunals in Rwanda, Yugoslavia, and Sierra Leone provide perfect justice for the millions of dead and maimed in those conflicts of the 1990s? No, but for the first time, criminal presidents from Slobodan Milosevic to Charles Taylor were held to account for their crimes. And from them came the push to establish a permanent body—the ICC—to potentially deter would-be human rights violators.

Has the ICC everywhere succeeded in deterring aggression or bringing evildoers to heel? No. But the indictments against Omar al-Bashir of Sudan (2009), Muammar al-Qaddafi of Libya (2011), and now Putin of Russia (2023) are each individual data points in the accelerating, decadeslong pursuit of international justice. Within the one lifetime from World War II to the present, such incremental, glacial progress has delivered expectations of justice that would be unfathomable to realpolitikers from Otto von Bismarck to Hans Morgenthau.

Unpredictable consequences can also be far more positive than cynicism would suggest. For example, when the U.N. Charter was drafted in 1945, there were absolutely no provisions for peacekeeping operations. Now peacekeeping and peace-building are among the most important U.N. functions. Likewise, in 1998, Pinochet was arrested on arrival in London on a Spanish extradition request for crimes committed in Chile, unleashing an international “justice cascade” promoting human rights norms at the expense of sovereign immunity. None of these outcomes could have been predicted in advance.

Beyond its impact on Russia alone, the Putin indictment may complicate American politics in unexpected ways—both in its relations with Russia and with the ICC.

The knee-jerk cynical reaction is to note the United States’ dubious and long-standing hostility to the ICC. From “renouncing” the United States’ symbolic

signature on the 1998 Rome Statute to former President George W. Bush's widely mocked "Hague Invasion Act"—by which the president could be authorized to intervene militarily on behalf of any American or allied national held by the court—even Democratic administrations have formally kept the ICC at arm's length.

Behind the scenes, though, the United States has actually drawn closer to cooperating with the ICC in recent years. Consider the U.S. State Department's Rewards for Justice (RFJ) program, which was begun in 1984 under President Ronald Reagan to provide cash rewards for information leading to the capture of international terrorists. Just as the U.N. adapted to peacekeeping roles that it was not originally designed for, so too has the RFJ program expanded beyond terrorism to target financial support of North Korea, cyberattacks on U.S. critical infrastructure, and even Russian nationals involved in interfering in the 2016 U.S. presidential election, including Putin henchman and Wagner Group founder Yevgeny Prigozhin.

Most notably, the RFJ program has—with bipartisan support in Congress—been expanded to cover individuals under indictment by the ICC. As it turns out, the usual Republican grandstanding about defense of American sovereignty against phantom incursions from The Hague bowed to the political realization that there were few votes to be had in defending warlords like Joseph Kony who were wanted by the court.

Or consider the War Crimes Rewards Program (WCRP), which offers \$5 million cash rewards for information and cooperation in the arrest or capture of individuals indicted by the ad hoc tribunals for Yugoslavia, Rwanda, and Sierra Leone. With wide bipartisan support, in 2013 Congress expanded the successful program to include "individuals indicted by any international or hybrid criminal tribunal, including the International Criminal Court."

In particular, the WCRP permits the United States to authorize payment to any informant for information leading to "the arrest or conviction in any country, or the transfer to or conviction by an international criminal tribunal (including a hybrid or mixed tribunal), of any foreign national accused of war crimes, crimes against humanity, or genocide, as defined under the statute of such tribunal."

Since the ICC is such a tribunal and Putin is such a foreign national accused of war crimes, suddenly—and quite unexpectedly—the ICC's indictment of Putin has brought the Russian president under the legal remit of both programs. Like the example of peacekeeping and the U.N., this is likely not something they were ever designed for yet might become important American tools to aid and promote international justice.

Will these tools be used in a way to further the pursuit of international justice? Given his extensive network of shady international business ties, will people be

more willing to turn on Putin, undermining the ties that hold his regime together? These programs' past successes in bringing lesser-known warlords and terrorists to trial hint at their utility in doing so—or at least enough to hold the usual cynicism about international law at bay for a time.

Will the indictment of Putin help uproot the antipathy and hostility that has been entrenched in Washington for the past 40 years? Will we return to the traditional recognition that U.S. national interests—from facilitating trade and commerce, to national security, to the promotion of liberty and human rights at home and abroad—actually rely on a robust, laws-based international order? Now for that, I'll remain skeptical.

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