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THE DOUBLE STANDARDS OF THE INTERNATIONAL CRIMINAL COURT

In a move that has the signs of joining the Russia-Ukraine conflict on the side of the North Atlantic Treaty Organisation (NATO), the International Criminal Court (ICC) has last Friday moved with speed and issued “war crime” warrants of arrest against Russia’s President Vladimir Putin and the country’s Presidential Commissioner for Children’s Rights Maria Lvova-Belova.

The war broke out after Russia accused NATO of violating the 1990 promise that it would not expand to the East and closer to the Russian borders. That period was the end of the Cold War with Russia led by Mikhail Gorbachev, and the US by George HW Bush. It is the US Secretary of State James Baker who made such commitments, probably encouraged by a Gorbachev-weakened Soviet Union. The last straw was when Ukraine, which is bordering Russia, expressed its intention to join NATO. Russia reminded the US of the 1990 promise, which the US claims was never written down for it to be a serious agreement or a treaty. Russia then invaded Ukraine.

Putin is now accused by the ICC of unlawfully deporting thousands of children from the war-ravaged Ukraine. On the other hand, Russia explains that it is a humanitarian move on its part to transport children affected by war to Russia for care and upbringing, while their parents cannot be located.

What came as a shock in world news was the fact that Putin is the first leader of a United Nations (UN) permanent member to be issued with a war crime warrant. Because the ICC has no police force of its own, this means its 123 member States are under legal obligation to arrest Putin if he were to put his foot on any of those States.

The tricky part is that South Africa is one such member State that is expected to arrest Putin as and when he lands in South Africa. The interesting thing about South Africa is that it is a member State of BRICS, whose Summit it will be hosting in August this year. In that regard, Putin is expected to come to this country to attend the Summit. Will South Africa arrest a leader of its ally Russia? It remains to be seen. However, there is precedent. South Africa refused to comply with an ICC arrest warrant against then

Sudanese President Omar al-Bashir who had attended an African Union (AU) meeting in South Africa. Two South African courts came to the conclusion that the country, as an ICC member State, erred by not arresting al-Bashir and handing him over to the ICC. What gave South Africa a reprieve was that the judges did not report the country to the UN Security Council, which reported al-Bashir to the ICC.

On Wednesday on Newzroom Afrika Parliamentary Speaker and former Minister of Defence Nosiviwe Mapisa-Nqakula explained to anchor Xoli Mngambi that South Africa could not arrest al-Bashir because the country had its soldiers on Sudanese soil doing international duties. She reckoned that SANDF soldiers could either be arrested or “massacred” on foreign soil. Be that as it might, that precedent suggests South Africa may not catch such a big fish as Putin. One doubts if South Africa may try and persuade Putin to miss the meeting under some pretext or the other. In fact, Putin was so daring that he visited a Russian-controlled area in Ukraine.

What is not clear is how the US may react to a “cheeky” South Africa that undermines its policing of the world. To make the situation worse, South Africa hosted a 10-day naval exercise with China and Russia but was scared to ignore the US sanctions against Russia and take advantage of the cheaper oil. The military exercises were timed to coincide with the one-year anniversary of Russia’s invasion of Ukraine on 24 February. Naturally, the Mosi (Smoke) naval drills have angered the US and its allies. Russia and China don’t give a damn. They are doing all in their power to change the global power dynamics in their favour. They are already involved in a campaign for the dedollarisation of the global economy. Winning Afrika over to them is important in that campaign. Their BRICS is showing signs of expansion with about 20 countries like Argentina, Turkey, Mexico, Algeria, Saudi Arabia, Iran, Egypt, Indonesia, Bahrain and United Arab Emirates queuing to join BRICS, which has already established the New Development Bank as a counter to the notorious IMF.

In a mood of defiance while he was in a State visit to Russia this past Tuesday, China’s leader Xi Jinping invited Putin to visit China later this year. China did not sign the UN treaty governing the ICC. The treaty is known as the Rome Statute. The implications of this are that the ICC has no jurisdiction over China because it is not its member State. Similarly, the ICC has no jurisdiction over Russia because the country is not its member State. Ironically, Ukraine is also not the ICC’s member State because it does not recognise its legitimacy. However, Ukraine gave the ICC jurisdiction to investigate Russia for possible war crimes.

One country that is making the loudest noise for Russia to comply with the war crimes warrant of arrest of the ICC against Putin is the US. However, the US does not recognise the legitimacy of the ICC. It did not only opt not to sign the Rome Statute, but it also went further and did all in its power to undermine, threaten and destabilise the ICC. After the ICC came under international criticism for its double standards that reduced it to a tool of the western world to prosecute its enemies and those refusing to toe its line, some prosecutors started to murmur about charging the US for war crimes in various invasions like Iraq and Afghanistan. The US targeted the ICC prosecutors with sanctions with the effect that they could not enter the US to undertake investigations. The US hostility began under the reign of its leader George W Bush who invaded Iraq and murdered the country’s leader Saddam Hussein under the false pretext Iraq harboured Weapons of Mass Destruction which were never found. Donald Trump intensified the hostility in a bid to protect the US military personnel and political leaders against prosecution by the ICC.

With justification, Afrika has accused the ICC of selective justice. In its two decades of existence, the ICC has spent a considerable amount of its resources and time prosecuting Afrikan countries and their leaders. That prompted the AU to agitate that its member States should withdraw its recognition of the ICC and its founding treaty. Following the al-Bashir episode, South Africa made efforts to withdraw from the ICC. But a High Court ruled that such an act would be unconstitutional and invalid. That move was never pursued any further by South Africa.

There is no doubt that world community needs some international law and its observance and administering to ensure peace and stability in global political and legal affairs. Unfortunately, the powerful countries connive to abuse the multilateral institutions for their sectarian interests. The IMF and the World Bank have been used to destabilise and capture the economies of weaker countries, while the ICC is used to prosecute and persecute the countries that refuse to toe the line of the Washington Consensus.