

# [Herald Interview] After Putin ICC arrest warrant, will Kim Jong-un ever get his?

Ex-chief of war crimes court explains why pursuing North Korean leader is harder

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Hon. Song Sang-hyun, the former chief of the International Criminal Court, speaks to The Korea Herald at his office on March 22. (Kim Arin/The Korea Herald)

The International Criminal Court's issuing of an arrest warrant for Russian President Vladimir Putin is "one of the most courageous steps taken" and "one that would eventually lead to accountability," according to the war crimes court's former president Hon. Song Sang-hyun.

However, bringing similar actions of international justice against North Korea's leader Kim Jong-un would be far more challenging, according to the three-term ICC judge.

Speaking to The Korea Herald, Song said that issuing an arrest warrant for Putin would have been a "very tough decision both politically and legally" for the court, which strives to exercise political restraint.

"It's politically tough because not only is Russia one of the world's most powerful countries, it is a permanent member of the UN Security Council, so it can exercise its

power to veto any resolution,” he said.

The fact that the arrest warrant was established means that ICC prosecutors were able to “find and amass sufficient evidence before deciding he was worthy of arrest to be tried in The Hague.”

The former ICC president said that Putin’s warrant would, more significantly, serve as a “cautionary tale” for leaders like him.

### **Warrant without an expiration date**

While Russia has defied the arrest warrant by opening its own case against the ICC, Song said he believes “catching up” to Putin will be possible one day.

“The thing about ICC arrest warrants is that they come without a statute of limitations. So this tag slapped on the back of his head is going to follow him for the rest of his life,” he said. “Unless the Court itself goes away, the never-expiring warrant is going to get him someday.”

Song said international criminal justice “does not have to be enforced and executed immediately.”

“You will remember that it took 10 years after the arrest warrant was issued for Al Bashir of Sudan to face justice,” he said.

Putin is the third head of state to be wanted by the ICC. In 2009, the first arrest warrant for a sitting head of state was issued for Sudan’s Omar al-Bashir and in 2011, for Libya’s Muammar Gadhafi.

Both Al-Bashir and Gadhafi met tragic ends. Twelve years after his warrant was first issued, Al-Bashir was handed over to the ICC by his own government. Gadhafi was hunted down by insurgents and shot dead just four months after the arrest warrant came for him.

Among the inconveniences caused by the warrant is being unable to travel to the ICC’s 123 member states.

“Governments of member states are treaty-bound to extradite the wanted to The Hague -- which may not be very plausible for the leader of Russia, but still humiliating. Some of our members include countries that were formerly in the Soviet bloc,” Song said.

The warrant was also a “powerful justification” for Putin’s domestic political opposition, he added. “There could be more consequences in the long run beyond

what can be foreseen at the moment.”

He said that in the end, he believes “the injustices committed by Russia with its invasion of Ukraine will be sorted out by the ICC’s activities.”

### **Case for Kim Jong-un**

On whether the leader of North Korea can be subject to ICC actions like Putin, Song said there had been an earlier attempt that wound up closing before the investigation could go forward.

In 2010, an investigation had opened against his predecessor and father Kim Jong-il by then-ICC prosecutor Luis Moreno-Ocampo. His office said at the time it was looking into two 2010 provocations by North Korea -- the shelling of Yeonpyeong Island near the maritime border and the sinking of the Cheonan, a South Korean military vessel. The investigation closed the following year in 2011 with his death.

Song said the investigation of the second-generation Kim was launched ex-officio by the ICC prosecutor and then authorized by the Court’s pre-trial chamber.

“The problem is it wasn’t feasible for our prosecutors to enter North Korea to conduct the necessary investigation. I remember we were trying to seek cooperation from China, which also would not have gone well,” he said.

“After Kim Jong-il died, Moreno-Ocampo’s successor ended up concluding the case with a decision not to indict.”

Then there was a fresh list of atrocities that took place under his son, Kim Jong-un, that could be as worthy of ICC investigation and trial.

Song said that he believed what happened to the US student Otto Warmbier, for instance, would constitute a crime against humanity -- one of the four categories of crimes handled by the ICC. The other three are genocides, aggression crimes and war crimes.

“Although the (Warmbier) case has not received the Court’s official judgment, that is how I see it, a crime against humanity,” Song said, adding that he wished to offer Warmbier’s parents his “wholehearted support and solidarity.”

### **What it takes to bring Kim to Court**

Song is skeptical about whether the ICC’s jurisdiction can reach Kim.

Aside from an ICC prosecutor deciding to pursue a case, as Moreno-Ocampo had done, the two other ways that an ICC investigation can be initiated are through a referral from the UN Security Council or a complaint by a state party. Here is where the challenge lies for an investigation of North Korea, he said.

He said while he had seen numerous complaints against the North Korean leader submitted by individuals and organizations during his time as the Court's judge and president, most of them were dismissed.

"Only a state party can bring a case to the Court," he explained.

He said that given the state of things, he believes it's improbable that a state party government would file a complaint against Kim Jong-un.

"I don't think the South Korean government would, much less the governments of North Korea's other neighbors like China or Japan," he said.

Like Sudan, Libya or Russia, North Korea does not recognize the ICC's legitimacy.

"Although Sudan and Libya are not ICC members, the UN Security Council referred the two to the court over the serious and worsening situations there," he said.

While also not a member, Ukraine earlier accepted the ICC's jurisdiction in its territory, and allowed investigations to be carried out to gather on-site evidence of possible war and anti-humanity crimes over the war.

The UN Security Council referral for North Korea won't be so easily established either unless Russia and China abstain, Song said.

## **Name the leader**

Song says there is a "powerful way" the UN can impose further pressure on the North Korean regime over its human rights violations and other potential crimes.

"That is to name Kim Jong-un in the agency's resolutions on North Korea," he said.

"The UN regularly passes resolutions condemning North Korea. When they do, they should name Kim Jong-un, rather than just stopping at (North Korea's official name) 'DPRK' or 'the supreme leadership of the DPRK.'"

Song said that the resolutions naming Kim Jong-un would reach Pyongyang to be translated, and even though they may not be open to the public, some of the higher-ranking officials would have access.

“A UN resolution calling out Kim Jong-un would hit differently than when it’s the US or South Korea. It will tell them how their leader is regarded by the international community,” he said. “I hope that the UN will specify his name next time.”

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