



# Repositioning South Africa in the Dynamic World Disorder: Reflections of the State's Predicament on the Russo-Ukraine War

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## Abstract

This paper dissects and proposes the feasible remedies that the South African government can navigate and adopt in light of the Russo-Ukrainian war utilising a qualitative research methodology-document analysis. The outbreak of the war has placed the South African government in a quandary as to which side to support. On the one hand, it is an ally of the United States of America, and on the other, it is allied to Russia through integration (Brazil, Russia, India, China, and South Africa-BRICS). The outbreak of hostilities between Russia and Ukraine has placed South Africa in the unenviable position of being trapped between integration and the condemnation of an egregious war. South Africa is a long-time ally of the United States. The two countries have enjoyed bilateral cordial trade, commerce, transport, finance, technology, and defence relations. The government has also enjoyed the same tranquil and reciprocal relations with Russia. The Russo-Ukrainian war, which later transmogrified into a proxy war between Russia and the United States-led North Atlantic Treaty Organisation (NATO), placed South Africa in a dilemma as to which course to pursue. The government's maneuvers to collaborate with Russia militarily were castigated by the United States and received threats of sanctions. On the contrary, abandoning Russia, its long-time ally and integration partner, would be suicidal. South Africa is also expected to arrest Russian President Vladimir Putin, who is scheduled to attend a BRICS Summit in August 2023. South Africa is a state party to the Rome Statute of the International Criminal Court and is required to incarcerate Putin territorially upon arrival. Adopting a non-aligned approach also seems like South Africa is neglecting both camps. This paper proposes the probable avenues the South African government can pursue to outsmart its predicament for its continual benefit and economic and political survival. Such a course should not derail but preserve the country's 2030 Agenda for Sustainable Development and its achievements in its thirty years of democracy.

## Keywords

Russo-Ukrainian war, BRICS, NATO, International Criminal Court (ICC), South Africa

## 1. Introduction

The Russo-Ukrainian war placed South Africa in the unenviable position of either supporting the United States of America and its North Atlantic Treaty Organisation (NATO) allies and risk being ostracised by its long-time ally, Russia, or supporting the latter and risk being quarantined by its dominant trading partners such as the United States of America and the European Union. Maintaining a neutral stance for South Africa in the conflict might also look tricky because it will look like the latter is neglecting Russia, which had supported South Africa when times were hard for the country. To South Africa in particular and Africa in general, Russia is a faithful and all-weather ally that played a pivotal role in the liberation of the African continent. When Russia invaded Ukraine on 24 February 2022, Russia referred to the invasion as a 'special operation' to disarm and denazify Ukraine. Russia also stated that the operation aimed to neutralise NATO's continual eastward expansion, which, according to the former, constituted an act of aggression (Mohamed, 2023). Ukraine and its NATO allies, on the contrary, believe Russia instituted the unprovoked war to annihilate Ukraine, which Russia labels as an artificial state (Cocks, 2022). NATO member states and other non-NATO member states worldwide condemned Russia's action on Ukraine and disapproved of such an act of aggression. The only exception is the African continent, where most states repudiated to condemn Russia's invasion of Ukraine. As a leading African state militarily

and economically, South Africa also refrained from condemning the Russian invasion of Ukraine. Rather than castigating the actions of its fellow ally, South Africa sat on the fence, opting to remain neutral and utilising verbal gymnastics to describe the situation.

South African President Cyril Ramaphosa dealt with the situation with dexterity, speaking in riddles and euphemisms to avoid infuriating Russia or NATO. He preferred to use neutral language to camouflage the Russian invasion. Ramaphosa (2022:1) says, "There are those who insist that we should take a very adversarial stance against Russia. The approach we will take [instead] is...insisting that there should be dialogue." South Africa reiterated that it was not at war with Russia, but NATO was. Therefore, it cannot be compelled to condemn Russia. It opted to maintain its neutral posture because it perceived the war not solely as a Russo-Ukrainian war but as a proxy between Russia and NATO. South Africa noted that under such circumstances, it had the right to pursue a non-aligned and independent foreign policy. Therefore, no state or alliance has a right to compel it to take any side in a conflict where it does not have any benefits or direct interests, or its risks will be jeopardized when it aligns with one side (Sidiropoulos, 2022). South African state officials such as President Ramaphosa, Defence Minister Thandi Modise, and International Relations and Cooperation Minister Naledi Pandor avoided words like 'invasion' and 'occupation' when referring to Russia's incursion into Ukraine. Instead, the term 'invasion' was lightly referred to as 'the conflict in Ukraine,' and 'occupation' is lightly referred to as 'an armed conflict.' The government avoided condemning or casing blame on the perpetrator, stating that it was informed that one of the dominant causes of the conflict was related to the parties' security concerns, and South Africa was appealing for dialogue and the cessation of hostilities. The South African government can thus justifiably be deemed guilty of linguistic smokescreen, fraud, and a habit of euphemism in being elusive in its approach to the conflict. The Russian incursion into Ukraine revealed a gargantuan appetite for the former's quest for an aggrandised state and territorial lebensraum in Europe. It also reveals that some states of the global south with democratic political systems and market economies that smack the West prefer not to take sides even after a brazen violation of a sovereign state's territorial integrity and independence (Ibid).

The Russian war on Ukraine triggered the International Criminal Court (ICC) to investigate international crimes that may have been perpetrated by Russian officials in Ukrainian hostilities. In March 2023, the ICC Chief Prosecutor issued an arrest warrant to Russian President Vladimir Putin and Maria Alekseyevna Lvova-Belova, the Commissioner for Children's Rights in the Office of the Russian President. The indictment warrant was issued on allegations of war crimes, abducting children from Ukraine to Russia (International Criminal Court, 2023; Bachmann, 2023). Although Russia is not a state party to the Rome Statute that created the ICC, its nationals may be arrested and prosecuted if they set foot in a state party. President Putin is scheduled to attend the August 20<sup>th</sup> Brazil, Russia, China, and South Africa (BRICS) Summit in Durban, South Africa. It means South Africa should arrest and surrender Putin to the Court. It puts South Africa in a quagmire as to which course to pursue. Firstly, it becomes difficult for South Africa to arrest the president of the world's most enormous and militarily-strongest nuclear power. Secondly, it will be hard for South Africa to arrest the head of state of its leading integration partner in BRICS. Thirdly, South Africa and Russia have enjoyed tranquil, harmonious, and symbiotic relationships that date back to the apartheid and liberation period. Failure to arrest Putin will put South Africa in another Omar al Bashir moment, likely resulting in an international backlash, condemnation, and possibly, sanctions from the West. It puts South Africa in an unenviable predicament of either breaching its domestic and international legislation and obligations to maintain its relations with Russia or arresting Putin and risking being bombarded and pulverized by Russia's nuclear bombs and Zircon hypersonic ballistic missiles.

## 2. Methodology

The paper adopts a qualitative research methodology. Information was gathered from secondary sources such as books, journal articles, institutional reports, and the media. Information was obtained in both print and electronic form. Educational material with relevant information on the current Russia-Ukrainian war and the International Criminal Court's work on the war were selected. The authors selected sources dealing with the current issues centering on the Russia-Ukraine conflict and the International Criminal Court's response in such conflict settings.

## 3. Literature Review

### 3.1 How South Africa Responded to the Russian Invasion of Ukraine

South Africa adopted a neutral stance as it has traditionally been a non-aligned state. Initially, the government vacillated, and its stance was shrouded in ambiguity. It appears there was no coordination and communication between the International Relations and Cooperation Ministry and the Office of the President. Initially, the former condemned the Ukrainian invasion. After a few days of the incursion, the government retracted its stance and started supporting Russia (Sidiropoulos, 2022). From there, South Africa abstained from voting on a United Nations Resolution in March 2022. The resolution condemned the Russian invasion of Ukraine and called for the former to withdraw its army from the latter's territory (Mohamed, 2023; Sidiropoulos, 2023; Gottschalk, 2022). Nathan (2022) says South Africa was castigated for abstaining from three United Nations Security Council Resolutions condemning Russian aggression on Ukraine. The first was on 2 March 2022 and commanded the expeditious withdrawal of Russia from Ukrainian territory and the cessation of hostilities. The second was on 24 March 2022 and demanded complete humanitarian protection and access to humanitarian personnel in Ukraine. The third was on 7 April 2022 and called for Russian suspension from the United

Nations Human Rights Council because of its wanton and outrageous human rights abuse (Nathan, 2022). In October 2022, South Africa and 34 other states abstained from a United Nations vote condemning Russia's annexation of Ukrainian territories (Mohamed, 2023; Sidiropoulos, 2022).

International Relations and Cooperation Minister Naledi Pandor stressed that South Africa perceives dialogue, diplomacy, and a commitment to the United Nations Charter as the only path to ending the conflict. Member states were to settle their disputes peacefully instead of resorting to war. South Africa hoped the conflict could be expeditiously ended through negotiations and diplomacy (Pandor, 2023). However, South African President Cyril Ramaphosa took a direct swipe at NATO for its continual eastward expansion and for failing to be proactive. According to him, such action triggered the war. Ramaphosa (2023:1) says, "The war could have been avoided if NATO had heeded the warnings from amongst its leaders and officials over the years that its eastward expansion would lead to greater, not less, instability in the region." However, there were dissenting views in the South African parliament. While the Economic Freedom Fighter (EFF) and the South African Communist Party were adopting the same stance as that of the African National Congress (ANC), the Democratic Alliance opposed the actions of Russia. The EFF unequivocally and categorically supported Russia. It acknowledged the cordial South Africa-Union of Soviet and Socialist Republic (USSR) relations that date back to the apartheid period when the USSR played a stupendous role in the liberation of South Africa. The EFF and the South African Communist Party, therefore, take the same stance as that of the ANC in supporting Russia. On the contrary, the Democratic Alliance (DA) takes a different perception. It views Russia as an aggressor state and wishes the government could support NATO rather than Russia. Democratic Alliance leader John Steenhuisen highlighted his party's concerns in the ongoing war. Steenhuisen (2021:1) says, "We are already involved in this war. Our government cannot be seen to be supporting Russia's aggression and alienating its trading partners. Let us put the country before party politics and consider what this war will mean to us and its impact on our economy."

### 3.2 The Predicament of South Africa: Why it adopted a Neutral Stance

South Africa and Russia have a solid historical umbilical cord that dates back to the apartheid period when the former was dominated by the oppressive apartheid white minority (Mohamed, 2023; Gottschalk, 2022). The Soviet Union assisted South Africa to fight and defeat apartheid. The ANC benefited immensely from the former Soviet Union, where the latter provided military training and education (Ibid). When the ANC was banned in 1960 by the apartheid regime, the former received abundant aid from the Soviet Union for its exiled mission to fight the oppressive regime in South Africa. The aid offered by the Soviet Union exceeded that from the then Organisation of African Union (OAU) or anyone else (Gottschalk, 2022). The former Soviet Union assisted South Africa with ammunition and finance to fight apartheid. Such assistance sharply contrasted with the West, which was hostile to South Africa's cause. For example, the United States of America labelled the ANC as a terrorist organisation and considered its leader Nelson Mandela a terrorist until 2008 (Mohamed, 2023; Gottschalk, 2022). Sidiropoulos (2022) avers by saying that the ANC has a historical and evolutionary relationship with the former Soviet Union, where many of South Africa's freedom fighters were trained and educated. This phenomenal support contrasts sharply with that of the United States of America, which labelled the ANC as a terrorist organisation. The Ronald Reagan and Margaret Thatcher administrations went a mile further by opposing the anti-apartheid movement in the United States of America and the United Kingdom, respectively, in the 1980s.

South Africa is also a member of the 120-country Non-Aligned Movement (NAM), which is not affiliated with any major world power alliance. The NAM was formed during the Cold War and is predominantly a developing state alliance aimed at benefiting from both worlds and sidelining none. South Africa would thus not be compelled by the West to take sides. The former castigated the United States of America (USA) for selective condemnation of Russia while ignoring other acts of aggression that the West could have intervened in or mitigated. They include the occupation of Palestinian territory by Israel. Both South Africa and Russia are also in an integration alliance. They are both members of BRICS, an alliance forged to promote trade and security ties between and among member states. The disintegration of the Soviet Union and the creation of successor states, such as Russia, led to the formation of BRICS, an amalgamation of middle-income countries integrated economically and politically into the world system. The BRICS integration gave South Africa yet another chance to cooperate with Russia in particular and other BRICS members such as Brazil, India, and China in general. Sidiropoulos (2022:4) says, "For South Africa, the smallest of the BRICS members, it remains a vital geopolitical body where the country can rub shoulders with the rising superpower, China, and other important leaders in the Global South that share similar views on the need for the reform (or transformation) of the global system." South Africa, the most industrialised nation in Africa, has enjoyed cordial trade relations with Russia for years. By 2020, for example, its exports to Russia were valued at US\$587 million, while Russian exports to South Africa amounted to US\$506 million (Mohamed, 2023). South Africa opted to be neutral to talk to both sides. However, it has been observed that international mediators can never be neutral but can strive to be impartial (Nathan, 2022). On the contrary, South Africa also enjoys friendly, symbiotic, and tranquil trade relations with the USA and the European Union (EU). The country's largest trading partners are the USA and the EU. Its trade with the USA amounts to R289 billion (about US\$ 16 billion in 2021). South Africa's trade with the EU amounts to R699 billion (about US\$38 billion in 2021). The country also benefits from the United States African Growth and Opportunity Act (AGOA), where it gets preferential access to United States markets for some of its export commodities (Tselapedi, 2023). Since South Africa belongs to the BRICS bloc that includes United States adversaries such as Russia and China, it necessitates confronting the United States' world

perception and global initiatives. South Africa thus needs to dexterously navigate the Russia-Ukraine conflict in light of the geopolitical contestations between the USA, its allies, and Russia and China (Singh, 2023).

South Africa was on the horns of a dilemma when it conducted military naval drills with Russia and China. The military drills infuriated the United States and were construed by the latter as a gesture to support aggression perpetrated on Ukraine. The drills were also perceived to compromise South Africa's neutrality. In response, the South African Defence Forces stated that the military naval drills aimed to consolidate the already blooming relations between the three states. However, the opposition Democratic Alliance party castigated Operation Mosi II (as the drill operation was codenamed) as untimely-instituted and silly, considering the hostilities that are currently ongoing between Russia and Ukraine (Oelofse, 2023). The military naval drills were also construed as ostracizing the West and fraternising with Russia and China, which are Western adversaries. The drills were also perceived to be ill-timed as they were conducted just before the first anniversary of the Russia-Ukrainian war. Fieldman (2023:2) says, "By participating in this exercise, South Africa is supporting the development of those naval war-fighting capabilities at a time when the Russian navy is blocking the Port of Odesa and preventing food from reaching African nations." The current Chinese aggressive behaviour towards Taiwan also exacerbated the timing of the drills. South Africa defended itself by stating that the drills were not unilateral since the former held them with NATO member states such as France. South Africa Defence Minister Thandi Modise said that under such circumstances, South Africa could not be accused of sidelining the aggressor. Modise (2023:2) says, "South Africa, like any independent and sovereign state, has a right to conduct foreign relations in line with its national interests."

South Africa found itself caught between the lines. The government defended itself by saying there was nothing new about conducting military drills with Russia and China because they have been doing so. It was their periodical military exercise tradition. South Africa also stated that the drills were not feverish and selective because they have also instituted such drills with NATO member states. The United States was also told that they needed to know that South Africa was not at war with Russia, but NATO and Ukraine were. It is thus unfair to dictate the state (s) that South Africa should cooperate with or ostracise just because the West is at war with Russia (Modise, 2023).

### **3.3 The International Criminal Court Arrest Warrant Against Russian President Vladimir Putin and South Africa's Obligation to Execute It**

South Africa was again placed in a pickle when it was supposed to arrest and surrender President Putin upon his arrival in South Africa in August for the BRICS Summit. South Africa ratified the Rome Statute and should arrest any inductee (s) of the ICC. Russia did not ratify the Rome Treaty and is not a state party to the ICC. However, its citizens, including President Putin, may be arrested if they enter the territory (territorial jurisdiction) of a state party such as South Africa. It places South Africa in a difficult position. In this unenviable position, it has to choose between arresting President Putin and facing the severe consequences that may come from the Russian government or ignoring arresting him and risking facing international backlash for failing to abide by its municipal and international regulations.

On 17 March 2023, the ICC dispatched two indictment warrants to Russian President Vladimir Putin and Ms. Maria Alekseyevna Lvova-Belova. Putin was indicted on crimes of unlawful deportation of Ukrainian children from the occupied Ukrainian areas to Russia (International Criminal Court, 2023). The indictment was instituted based on articles 8 (2) (a) (vii)<sup>1</sup> and 8 (2) (b) (viii)<sup>2</sup> of the Statute of Rome. The Court suspects Putin to bear individual criminal responsibility for the crimes perpetrated in Ukraine. These crimes are: a) for perpetrating the acts directly, together with others, and/ or through others (Article 25 (3) (a)<sup>3</sup> for the Rome Treaty, and b) for failing to properly control his military and civilian subordinates who perpetrated the acts, or acceded to their commission while the minions were under his control and authority, in tandem with prime responsibility (article 28 (b)).<sup>4</sup> Ms. Maria Alekseyevna Lvova-Belova, a Commissioner for Human Rights in the Office of the Russian President, was indicted on war crimes of unlawful deportation of the population (children) and unlawful transfer of population (children) from Ukrainian-occupied areas to Russia. The indictment was in line with the Rome Treaty's articles 8 (2) (a) (vii) and 8 (2) (b) (viii). It was suspected by the Court that the accused bears individual criminal responsibility for the crimes stated above. She may have perpetrated the acts directly, jointly with others, and/or through others as stipulated by Article 25 (3) (a)<sup>5</sup> for the Statute of Rome. Pre-Trial Chamber II of the ICC has reasonable grounds to suspect that the two accused officials may have prejudged

<sup>1</sup> Unlawful deportation or transfer or unlawful confinement;

<sup>2</sup> The transfer, directly or indirectly, by the Occupying Power of parts of its civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory

<sup>3</sup> Commits such a crime, whether as an individual, jointly with another, and/ or through another person, regardless of whether that other person is criminally responsible

<sup>4</sup> Concerning superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control as a result of his or her failure to exercise control properly over such subordinates,

<sup>5</sup> Commits such a crime, whether as an individual, jointly with another, or through another person, regardless of whether that person is criminally responsible

Ukrainian children by unlawfully deporting them and transferring them from the occupied Ukrainian areas to Russia; hence they bear individual criminal responsibility for such iniquities.

Putin may be arrested if he visits any of the 123 state parties to the Rome Treaty. South Africa and thirty-two other African states are parties to the Rome Treaty. The former is scheduled to host the 15<sup>th</sup> Summit of the BRICS bloc in Durban. As a president of a BRICS member state, Putin was invited to attend the summit. On the contrary, South Africa, as a state party to the Rome Statute, is obliged by its municipal and international law to arrest Putin. South Africa ratified the Treaty of Rome and domesticated it into its municipal law. The Putin-South Africa-ICC incident is not a groundbreaking event for South Africa. In 2015 the then-president of Sudan, Omar al Bashir, was insulated from arrest and incarceration when he visited South Africa for an African Union Summit. The ICC had indicted Bashir for violations of human rights law and international humanitarian law in the Darfur region, a Security Council referral to the ICC. The then South African government under President Jacob Zuma repudiated to comply in arresting Bashir, citing the immunities of incumbent heads of state, which form a bedrock of customary international law. The then African Union Commission Chairperson Nkosazana Dhlamini Zuma asserted the stance of the continental body in insulating Bashir. Zuma (2015:1) says, "There is nothing new about President al Bashir attending African Union Summits...The African Union does things according to its own rules, not the rules of the International Criminal Court."

The ICC arrest warrant for Putin has placed South Africa in a quandary. Complying with the arrest warrant will alienate Russia and tarnish the solid relations that have already existed between the two countries. It will also certainly cultivate hostile bilateral relations between the two countries. Russia has been South Africa's all-weather friend since the time of apartheid. The two countries have enjoyed harmonious and symbiotic trade, diplomacy, military and political relations. The former Soviet Union (from which Russia emerged) played a remarkable role in liberating South Africa from the shackles of apartheid. Russia is also a member of the BRICS block, of which China, an ally of South Africa, is a member. From a military and practical perspective, it becomes unfathomable for South Africa, in particular, or any state in the world, in general, to arrest a head of state of the most powerful nuclear power in the world. In arresting President Putin, South Africa may face horrific and unbearable repercussions such as being pulverised by atomic bombs. If South Africa makes such a mistake, it may cease to exist due to the potential destruction emanating from Russia as a retaliatory measure. Conversely, hosting President Putin in South Africa will constitute the country's second Omar al Bashir moment. South Africa may be perceived as a recalcitrant and incorrigible state. The government may be dragged to the courts by non-governmental organisations for the breach of its municipal law, as what transpired in the Omar al Bashir case. South Africa may also lose international trust and credibility due to non-compliance with its domestic and international legal obligations.

Russia dismissed the arrest warrant as meaningless, outrageous, unacceptable, null, and void. The former is not part of the Rome Treaty that created the International Criminal Court. Maria Zakharova, the country's foreign affairs ministry spokesperson, concurred with the decision. Zakharova (2023:2) says, "The decisions of the International Criminal Court have no meaning for our country, including from a legal point of view. Russia is not a party to the Rome Statute of the International Criminal Court. It bears no obligation under it," The ICC President Piotr Hofmanski dismissed Russia's claim as completely irrelevant because 43 states had referred the Ukrainian situation to the Court, triggering its jurisdiction to intervene. Since Ukraine accepted the Court's jurisdiction on an ad hoc basis in 2014 and 2015, it gives the ICC jurisdiction over crimes perpetrated on any person on the territory of Ukraine from November 2013 onwards, irrespective of one's nationality of the alleged offenders.

The indictment warrant will likely impede the ongoing negotiations and peace efforts that many world leaders are initiating with President Putin. The arrest warrant will likely alienate Russia, make the country more aggressive, uncooperative and escalate the conflict. It will likely constrict the underway diplomatic efforts as the warrant will restrict Putin from travelling to state parties of the Statute of Rome. The decision to indict Putin may also be counter-productive because it will be difficult for him to travel to other key states that play a fundamental role in the negotiation process, such as France and the United Kingdom. The indictment decision by the Court will also likely worsen any prospects for peace between Russia and Ukraine, obliterating any possibility for negotiations. The indictment warrant triggered furious reactions from Russia. Former Russian President Dmitry Medvedev threatened to bomb the Court with hypersonic missiles. Medvedev (2023:1) says, "It is quite possible to imagine a hypersonic missile fired from the North Sea from a Russian ship at The Hague courthouse. Everyone walks under God and rockets. Look carefully to the sky." The indictment warrant also led to counter-legal sanctions from Russia, where the latter's highest investigative body opened a counter-criminal case against the Court's Chief Prosecutor Karim Khan and all the judges who were involved in the issuance of the arrest warrant to Putin (Donmez, 2023). Russia placed Karim Khan on its wanted person list. The country's Investigative Division said the ICC Chief Prosecutor was being investigated for "criminal prosecution of a person known to be innocent...and preparation of an attack on a representative of a foreign state enjoying international protection" (Ikeji, 2023).

### **3.4 Implications for the 2030 Agenda for Sustainable Development and Thirty Years of Democracy**

The Russo-Ukrainian conflict will likely derail South Africa's anticipated achievements for the 2030 Agenda for Sustainable Development. It will likely offset the country's achievements in its thirty years of democracy in food security, inflation, unemployment, migration, and stability. The war has been so absorbing for South Africa that it may lead to the shelving or neglect of other pertinent issues as the country concentrates on the war's troubles, intricacies, and

complexities. Sidiropoulos (2022) notes that other pressing country issues such as the Sustainable Development Goals, climate change, the COVID-19 pandemic, and the Mozambique, Democratic Republic of Congo, and Sudan conflicts will undoubtedly be compounded, suspended, or neglected as all efforts will be directed on how to mitigate through the crisis. The conflict will heavily blow the third estate and marginalised groups because it will likely affect the food chain. Food supply and security are likely to hang in the balance, and the situation may worsen as the war escalates (Guterres, 2021). The conflict will affect oil, wheat, and maize supplies. It will also likely lead to increases in the prices of household staples. South African Deputy Minister of Finance David Masondo said inflation would drastically affect South African consumers' disposable income (Masondo, 2021).

If the South African government hosts Putin in Durban for the BRICS Summit without incarcerating him, the former will likely be sanctioned for such recidivism. Article 165 (5)<sup>6</sup> of the South African Constitution makes it abundantly clear that court decisions and orders bind the government. One potential negative ramification might be South Africa's loss of preferential trade terms. It could jeopardise the treatment of its exports to the United States under the African Growth and Opportunity Act (AGOA). The latter has been recently utilised as a punitive instrument against The Gambia, Ethiopia, and Mali for unconstitutional government change and grievous human rights violations (Bachmann, 2023). Such sanctions will injure the South African economy because its trade with the United States far exceeds Russia's (Ibid). The AGOA sanctions may also derail South Africa's 2030 Agenda for Sustainable Development due to stunted economic growth, high levels of poverty, escalating unemployment, and inequality. It will also potentially threaten the country's thirty years of democracy as it may lead to instability, such as food riots, street demonstrations, increased xenophobia, and insurrectionism due to a high cost of living, unemployment, inflation, and food insecurity.

### 3.5 How South Africa can outshine the Predicament

In order to balance its relations with Russia, its municipal and international legislation, and the ICC, there are feasible remedies that South Africa can utilise to outwit the predicament and avoid a second Omar al Bashir moment. One antidote would be for the country to uphold and maintain its invitation to Russia and assign Sergei Lavrov, the Minister of Foreign Affairs. Lavrov has become a de facto Russian diplomatic player since the beginning of the conflict with Ukraine. President Putin may also attend the meeting virtually to avoid any potential political and legal hiccups if he comes in person to attend the summit. South Africa can also amend its municipal legislation to incorporate and prioritise presidential immunities for incumbent heads of state. It can institute a treaty reservation to make the host-country-immunity supersede the Rome Statute. It is, however, a long process that needs parliamentary approval and may still be ongoing and inapplicable by August, when President Putin is scheduled to visit the country. The BRICS members can also change the summit venue to a non-state party such as China, India, or Russia. In so doing, they will insulate Putin from possible arrest and incarceration. South Africa will also safeguard its image and thwart any possible vendettas between the government, the courts, Russia, and the international community. It should also withdraw from the Rome Treaty to avoid volatile entanglements with its courts and the international community. However, it is a long process that needs parliamentary approval and may only be applicable after President Putin visits the country. In the future, South Africa can pursue this course to avoid further legal, diplomatic, or political skirmishes with domestic and international institutions. In light of all the suggested options for South Africa to outsmart the ICC, the country opted for the Zoom meeting for President Putin. The latter attended the meeting through Zoom, an online platform, with Foreign Minister Sergei Lavrov attending in person.

## 4. Recommendations

South Africa should balance integration, municipal and international law to protect its image and reputation. It should try to invigorate and revivify its battered international image soiled by the 2015 Omar al Bashir debacle. The country should also institute decisions that benefit its people and national interests. Such decisions should not be driven by the United States or Russia, non-state parties to the Treaty of Rome. The government must not make a mockery of its laws and court orders. If it fails to abide by its municipal regulations, then the democratic edifice will crumble stone by stone until it collapses. The habitual non-compliance to municipal and international law may ultimately lead the country's vibrant legal institutions to capsizes and founder. South Africa should also set a good precedent for the other thirty-two African states that ratified the Rome Statute. As the most industrialised country in Africa, it should set a pace that other African states can emulate. Non-compliance and recidivism to its municipal and international law may be contagious to other African states, making the continent transmogrify and slide into anarchy, mayhem, and barbarism. Civil society should also actively cajole the state to abide by its domestic and international legislation. The former can do so by inducing positive inducements that can enhance state compliance rather than just castigating or lampooning the state when it fails to do so.

<sup>6</sup> An order or decision issued by a court binds all persons to whom and organs of state to which it applies.

## 5. Conclusion

The 15<sup>th</sup> BRICS Summit, to be held in Durban, South Africa, has placed South Africa between a rock and a hard surface. It has placed the country in a quagmire. On the one hand, South Africa cannot invite President Putin to arrest him. On the other, the country is obligated to do so if he sets foot in South Africa because the latter is a state party to the Statute of Rome that created the International Criminal Court. It is also incomprehensible that South Africa can arrest the president of the most enormous nuclearised power and the most militarily strong state in the world. It will also be difficult for South Africa to arrest the president of its all-weather ally, Russia, which has supported it since apartheid to the post-independence era. South Africa may also find it difficult to arrest the president of a fellow integration partner. Thus, South Africa needs to weigh the costs and benefits of arresting President Putin or ignoring the indictment warrant. Considering that Russia is armed to the teeth and is the most significant nuclear power in the world, South Africa may save itself from destruction and holocaust by ignoring the arrest of Putin when he comes to attend the summit. In doing so, South Africa will save the lives of millions of South Africans that may perish when Russia retaliates. Since an indicted president's visit to South Africa is not new, South Africa may ignore arresting Putin and experience a second Omar al Bashir moment. Such an option may be better than arresting Putin and potentially facing horrific consequences.

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