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Netanyahu and Gallant Arrest Warrants: International Justice on Trial

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Series: **Case Analysis**

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When the Rome Statute of the International Criminal Court of 1998 was adopted (although it did not come into effect until 1 July 2002), very few expected that a time would come when this statute would be applied to Israeli officials, holding them accountable for crimes committed against Palestinians in the Palestinian territories occupied since 1967, that is, the Gaza Strip and the West Bank, including East Jerusalem, especially given the fact that Israel is not a State Party to the Rome Statute. Nevertheless, human rights defenders went to work, focusing their efforts on using the principle of universal jurisdiction to persuade states to hold accountable Israeli leaders suspected of committing war crimes and crimes against humanity in the occupied Palestinian territories.¹

When Palestinian and international human rights organizations began investigating ways in which the Court could prosecute Israeli politicians and military personnel for suspected involvement in the commission of war crimes and crimes against humanity against Palestinians, it became apparent that Palestine would need to join the Rome Statute, particularly given the fact the United States would use its veto power to sabotage any attempt by the UN Security Council to use its powers under Article 13 (b) of the Rome Statute to refer the Palestine file to the Court so that it could exercise its jurisdiction over the occupied Palestinian territories.²

With Palestine's accession to the Rome Statute on 2 January 2015, the foundations were laid for the Court's jurisdiction to consider war crimes and crimes against humanity, including the crime of genocide, committed in the occupied Palestinian territories.³ On 3 March 2021, then-Prosecutor of the ICC, Fatou Bensouda, announced the opening of an investigation into the situation in Palestine.⁴ In response, Yossi Cohen, head of Israel's foreign intelligence agency, Mossad, issued a direct threat against Bensouda to dissuade her from pursuing the investigation.⁵

On 21 November 2024, more than 410 days after the launch of Israel's war of revenge against the Gaza Strip, the ICC Pre-Trial Chamber I issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defence Minister Yoav Gallant. By this time, six months had passed since the announcement by the ICC Prosecutor Karim Khan on 20 May 2024 that requests had been submitted to the Pre-Trial Chamber for arrest warrants against the two men for war crimes and crimes against humanity against Palestinians, particularly in the Gaza Strip. The Pre-Trial Chamber also issued an arrest warrant for Muhammad Diab Ibrahim al-Masri (aka "Muhammad Deif"), Commander-in-Chief of the Qassam Brigades (Hamas's military wing), while agreeing to drop the arrest warrants for Yahya Sinwar, head of Hamas in Gaza, and Ismail Haniyeh, head of Hamas's political bureau, after their deaths were confirmed.⁶

¹ International Committee of the Red Cross, "The Scope and Application of the Principle of Universal Jurisdiction: ICRC Statement to the United Nations: 2015, accessed on 14/7/2024, at: <https://acr.ps/1L9zQCb>.

² United Nations, "Rome Statute of the International Criminal Court (1998)," accessed on 20/9/2024, at: <https://acr.ps/1L9zQQI>.

³ International Criminal Court, "ICC Welcomes Palestine as a new State Party," 1/4/2015, accessed on 24/5/2024, at: <https://acr.ps/1L9zQIz>.

⁴ On 1 January 2015, the Government of Palestine deposited a declaration under Article 12(3) of the Rome Statute of the International Criminal Court stating that as of 13 June 2014, it accepted the Court's jurisdiction over crimes committed in the Palestinian territories occupied since 1967, including East Jerusalem. On 2 January 2015, Palestine acceded to the Rome Statute by depositing its instrument of accession with the Secretary-General of the United Nations, and it entered into force on 1 April 2015.

⁵ International Criminal Court, "Statement of ICC Prosecutor, Fatou Bensouda, Respecting an Investigation of the Situation in Palestine," 1/4/2015, accessed on 24/5/2024, at: <https://acr.ps/1L9zQt4>.

⁶ International Criminal Court, "Situation in the State of Palestine: ICC Pre-Trial Chamber I Issues Warrant of Arrest for Mohammed Diab Ibrahim Al-Masri (Deif)," 21/11/2024, accessed on 25/11/2024, at: <https://acr.ps/1L9zRdG>.

The majority of the 124 States Parties to the Rome Statute voiced their commitment to implement the decision in a manner consistent with their obligations under the Statute. The leaders of some States even announced that Netanyahu and Gallant would be arrested if they set foot in their territories. Meanwhile, Israeli officials launched a shrill attack on the decision and the Court, as did most US officials, threatening to impose severe sanctions on the justices of the Court, as well as on countries that cooperated with it.⁷

This paper presents an overview of human rights defenders' struggle for more than two decades to prosecute perpetrators of war crimes and crimes against humanity in the occupied Palestinian territories before the International Criminal Court (ICC) in order to prevent impunity and to achieve justice for the victims. The paper discusses the potential consequences of the ICC arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Defence Minister Yoav Gallant, including the prospects for holding them accountable for their involvement in war crimes and crimes against humanity against Palestinians, particularly in the Gaza Strip, where the Palestinian population has been subjected to an ongoing retaliatory war since 8 October 2023.

First: The legal foundation for ICC jurisdiction over the Palestinian territories occupied since 1967

Article 12(3) of the Rome Statute of the International Criminal Court (ICC) allows States which are not party to the Statute to accept the jurisdiction of the ICC based on a declaration deposited with the Court Registrar with respect to crimes committed on their territory or by one of their nationals.⁸ Based on this provision, the State of Palestine undertook on 1 January 2015 to deposit a declaration accepting the Court's jurisdiction with respect to crimes committed in the Palestinian Territories occupied since 1967, including East Jerusalem, with retroactive effect from 13 June 2014. On 2 January 2015, the State of Palestine acceded to the Rome Statute after depositing its instrument of accession with the Secretary-General of the United Nations, which entered into force on 1 April 2015.

On 16 January 2015, in a clear sign that the efforts of Palestinian and international human rights organizations and some States Parties to the Rome Statute were beginning to bear fruit with regard to the Court's exercise of territorial jurisdiction over the situation in Palestine, the Office of the ICC Prosecutor initiated a preliminary assessment of the situation in Palestine based on the information at its disposal. The purpose of this assessment was to determine whether the Rome Statute's criteria for opening an investigation into crimes committed on Palestinian territory under Article 53(1), which authorizes it to consider crimes that fall within the Court's jurisdiction, had been met.⁹

⁷ "Netanyahu to discuss Hague orders, while in Israel they prefer to wait for Trump: 'He is planning sanctions from hell,'" *Ynet*, 11/25/2024, accessed on 26/11/2024, at: <https://acr.ps/1L9zQuP>.

⁸ International Criminal Court, Rome Statute of the International Criminal Court (1998), Article 12(3). Accessed on 2/8/2024, at: <https://acr.ps/1L9zRbD>.

⁹ *Ibid.*, Article 53.

On 22 May 2018, the State of Palestine referred the situation in the occupied Palestinian territory to the ICC Prosecutor, Fatou Bensouda, to consider it with retroactive effect since 13 June 2014. After assessing the information in her possession, Bensouda announced on 20 December 2019 that she had opened an investigation into alleged crimes committed in the occupied Palestinian territory.¹⁰ However, in view of the complex legal issues relating to the situation in Palestine and the uncertainty regarding the scope of the Court's territorial jurisdiction, she submitted a request to the ICC's Pre-Trial Chamber I for a ruling clarifying whether the Court's jurisdiction extended to crimes committed in the Palestinian territory occupied since 1967 (the Gaza Strip and the West Bank, including East Jerusalem).¹¹ On 5 February 2021, the Pre-Trial Chamber arrived at a decision that the Court's jurisdiction did indeed extend to the Palestinian territory occupied by Israel since 1967, the reason being that Palestine was a State Party to the ICC under Article 12(2) of the Rome Statute. The Pre-Trial Chamber also explained that it had no authority to challenge Palestine's accession process, which had been approved by the States Parties.¹² Following this decision, Bensouda announced on 3 March 2021 that an investigation had been opened into the situation in the State of Palestine.¹³

In light of the foregoing, there are no legal grounds for Israel's claim that it has no obligations towards the International Criminal Court on the pretext that it is not a State Party to the Rome Statute, since Palestine's membership in the ICC grants the Court territorial jurisdiction over the territories Israel has occupied since 1967 (Gaza and the West Bank, including East Jerusalem),¹⁴ and hence, the power to consider crimes committed within said territories, especially the crime of genocide, crimes against humanity, and war crimes committed in the Gaza Strip.

The ICC's decision angered Israel's official establishment, who realized the consequences of the investigation, namely, that it would necessarily entail the issuance of arrest warrants against Israeli political officials and military personnel suspected of committing grave crimes against the Palestinians. Thus, they launched a wide-ranging smear campaign against the ICC, challenging its credibility. Netanyahu described the Court's decision to open an investigation against Israel on charges of committing war crimes as antisemitic and "the height of hypocrisy."¹⁵ The United States government also vehemently opposed the decision, claiming that the ICC had no jurisdiction in the matter because Israel was not a State Party to the Rome Statute, and because Palestine was not a sovereign state and

¹⁰ International Criminal Court, "Statement of ICC Prosecutor Fatou Bensouda on the Conclusion of the Preliminary Examination of the Situation in Palestine and Seeking a Ruling on the Scope of the Court's Territorial Jurisdiction," 20/12/2019, accessed on 20/11/2024, at: <https://acr.ps/1L9zQSC>.

¹¹ International Criminal Court, "Questions and Answers on the Decision on the Territorial Jurisdiction of the International Criminal Court in the Situation in Palestine, February 2021," accessed on 22/7/2024, at: <https://acr.ps/1L9zRkC>.

¹² International Criminal Court, "Questions and Answers on the Decision on the International Criminal Court's Territorial Jurisdiction in the Situation in The State of Palestine," 15/2/2021, accessed on 23/11/2024, at: <https://acr.ps/1L9zRkC>.

¹³ International Criminal Court, "Statement of ICC Prosecutor Fatou Bensouda Respecting an Investigation of the Situation in Palestine," 3/3/2021, accessed on 4/8/2024, at: <https://acr.ps/1L9zQt4>.

¹⁴ International Criminal Court, "Questions and Answers."

¹⁵ Gov.il, Prime Minister's Office, "Remarks by Prime Minister Benjamin Netanyahu on the ICC Decision," 3/3/2021, accessed on 5/11/2024, at: <https://acr.ps/1L9zQXL>.

was therefore ineligible for state membership in the International Criminal Court. However, these claims were inconsistent with the Court's Statute, and were not supported by international law.¹⁶

On 17 November 2023, after Israel's retaliatory assault on Gaza had begun, the ICC Prosecutor's Office received a referral regarding the situation in the State of Palestine from South Africa, Bangladesh, Bolivia, Comoros and Djibouti – all of them States Parties to the Rome Statute – calling for an investigation to be opened into Israel's suspected commission of the crime of genocide,¹⁷ war crimes,¹⁸ and crimes against humanity¹⁹ against Palestinians in the occupied territories.²⁰ The aforementioned States based their request on Article 14 of the Rome Statute, which allows a State Party to refer to the ICC Prosecutor a situation in which one or more crimes that fall within the Court's jurisdiction appear to have been committed; this Article also allows States Parties to the Rome Statute to ask the ICC Prosecutor to open an investigation to determine whether one or more specific persons should be charged with such crimes.²¹ Upon receiving the referral, ICC Prosecutor Karim Khan stated that his investigation into the situation in the State of Palestine would take into account the escalation of hostilities and violence beginning with the attacks that had occurred on 7 October 2023.²²

On 20 May 2024 – after nearly a decade of struggle to extend the Court's territorial jurisdiction to the situation in Palestine – the ICC Prosecutor Karim Khan asked the Court's Pre-Trial Chamber I to issue arrest warrants for Netanyahu and Gallant for the alleged commission of war crimes and crimes against humanity in the Gaza Strip since 8 October 2023, including the crime of genocide as a crime against humanity under Article 7(1)(b) of the Rome Statute.²³ Khan also requested arrest warrants for Yahya Sinwar, Mohammed Deif, and Ismail Haniyeh for the alleged commission of war crimes and crimes against humanity in the territories of both Israel and the State of Palestine (the Gaza Strip) beginning on 7 October 2023.²⁴

Israel sought to pre-empt the issuance of the arrest warrants by challenging the ICC's jurisdiction over the occupied Palestinian territory, arguing that Palestine was not a Party to the ICC, and was

16 US Embassy in Israel, "The United States Opposes the ICC Investigation into the Palestinian Situation," 3/3/2021, accessed on 7/11/2024, at: <https://acr.ps/1L9zQw6>.

17 United Nations, *Rome Statute of the International Criminal Court*, The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, 17/7/1998, Article 6, accessed on 8/9/2024, at: <https://acr.ps/1L9zR4Q>.

18 *Ibid.*, Article 7.

19 *Ibid.*, Article 8.

20 South African Embassy, "State Party Referral in accordance with Article 14 of the Rome Statute of the International Criminal Court," 17/11/2023, accessed on 7/8/2024, at: <https://acr.ps/1L9zQtT>.

21 International Criminal Court, "Statement of the Prosecutor of the International Criminal Court, Karim A. A. Khan KC, on the Situation in the State of Palestine: Receipt of a Referral from Five States Parties," 17/11/2023, accessed on 24/11/2024, at: <https://acr.ps/1L9zRbW>; United Nations, *Rome Statute*, Article 13 (a), 14.

22 *Ibid.*

23 International Criminal Court, "Statement of ICC Prosecutor Karim A. A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine," 20/5/2024, accessed on 9/8/2024, at: <https://acr.ps/1L9zPE6>.

24 *Ibid.*

not a State according to the criteria laid down in the Rome Statute. However, the Pre-Trial Chamber rejected Israel's claim that the Court lacked jurisdiction over the State of Palestine under Article 19(2) of the Rome Statute based on the fact that any challenge to the ICC's exercise of its jurisdiction would be premature, since according to the provisions of the Rome Statute, no State Party may challenge the Court's jurisdiction on the basis of Article 19 until an arrest warrant or summons has been issued. Therefore, Pre-Trial Chamber I rejected Israel's request to be allowed to challenge the ICC Prosecutor's application for arrest warrants against Netanyahu and Gallant.²⁵ Nevertheless, the Pre-Trial Chamber made clear that Israel would have every opportunity to challenge the Court's jurisdiction and/or the admissibility of any particular case if the ICC Chamber were to issue an arrest warrant or summons against Israeli nationals.

Ultimately, the ICC's Pre-Trial Chamber granted the Prosecutor's request, and on 21 November 2024 – more than 410 days after Israel's war on Gaza began on 8 October 2023, and six months after the Prosecutor announced on 20 May his applications for arrest warrants for Netanyahu and Gallant for crimes against humanity and war crimes – the Chamber issued the warrants requested.²⁶ The Court had decided initially to keep the arrest warrants confidential in order to protect witnesses and safeguard the progress of the investigations. However, it eventually thought it best to release the information, given that the conduct that had formed the basis for the arrest warrants was still ongoing, and given its conviction that it would be in the best interests of the victims and their families to be informed of the existence of the warrants.²⁷

Second: Crimes being committed in the context of Israel's retaliatory war on the Gaza Strip

Since its occupation of the Palestinian territories in 1967, Israel has engaged in policies that entail gross violations of the fundamental collective and individual rights guaranteed by international law, foremost among which are the right to self-determination, the right to life, liberty and dignity, the right to property, and the right to freedom of movement. Such policies have enabled Israel to maintain itself as an occupying power, a settler colonial project, and an apartheid regime across the entire occupied territory via the ongoing commission of grave violations that amount to crimes against humanity and war crimes: targeting civilians with killing, starvation, and forced transfer, inflicting widespread destruction on infrastructure, illegally seizing and annexing land, building and expanding settlements, and transferring Jewish settlers to live in them, thus creating facts on the ground that will be difficult to change in the future and thus restore the situation to what it was before.

²⁵ International Criminal Court, *Decision on Israel's Challenge to the Jurisdiction of the Court Pursuant to Article 19 (2) of the Rome Statute*, ICC Pre-Trial Chamber Decision, 01/18-374, 21/11/2024, accessed on 28/11/2024, at: <https://acr.ps/1L9zRdk>.

²⁶ International Criminal Court, "Situation in the State of Palestine: ICC Pre-Trial Chamber I Rejects the State of Israel's Challenges to Jurisdiction and Issues Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant," 21/11/2024, accessed on 21/11/2024, at: <https://acr.ps/1L9zQm2>.

²⁷ *Ibid.*

Israel retaliated against the surprise attack launched by Hamas and other Palestinian factions on 7 October 2023, on the area adjacent to the Gaza Strip (the Gaza Envelope), with a savage and unprecedented military campaign against the Palestinians. Referred to by Israeli officials as the “War of Iron Swords,” it was Israel’s seventh and most violent war of aggression on the Gaza Strip since it redeployed its occupation forces outside of Gaza in 2005.²⁸ Israeli leaders and decision-makers made no secret of the fact that the purpose of this war of theirs was revenge. On the contrary, they stated openly and shamelessly that they were bent on obliterating the Gaza Strip, reducing it to rubble, inflicting the largest possible number of casualties among civilians, displacing them, and destroying Gaza’s infrastructure. Prime Minister Netanyahu voiced his vengeful intent against Gaza and its population with utter candour, saying, “We will paralyze them to the point of destruction, and we will take forceful revenge for this black day that they have brought upon the State of Israel and its citizens, and we will turn all the places where Hamas hides and operates into destroyed cities.” He added: “I say to the residents of Gaza: Get out of there now, because we will move everywhere and with all force.”²⁹

Israeli Minister of Defence, Yoav Gallant, was even more vehement in affirming the Israeli’s government’s vindictive intentions toward Gaza and its people when, on 9 October 2023, he announced the imposition of a complete siege on the Gaza Strip, which had already been under a stifling blockade since 2007. He stated with utter clarity, “No food, no water, no electricity, no fuel... everything is closed. We are fighting human animals, and we will act accordingly.”³⁰ Retired Israeli Major General Giora Eiland called for al-Shifa Hospital to be bombed, and for the population of Gaza to be starved,³¹ while the Likud-aligned Minister of Energy Yisrael Katz declared, “no ‘electrical switch will be turned on, no water hydrant will be opened and no fuel truck will enter’ until the ‘abductees’ were free.”³²

Israeli officials also revealed their intention to ethnically cleanse the Gaza Strip of Palestinians and forcibly displace them to Egypt or Jordan, knowing that more than 70 percent of them were refugees whose families had been forcibly displaced during the Palestinian Nakba of 1948. In a statement to foreign media in October 2023, the spokesman for the Israeli occupation forces issued an order for Palestinians to head to Egypt via the Rafah crossing, while Amir Weitmann, leader of the Likud Party’s liberal current, called for international coordination to transfer the entire population of the Gaza Strip.³³ Influential businessmen demanded that Gaza be levelled to the ground, and that Jordan and Egypt be given a limited period of time to save the lives of its residents and absorb them into

28 “Israel’s Most Prominent Wars on the Gaza Strip”, *Al Jazeera*, 7/28/2024, accessed on 12/8/2024, at: <https://acr.ps/1L9zROT>. See “The War of Iron Swords”, Hamkhalul website, accessed on 12/8/2024, at: <https://acr.ps/1L9zQBI>.

29 “Netanyahu: We will take revenge on Hamas for this black day,” *News 1*, 10/7/2023, accessed on 8/14/2024, at: <https://acr.ps/1L9zQVW>.

30 “Statement by Israeli Minister of Defence Yoav Galant,” Knesset TV TikTok, accessed on 8/13/2024, at: <https://bitly/3s5bXLM>.

31 “We need to bomb Al-Shifa Hospital and starve the people of Gaza,” Rotter [Israel Forum Community], 10/10/2023, accessed on 12/24/2024, at: <https://bit.ly/48PwiVR>.

32 Bethan McKernan, “No power, water or fuel to Gaza until hostages freed, says Israel minister”, *The Guardian*, 12/10/2023, accessed on 31/12/2024, at: <https://acr.ps/1L9zQMQ>.

33 “Plan to transfer population of Gaza to Egypt: Likud Liberal leader proposes systematic plan to transfer Gaza residents to Egypt after levelling of the Strip not just an Israeli interest,” *Channel 7* (Israeli), 12/10/2023, accessed on 8/14/2024, at: <https://bitly/3rOEAwX>.



their countries.³⁴ On 13 October 2023, Israel ordered more than a million Palestinians to evacuate their homes in northern Gaza and move to the southern areas, giving them six hours to carry out the order³⁵ even as it proceeded to bomb the entire Gaza Strip, including the areas where hundreds of thousands of displaced people had gathered. This confirmed the occupation's intention to cleanse the Strip of Palestinians by intensifying its acts of killing, destruction, intimidation, and forced displacement, and by imposing on the population conditions of life so dire that they bordered on genocide.

Between 8 October 2023 and December 2024, that is, over the course of its first 410 days, the ongoing Israeli retaliatory war on the Gaza Strip killed 43,972 Palestinians and injured 104,000 others,³⁶ most of them children, women, and elderly. This aggression resulted in the displacement of 1.9 million residents of the Strip, or about 90 percent of the total population. In addition, it led to the total or partial destruction of 60 percent of all its housing units, 493 out of 564 schools and educational facilities, and 19 out of a total of 36 hospitals, the rest of which are now only partially functioning.³⁷

It is quite apparent that the issuance of arrest warrants for Netanyahu and Galant by the ICC's Pre-Trial Chamber I did not come out of nowhere, but that it was supported by both the law and concrete facts. The ICC Prosecutor requested arrest warrants from the Pre-Trial Chamber on charges of involvement in the commission of two of the four crimes set forth in the Rome Statute, that is, crimes against humanity and war crimes.³⁸

1. Crimes against humanity

Originating from the highest-ranking civilian and military officials in the occupation state, the actions perpetrated by the Israeli occupation forces in the context of the war on Gaza amount to a crime against humanity as defined by the Rome Statute of the International Criminal Court, because they come in the context of a systematic and wide-ranging assault on the civilian population, with awareness of the assault, its dimensions, and its resulting outcomes.³⁹ These acts take the form of wilful killing and extermination by deliberately imposing conditions of life on the population – such as denial of access to food and medicine – in order to destroy numbers of them; the banishment or forcible transfer of the population without justifications permitted by international law; ongoing persecution of the population of the Gaza Strip by depriving them, intentionally and to an extreme

³⁴ “A High-Tech Businessman Proposes: ‘It’s Not Enough to Bring Down Hamas, We Need to Raze Gaza to the Ground,’” *Globes* (Israeli newspaper), 15/10/2023, accessed on 16/6/2024, at: <https://bitly/3PZn8O3>.

³⁵ “Israel orders 1.1 million people in Gaza to move south: What to know”, *Al Jazeera*. 13/10/2023, at <https://acr.ps/1L9zQMz>.

³⁶ It should be noted that according to numerous experts, the actual death toll is most certainly far higher than this when one takes into account deaths from starvation and dehydration, deaths of individuals whose bodies could not be identified, those buried in mass graves, deaths from untreated medical conditions, and the now tens of thousands buried under the rubble. See https://www.youtube.com/watch?v=n8dJJa2lk8I&ab_channel=KatieHalper; and Susan Abulhawa, “Math Proves that Israel’s Stated Goals Are an Epic Lie,” *Electronic Intifada*, 27/6/2024, accessed on 2/1/2025, at <https://electronicintifada.net/content/math-proves-israels-stated-goals-are-epic-lie/47371>.

³⁷ United Nations, Office for the Coordination of Humanitarian Affairs, *Reported Impact Snapshot | Gaza Strip (19 November 2024)*, 19/11/2024, accessed on 24/11/2024, at: <https://acr.ps/1L9zRet>.

³⁸ International Criminal Court, *Rome Statute*, Article 5.

³⁹ *Ibid.*, Article 7.



degree, of the basic rights guaranteed by international law due to their Palestinian identity; and apartheid, which is a crime against humanity committed as part of an institutionalized regime based on systematic oppression and control for the purpose of maintaining and perpetuating Israeli domination over the Palestinians, including in the Gaza Strip.⁴⁰

2. War crimes

The Israeli military attacks on the Gaza Strip and its population may be classified as grave breaches of the Geneva Conventions of 1949, the first Additional Protocol of 1977,⁴¹ and the Rome Statute of the International Criminal Court of 1998. These actions amount to war crimes committed on a large scale as part of a systematic policy that takes the form of wilful killing, declaring that no one will survive, launching an attack with the knowledge that it will result in civilian casualties, intense suffering or serious bodily harm; deliberately directing attacks against civilian targets of a non-military nature with the aim of achieving widespread destruction without military necessity; the unlawful displacement of the population; targeting religious, educational, artistic and scientific sites, hospitals and places where the sick and wounded are gathered without these places being military targets; attacking medical structures, materials and units; and deliberately starving civilians by depriving them of objects indispensable to their survival, including the deliberate obstruction of relief supplies in the manner stipulated.⁴²

In the course of requesting arrest warrants for Netanyahu and Gallant, ICC Prosecutor Karim Khan made no explicit reference to their being suspected of committing the crime of genocide in the Gaza Strip, and this despite the severity and savagery of the violations that had been ongoing since the start of the war, and despite the fact that these acts constitute a clear violation of Article 6 of the Rome Statute, which defines genocide as acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, including killing members of the group, causing serious bodily or mental harm to members of the group, or deliberately subjecting them to conditions of life calculated to bring about the group's physical destruction, in whole or in part, as has been argued by most international law and human rights experts and jurists.⁴³

In March 2024, Francesca Albanese, UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, concluded that there were reasonable grounds to believe that Israel had committed acts of genocide in the Gaza Strip.⁴⁴ In a subsequent report released in October of the same year, she stated that the current genocide in the Gaza Strip was part of a

⁴⁰ Ibid.

⁴¹ The Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949, Article 147, accessed on 28/10/2023, at <https://acr.ps/1L9zR6G>.

⁴² The International Criminal Court, *The Rome Statute of the International Criminal Court*, Article 8.

⁴³ International Criminal Court, *Rome Statute*, Article 6.

⁴⁴ United Nations, General Assembly, "Anatomy of a Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Francesca Albanese," A/HRC/55/73 of 2024, accessed on 26/11/2024, at: <https://acr.ps/1L9zR2B>.



century-long settler-colonial project in Palestine that was a stain on the international order and humanity, and that it must be brought to an end, investigated and prosecuted by the International Criminal Court.⁴⁵

Both the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the 1998 Rome Statute of the International Criminal Court define genocide as acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.⁴⁶ According to this definition, it may be argued that the practices of the Israeli occupation forces, which coincided with calls by Israeli officials and leaders to reduce the Gaza Strip to rubble and to cut off food, water, electricity and other basic supplies necessary for human survival, may amount to the crime of genocide, given the presence of the intent to punish the entire population of Gaza by depriving them of all basic necessities, causing them serious bodily or mental harm, or deliberately inflicting on them living conditions calculated to bring about their destruction in whole or in part.⁴⁷ This is what Francesca Albanese, the independent UN Special Rapporteur on the situation of human rights in the occupied Palestinian territories, indicated in her periodic report, in which she stated that there were reasonable grounds to believe that the crime of genocide had been committed against the Palestinians in Gaza, and called on the international community to ensure the compliance of Israel and Third-Party States with their obligations under the Convention on the Prevention and Punishment of the Crime of Genocide.⁴⁸

Third: Legal implications of the arrest warrants for Netanyahu and Gallant and the duties of States Parties to the Rome Statute

The arrest warrants issued by the International Criminal Court for Netanyahu and Gallant on suspicion of war crimes and crimes against humanity in the Gaza Strip were on the order of a “legal bombshell,” which was met by Israeli officials with a shrill attack. Netanyahu’s office called them anti-Semitic, likening them to a “modern Dreyfus trial,” while Gallant remarked that the warrants would “be remembered for eternity,” because they placed the State of Israel and Hamas leaders in the same category, thus “lending legitimacy to the murder of children, the rape of women, and the abduction of the elderly from their homes.”⁴⁹

The State of Palestine praised the ICC’s decision, describing it as restoring hope and confidence in international law and its institutions, and in the importance of justice, accountability and the

⁴⁵ United Nations. “A/79/384: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese - Genocide as colonial erasure,” 1 October 2024, accessed on 26/11/2024 at: <https://acr.ps/1L9zQwy>.

⁴⁶ International Committee of the Red Cross, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9/12/1948, Article 2. accessed on 24/12/2024, at: <https://acr.ps/1L9zQrS>; International Criminal Court, *Rome Statute*, Article 7 (1) (b);

⁴⁷ International Criminal Court, *Rome Statute*.

⁴⁸ United Nations, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967*, A/HRC/55/73, 25/3/2024, accessed on 20/8/2024, at: <https://acr.ps/1L9zRbH>.

⁴⁹ Gallant on the arrest warrant issued against him. See: “The court’s decision will be remembered for eternity,” *Srugim* website, 21/11/2024, accessed on 24/12/2024, at: <https://acr.ps/1L9zQrO>.

prosecution of war criminals, especially at a time when the Palestinian people are being subjected to genocide and war crimes such as forced mass starvation, and crimes against humanity in the form of murder, persecution, forced displacement, and other inhumane acts. Further, it called for the decision to be implemented, for the international fugitives Netanyahu and Gallant to be brought before the world judiciary, and for all ties with them to be severed.⁵⁰

By contrast, the positions taken by many countries, especially Western states that are Parties to the Rome Statute, were vague and hesitant. This appears to be due to the policy of near-absolute support and favouritism that Israel enjoys in the West, even when it comes to its breaches of international law and human rights. Countries such as Slovenia, Austria, Ireland, Spain, Belgium, and the Netherlands stated explicitly that they would enforce the arrest warrants and detain Netanyahu and Gallant if they were set foot on their soil, whereas the Czech Republic and Hungary announced that they would not enforce them, and the positions of Germany, Italy, and France were ambiguous and unclear.⁵¹ As for US officials, they continued to hurl accusations at the Court and issue threats against the ICC justices and its Prosecutor. Mike Waltz, the incoming Trump Administration's nominee for the post of National Security Advisor, rejected the international arrest warrants issued for Netanyahu and threatened a forceful response in January,⁵² while Hungary's Prime Minister Viktor Orbán sent a letter of support to Netanyahu, inviting him to make a diplomatic visit to his country even though Hungary is a State Party to the Rome Statute.⁵³

Most EU countries declared that they would respect the Court's decision by fulfilling their obligations as Parties to the Rome Statute. EU foreign policy chief Josep Borrell asserted the ICC's decision had not been political, and that it should be respected and implemented.⁵⁴ Similarly, Ireland's Prime Minister, Simon Harris, said that Netanyahu would be arrested if he came to Ireland,⁵⁵ while the foreign minister of the Netherlands, home to the ICC headquarters, said his country would respect the decision and arrest Netanyahu and Gallant if they reached Dutch soil.⁵⁶ For his part, Canada's Prime Minister Justin Trudeau said it was important for everyone to abide by international law, adding that Canada would comply with the rulings of international courts.⁵⁷ As for the British government, it refused to declare

50 "The State of Palestine welcomes the decision of the 'International Criminal Court' to issue arrest warrants against Netanyahu and Galant," Palestinian News and Information Agency "Wafa," 21/11/2024, accessed on 26/11/2024, at: <https://acr.ps/1L9zQWH>.

51 "Netanyahu Arrest Warrant: Where can he still go in Europe?" *Politico*, 22/11/2024, accessed on 27/11/2024, at: <https://acr.ps/1L9zR9d>.

52 "Trump's Nominee for Security Advisor Vows 'Strong Response' to ICC," *Jewish News Syndicate*, 21/11/2024, accessed on 26/11/2024, at: <https://acr.ps/1L9zQAJ>.

53 Krisztina Than and Ingrid Melander, "Orbán Invites Netanyahu to Hungary as ICC Warrant Divides Europeans," *Reuters*, 22/11/2024, accessed on 26/11/2024, at: <https://acr.ps/1L9zQIO>.

54 Stephanie van den Berg & Nidal Al-Mughrabi, "ICC Issues Arrest Warrants for Israel's Netanyahu, Gallant and Hamas Leader," *Reuters*, 22/11/2024, accessed on 26/11/2024, at: <https://acr.ps/1L9zQVt>.

55 "Ireland Would Arrest Netanyahu Following ICC Warrant, PM Says," *Reuters*, 22/11/2024, accessed on 26/11/2024, at: <https://acr.ps/1L9zQRO>.

56 "US Rejects ICC's Netanyahu Warrant, Hamas Celebrates as Reactions Pour In," *The Jerusalem Post*, 21/11/2024, accessed on 21/11/2024, at: <https://acr.ps/1L9zQkm>.

57 "Reaction to the ICC Warrants for Israeli and Hamas Leaders," *Middle East Monitor/Reuters* 21/11/2024, accessed on 21/11/2024, at: <https://acr.ps/1L9zQvd>.

explicitly that it would arrest Netanyahu and Gallant⁵⁸ if either of them set foot on British territory, saying only that it would fulfill its legal obligations as stipulated in domestic and international law; therefore, British MPs have urged their government to openly endorse the ICC's arrest warrants for Netanyahu and Gallant.⁵⁹

Shortly after the ICC's decision was issued, the spokesperson for France's Foreign Ministry stated that the arrest warrant against Netanyahu would be dealt with in accordance with the Rome Statute. However, he declined to say whether France would arrest him if he entered French territory, arguing that the issue was legally complex, thus revealing the French government's reluctance to announce unequivocally that it would enforce the arrest warrants in a manner consistent with its obligations under the Rome Statute.⁶⁰ The French government repeated its position on this matter when the French Foreign Ministry announced on 27 November 2024 that Israeli Prime Minister Netanyahu enjoyed immunity before the ICC, claiming that he was included under the immunity rules that apply to non-State Parties to the ICC, noting France's commitment to international justice and stating that the decision would rest ultimately with the judicial authorities.⁶¹

In light of the foregoing, some States Parties, such as Germany, France and the United Kingdom, seem determined to evade their obligations under the Rome Statute as regards arrest procedures in accordance with Article 59, which obliges them to take immediate steps to detain suspects in keeping with their domestic laws, and with the provisions of Part IX of the Statute (Articles 86-102), which ensures full cooperation with the Court in its investigations and prosecution of crimes.

The situation just described puts the credibility of the Court on the line, since it renders it subject to the policies of major powers regardless of whether or not they are Parties to the Rome Statute. We are thus brought back to the failure of the earnest efforts that have been made for nearly two decades by Palestinian and international human rights organizations to compel states, especially European states, to prosecute those suspected of committing crimes in the occupied Palestinian territory before their domestic judiciaries in accordance with the principle of universal jurisdiction, which requires them to exercise their jurisdiction outside their territorial borders. Such jurisdiction includes criminal proceedings related to serious crimes committed outside a state's own territory, regardless of where the crimes occurred or the nationality of the perpetrator or victim. Unfortunately, experience has demonstrated European countries' lack of political will in this connection, and hence their failure to fulfil their international obligations to prosecute criminals when it comes to Israel, which is treated as though it were above the law. This situation gives the lie to the pretensions of states that claim to be working to protect democracy, the rule of law and human rights.

58 "British MPs Urge Government to Endorse ICC Arrest Warrant for Netanyahu, Gallant," *Middle East Monitor*, 21/11/2021, accessed on 26/11/2024, at: <https://acr.ps/1L9zQp5>.

59 "Downing Street Indicates Netanyahu Would Be Arrested in UK after ICC Warrant," *Sky News*, 22/11/2024, accessed on 27/11/2024, at: <https://acr.ps/1L9zQi8>.

60 "France Says Looking into Legal Implications of Netanyahu ICC Arrest Warrant," *Deccan Herald (DH)*, 21/11/2024, accessed on 27/11/2024, at: <https://acr.ps/1L9zR2u>.

61 *Ibid.*



Conclusion

In this paper, I have discussed the efforts made by defenders of Palestinian human rights and the Palestinian Authority for over ten years to enable Palestine to accede to the Rome Statute of the International Criminal Court (ICC) so that it could exercise its jurisdiction over the Palestinian territories occupied since 1967 and ultimately prosecute those suspected of committing war crimes, crimes against humanity and genocide in those same territories. I have also reviewed the political and technical hindrances to these efforts and the ways in which they were overcome. I review the decision made by the ICC Prosecutor in 2021 to open an investigation into crimes committed in Palestine, and how, in May 2024, the ICC was asked to issue arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defence Minister Yoav Gallant on suspicion of having committed international crimes under the jurisdiction of the Rome Statute of the ICC.

I have highlighted the powers invested in the ICC to prosecute the perpetrators of war crimes and crimes against humanity in the Palestinian territories occupied since 1967, and the implications of the arrest warrants issued against Netanyahu and Gallant as a vital step towards putting an end to the impunity enjoyed for so long by Israeli officials, and towards achieving justice for the victims. The pivotal question arises here with respect to the arrest warrants for Netanyahu and Gallant, as well as for other Israeli officials against whom similar warrants may also have been issued, or may be issued in the future, that is: How willing will the States Parties to the Rome Statute of the ICC be to carry out their obligations to detain and prosecute the accused, thereby ensuring a true lack of impunity for them and true justice for their victims?



References

- Abulhawa, Susan. “Math Proves that Israel’s Stated Goals Are an Epic Lie,” *Electronic Intifada*, 27/6/2024. <https://acr.ps/1L9zQEf>.
- Bethan McKernan, “No power, water or fuel to Gaza until hostages freed, says Israel minister”, *The Guardian*, 12/10/2023. <https://acr.ps/1L9zQMQ>.
- “British MPs Urge Government to Endorse ICC Arrest Warrant for Netanyahu, Gallant.” *Middle East Monitor*, 21/11/2021. <https://acr.ps/1L9zQp5>.
- “Court’s decision will be remembered for eternity.” *Srugim* website, 21/11/2024. <https://acr.ps/1L9zQrO>.
- “Downing Street Indicates Netanyahu Would Be Arrested in UK after ICC Warrant.” *Sky News*, 22/11/2024. <https://acr.ps/1L9zRkf>.
- “France Says Looking into Legal Implications of Netanyahu ICC Arrest Warrant.” *Deccan Herald (DH)*, 21/11/2024. <https://acr.ps/1L9zR2u>.
- Gov.il. Prime Minister’s Office. “Remarks by Prime Minister Benjamin Netanyahu on the ICC Decision.” 3/3/2021. <https://acr.ps/1L9zQnY>.
- “High-Tech Businessman Proposes: ‘It’s Not Enough to Bring Down Hamas, We Need to Raze Gaza to the Ground.’” *Globes* (Israeli newspaper), 15/10/2023. <https://bitly/3PZn8O3>.
- International Committee of the Red Cross. *Convention on the Prevention and Punishment of the Crime of Genocide*. 9/12/1948. <https://acr.ps/1L9zQrS>.
- _____. International Humanitarian Law Databases. Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. <https://acr.ps/1L9zQAC>.
- International Criminal Court. “ICC Welcomes Palestine as a New State Party.” 1/4/2015. <https://acr.ps/1L9zQlz>.
- _____. “Statement of ICC Prosecutor, Fatou Bensouda, Respecting an Investigation of the Situation in Palestine.” 1/4/2015. <https://acr.ps/1L9zQt4>.
- _____. “Statement of ICC Prosecutor Fatou Bensouda on the Conclusion of the Preliminary Examination of the Situation in Palestine and Seeking a Ruling on the Scope of the Court’s Territorial Jurisdiction.” 20/12/2019. <https://acr.ps/1L9zQYq>
- _____. “Questions and Answers on the Decision on the International Criminal Court’s Territorial Jurisdiction in the Situation in the State of Palestine.” 15/2/2021. <https://acr.ps/1L9zQSF>.
- _____. “Statement of ICC Prosecutor Fatou Bensouda Respecting an Investigation of the Situation in Palestine.” 3/3/2021. <https://acr.ps/1L9zQt4>.



- _____. “Statement of the Prosecutor of the International Criminal Court, Karim A. A. Khan KC, on the Situation in the State of Palestine: Receipt of a Referral from Five States Parties.” 17/11/2023. <https://acr.ps/1L9zRbW>.
- _____. “Situation in the State of Palestine: ICC Pre-Trial Chamber I Issues Warrant of Arrest for Mohammed Diab Ibrahim Al-Masri (Deif).” 21/11/2024. <https://acr.ps/1L9zQOW>.
- _____. “Situation in the State of Palestine: ICC Pre-Trial Chamber I Rejects the State of Israel’s Challenges to Jurisdiction and Issues Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant.” 21/11/2024. <https://acr.ps/1L9zQm2>.
- _____. “Statement of ICC Prosecutor Karim A. A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine.” 20/5/2024. <https://acr.ps/1L9zQJo>.
- _____. *Decision on Israel’s Challenge to the Jurisdiction of the Court Pursuant to Article 19 (2) of the Rome Statute*. ICC Pre-Trial Chamber Decision. 01/18-374. 21/11/2024. <https://acr.ps/1L9zQGF>.
- “Ireland Would Arrest Netanyahu Following ICC Warrant, PM Says.” *Reuters*, 22/11/2024. <https://acr.ps/1L9zQG6>.
- “Israel orders 1.1 million people in Gaza to move south: What to know.” *Al Jazeera*. 13/10/2023. <https://acr.ps/1L9zQMz>.
- “Israel’s Most Prominent Wars on the Gaza Strip”, *Al Jazeera*, 7/28/2024. <https://acr.ps/1L9zROT>.
- Krisztina Than and Ingrid Melander. “Orban Invites Netanyahu to Hungary as ICC Warrant Divides Europeans.” *Reuters*, 22/11/2024. <https://www.aol.com/news/pm-orban-says-invite-israeli-071338119.html>.
- “Netanyahu Arrest Warrant: Where can he still go in Europe?” *Politico*, 22/11/2024. <https://acr.ps/1L9zR9d>.
- “Netanyahu: We will take revenge on Hamas for this black day.” *News 1*, 10/7/2023. <https://acr.ps/1L9zQVW>.
- “Plan to transfer population of Gaza to Egypt: Likud Liberal leader proposes systematic plan to transfer Gaza residents to Egypt after levelling of the Strip not just an Israeli interest.” *Channel 7 (Israeli)*, 12/10/2023. <https://acr.ps/1L9zR10>.
- “Reaction to the ICC Warrants for Israeli and Hamas Leaders,” *Middle East Monitor/Reuters* 21/11/2024. <https://acr.ps/1L9zQvd>.
- “Revealed: Israeli Spy Chief ‘Threatened’ ICC Prosecutor over War Crimes Inquiry.” *The Guardian*. 28/5/2024. <https://acr.ps/1L9zQxu>.
- South African Embassy. “State Party Referral in Accordance with Article 14 of the Rome Statute of the International Criminal Court.” 17/11/2023. <https://acr.ps/1L9zQBp>.



- “State of Palestine welcomes the decision of the ‘International Criminal Court’ to issue arrest warrants against Netanyahu and Galant.” Palestinian News and Information Agency “Wafa,” 21/11/2024. <https://acr.ps/1L9zR6P>.
- “Statement by Israeli Minister of Defence Yoav Galant.” *Knesset TV*, TikTok. <https://acr.ps/1L9zQNK>.
- Stephanie van den Berg & Nidal Al-Mughrabi. “ICC Issues Arrest Warrants for Israel’s Netanyahu, Gallant and Hamas Leader.” *Reuters*, 22/11/2024. <https://acr.ps/1L9zQVH>.
- “Trump’s Nominee for Security Advisor Vows ‘Strong Response’ to ICC.” *Jewish News Syndicate*, 21/11/2024. <https://acr.ps/1L9zQMK>.
- United Nations, General Assembly. “Anatomy of a Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Francesca Albanese,” A/HRC/55/73 of 2024. <https://acr.ps/1L9zR2B>.
- United Nations. “A/79/384: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese - Genocide as colonial erasure,” 1 October 2024. <https://acr.ps/1L9zQwy>
- United Nations. Office for the Coordination of Humanitarian Affairs. *Reported Impact Snapshot / Gaza Strip (19 November 2024)*. 19/11/2024. <https://acr.ps/1L9zR8R>.
- United Nations. Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967. 25/3/2024. <https://acr.ps/1L9zQq1>.
- United Nations. *Rome Statute of the International Criminal Court*. The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. 17/7/1998. <https://acr.ps/1L9zQua>.
- “US Rejects ICC’s Netanyahu Warrant, Hamas Celebrates as Reactions Pour In.” *The Jerusalem Post*, 21/11/2024. <https://acr.ps/1L9zQkm>.
- US Embassy in Israel. “The United States Opposes the ICC Investigation into the Palestinian Situation.” 3/3/2021. <https://acr.ps/1L9zR5T>.
- “War of Iron Swords.” Hebrew Wikipedia. <https://acr.ps/1L9zQNn>.
- “We need to bomb Al-Shifa Hospital and starve the people of Gaza.” Rotter [Israel Forum Community], 10/10/2023. <https://acr.ps/1L9zQyj>.