

## Q&A on the arrest warrants issued by the ICC against Netanyahu and Gallant

---

### 1. What charges has the ICC brought against Israel's Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant in the arrest warrants?

On 21 November 2024, the International Criminal Court (ICC) issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant, charging them with war crimes and crimes against humanity allegedly committed in Gaza between 8 October 2023 and 20 May 2024, pursuant to the application for the arrest warrant submitted by the Office of the Prosecutor (OTP). To safeguard ongoing investigations, the arrest warrants remain classified as 'secret', however the charges have been made public by the Court. In particular, Netanyahu and Gallant are investigated as co-perpetrators for jointly committing the following crimes:

- a. **War crime of starvation as a method of warfare** ([Article 8\(2\)\(b\)\(xxv\)](#) Rome Statute): The Chamber found reasonable grounds to believe that Netanyahu and Gallant intentionally deprived the civilian population of Gaza of essential goods such as food, water, medical supplies, fuel, and electricity.
- b. **Murder as a crime against humanity** ([Article 7\(1\)\(a\)](#) Rome Statute): The deprivation of essential goods allegedly led to civilian deaths, including children, due to malnutrition and dehydration.
- c. **Persecution as a crime against humanity** ([Article 7\(1\)\(h\)](#) Rome Statute): The civilian population was allegedly targeted on political and/or national grounds, depriving them of their fundamental rights.
- d. **Other inhumane acts as a crime against humanity** ([Article 7\(1\)\(k\)](#) Rome Statute): The Chamber found that preventing medical supplies from reaching Gaza caused great suffering, forcing doctors to perform surgeries and amputations without anesthesia, leading to extreme pain and suffering.
- e. Additionally, as civilian superiors, Netanyahu and Gallant are also charged with the **war crime of intentionally directing attacks at a civilian population**, in violation of [Article 8\(2\)\(b\)\(i\)](#) and [Article 28\(b\)](#) of the Rome Statute.

## 2. What is the difference between the International Court of Justice (ICJ) and the International Criminal Court (ICC)?

The International Criminal Court (ICC) and the International Court of Justice (ICJ) are both international judicial bodies, but they have distinct mandates and legal frameworks, particularly in relation to the commission of international crimes.

The ICC is a criminal court that exercises jurisdiction over individuals, including Heads of State and other high-ranking officials, who are alleged to have committed international crimes: genocide, war crimes, crimes against humanity, and the crime of aggression. The ICC is an independent body, established in 2002 by a treaty, and has the authority to issue arrest warrants, conduct investigations, and carry out criminal trials leading to potential individual convictions and sentencing.

In contrast, the ICJ is the highest UN judicial body, dealing with legal disputes between states and providing advisory opinions on matters of international law. It does not have the power to prosecute individuals or issue arrest warrants. Instead, the ICJ examines questions of state responsibility, such as whether a state has violated international obligations, including under the Genocide Convention or international humanitarian law. In the ongoing proceedings initiated by South Africa, for instance, the ICJ is assessing whether Israel has violated the Genocide Convention with regard to its ongoing military operation in the Gaza Strip, which could lead to a finding of state responsibility for the crime of genocide.

## 3. What is the distinction between war crimes and crimes against humanity?

The Rome Statute, which governs the ICC, distinguishes between war crimes and crimes against humanity based on the context, scale, and nature of the conduct involved, as well as the legal elements required for each category of crime.

War crimes, defined in [Article 8](#) of the Rome Statute, are **serious violations of international humanitarian law committed in the context of armed conflict**. These crimes include, for instance, intentionally directing attacks against civilians ([Article 8\(2\)\(b\)\(i\)](#)), starvation of civilians as a method of warfare ([Article 8\(2\)\(b\)\(xxv\)](#)), and intentionally directing attacks against humanitarian personnel or installations ([Article 8\(2\)\(b\)\(iii\)](#)). War crimes require the existence of an international or non-international armed conflict, and a nexus between the alleged acts and the conflict.

On the other hand, crimes against humanity are defined in [Article 7](#) of the Rome Statute. Unlike war crimes, crimes against humanity do not require a link to an armed conflict, but they must be **part of a widespread or systematic attack against the civilian population**, i.e. a broader campaign of abuse against the population, typically involving a state or organizational policy.

## 4. How does the ICC define its jurisdiction in this situation, particularly since Israel is not a member state of the ICC?

The ICC has jurisdiction over the situation in Palestine based on Palestine's 2015 acceptance and ratification of the Rome Statute, and its referral of the situation to the ICC, including crimes committed since June 2014.

According to the ICC Pre-Trial Chamber I decision of 21 November 2024, Palestine accepted the jurisdiction of the ICC on 1 January 2015 under [Article 12\(3\)](#) of the Rome Statute, which allows a non-member state to accept the Court’s jurisdiction over crimes committed within its territory. In parallel, Palestine ratified the Rome Statute, becoming a State Party. The ICC Pre-Trial Chamber I determined in 2021 that it has territorial jurisdiction over the territory of Palestine, being the Palestinian territory occupied by Israel since 1967 (the West Bank, including East Jerusalem, and the Gaza Strip).

Israel — not a State Party to the Rome Statute — has claimed that the ICC would not have jurisdiction under [Article 19\(2\)](#) of the Rome Statute, arguing that Palestine does not have the legal capacity to “delegate” jurisdiction to the ICC, while also asserting that the ICC cannot exercise jurisdiction over Israeli nationals. However, the ICC rejected Israel’s challenge, stating that the acceptance of jurisdiction by Israel is not required because the Court’s jurisdiction is based on territory rather than nationality, and does not imply any “delegation” from the territorial state, nor any consent from the State of nationality. This means that the ICC can prosecute crimes committed on the territory of a State Party, even if the person accused is a national of a non-member state. Jurisdiction in this case is based on where the crime occurred, Palestine, and not the nationality of the alleged perpetrators.

Israel has also argued that its claim that Palestine is not a state should be enough to invalidate ICC jurisdiction. However, the ICC also dismissed this argument, stating that it had already [ruled on this matter in 2021](#), and this decision stands as *res judicata*—meaning it has already been adjudicated.

In conclusion, despite Israel’s non-membership of the Rome Statute and its refusal to recognize the ICC’s jurisdiction, **the ICC has based its jurisdiction on Palestine’s accession to the Rome Statute and the principle of territorial jurisdiction**, affirming its legal authority to investigate and prosecute alleged crimes committed in Gaza and the West Bank (including East Jerusalem).

## 5. Can Netanyahu and Gallant invoke (personal) immunity as high-ranking state officials?

Netanyahu and Gallant cannot invoke personal immunity as high-ranking state officials before the ICC. The ICC has consistently upheld the principle that **immunity does not apply to prosecutions before international courts**, particularly for the serious international crimes under its jurisdiction, such as war crimes and crimes against humanity.

[Article 27](#) of the Rome Statute explicitly states that official capacity as a Head of State or government, a member of a government, or a parliamentarian does not exempt a person from criminal responsibility nor constitute a ground for reducing a sentence. This provision establishes that no immunity shields individuals from prosecution before the ICC, regardless of their position.

In addition, the ICC ruling on Jordan’s non-compliance in the [Al-Bashir case](#) confirmed that States Parties to the Rome Statute have accepted that immunities do not apply before the Court. The ICC also ruled that **State Parties cannot refuse to cooperate with arrest warrants on the basis of Head of State immunity**, as doing so would contradict their obligations under the Rome Statute.

- a. *What precedents indicate that the exception to immunity for arrest warrants issued by international courts has developed into customary international law?*

The ICC Appeals Chamber's ruling in the [Al-Bashir case](#) provides a key precedent. The Appeals Chamber ruled that there is no Head of State immunity before an international court, stating that customary international law does not recognize such immunity as a bar to international criminal jurisdiction. This means that even sitting Heads of State and senior officials can be subject to ICC proceedings. It is worth noting that Al-Bashir was the President of Sudan at the time the ICC issued arrest warrants against him in 2009 and 2010.

Sudan, like Israel, was not a State Party to the Rome Statute. Given the legal evolution in cases such as *Slobodan Milošević* before the International Criminal Tribunal for the former Yugoslavia—who was still President of Serbia when the indictment against him was issued in 1999 and who remained in office until 2000—*Charles Taylor* before the Special Court for Sierra Leone, *Hashim Thaçi* before the Kosovo Specialist Chambers, and *Omar Al-Bashir* and *Vladimir Putin* before the ICC, the principle that personal immunity does not apply before international criminal courts and tribunals has become firmly established.

Additionally, in the cases of [Uhuru Kenyatta](#) and [William Ruto](#), both individuals were under investigation and summoned to appear before the ICC whilst in office as the President and Deputy President of Kenya, respectively. Although no arrest warrants were ultimately issued against them, their cases further underscore the irrelevance of official capacity to the exercise of ICC jurisdiction over sitting state officials.

This principle, expressly codified in [Article 27](#) of the Rome Statute, has now evolved into customary international law, affirming that no official status can shield individuals from accountability before international criminal tribunals.

Within the German legal system, this norm holds particular significance. Under [Article 25](#) of the German Basic Law (*Grundgesetz*), the rules of customary international law take precedence over federal law, ensuring that the non-recognition of personal immunity before international courts and tribunals prevails in Germany's legal framework.

## **6. What obligations do ICC member states have with regard to the enforcement of the arrest warrants?**

ICC member states have clear legal obligations regarding the enforcement of arrest warrants issued by the ICC under the Rome Statute. These obligations include cooperation in arrests, surrender of suspects, and assistance in legal proceedings.

Under [Article 86](#) of the Rome Statute, **all States Parties must cooperate fully with the ICC** in its investigations and prosecutions, thus including the execution of arrest warrants.

[Article 89\(1\)](#) of the Rome Statute further specifies that State Parties must comply with ICC requests for the arrest and surrender of individuals. If a person subject to an ICC warrant enters the territory of a State Party, that state is obligated to detain and transfer them to the Court. Member states also have an obligation under [Article 88](#) of the Rome Statute to ensure that their national legal procedures allow for full cooperation with the ICC, including the execution of arrest warrants.

## 7. What specific obligations does Germany have as an ICC member state if Netanyahu or Gallant enter Germany?

As a member state of the ICC, Germany is legally **obligated under the Rome Statute to cooperate fully with the ICC** in its investigations and prosecutions. This includes cooperation in the execution of arrest warrants issued by the Court. Specifically, [Article 89\(1\)](#) of the Rome Statute mandates that States Parties **comply with requests for arrest and surrender** of individuals sought by the ICC.

In the context of the arrest warrants issued by the ICC for Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant on 21 November 2024, Germany's obligations are clear: if either Netanyahu or Gallant enters German territory, **Germany is required to arrest them and surrender them to the ICC.**

Inviting Netanyahu to Germany while guaranteeing him immunity would violate both international and domestic German law. Since the last legislative period, and with the approval of all democratic parties, German law has explicitly excluded functional immunity for crimes under international law ([§20\(2\)](#) of the *Gerichtsverfassungsgesetz* (GVG)).

## 8. What role does the principle of complementarity play in this context?

The principle of complementarity is a core principle of the ICC that establishes the Court as a last resort jurisdiction for prosecuting international crimes. This principle, enshrined in [Article 17](#) of the Rome Statute, means that the ICC only intervenes if national jurisdictions are unwilling or unable to genuinely investigate and prosecute crimes within its jurisdiction. In this context, the principle of complementarity plays a decisive role in determining whether the ICC can proceed with an investigation or prosecution, including in relation to Israeli officials.

According to [Article 17\(1\)\(a\) and \(b\)](#), a case is inadmissible before the ICC if:

- a. A State with jurisdiction is already investigating or prosecuting the case, unless it is unwilling or unable to do so genuinely.
- b. The case has been investigated by a State that decided not to prosecute, unless that decision resulted from an unwillingness or inability genuinely to prosecute.

It is undisputed that Israel has not conducted any domestic investigations or prosecutions that would preclude the jurisdiction of the ICC under the principle of complementarity. Following the opening of the ICC investigation in 2021 and the Prosecutor's notification under [Article 18](#) of the Rome Statute, Israel did not respond within the one-month period in which it can assert its jurisdiction ([Article 18\(2\)](#)). Since that time, no genuine domestic proceedings have been initiated in relation to the alleged crimes falling within the scope of the ICC's investigation. As a result, the conditions under [Article 17](#) of the Rome Statute—which require that a case is being or has been genuinely investigated or prosecuted by the relevant State—are not fulfilled, and thus the ICC retains jurisdiction over the situation in Palestine, including any potential cases against Israeli officials in that context.

## 9. What impact do the ICC arrest warrants have on the freedom of movement of Netanyahu and Gallant?

The arrest warrants issued by the ICC for Benjamin Netanyahu and Yoav Gallant significantly impact their freedom of movement, particularly in relation to travel to ICC member states. Since the ICC does not have its own enforcement mechanisms, it relies on State Parties to the Rome Statute to execute its arrest warrants. This means that any of the Court's 125 member states are legally obligated to arrest and surrender Netanyahu and Gallant if they enter their territory. Consequently, their ability to travel is now highly restricted, as they face a real risk of being arrested in any ICC member state.

In conflict with their obligations under the Rome Statute, some countries have extended invitations or expressed a willingness to host Netanyahu and Gallant, despite their wanted status before the ICC. Hungary has openly [invited](#) Netanyahu for an official visit, with Prime Minister Viktor Orbán rejecting the legitimacy of the ICC's decision to issue the arrest warrants. Similarly, Poland has passed a [government resolution](#) to ensure Netanyahu's attendance at the 80th anniversary of the liberation of Auschwitz-Birkenau, effectively guaranteeing his safe entry. In Germany, CDU leader Friedrich Merz has [stated](#) that he would invite Netanyahu to Germany and ensure that he could visit without risk of arrest. In Italy, conflicting signals have [emerged](#): while some officials reiterated support for the ICC, others, including the Deputy Premier, [indicated](#) that Netanyahu would not be arrested if he travelled to the country. France, too, has taken an ambiguous stance, initially affirming support for the Rome Statute but later [suggesting](#) that immunity rules might still protect Israeli leaders under certain circumstances. These invitations and declarations highlight a clear violation of these states' obligations under international law, influenced by political, diplomatic and economic considerations.

## 10. Are there any precedents for issuing such arrest warrants against sitting Heads of State or government?

That personal immunity does not shield sitting Heads of State or high-ranking officials from accountability for international crimes is confirmed by the case law of international criminal courts and tribunals. Courts have applied this principle uniformly across different legal and political contexts, reinforcing the notion that individual responsibility under international law transcends national or geopolitical considerations.

In the case of [\*Democratic Republic of the Congo v. Belgium\*](#), the ICJ clarified the critical distinction between immunity before national courts and the absence of such immunity before international criminal courts and tribunals. The Court held that under customary international law, incumbent high-ranking state officials, such as foreign ministers, enjoy full immunity from criminal jurisdiction in foreign national courts, even when accused of serious crimes like war crimes or crimes against humanity. This immunity is granted not to protect the individual as such, but to preserve the effective functioning of the state they represent.

However, the ICJ explicitly acknowledged that this immunity does not apply before international courts, such as the ICC. While national courts of other states are barred from prosecuting sitting officials of a foreign state without that state's consent, international courts derive their jurisdiction from treaty or United Nations Security Council mandate, and as such, they are not bound by the immunities that operate between sovereign states. This exception aligns with [Article 27](#) of the Rome Statute, which confirms that official capacity shall in no case exempt a person from criminal responsibility before the ICC.



From Africa (*Al-Bashir*, *Gaddafi*, and *Taylor*) to Europe (*Milošević*) and more recently to Russia (*Putin*) and the Middle East (*Netanyahu* and *Gallant*), international criminal courts and tribunals have consistently exercised jurisdiction over state leaders who are alleged to have committed war crimes, crimes against humanity, and genocide.

## **11. What consequences would Germany face if it refuses to enforce the arrest warrants?**

If Germany refuses to enforce the ICC arrest warrants that have been issued for Netanyahu and Gallant, it could face serious legal, political, and diplomatic consequences at both the international and domestic level.

Germany is a State Party to the Rome Statute, which it ratified in 2000. As a member state, Germany has a legal obligation to “cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court” ([Article 86](#) Rome Statute). This includes executing arrest warrants issued by the ICC.

If it fails to enforce the warrants of arrest against Netanyahu and Gallant, the ICC may find Germany to be in violation of its obligations under the Rome Statute. The ICC could also refer Germany’s non-compliance to the Assembly of States Parties or to the United Nations Security Council ([Article 87\(7\)](#)). While the ICC does not have enforcement powers to compel Germany’s compliance, such a referral could lead to serious diplomatic and reputational consequences for Germany.

---

**Status: April 2025**

European Center for Constitutional and Human Rights (ECCHR) e. V.

[www.ecchr.eu](http://www.ecchr.eu)