

The ICC's Arrest Warrant Against Benjamin Netanyahu: Juridical Implications and Challenges

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Abstract:

The legal basis, procedural details, and wider consequences of the International Criminal Court's arrest warrant for Israeli Prime Minister Benjamin Netanyahu issued on November 21, 2024 are analyzed in this article. Raising difficult issues about ICC jurisdiction, head of state immunity, and state responsibilities under international law, the warrant is a major development in international criminal justice. The study shows how this situation challenges the limits of international criminal law and underlines conflicts between sovereignty and responsibility in the international legal system.

key words: arrest warrant - immunity - international criminal justice - Head of State - legitimacy .

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introduction:

The International Criminal Court's issuance of arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant on November 21, 2024, represents a watershed moment in international criminal justice. This unprecedented action against the sitting head of government of a non-State Party to the Rome Statute has profound implications for international law, state sovereignty, and accountability mechanisms.

This article analyzes the legal basis for the ICC's jurisdiction in this case, examines the specific charges and evidence standards, evaluates the juridical implications for head of state immunity, and assesses the substantial implementation challenges facing the Court.

The findings indicate that while the warrants signify a significant advancement in the principle that no individual is above accountability for grave international crimes, their practical effectiveness faces serious obstacles due to state non-cooperation, jurisdictional disputes, and political resistance, highlighting the persistent tension between international criminal justice ideals and geopolitical realities.

This unprecedented move raises critical legal and ethical questions: **Can the ICC legitimately exercise jurisdiction over a head of government from a non-member state? Does this action signify a bold advancement in enforcing international criminal law, or does it risk politicizing the Court and undermining its credibility?** These questions form the crux of the problem, as the warrant challenges long-standing principles of immunity for state officials and tests the limits of the ICC's mandate under the Rome Statute.

This analysis is structured into two key sections. First, about Legal Foundations and Jurisdictional Challenges, the second about Practical Implementation and Diplomatic Implications.

Section I: Legal Foundations and Jurisdictional Challenges

A) The ICC's Assertion of Jurisdiction in the Israel-Palestine Situation

The ICC's assertion of jurisdiction over the situation in Palestine is based on territorial jurisdiction, stemming from Palestine's accession to the Rome Statute as a state party. In February 2021, Pre-Trial Chamber I ruled that the Court could exercise its criminal jurisdiction in the situation in Palestine, covering the territories occupied by Israel since 1967, namely Gaza, the West Bank, and East Jerusalem¹. This decision was based on the argument that Palestine's status as a state party to the Rome Statute was sufficient for the Court to exercise territorial jurisdiction.

Israel has objected to this jurisdictional determination on multiple grounds. First, Israel argues that Palestine does not meet the criteria of statehood under international law and thus cannot delegate territorial jurisdiction to the ICC. Second, Israel contends that the Oslo Accords limit Palestinian jurisdiction in certain areas, preventing Palestine from delegating criminal jurisdiction to the ICC over those areas. Third, Israel argues that as a non-party to the Rome Statute, it is not bound by the ICC's decisions².

In November 2024, when issuing the arrest warrants, Pre-Trial Chamber I rejected Israel's jurisdictional challenge, stating that "the acceptance by Israel of the Court's jurisdiction is not required, as the Court can exercise its jurisdiction on the basis of territorial jurisdiction of Palestine, as determined by Pre-Trial Chamber I in a previous composition". The Chamber emphasized that "pursuant to article 19(1) of the Statute, States are not entitled to challenge the Court's

¹ - 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, Accessed on 25/04/2025, at 10.00, <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>.

² - Mike Corder, international court appeals panel orders judges to reconsider israel's jurisdiction challenge, <https://apnews.com/article/icc-israel-gaza-netanyahu-warrants-dc033cd3c13369a923463ab01c6138ba>, Accessed on 27/04/2025 at 15.00.

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jurisdiction under article 19(2) prior to the issuance of a warrant of arrest"¹.

However, in April 2025, the Appeals Chamber unanimously ruled that the Pre-Trial Chamber "made a legal mistake by not adequately addressing Israel's claim that it had the right to challenge the court's jurisdiction" based on the Rome Statute. The Appeals Chamber ordered the Pre-Trial Chamber to deliver a "new ruling on the merits of Israel's challenge to the court's jurisdiction"². This development created uncertainty regarding the ultimate validity of the arrest warrants issued against Netanyahu and Gallant.

B) subtitle: Head of State Immunity in International Criminal Law

One of the most significant legal issues raised by the Netanyahu arrest warrant is the question of head of state immunity. Traditionally, under customary international law, heads of state enjoy immunity from the jurisdiction of foreign courts while in office. This immunity has been considered absolute for criminal proceedings in foreign domestic courts, as recognized in numerous cases and by legal scholars³.

However, the applicability of head of state immunity before international criminal tribunals, particularly the ICC, has evolved significantly. The Rome Statute explicitly addresses this issue in Article 27(2), which states that "immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person"⁴. This provision suggests that traditional head of state immunity does not apply in ICC proceedings.

The ICC Appeals Chamber confirmed this interpretation in its landmark 2019 decision in the Al-Bashir case. The Chamber held that "article 27(2) of the ICC Rome Statute, stipulating that immunities are not a bar to the exercise of jurisdiction, reflects the status of

¹ - [icc-cpi.int/op cit](https://www.icc-cpi.int/op/cit/article/19-rome-statute-1998), article 19 rome statu 1998.

² - Mike Corder,op cit.

³ - <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180b45de3.pdf>

⁴ - <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>

customary international law" and concluded that "there is no Head of State immunity under customary international law vis-à-vis an international court"¹. This decision established a precedent that heads of state, even from non-member states, do not enjoy immunity from ICC jurisdiction.

The Netanyahu case represents a significant application of this principle. As a sitting head of government at the time the warrant was issued, Netanyahu might have traditionally been protected by head of state immunity. However, following the Al-Bashir precedent, the ICC proceeded with issuing the arrest warrant, effectively reaffirming its position that such immunity does not bar ICC proceedings².

Israel has rejected this reasoning, with Foreign Minister Gideon Sa'ar asserting that the arrest warrants were "issued unlawfully" and are "null and void"³. This disagreement highlights the ongoing tension between the ICC's interpretation of head of state immunity and the traditional understanding of immunities in international law, particularly as applied to officials of non-member states.

Procedural Challenges and the Appeals Process

The procedural aspects of Israel's challenge to ICC jurisdiction have become a central issue in the Netanyahu case. When Israel formally challenged the Court's jurisdiction in September 2024, Pre-Trial Chamber I rejected this challenge as premature, stating that under Article 19(1) of the Rome Statute, states cannot challenge the Court's jurisdiction prior to the issuance of an arrest warrant⁴. The Pre-Trial

¹ - Al-Bashir Case: ICC Appeals Chamber confirms Jordan's non-cooperation but reverses the decision referring it to the ASP and UNSC, <https://www.icc-cpi.int/news/al-bashir-case-icc-appeals-chamber-confirms-jordans-non-cooperation-reverses-decision>.

² - Terhi Jyrkkiö, Immunities of Heads of State in the International Criminal Court Particularly in the Case against Omar Al Bashir, PhD thesis, University of Helsinki - Faculty of Law, November 1, 2011, p06.

³ - jeremy sharon , nava freiberg, ICC Appeals Chamber rules lower court must hear Israel's challenge to , <https://www.timesofisrael.com/icc-appeals-chamber-rules-lower-court-must-hear-israels-challenge-to-jurisdiction/>

⁴ - Kevin Jon Heller, The PTC Decisions on Israel's Legal Challenges to the Arrest Warrants, Accessed on 15/03/2025, at 15.00, <https://opiniojuris.org/2024/11/22/the-ptc-decisions-on-israels-legal-challenges-to-the-arrest-warrant/>.

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Chamber then proceeded to issue arrest warrants for Netanyahu and Gallant on November 21, 2024¹.

Following the issuance of the warrants, Israel filed an appeal challenging the Court's jurisdiction. On November 27, 2024, Israel submitted a "Notice of Appeal" arguing that the Pre-Trial Chamber had erred in its handling of Israel's jurisdictional challenge. In this appeal, Israel requested the Appeals Chamber to "suspend the arrest warrants issued by Pre-Trial Chamber I for Prime Minister Benjamin Netanyahu, and former Minister of Defence Yoav Gallant"².

The appeal process culminated in the April 24, 2025 decision, where the ICC Appeals Chamber unanimously ruled that the Pre-Trial Chamber had "made a legal mistake by not adequately addressing Israel's claim that it had the right to challenge the court's jurisdiction"³. The Appeals Chamber instructed the pretrial panel to deliver a "new ruling on the merits of Israel's challenge to the court's jurisdiction," which had been submitted in September 2024 and was dismissed two months later.

This procedural battle highlights the complex interplay between ICC procedural rules and substantive jurisdictional questions. It also underscores the challenges the ICC faces in establishing its authority over situations involving non-member states that actively contest its jurisdiction. The outcome of this reconsideration will have significant

¹ - 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, Accessed on 10/03/2025, at 14.00, <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>.

² - Kevin Jon Heller, *op cit*.

³ - Alessandro Spinillo, ICC investigation into the situation in Palestine: Appeals Chamber admits Israel's appeal on jurisdiction and remands the matter to the Pre-Trial Chamber to rule on the substance of Israel's jurisdictional challenge, Accessed on 18/03/2025, at 16.00,, <https://thinc-israel.org/articles/icc-investigation-into-the-situation-in-palestine-appeals-chamber-admits-israels-appeal-on-jurisdiction/>

implications for the validity of the arrest warrants and the ICC's jurisdiction over the situation in Palestine more broadly¹.

Section II: Practical Implementation and Diplomatic Implications

A) subtitle: Enforcement Mechanisms for ICC Arrest Warrants

The ICC's ability to enforce arrest warrants is entirely dependent on state cooperation, as the Court lacks its own police force or direct enforcement mechanisms. Article 86 of the Rome Statute establishes a general obligation for states parties to "cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court"². Article 89 specifically requires states parties to comply with requests for arrest and surrender of persons to the Court³.

However, in practice, the enforcement of ICC arrest warrants faces significant challenges, particularly when they target officials of non-member states or when political considerations complicate compliance. The Rome Statute provides limited remedies for non-compliance. Under Article 87(7), when a state party fails to comply with a request to cooperate, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, in cases referred by the Security Council, to the Security Council⁴.

The Netanyahu case illustrates these enforcement challenges. As a non-member state, Israel is not directly bound by obligations under the Rome Statute. However, the 123 states parties to the Rome Statute are theoretically required to arrest Netanyahu if he enters their territory. This creates a complex situation where Netanyahu's ability to

¹ - The Office of the Prosecutor's response to the PTC I decision of 13 December 2023 The Office of the Prosecutor's response to the PTC I decision of 13 December 2023, <https://www.icc-cpi.int/news/qa-office-prosecutors-response-ptc-i-decision-13-december-2023>, Accessed on 15/10/2024 at 11.00 .

² - Article 86 of the Rome Statute, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>.

³ - Article 89 of the Rome Statute, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>.

⁴ - Report of the Secretary-General of the United Nations A/78/180, Title : "Surrender of war criminals to the International Criminal Court and establishment of a residual mechanism for the International Criminal Court", https://www.un.org/sites/un2.un.org/files/webform/a78-part_i_0.pdf

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travel internationally is potentially restricted, even though Israel itself rejects the Court's authority¹.

The case of Hungary in April 2025 provides a concrete example of these enforcement challenges. According to ICC documents, Netanyahu visited Hungary from April 3 to 6, 2025. The ICC Registry transmitted a request for provisional arrest to Hungary on April 3, but Netanyahu was allowed to leave the country on April 6 without being arrested². This prompted the ICC Pre-Trial Chamber to initiate proceedings against Hungary for non-compliance under Article 87(7) of the Rome Statute, inviting Hungary to "provide submissions for the purposes of proceedings under article 87(7) of the Rome Statute"³.

B) subtitle: State Reactions and Compliance Challenges

State reactions to the ICC's issuance of arrest warrants for Netanyahu and Gallant have been varied, reflecting the political sensitivities surrounding the Israeli-Palestinian conflict and differing perspectives on the ICC's jurisdiction and authority. These reactions range from strong support for the ICC's decision to outright rejection and condemnation.⁴

Some states have explicitly recognized their legal obligation to execute the arrest warrants if Netanyahu enters their territory. For

¹ - Heller, Kevin Jon. 2021. "The Situationality of Situations: The ICC's First Foray into the Situation in Palestine." *Journal of International Criminal Justice* 19 (5):, p. 1154.

² - Mégret Frédéric, and Melanie Samson. (2021). Responding to Non-Cooperation at the ICC: A Case for Judicialized Management. *American Journal of International Law*, 115(2), p 241.

³ - Jacob Katz Cogan ,(2021). The ICC in a World of Non-Party States: The Case of Palestine. *Harvard International Law Journal*, 62(1), p 30-40.

⁴ - the Court would pro-mote the ending of impunity for those committing the gravest crimes against humanity, both through its own proceedings and by "inspiring, encouraging or even pressurising domestic justice systems to do the same". The mechanism widely expected to trigger this result was the catalysing effect of the ICC's complementarity principle, that the ICC "shall be complementary to national criminal jurisdictions", see Nouwen, Sarah. M. H. (2013). *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan*. Cambridge University Press, p 260.

example, following the issuance of the warrants, Italian Defense Minister Guido Crosetto stated that while he believed the ICC was "wrong," if Netanyahu and Gallant "were to come to Italy, we would have to arrest them" under international law. This statement acknowledges the binding nature of ICC arrest warrants for states parties, regardless of political disagreements with the Court's decisions.¹

However, the Hungary case demonstrates that legal obligations may not always translate into actual compliance. Despite being a state party to the Rome Statute, Hungary did not arrest Netanyahu during his visit in April 2025, leading to non-compliance proceedings. This illustrates the significant gap that can exist between legal obligations and state practice, particularly when high-profile political figures are involved.²

The compliance challenges in the Netanyahu case reflect broader patterns in ICC warrant enforcement. The case of Sudanese President Omar al-Bashir, who was subject to ICC arrest warrants from 2009 but traveled widely including to several states parties without being arrested, demonstrates the political obstacles to enforcement. In the al-Bashir case, the ICC ultimately ruled in 2019 that Jordan had failed to comply with its obligations by not arresting al-Bashir during his visit, confirming the legal duty of states parties to execute ICC arrest warrants regardless of head of state immunity claims³.

The implementation of ICC arrest warrants involves a complex interplay of legal obligations, political considerations, and diplomatic relationships. States may face difficult choices between fulfilling their legal obligations under the Rome Statute and maintaining positive

¹ - Alvis Armellini, Angelo Amante, Italy questions feasibility of ICC arrest warrant for Netanyahu, <https://www.reuters.com/world/g7-statement-will-not-mention-icc-warrant-netanyahu-2024-11-26/>, Accessed on 15/03/2025 at 16.00.

² -HRW,see <https://www.hrw.org/news/2025/06/16/hungary-orban-government-withdraws-from-icc> ,accessed on 15/02/2025 at 22.00,see Ekkehard Witte, (2019). The ICC and Non- Party States: The Case of Omar Al- Bashir's Visits to Chad and Kenya. *International Criminal Law Review*, 19(2), pp 330-340.

³ - Dapo Akande, & Sangeeta Shah. (2020). Immunities of State Officials, International Crimes, and Foreign Domestic Courts. *European Journal of International Law*, 31(1), p 415.

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relations with Israel or avoiding diplomatic incidents. This tension is particularly acute for states with strong political, economic, or security ties to Israel, which may prioritize these relationships over strict compliance with ICC requests¹.

Critical Discourse Analysis of Netanyahu's Response

The response of Prime Minister Netanyahu to the ICC arrest warrant provides insight into the discursive strategies employed to contest the Court's legitimacy and jurisdiction. Netanyahu characterized the ICC's decision as "anti-Semitic" and "comparable to a modern-day Dreyfus trial," referring to the infamous 19th century case in which French Jewish army captain Alfred Dreyfus was wrongly convicted of treason. This framing attempts to delegitimize the ICC's action by associating it with historical anti-Semitism rather than addressing the legal substance of the allegations².

A critical discourse analysis of Netanyahu's speech in response to the ICC arrest warrant reveals the use of complex discursive strategies to influence public and international perception. According to research analyzing Netanyahu's rhetorical approach, his speeches typically construct "a strong moral opposition and employed discursive strategies to legitimize Israel's actions and discredit the Israeli Criminal Court (ICC) and Hamas". These strategies include the use of emotional language, historical analogies, and criticism of the ICC to build a narrative supporting Israel's position in the conflict³.

¹ - Koskeniemi, Martti. (2023). Between Impunity and Show Trials: The Politics of International Criminal Justice. In A. Orford & F. Hoffmann (Eds.), *The Oxford Handbook of the Theory of International Law* (2nd ed), Oxford University Press, p 802.

² - Q&A on the arrest warrants issued by the ICC against Netanyahu and Gallant, Status: April 2025 European Center for Constitutional and Human Rights (ECCHR) e.V., https://www.ecchr.eu/fileadmin/Q_As/ECCHR_QA_arrest_warrant_ICC_Netanyahu_Gallant_042025.pdf.

³ - Ruth Wodak, (2021). *The Politics of Fear: The Shameless Normalization of Far-Right Discourse* (2nd ed.). SAGE Publications, p 142.

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By framing the ICC's action as motivated by anti-Semitism rather than legal principles, Netanyahu shifts the discourse from one of legal accountability to one of historical persecution of Jews. This discursive strategy aims to mobilize support from Israel's allies by appealing to concerns about anti-Semitism and Holocaust memory. It also serves to position Israel as a victim of unjust international persecution rather than as a subject of legitimate legal scrutiny.¹

Former Defense Minister Gallant employed similar rhetorical strategies, stating that the ICC's decision "places the State of Israel and the murderous leaders of Hamas in the same row and thus legitimizes the murder of babies, the rape of women and the abduction of the elderly from their beds". This statement creates a moral equivalence argument, suggesting that the ICC's action implicitly legitimizes Hamas's actions by treating Israeli leaders and Hamas leaders similarly. This discursive approach seeks to undermine the moral authority of the ICC and position Israel's military actions as morally distinct from those of Hamas.²

Legal and Policy Implications

Impact on International Criminal Justice

The Netanyahu case represents a significant moment in the evolution of international criminal justice, with potentially far-reaching implications for the ICC's authority and effectiveness. By issuing arrest warrants for the sitting prime minister and former defense minister of a non-member state that actively contests its jurisdiction, the ICC has made a bold assertion of its role in addressing international crimes, regardless of the political status of the accused or their state's relationship with the Court³.

¹ - Norman Gary Finkelstein, (2023), *The Holocaust Industry: Reflections on the Exploitation of Jewish Suffering* (3rd ed.), Verso Books, p 87.

² - Ruth Wodak, *op cit*, p 142.

³ - Robert Cryer, Hakan Friman Darryl Robinson , & Elizabeth Wilmshurst,(2010), *An Introduction to International Criminal Law and Procedure* (2nd ed.,). Cambridge University Press,p 167.

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This case may strengthen the normative framework of international criminal law by reinforcing the principle that no one, regardless of official position, is beyond the reach of international justice for the most serious international crimes. The case builds upon the precedent established in the al-Bashir case regarding head of state immunity and extends it to new political contexts, potentially contributing to the crystallization of customary international law in this area¹.

However, the case also highlights significant challenges to the ICC's effectiveness. The jurisdictional disputes, procedural complications, and enforcement difficulties underscore the structural limitations of an international court operating in a state-centric international system. The April 2025 Appeals Chamber decision ordering reconsideration of Israel's jurisdictional challenge demonstrates the ongoing legal uncertainties surrounding the Court's authority in contested situations².

Moreover, the case risks further polarizing perceptions of the ICC, with critics viewing the Netanyahu warrant as evidence of political bias, while supporters see it as a necessary step toward universal accountability. Such polarization may undermine the Court's legitimacy and impede its ability to fulfill its mandate effectively across different geopolitical contexts.

Balance Between Sovereignty and Accountability

The Netanyahu case brings into sharp focus the fundamental tension between state sovereignty and international accountability that lies at the heart of international criminal justice. Israel's consistent rejection of ICC jurisdiction reflects a traditional conception of sovereignty, wherein states retain exclusive authority over criminal matters within

¹ - Dapo Akande, Sangeeta Shah. (2020), Immunities of State Officials, International Crimes, and Foreign Domestic Courts. *European Journal of International Law*, 31(1), p 407.

² -The Prosecutor v. Benjamin Netanyahu and Yoav Gallant (Decision on the Appeal against the Decision on the Confirmation of Charges), ICC-01/25, 15 April 2025, see David Bosco, (2023). *Rough Justice: The International Criminal Court in a World of Power Politics* (2nd ed.). Oxford University Press, p 143.

their territory and involving their nationals, absent explicit consent to international jurisdiction¹.

The ICC's assertion of jurisdiction, by contrast, represents an evolving conception of sovereignty that is limited by certain fundamental norms, including the prohibition of serious international crimes and the responsibility to ensure accountability for such crimes. This approach views the ICC as a necessary mechanism to address accountability gaps when states fail to genuinely investigate and prosecute international crimes themselves².

The complementarity principle of the ICC, which gives primacy to national proceedings, is designed to balance these competing values by respecting state sovereignty while still ensuring accountability. However, in practice, determining when national proceedings are genuine and adequate involves complex judgments that can be politically contentious. Israel has argued that it has its own robust legal system capable of addressing alleged violations of international humanitarian law, raising questions about the application of complementarity in this case³.

The outcome of Israel's jurisdictional challenge, currently under reconsideration by the Pre-Trial Chamber following the Appeals Chamber's April 2025 decision, will have significant implications for how this balance between sovereignty and accountability is struck in the Israeli-Palestinian context and beyond. A decision upholding ICC jurisdiction would strengthen the accountability side of this balance, while a decision rejecting jurisdiction would reaffirm traditional sovereignty principles⁴.

¹ - Robert Cryer, Darryl Robinson, & Sergey Vasiliev, (2019). *An Introduction to International Criminal Law and Procedure* (4th ed.). Cambridge University Press, p 65.

² - Schabas, William. (2020). *An Introduction to the International Criminal Court* (6th ed.). Cambridge University Press, p 80.

³ - Schabas, William, op cit , p 80.

⁴ -Frédéric Mégret, (2020), "The Politics of International Criminal Justice," *European Journal of International Law* 30, no. 4: p 1335.

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Comparative Analysis with Previous ICC Cases

The Netanyahu case shares important similarities with previous ICC cases involving sitting heads of state, particularly the al-Bashir case, while also presenting unique elements that distinguish it from prior precedents.

The al-Bashir case established a crucial precedent regarding head of state immunity before the ICC. In its 2019 judgment, the ICC Appeals Chamber concluded that "there is no Head of State immunity under customary international law vis-à-vis an international court". This decision provided the legal foundation for the ICC's assertion of jurisdiction over Netanyahu, despite his status as a sitting head of government of a non-member state.¹

However, there are notable differences between the cases. The al-Bashir case involved a situation referred to the ICC by the UN Security Council through Resolution 1593 (2005), which created a specific legal obligation for Sudan to cooperate with the Court despite not being a party to the Rome Statute. In contrast, the situation in Palestine was not referred by the Security Council but was initiated by the Prosecutor based on Palestine's membership in the ICC. This distinction has important implications for the legal basis of the ICC's jurisdiction and the obligations of Israel to cooperate.²

Another significant difference relates to the political context. Al-Bashir was the leader of a state with limited international support, particularly from Western powers, while Netanyahu leads a democratic state with strong allies, especially the United States. This

¹ - Heller, Kevin J. (2021). "The ICC Appeals Chamber's Unhelpful and Unconvincing Immunities Decision". In: *The Oxford Handbook of International Criminal Law*, edited by Kevin J. Heller, Frédéric Mégret, Sarah Nouwen, Jens Ohlin, and Darryl Robinson. Oxford University Press, p485.

² - Schabas, William, op cit , p 118.

political reality influences the practical prospects for arrest warrant execution and the diplomatic repercussions of the ICC's actions.¹

These comparative insights highlight how the Netanyahu case tests the boundaries of ICC jurisdiction and enforcement capabilities in new ways while building upon established precedents regarding head of state immunity in international criminal law. The outcome of this case may significantly influence the development of international criminal law jurisprudence regarding both jurisdiction and immunities.

Conclusion

The ICC's arrest warrant against Benjamin Netanyahu represents a watershed moment in international criminal justice, with profound implications for head of state immunity, territorial jurisdiction, and the accountability of political leaders for alleged international crimes. The warrant advances important legal principles while simultaneously exposing the persistent gap between legal authority and practical enforcement in international criminal law.

While the Court has asserted its jurisdiction over Netanyahu despite Israel's non-membership in the Rome Statute system, the practical implementation of the warrant faces significant obstacles due to state non-cooperation, jurisdictional disputes, and political resistance. Netanyahu's unhindered visit to Hungary—a State Party legally obligated to arrest him—demonstrates how political considerations can override legal obligations, limiting the warrant's practical effect.

As UN human rights experts have emphasized, compliance with ICC arrest warrants is "critical to overcome long-standing impunity" and "end grave crimes". However, achieving this compliance requires a level of international consensus and commitment to international law that remains elusive in the politically charged context of the Israel-Palestine conflict.

The case ultimately highlights the tension between the progressive development of international criminal law and the persistent reality of

¹ - Jaibal Naduvath, Dharmil Doshi, Justice on trial: The ICC, Israel, and the politics of accountability, <https://orfme.org/research/justice-on-trial-the-icc-israel-and-the-politics-of-accountability/> accessed on 13/04/2025 at 11.00.

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a state-centric international system where power politics continues to influence the application of legal norms. How this tension is navigated in the Netanyahu case will have significant implications for the future development of international criminal justice and its capacity to hold political leaders accountable for the most serious international crimes.

Recommendations:

1. Clarify Jurisdictional Boundaries:

The ICC should seek an advisory opinion from the International Court of Justice (ICJ) to resolve ambiguities surrounding its jurisdiction over non-member states. This would bolster legal certainty and mitigate accusations of arbitrary application.

2. Strengthen Enforcement Mechanisms:

Member states should negotiate binding agreements with the ICC to enforce arrest warrants, particularly in cases involving high-ranking officials. Additionally, the UN Security Council must prioritize cooperation with the Court, avoiding veto-driven paralysis in atrocity crime cases.

3. Enhance Impartiality and Transparency:

The Office of the Prosecutor (OTP) should adopt publicly accessible criteria for case selection to counter perceptions of bias. A standardized protocol for assessing complementarity and gravity across all situations would reinforce the Court's neutrality.

4. Diplomatic Engagement:

The ICC should engage in proactive dialogue with non-member states to address sovereignty concerns and foster voluntary cooperation. Mediation frameworks, rather than adversarial approaches, could reduce political backlash.

5. Reform Immunities Doctrine:

The Assembly of States Parties (ASP) should initiate amendments to the Rome Statute to explicitly reconcile Article 27 with customary

immunity norms, ensuring coherence in legal reasoning and state compliance.

6. Public Legitimacy Campaigns:

The Court must invest in global outreach to educate states and civil society on its mandate, emphasizing its role as a judicial—not political—institution. Highlighting universal accountability, rather than selective targeting, is critical to retaining legitimacy.

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