
COURTING BENJAMIN NETANYAHU AND YOAV GALLANT: AN EXAMINATION OF STATE COMPLIANCE AND THE LIMITS OF THE INTERNATIONAL CRIMINAL COURT

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ABSTRACT

This article explores the complexities involved in prosecuting international crimes, with a particular emphasis on the potential prosecution of high-profile Israeli officials, Benjamin Netanyahu and Yoav Gallant. The paper examines the challenges the ICC is likely to encounter, including structural and political limitations. The central argument of the paper is that Israel's geopolitical position, the ICC's dependence on state cooperation, the inadequate sanctions for non-cooperation, and evidentiary challenges are significant hurdles that the Court must navigate in considering prosecution. By drawing on precedents from high-profile cases, this paper highlights the tension between legal mandates and political realities. Furthermore, it contextualizes the cases against Benjamin Netanyahu and Yoav Gallant within the broader discourse on the implementation of ICC decisions, discussing the disconnect between accountability for international crimes and the actual enforcement of such accountability.

Keywords: International Criminal Court, Cooperation, Prosecution, Sanctions, United Nations Security Council, Assembly of State Parties, Geopolitics.

1. Introduction

The International Criminal Court (ICC) fundamentally depends on the cooperative engagement of state parties to fulfil its mandate. The persistence of non-cooperation by member states poses significant challenges to the Court's efficacy and authority, complicating its ability to prosecute crimes and enforce international accountability measures.¹ Articles 86-102 of the Rome Statute outline the framework for state cooperation with the ICC. These provisions primarily focus on the facilitation of investigations and prosecutions related to cases that fall under the Court's jurisdiction. This cooperation is essential for the effective functioning of the ICC, as it relies on state parties to assist in the collection of evidence, the execution of arrest warrants, and the enforcement of the Court's decisions.²

The prospective prosecution of Prime Minister Netanyahu and former military official Gallant, both indicted on charges of war crimes and crimes against humanity, is poised to challenge the parameters of state cooperation. This situation is likely to reveal the complex legal, political, and geopolitical obstacles that the Court will encounter as it seeks to advance the prosecution of this case.³

This article contends that the ICC faces significant challenges due to its ineffective sanction regime on state non-cooperation. Historical precedents indicate that measures taken against non-compliant states often result in impunity. Moreover, Israel's geopolitical positioning is reinforced by robust support from Germany and, notably, the United States, which has vocally criticized the ICC's decision to issue arrest warrants for the two suspects involved.⁴

2. Methodology

The study employs a doctrinal methodology to critically examine legal texts and precedents from notable cases adjudicated by the ICC. It specifically focuses on the Rome Statute and the Geneva Conventions, including their Additional Protocols, as well as pertinent agreements governing the cooperation between the ICC and the United Nations Security Council (UNSC).

¹ Courtney Hillebrecht, *Saving the International Justice Regime: Beyond Backlash against International Courts*, Cambridge: Cambridge University Press, 2021, p.40.

² Article 86 of the Rome Statute of the International Criminal Court (hereafter referred to as the Rome Statute)

³ Ulrich Duchrow, *Germany Suppression of the Palestinian Voices, the Role of the Churches, Countervailing Theological and Social Forces in Ulrich and Mark Braverman, Interreligious Solidarity for Justice in Palestine-Israel Ecumenical Response to International Law Violations*, Cham: Springer, 2025, p. 104

⁴ Ibid.

Furthermore, the analysis delves into ICC jurisprudence and relevant academic discourse to contextualize the findings within the institutional and political frameworks that shape the Court's operations. In this context, relevant scholarly literature has been reviewed to appropriately situate the legal findings within the institutional framework and the geographical as well as geopolitical contexts that shape the operations of the ICC.

3. The Legal Framework on State Cooperation and Compliance

3.1 The Rome Statute and State Cooperation

The ICC relies extensively on the cooperation of member states for the investigation and prosecution of cases. Lacking its own policing body or investigative unit, the ICC depends on states to facilitate arrests and gather evidence crucial to its proceedings. This state cooperation is vital for the Court to fulfil its mandate effectively.⁵ Member states are equally therefore, obligated to cooperate with the Court in the apprehension and extradition of individuals located within their jurisdictions.⁶ In the context of surrender proceedings, if an individual slated for surrender contends that their surrender would contravene the principle of double jeopardy, it is imperative that the admissibility of the case be assessed prior to the execution of the surrender.⁷

Member states are further mandated to cooperate with the Court in the production of documentation relevant to cases under the jurisdiction of the Court, as well as to furnish supporting evidence for these cases. Likewise, states must take proactive measures to identify and produce individuals before the Court, engage in searches and seizures as necessary, ensure the protection of witnesses and victims, facilitate the temporary transfer of individuals, and ensure the effective service of legal documents, among other responsibilities.⁸

Cooperation with the Court extends to the execution of its sentences, particularly the imprisonment of individuals found guilty. The Court identifies the state tasked with enforcing the prison sentence, drawing from a roster of countries that have expressed their readiness to undertake this responsibility.⁹

⁵ Rohit Manglik, Application of International Humanitarian Law, EduGorilla Publication, 2023, Pgs. 39-40.

⁶ Article 89 (1) of the Rome Statute

⁷ Article 89(2) of the Rome Statute

⁸ Article 93 (a-l) of the Rome Statute

⁹ Article 103 of the Rome Statute

3.2 Nature and Scope of State Cooperation

The obligation for states to cooperate with the ICC is legally binding for member states. In contrast, non-member states are only required to assist the Court on a voluntary basis during investigations and prosecutions. To facilitate this cooperation, the ICC often establishes *ad hoc* arrangements with these non-member states, which may take the form of formal agreements or other suitable mechanisms for assistance. This flexibility enables the Court to gather necessary support and resources from non-state actors throughout its judicial processes.¹⁰ In cases where a non-state party does not fulfil its obligations to cooperate with the Court, the Court has the mandate to notify the Assembly of States Parties (ASP) or, if applicable, the United Nations Security Council (UNSC), particularly in instances where the state was referred to the Court by the UNSC.¹¹

In instances where state parties do not fulfil their obligation to cooperate with the Court, the Court will reach a finding of non-cooperation or non-compliance. The matter will then be referred to the ASP, or to the UNSC if the case was initially referred to the Court by the UNSC.¹² According to the Assembly procedures relating to Non-Cooperation, non-cooperation is defined as “...the failure by a State Party or a State which has entered into an *ad hoc* arrangement or an agreement with the Court (hereafter: “requested State”) to comply with a specific Court request for cooperation...”¹³

3.3 State Sovereignty, Complementarity and Jurisdictional Tensions

3.3.1 State Sovereignty

The ICC was not created to infringe upon or diminish state sovereignty. In fact, the Preamble of the Rome Statute explicitly emphasizes that serious international offenses should not remain unpunished and that accountability measures should primarily occur at the national level.¹⁴ Consequently, it is not surprising that the Rome Statute explicitly provides that no provision within the statute grants any state the authority to intervene in or interfere with the internal

¹⁰ Article 87(5)

¹¹ Ibid.

¹² Article 87 (7) of the Rome Statute

¹³ Assembly procedures relating to non-cooperation (ICC-ASP/10/Res.5, annex), Para B5

¹⁴ Para 3 of the Preamble of the Rome Statute

matters of another state.¹⁵

To uphold the principle of state sovereignty, the ICC is mandated to intervene solely in circumstances where offenses have been committed within the territories of its member states. By ratifying the Rome Statute, a state explicitly consents to the Court's jurisdiction over the most serious crimes, thereby facilitating cooperation when necessary. This framework is intentionally structured to safeguard the sovereignty of states and ensure accountability for serious international crimes.¹⁶

Notably in the case against Netanyahu and Gallant, Israel maintains that the case infringes upon the principle of state sovereignty. The Israeli stance asserts that the ICC lacks jurisdiction over the matter, as Palestine is deemed incapable of conferring jurisdiction to the Court. This is due to the argument that not all alleged crimes occurred within the delineated territory of Palestine.¹⁷ Israel's argument is that the Court requires acceptance of jurisdiction from Israel by virtue of article 19(2) (c) and Article 12 of the Rome Statute.¹⁸

The Court, in its ruling on Israel's jurisdictional challenge, stated that Israel's consent to the Court's jurisdiction is unnecessary. It determined that the Court can validly assert jurisdiction over Palestine based on territorial grounds alone. The Court emphasised that a singular basis for jurisdiction suffices for the case at hand.¹⁹ It should be remembered that on 1 January 2015, Palestine accepted the jurisdiction of the Court and acceded to the Rome Statute on 2 January 2015.²⁰

Israel has also contended that Palestine lacks statehood and, as such, is incapable of initiating legal proceedings before the Court. The Court has largely dismissed these assertions.²¹ As per statistical data, approximately 75% of United Nations member states officially recognize Palestine as a sovereign entity. The UN designates Palestine as a non-member observer state,

¹⁵ Para 8 of the Preamble of the Rome Statute

¹⁶ Emma Irving, *Multi-Actor Human Rights Protection at the International Criminal Court*, Cambridge: Cambridge University Press, 2020, P. 32.

¹⁷ The Situation in the State of Palestine, Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute, ICC-01/18-374 21-11-2024 1/8 PT, para 11.

¹⁸ The Situation in the State of Palestine, Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute, ICC-01/18-374 21-11-2024 1/8 PT, para 15.

¹⁹ The Situation in the State of Palestine, Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute, ICC-01/18-374 21-11-2024 1/8 PT, para 13.

²⁰ The Situation in the State of Palestine, Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute, ICC-01/18-374 21-11-2024 1/8 PT, para 1.

²¹ Thomas W. Smith, *Human Rights and War through Civilian Eyes*, Philadelphia: University of Pennsylvania Press, 2017, p. 177.

which grants it certain participatory rights in the assembly; however, this status does not confer voting privileges.²²

As of late September 2025, the sovereign status of Palestine has been officially acknowledged by several nations, including the United Kingdom, Canada, Austria, and France. This follows a significant wave of recognition that began in May 2024, when countries such as Spain, Ireland, Norway, Slovenia, Armenia, and Mexico extended similar recognition. Within the African Union, 54 member states have recognized Palestine as a sovereign state, with Eritrea and Cameroon being the notable exceptions. Additionally, among the 27 member states of the European Union, ten have formally recognized Palestine as a state.²³

However, the Montevideo Convention stipulates that the recognition of a state by other states does not inherently confer political existence upon that state. Instead, recognition serves as an acknowledgment of the recognized state's obligations and rights under international law. This type of recognition is both irreversible and unconditional, meaning it cannot be withdrawn or made contingent upon specific criteria.²⁴

In contrast, the constitutive theory of statehood asserts that a territory's status as a state is contingent upon its recognition by other established states. This perspective emphasizes the role of diplomatic acknowledgment as central to statehood, yet it lacks a definitive benchmark for the criteria that a territory must satisfy to achieve this recognition beyond the act itself.²⁵

The criteria for statehood are outlined in the Montevideo Convention on the Rights and Duties of States. Under international law, a political entity is recognized as a state if it meets four specific requirements: (a) it must possess a permanent population, (b) it must have a defined geographic territory, (c) it must be governed by a structured political organization, and (d) it must demonstrate capacity for engaging in diplomatic relations with other sovereign states.²⁶ As of October 27, 2025, United Nations data, as detailed by Worldometer, indicates that

²² <https://www.bbc.com/news/articles/cvqp5z1vvj5o> (accessed 27 October 2025).

²³ <https://unric.org/en/recognition-of-palestine-a-long-history> (accessed 27 October 2025)

²⁴ Articles 3 & 6 of the Montevideo Convention, 1933.

²⁵ Tanvi Bhargava & Rebecca Cardoso, An Examination of Palestine's Statehood Status through the Lens of The ICC Pretrial Chamber's Decision and Beyond, Vol. 54 Journal of International Law and Politics, Issue 1, 2021, P.17.

²⁶ Article 1 of the Montevideo Convention, 1933.

Palestine has a stable population of 5,519,017.²⁷

The question of Palestine's territorial definition remains a deeply contested issue. The proposed state of Palestine encompasses East Jerusalem, the West Bank, and the Gaza Strip, all of which were captured by Israel during the Six-Day War in 1967. This conflict resulted in significant geopolitical shifts in the region and has continued to influence Israeli-Palestinian relations and discourse surrounding territorial sovereignty.²⁸ In East Jerusalem, the construction of Israeli settlements has increased significantly, with approximately 60% of the area now developed for this purpose.²⁹ This stands in violation of international humanitarian law, which explicitly mandates that during an occupation, the occupying authority is prohibited from transferring segments of its civilian population into the territory it occupies.³⁰

The ambiguity surrounding territorial claims, especially in the context of the West Bank and Gaza Strip, does not inherently refute the concept of statehood, as argued by certain scholars. Disputes over specific regions or even the entire state do not undermine the criteria for international recognition as a state. Notably, under international law, there is no stipulated minimum size for a territory to attain recognition as a sovereign state.³¹

Statehood is established when a governing authority has effective control over a defined territory. This authority must possess a structured administrative and political framework, enabling it to enforce the rule of law and maintain societal order. Such an organization is critical in legitimizing its governance and ensuring compliance with legal norms within its jurisdiction.³² The argument has been posited that Palestine's lack of sovereignty, particularly over the West Bank, calls into question its status as a state. In the context of the West Bank's administrative divisions, Areas A and B are under varying degrees of Palestinian governance, whereas Area C remains under full Israeli control. This delineation raises complex issues

²⁷ <https://www.worldometers.info/world-population/state-of-palestine-population> (accessed 27 October 2025).

²⁸ Paul Adams "Recognising Palestinian statehood opens another question - who would lead it?" <https://www.bbc.com/news/articles/c930dlxnee4o> (accessed 27 October 2025).

²⁹ IPB, Inc, Palestine: Customs, Trade Regulations and Procedures Handbook, International Business Publications, 2021, P.21.

³⁰ Article 49(6) of the IV Geneva Convention

³¹ Seada Hussein Adem, Palestine and the International Criminal Court, The Hague: T.M.C ASSER PRESS, 2019, P.65

³² Adem Ibid.

regarding statehood and territorial sovereignty in the region.³³

It can be argued that the comprehensive control of a territory by one authority through occupation, which necessitates that the governing bodies of an occupied region submit their power to the total or substantial authority of the occupying force, does not automatically strip the occupied entity of its status as a sovereign state. Occupation does not confer sovereignty upon the occupier; rather, the original state's status remains intact despite the occupation.³⁴ This is in line with the ICC Pre-Trial Chamber's argument that "The entire legal framework governing occupation rests on the principle that sovereignty cannot be alienated through the use or threat of force. Mere military control by a foreign power does not, and cannot, result in a lawful transfer of sovereignty."³⁵

The aforementioned perspective is reinforced by the International Court of Justice's advisory opinion concerning Israel's responsibilities under international law, particularly in relation to the occupied Palestinian territories. In its advisory ruling, the ICJ articulated that Israel, in its capacity as an occupying power, does not possess sovereignty over these territories and is, therefore, precluded from exercising sovereign authority within them.³⁶

In conclusion, regarding its capacity to engage in international relations, Palestine has established various legal partnerships with other states. Notably, in 1997, Palestine formalized an economic agreement with the European Economic Union, which has since evolved into the European Union. This agreement was subsequently renewed in 2021, extending its duration for an additional ten years.³⁷ Turkey has historically maintained a robust diplomatic relationship with Palestine, formally recognizing it as a sovereign state in 1988, alongside other nations.³⁸

³³ Monique Cormier, *The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties*, Cambridge: Cambridge University Press, 2020, P.109-110. The division of West Bank into A, B, and C was by virtue of the Oslo Accords which contained two agreements between Israel and the Palestine Liberation Organisation later to be known as Palestine. The agreements were entered into in 1993 and 1995.

³⁴ Occupied Territories and International Law found on https://www.btselem.org/international_law (accessed on 27 October 2025).

³⁵ The Situation in the State of Palestine, ICC-01/18-451 27-06-2025 1/47 PT, para 70

³⁶ ICJ Advisory Opinion on Obligations of Israel in Relation to the Presence and Activities of the United Nations, other International Organizations and Third States in and in Relation to the Occupied Palestinian Territory, 22 October 2025.

³⁷ https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/palestine_en (accessed 25 October 2025).

³⁸ https://www.mfa.gov.tr/turkiye_s-political-relations-with-the-palestinian-national-authority.en.mfa (accessed 25 October 2015)

3.3.2 Complementarity

The Rome Statute clearly outlines the principle of complementarity in Article 17, asserting that states hold primary responsibility for the investigation and prosecution of criminal cases. The International Criminal Court's jurisdiction is activated only when a state is either unwilling or unable to carry out these obligations effectively.³⁹ The ICC differs significantly from the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for Sierra Leone (SCSL), all of which had primacy over the cases brought before them. In contrast, the ICC can only complement national jurisdictions rather than superseding them.⁴⁰

Under the principle of complementarity, states affected by international crimes exercise their sovereign authority by prosecuting such crimes through their domestic legal systems. This is in line with Article 1 of the Rome Statute which states that the Court shall be complementary to national jurisdictions. The ICC's prosecution role is only limited to situations where a state is unwilling or unable to prosecute. As a result, domestic courts can adjudicate cases and establish legal precedents, contribute to the development of new jurisprudence, and generally enhance the efficacy and credibility of local judicial systems.⁴¹

As previously noted, Palestine is recognized as a member of the ICC, whereas Israel is not. Consequently, the principle of complementarity necessitates that Palestine take action to prosecute alleged crimes occurring within its jurisdiction or involving its nationals in foreign jurisdictions.⁴² Palestine, however, faces significant challenges in prosecuting offenses occurring within its jurisdiction, primarily due to inadequate judicial infrastructure and insufficient personnel to handle such cases. According to the United Nations Commission for Human Rights (UNCHR), in 2023, Israeli forces targeted the local headquarters of the Palestine Bar Association, resulting in the destruction of official documentation.⁴³ The prolonged nature of the Israel-Palestine conflict complicates the situation further by posing significant challenges for conducting investigations, arrests, and prosecutions in the midst of ongoing hostilities.

³⁹ Article 17 of the Rome Statute.

⁴⁰ Gasto Deogratias Inshengoma, *International and National Legal Implications of the Work of the International Criminal Court*, A master of Laws Dissertation, University of Dar es Salaam, 2013, pg. 42.

⁴¹ Gerhard Werle and Florian Jessberger, *Principles of International Criminal Law*, 4th ed. Oxford: Oxford University Press, 2020, P. 118-119.

⁴² Para 6 of the Preamble of the Rome Statute.

⁴³ <https://www.ohchr.org/en/press-releases/2024/04/israelgaza-un-experts-condemn-destruction-judicial-infrastructure-call> (accessed 25 October 2025)

Given the complex and volatile environment, it is imperative that this situation be addressed by the ICC to ensure a thorough and impartial judicial process.

In the context of non-state actors whose cases have been submitted to the Court, the principle of complementarity remains operational. A pertinent example is the situation involving Israel, where prior to the referral of the case to the ICC, Israel publicly committed to prosecuting and investigating alleged crimes perpetrated by its armed forces during the Israel-Gaza Conflict.⁴⁴ The ICC proceeded with investigations despite the context. Critiques of Israel's accountability mechanisms exposed their inadequacy in delivering justice because they often focus on "low-level perpetrators." A notable instance of this was in the aftermath of the 2014 Gaza conflict, where Israel conducted inquiries into the conduct of 19 soldiers, yet none of the commanding officers faced prosecution. Additionally, during the events of the 2018 Great March of Return, only a single soldier was convicted for their actions.⁴⁵

3.3.3 Jurisdictional Tensions

The ICC operates under four key types of jurisdictions: territorial, temporal, subject matter (*ratione materiae*), and personal (*ratione personae*). Regarding territorial jurisdiction (*ratione loci*), the Rome Statute stipulates that the Court has jurisdiction over crimes committed on the territory of a state party, as well as over crimes perpetrated by nationals of a state party, even when these crimes occur outside their national boundaries.⁴⁶ In instances where a state is not a party to the Rome Statute, the ICC may still assert jurisdiction over such territories if the state in question is a member of the United Nations and if the situation is referred to the Court by the UN Security Council.⁴⁷ The situation in Palestine was not referred to the ICC by the UNSC but rather by the state of Palestine and by other state parties.⁴⁸

The UNSC has historically employed a selective approach when referring cases to the ICC. While the UNSC has utilized its deferral powers to suspend investigations and prosecutions involving U.S. peacekeepers, it adopted a similar stance during the 2011 situation in Libya, where NATO violations were excluded from the ICC's jurisdiction. The UNSC justified this

⁴⁴ Monique Cormier, P.18.

⁴⁵ Jeremie Bracka, *Transitional Justice for Israel/Palestine: Truth-Telling and Empathy in Ongoing Conflict*, Cham: Springer, 2021, P.181

⁴⁶ Article 12 (1 &2) of the Rome Statute.

⁴⁷ Article 13(b) of the Rome Statute.

⁴⁸ Situation in the State of Palestine, ICC-01/18-451 27-06-2025 1/47 PT, para 70.

position by arguing that nationals of non-member states could not be subjected to the Court's authority.⁴⁹

It is unsurprising that Israel has challenged the Court's jurisdiction. Israel has argued that the ICC does not have jurisdiction over Palestine because of the Oslo agreement made between Israel and Palestine. According to Israel, "the Oslo Accords exclusively prescribe the jurisdictional competencies of the Palestinians with respect to the territory in question pending a negotiated Israeli-Palestinian settlement."⁵⁰In response to the aforementioned claims, the ICC has contended that, as a sovereign entity, Palestine possesses the inherent right to self-determination. This principle underpins its authority to establish its own criminal jurisdiction, an assertion that remains unaffected by any previous bilateral agreements that might imply limitations on such jurisdiction.⁵¹ The Court has also emphasised that Article 12 of the Rome Statute expressly gives the Court jurisdiction and it does not have a lacuna that would require the Court to consider other sources of law.⁵² Again, the argument on jurisdiction is clearly settled under Article 25(1) of the Rome Statute. The Article states that the Court has jurisdiction over natural persons particularly those who have committed crimes within the jurisdiction of the Court.⁵³

In terms of *ratione materiae*, the Rome Statute explicitly provides for the International Criminal Court's jurisdiction over war crimes, genocide, crimes against humanity, and the crime of aggression. The ICC's arrest warrants issued for Netanyahu and Gallant were predominantly centered on allegations of war crimes and crimes against humanity, thereby establishing the specific subject matter jurisdiction invoked in these cases.⁵⁴In terms of *ratione materiae*, it is notable that the arrest warrant does not encompass a comprehensive list of offenses; specifically, the crime of genocide is evidently absent from the list. The Independent International Commission of Inquiry on the occupied Palestinian territory, including East Jerusalem and Israel, has reported that Israel has perpetrated acts of genocide, resulting in the deaths of 60,199 Palestinians.⁵⁵ This perspective is also supported by an unofficial body known

⁴⁹ Lukas Emanuel Müller, Referrals, Deferrals, and Many Double Standards <https://voelkerrechtsblog.org/referrals-deferrals-and-many-double-standards/> (accessed 30 December 2025)

⁵⁰ Situation in the State of Palestine, ICC-01/18-451 27-06-2025 1/47 PT, para 68.

⁵¹ Situation in the State of Palestine, ICC-01/18-451 27-06-2025 1/47 PT, paras 71 and 72.

⁵² Situation in the State of Palestine, ICC-01/18-451 27-06-2025 1/47 PT, paras 79.

⁵³ Article 25(1) of the Rome Statute.

⁵⁴ <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges> (accessed 28 October 2025)

⁵⁵ The Human Rights Council Report on the Conduct of Israel in Gaza, para 3 and 20.

as the Gaza Tribunal, led by Jeremy Corbyn, a prominent advocate for Palestinian rights. In its final findings, the Tribunal concluded that Israel is committing acts of genocide in Gaza, aided by “western enablers.” It is important to note that the Tribunal’s decisions are not legally binding.⁵⁶

Within the framework of its jurisdiction, the ICC possesses temporal jurisdiction (*ratione temporis*), which pertains to the Court's authority relative to the period during which the alleged crimes were committed. Consequently, the Court has jurisdiction solely over crimes committed after its establishment.⁵⁷ Upon ratification of the Rome Statute, the provisions of the Statute will apply to the newly acceding state from the moment of its membership. This establishes the temporal jurisdiction of the Rome Statute, ensuring that all relevant obligations and responsibilities under the statute commence at the point of accession.⁵⁸

In the context of the Darfur case, it is evident that for states that are not signatories to the Rome Statute, the jurisdiction of the ICC is contingent upon the commission of crimes occurring after the Court became operational. The ICC has explicitly articulated in its ruling on the Darfur situation that it lacks jurisdiction over any crimes perpetrated prior to the Court's entry into force on July 1, 2002.⁵⁹ The Court focused on crimes committed between March 2002 and August 2003 in that regard.⁶⁰ The Court clarified that Articles 11(2) and 126(2) are not applicable to non-state actors, especially in instances where cases are referred to the Court by the UNSC. In such referrals, the jurisdiction of the Court extends “retroactively” to July 1, 2002, the date of its establishment, allowing for prosecution of crimes that were committed prior to that date.⁶¹

A superficial interpretation of the aforementioned analogy may suggest an application of the principle of non-retroactivity. It could appear that cases referred by the UNSC are subject to retrospective prosecution; however, this is a misinterpretation. In actuality, cases referred by UNSC are strictly confined to crimes occurring after the establishment of the Court's

⁵⁶ <https://www.aljazeera.com/news/2025/10/26/gaza-tribunal-calls-for-israeli-perpetrators-and-enablers-to-face-justice> (accessed 28 October 2025)

⁵⁷ Article 11(1) of the Rome Statute.

⁵⁸ Situation in the State of Palestine, ICC-01/18-451 27-06-2025 1/47 PT, paras 5 and 6.

⁵⁹ Ibid, para 38.

⁶⁰ The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”), ICC-02/05-01/20-427 29-06-2021 1/22 EC PT OA8

⁶¹ The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”), ICC-02/05-01/20-427 29-06-2021 1/22 EC PT OA8, para

jurisdiction.⁶²

Lastly, with regard to *ratione personae* (individual criminal responsibility), the Rome Statute states that the Court has jurisdiction over natural persons who have perpetrated crimes that fall within the Court's designated jurisdiction.⁶³ Under Article 25 of the Rome Statute, the ICC asserts its jurisdiction over natural persons, establishing that individuals who perpetrate crimes within the Court's jurisdiction bear individual criminal responsibility. Importantly, the ICC's jurisdiction is confined to individuals aged 18 and above.⁶⁴

4. Prosecuting Netanyahu and Gallant: Potential Legal and Practical Challenges

4.1 Individual Criminal Responsibility and Command Responsibility

Article 25(2) of the Rome Statute states that individuals are personally accountable for crimes falling under the jurisdiction of the International Criminal Court. The arrest warrant issued indicates that Netanyahu and Gallant are identified as co-perpetrators, having collaborated with others to perpetrate crimes constituting starvation and elements classified as crimes against humanity, including murder, extermination, and inhumane acts.⁶⁵

In the realm of international law, individual criminal accountability is established when acts constituting crimes are committed by individuals operating under state authority. Consequently, even when a person perpetrates international crimes while acting in the capacity of a state representative, they remain subject to individual liability for the crimes.⁶⁶

Netanyahu and Gallant are currently facing prosecution based on the principle of superior responsibility as articulated in Article 28(2) of the Rome Statute. This provision stipulates that for superior responsibility to apply, there must be a clear hierarchical relationship where the subordinates were under the effective authority and control of the superior. Furthermore, it necessitates that the superior had knowledge or reasonable grounds to be aware that the

⁶² The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"), ICC-02/05-01/20-427 29-06-2021 1/22 EC PT OA8, para 42.

⁶³ Article 1 of the Rome Statute

⁶⁴ Article 26 of the Rome Statute

⁶⁵ The Situation in the State of Palestine found on <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges> (accessed 28 October 2025)

⁶⁶ Ramona Preditti, *Immunity of Heads of States and State Officials for International Crimes*, Leiden: Koninklijke Brill NV, 2015, p.330

subordinates were either committing or poised to commit a criminal act.⁶⁷ The crimes committed must include criminal “activities that were within the effective responsibility and control of the superior.”⁶⁸ Finally, the superior must have failed to take action against his or her subordinates for the crimes committed.⁶⁹

In relation to superior responsibility, the ICC believes that Netanyahu and Gallant are responsible for intentionally directing attacks on civilians.⁷⁰ In the case of *Nyiramasuhuko*, the International Criminal Tribunal for Rwanda (ICTR) articulated the principles governing superior responsibility. It emphasized that establishing this doctrine requires evidence of a superior-subordinate relationship, wherein the superior possesses the authority to issue orders that subordinates are expected to comply with. Furthermore, the superior must have the capacity to take preventive measures and impose sanctions regarding any criminal acts committed by their subordinates.⁷¹ Netanyahu has made public statements that incite violence against the Palestinian populace and has issued explicit directives for the intentional targeting of civilian individuals.⁷² In this regard, Netanyahu is responsible for crimes committed against the Palestinians.

4.2 Cooperation Hurdles

The ICC faces considerable challenges in executing investigations within Israel, especially in acquiring sufficient evidence from Israeli sources without their full cooperation. The Israeli government has clearly stated its refusal to engage with the Court on matters pertaining to inquiries in its occupied territories.⁷³

In the context of the case against Netanyahu and Gallant, it is important to acknowledge that international crimes are frequently committed during armed conflicts, which can significantly

⁶⁷ Article 28(2)(a) of the Rome Statute.

⁶⁸ Article 28(2)(b)

⁶⁹ Article 28(2)(c)

⁷⁰ “ICC judges issue three arrest warrants in the context of the Situation in the State of Palestine” <https://coalitionfortheicc.org/news/icc-judges-issue-three-arrest-warrants-palestine-situation> (accessed 9 November 2025)

⁷¹ Prosecutor v. Pauline Nyiramasuhuko et al, ICTR-98-42, para 2568

⁷² David Gritten and Imogen Foulkes, “Israel has committed genocide in Gaza, UN commission of inquiry says” <https://www.bbc.com/news/articles/c8641wv0n4go> (accessed 9 November 2025). See also Middle East Eye “Israel ‘sending soldiers to commit war crimes in Gaza’, says former army chief” <https://www.middleeasteye.net/news/israel-sending-soldiers-commit-war-crimes-gaza-says-former-army-chief> (accessed 9 November 2025)

⁷³ Israel ‘will not co-operate’ with ICC war crimes investigation see <https://www.bbc.com/news/world-middle-east-56687437> (accessed 28 October 2025)

impact the value of evidence. If Israel does not cooperate, gathering evidence will pose considerable challenges. In 2024, a Bill was presented to the Knesset (Israel's Parliament), the Bill for the Protection of Israeli Public Figures from the Actions of the International Criminal Court in The Hague Against the State of Israel, 2024. The primary aim of this Bill is to safeguard Israeli soldiers, the Israel Defense Forces, and public officials from the jurisdiction of the Court.⁷⁴

Nonetheless, it is crucial to acknowledge that the UN has consistently urged member states to cooperate with the Court. This position was explicitly articulated in the 2005 Resolution regarding the situation in Sudan, which mandated that all states, including non-state parties, fully comply with the Court's processes in relation to Sudan.⁷⁵

4.3 Evidentiary Challenges

The evidentiary legal framework of the ICC is provided for under Articles 66 to 69 of the Rome Statute. These provisions include critical elements such as the presumption of innocence, the legal framework for the submission of evidence, the rights afforded to the accused, and measures for witness protection.⁷⁶ Prior to securing a conviction, the prosecution is tasked with presenting evidence that meets the standard of sufficiency, particularly establishing the defendant's guilt beyond a reasonable doubt.⁷⁷

The recently imposed ban on international journalists in Palestine is likely to impact the sufficiency of evidence in reporting. As of October 7, 2023, Israel has restricted access to Gaza exclusively to Palestinian journalists, thereby limiting independent journalistic oversight and potentially skewing the narrative surrounding the situation. This constraint raises concerns about the comprehensiveness and objectivity of the information that reaches the global audience.⁷⁸ As of November 7, 2025, allegations have surfaced regarding the destruction of evidence pertinent to war crimes in Palestine. Notably, YouTube has been criticized for its

⁷⁴ The Situation in the State of Palestine, Joint submissions on behalf of Palestinian Victims pursuant to Article 68(3) of the Rome Statute related to Article 19 proceedings, ICC-01/18-451 27-06-2025 1/47 PT, paras 118 and 119.

⁷⁵ Resolution 1593 (2005) Adopted by the Security Council at its 5158th meeting, on 31 March 2005, S/RES/1593 (2005), para 2.

⁷⁶ Articles 66-69 of the Rome Statute.

⁷⁷ Article 66(3) of the Rome Statute.

⁷⁸ CPJ demands immediate end to Gaza media access ban, files legal challenge, <https://cpj.org/2025/10/cpj-demands-immediate-end-to-gaza-media-access-ban-files-legal-challenge> (accessed 9 November 2025)

removal of approximately 700 videos documenting alleged crimes perpetrated by Israeli forces in Gaza and the West Bank.⁷⁹

Despite certain limitations, the ICC retains a substantial reservoir of evidence pertaining to the situation in the State of Palestine. The ICC is well-positioned to collect further testimonies and documentation from victims who have suffered as a result of the violations occurring in the region.⁸⁰

The other evidentiary challenge that the ICC is likely to face centers around witness intimidation. The issue of witness intimidation, particularly from Israeli sources, is a significant concern in this context. It is important to highlight that the original warrant for arrest issued by the ICC was not disclosed publicly due to fears regarding the potential intimidation of victims and witnesses.⁸¹ Since the beginning of the conflict, Israel has implemented various strategies aimed at suppressing Palestinian voices that speak out against the documented atrocities. Individuals who speak against these atrocities often face branding as supporters of Hamas, which serves to further silence opposition and dissent.⁸²

The Rome Statute addresses witness protection in Article 68. However, historical precedents have demonstrated that one of the pivotal reasons for the failure of the *Kenyatta* case was the harassment of witnesses and victims, which resulted in their silencing. This significantly undermined the adequacy of evidence presented to the Court regarding the matter.⁸³ The former prosecutor of the Court, Fatou Bensouda reportedly failed to take necessary measures to address accountability for witness and victim intimidation, in contravention of the obligations outlined in Article 70 of the Rome Statute.⁸⁴ The efficacy of the case against Netanyahu and Gallant hinges on the ICC's ability to safeguard victims and witnesses of the alleged atrocities in Palestine. Should the ICC fail in this obligation, the prospects for a successful prosecution may diminish significantly.

⁷⁹ “YouTube ‘Secretly’ Deletes 700 Videos Documenting Israeli War Crimes” <https://kashmirobservers.net/2025/11/07/youtube-secretly-deletes-700-videos-documenting-israeli-war-crimes> (accessed 9 November 2025)

⁸⁰ <https://news.un.org/en/story/2024/11/1157286> (accessed 9 November 2025)

⁸¹ <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges> (accessed 10 November 2025)

⁸² <https://arabcenterdc.org/resource/the-war-on-gaza-the-policy-of-silencing-intimidating-and-persecuting-palestinians-in-israel/> (accessed 10 November 2025)

⁸³ The Situation in the Republic of Kenya, CC-01/09, para 64

⁸⁴ Ibid, paras 64-66

4.4 Geopolitical Alliances

For decades, Israel has received considerable backing from Western nations, particularly the United States and Germany, alongside institutional support from the European Union. This unwavering support has, in various ways, fostered a culture of impunity concerning violations of international law and human rights abuses in the Palestinian territories.⁸⁵ When the warrant of arrest was issued, the Biden administration utterly rejected the warrant. Through the then White House Spokeswoman, the white house stated “...We fundamentally reject the court’s decision to issue arrest warrants for senior Israeli officials...We remain deeply concerned by the prosecutor’s rush to seek arrest warrants and the troubling process errors that led to this decision.”⁸⁶

Conversely, the Biden administration collaborated with the ICC on the situation between Russia and Ukraine. The Biden administration supported the Court's initiatives by assisting in the collection of evidence relating to the international crimes committed against Ukraine.⁸⁷ The collaboration culminated in the indictment of Vladimir Putin and his Minister for Children, Maria Lvova.⁸⁸ This stance clearly shows the western world’s indifference towards Israeli attacks on Palestinian civilians not directly participating in the conflict.

Avraham Burg, former Speaker of the Knesset (Israel Parliament) once painted a very vivid picture of the western world support of Israel by stating that:

“Only the absolute protection of German and the United States still stands between Israel and the denunciation of its political distortions. It is only thanks to the automatic veto in the United Nations that Israel is the only state in the western world that for decades has denied the democratic right of millions of Palestinians, perpetuated injustice in the occupied territories and simply does not understand why everyone

⁸⁵ Ulrich Duchrow, *Germany Suppression of the Palestinian Voices, the Role of the Churches, Countervailing Theological and Social Forces in Ulrich Duchrow and Mark Braverman, Interreligious Solidarity for Justice in Palestine-Israel Ecumenical Response to International Law Violations*, Cham: Springer, 2025, p. 104

⁸⁶ <https://www.aljazeera.com/news/2024/11/21/how-us-politicians-responded-to-netanyahus-icc-arrest-warrant> (accessed 29 October 2025)

⁸⁷ Max Hilaire, *The Permanent members of the United Nations Security Council and International Law*, Berlin: Logos Verlag Berlin GmbH, 2025, P.356

⁸⁸ Ibid

condemns it...”⁸⁹

One of the prominent controversies regarding hostilities pertains to the disparity in responses from the international community. While Russia faced widespread condemnation for its military actions against Ukraine, the West has consistently endorsed Israel's military operations in Palestine.⁹⁰

The extremes of the western world support for Israel have been experienced from Germany especially in relation to cooperation with the Court in enforcing the arrest of Netanyahu. Chancellor Friedrich Merz has publicly stated that Netanyahu can visit Germany without being arrested as Germany can find means to facilitate his visit without enforcing an arrest.⁹¹ In the same breath, Netanyahu also went ahead to visit the US without being arrested. From January-July 2025, Netanyahu visited the US three times.⁹²

Historical patterns consistently demonstrate that backing individuals responsible for serious human rights violations or significant infringements of international humanitarian law hampers the International Criminal Court's (ICC) ability to effectively investigate or prosecute cases. A prominent example of this phenomenon is the situation involving Omar Al Bashir. The African Union (AU) urged member states to refrain from cooperating with the ICC's arrest warrant issued for Al Bashir, thereby complicating the Court's efforts to fulfil its mandate.⁹³ Omar Al Bashir has never been arrested to-date.

4.5 Selective State-Initiated Sanctions

Amid widespread violations of human rights and international humanitarian law, several states have demonstrated a willingness to sanction those responsible. This approach demonstrates that many nations do not condone grave human rights abuses. However, such actions are often taken selectively. For example, following Russia's military offensive against Ukraine, numerous countries from the west imposed sanctions on Russia, including restrictions on

⁸⁹ *ibid*

⁹⁰ Paul Dubrescu and Flavia Durach, *Competing Visions: Waiting for a Grand Strategic Shift*, Cham: Springer, 2025, p.105

⁹¹ Jens Thurau, Merz invites Netanyahu to Germany despite ICC arrest warrant, <https://www.dw.com/en/merz-invites-netanyahu-to-germany-despite-icc-arrest-warrant/a-71788069> (accessed 28 October 2025)

⁹² Netanyahu Visits U.S. Despite ICC Arrest Warrant as Trump Touts Possible Ceasefire found on https://www.democracynow.org/2025/7/7/headlines/netanyahu_visits_us_despite_icc_arrest_warrant_as_trump_touts_possible_ceasefire (accessed 8 November 2025).

⁹³ Lisa Gabone, ICC Defied: Africa will not co-operate on Sudan, <https://fpa.org/icc-defied-africa-will-not-co-operate-on-sudan> (accessed 28 October 2025)

investments, imports and exports, and energy.⁹⁴ The European Union, the United States, the United Kingdom, along with several other nations, implemented a series of economic sanctions targeting Russia. These measures aim to significantly weaken Russia's economic capabilities, thereby hindering its capacity to sustain war activities and reduce the funding available for military operations.⁹⁵

The imposition of sanctions on Russia has been criticized for failing to produce the intended economic impact. The goal of these sanctions was to cripple Russia's economy; however, the opposite has occurred. In fact, since the sanctions were enacted, Russia's economic performance is said to have instead improved.⁹⁶

In relation to Israel, the experience with sanctions has been notably different. For instance, the approach taken by the United States in relation to Israel contrasts sharply with that of Russia. The U.S. imposed sanctions on human rights organizations in Palestine that were involved in the International Criminal Court's efforts to investigate Israel. These organizations had initiated requests for the ICC to examine allegations of atrocities committed by Israel in Palestine.⁹⁷

Again, the United States has recently enacted sanctions against Francesca Albanese, the United Nations Special Rapporteur on human rights in the Palestinian territories occupied since 1967. This decision stems from the perception that her mandate poses a conflict with U.S. geopolitical interests in Israel.⁹⁸ The U.S. Secretary of State, Marco Rubio, has classified Albanese's initiatives as forms of economic and political warfare directed against the United States, asserting that such actions must be plainly condemned.⁹⁹ The situation was further exacerbated by the U.S. imposing economic and travel sanctions on ICC Prosecutor Karim Khan, along

⁹⁴ Ivan F. Timofeev, Sanctions on Russia, a New Chapter, Vol 20, Russia in Global Affairs, 2022, p.104

⁹⁵ Simoli Heli, What the Literature says about the Effects of Sanctions on Russia, BOFIT Policy Brief, No. 8/2023, Bank of Finland, Bank of Finland Institute for Emerging Economies (BOFIT), Helsinki, 2023, p.9.

⁹⁶ Nicholas Fenton, "Down but not Out: The Russian Economy under Western Sanctions" see <https://www.csis.org/analysis/down-not-out-russian-economy-under-western-sanctions> (accessed 31 December 2025)

⁹⁷ US imposes sanctions on Palestinians for requesting war crimes inquiry, The Guardian, <https://www.theguardian.com/world/2025/sep/04/us-sanctions-palestinian-human-rights> (accessed on 8 November 2025). These human rights organisations include the Palestine Centre for Human Rights, Al-Haq, Al-Mezan see <https://www.ohchr.org/en/press-releases/2025/09/un-experts-dismayed-us-sanctions-against-palestinian-human-rights> (accessed on 8 November 2025)

⁹⁸ USA/Israel/Palestine: Immediately Rescind Sanctions against UN Special Rapporteur Francesca Albanese, <https://www.icj.org/usa-israel-palestine-immediately-rescind-sanctions-against-un-special-rapporteur-francesca-albanese> (accessed on 8 November 2025)

⁹⁹ U.S. issues sanctions against United Nations investigator probing abuses in Gaza see <https://www.opb.org/article/2025/07/10/u-s-issues-sanctions-against-u-n-investigator-probing-abuses-in-gaza>

with four judges of the International Criminal Court.¹⁰⁰

The selectiveness of imposition of sanctions impede accountability for human rights violations or breach of international humanitarian law. In the long run, as long as perpetrators continue to enjoy the support of the west, impunity for these violations will continue to prevail.

5 The ICC Legal Framework for Addressing Non-Cooperating States

According to the Rome Statute, if a state fails to cooperate with the Court in a manner that obstructs or delays its functioning, the Court may report this issue to the Assemblies of States Parties (ASP) or to the United Nations Security Council, should the latter have referred the case.¹⁰¹

5.1 The Assembly of States Parties

5.1.1 Findings of Non-Cooperation

“The Assembly of States Parties is the management oversight and legislative body of the International Criminal Court, and is composed of representatives of the States which have ratified or acceded to the Rome Statute.”¹⁰²

One of the most notable instances of non-cooperation addressed by the ICC involves Chad. In July 2010, Omar Al Bashir visited Chad without being arrested, prompting the ICC to report the situation to the ASP and the UNSC. However, no sanctions were imposed on Chad in response to this incident.¹⁰³ Omar Al Bashir went ahead to visit other countries like Kenya, Nigeria and South Africa untouched.

Subsequently, other countries, such as Malawi, followed suit. After Omar Al Bashir was indicted and a warrant for his arrest was issued, he attended a convention in Malawi without being apprehended. In fact, the Court reiterated Malawi's obligation to arrest Al Bashir, yet the country failed to comply with this order.¹⁰⁴ Malawi was given a chance to defend herself and

¹⁰⁰ USA/Israel/Palestine: Immediately Rescind Sanctions against UN Special Rapporteur Francesca Albanese, <https://www.icj.org/usa-israel-palestine-immediately-rescind-sanctions-against-un-special-rapporteur-francesca-albanese> (accessed on 8 November 2025)

¹⁰¹ Article 87(7) of the Rome Statute

¹⁰² <https://asp.icc-cpi.int> (accessed 28 October 2025)

¹⁰³ Mark S. Ellis, *Sovereignty and Justice*, 155

¹⁰⁴ *Ibid* para 5.

she argued that Al Bashir enjoyed immunity of Heads of States and therefore he could not be arrested.¹⁰⁵ The Court determined that Malawi had not fulfilled its obligation to arrest Omar Al Bashir, in accordance with articles 86, 87(7), and 89 of the Rome Statute. This failure prevented the Court from exercising its powers and functions under the Rome Statute. As a result, the Court referred the matter to the UN Security Council.¹⁰⁶

In the case involving Netanyahu and Gallant, history appears to be repeating itself. Specifically, after a warrant for his arrest was issued, Netanyahu travelled to Hungary, a signatory to the Rome Statute. His four-day visit did not result in any arrest. In fact, Hungarian Prime Minister Viktor Orbán explicitly stated that he would "defy the court to host Netanyahu" and assured that the ICC's ruling would "have no effect in Hungary."¹⁰⁷

As a result, the ICC took steps against Hungary by making a finding of non-compliance.¹⁰⁸ Hungary contended that it has not incorporated the Rome Statute into its domestic legal framework and equally asserted that the Court lacks jurisdiction over the matters pertaining to the Palestinian situation.¹⁰⁹ In its response, the ICC noted that Hungary had initially indicated in 2003 that it could not incorporate the Rome Statute into its domestic law without amending its Constitution. Although Hungary amended its Constitution in 2016, it still chose not to adopt the Rome Statute, arguing that doing so would conflict with its constitutional provisions.¹¹⁰

The Court went on to assert that the absence of national legislation domesticating the Rome Statute cannot serve as an excuse for a state to neglect its obligations under the Statute. In this context, the Court referred to the *Kenyatta* case, where a comparable issue was raised. In that case, it was similarly concluded that the lack of domestic legal mechanisms to enable cooperation does not justify non-compliance.¹¹¹ Consequently, the Court came to a decision

¹⁰⁵ Prosecutor v. Omar Hassan Ahmad Al Bashir, Decision Pursuant to Article 87(7) of the Rome Statute on the Failure of the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir, Corrigendum, P.-T. Ch. I, ICC-02/05 01/09, 12 December 2011, para 18.

¹⁰⁶ Ibid para 47.

¹⁰⁷ Ashifa Kassam, "Netanyahu visits Hungary as Orbán vows to defy ICC arrest warrant" <https://www.theguardian.com/world/2025/apr/03/netanyahu-to-visit-hungary-as-orban-vows-to-defy-icc-arrest-warrant> (accessed 8 November 2025)

¹⁰⁸ The Situation in the State of Palestine, Pre-Trial Chamber I, 'Prosecution's Observations on Hungary's Submissions for the purposes of proceedings under article 87(7) of the Rome Statute (ICC-01/18-433-AnxII)', 13 June 2025, ICC-01/18-442-US-Exp, para 3.

¹⁰⁹ Ibid, para 20.

¹¹⁰ Ibid, paras 34-36.

¹¹¹ Ibid, para 38.

that the best course of action would be to refer the matter to the ASP.¹¹²

In a significant development, following a provisional request for arrest submitted by the Court concerning Netanyahu on April 3, 2025, the Hungarian government introduced a legislative bill in its parliament signalling its intent to withdraw from the Court's jurisdiction.¹¹³

Pursuant to the Rome Statute, "A State Party may withdraw from this Statute by submitting a written notification to the Secretary-General of the United Nations. Such withdrawal will take effect one year after the date the notification is received, unless a later date is specified in the notification."¹¹⁴ State withdrawal from the ICC does not in any way relieve the state from its obligations under the Statute.¹¹⁵ Hungary may still hold responsibility for its apparent failure to cooperate with the Court in regards to the apprehension of Benjamin Netanyahu during his recent visit to the country. This situation is compounded by the fact that a period of one year must elapse before Hungary can officially withdraw from the Court.

5.1.2 Double Standards in Non-Cooperation Findings

It is important to note that the ICC appears to apply double standards on findings of non-cooperation. While some states that Omar Al Bashir visited but did not arrest him were reported to the ASP or the UNSC, others were treated differently. A notable example is Nigeria, where Al Bashir visited and was not apprehended. Unfortunately, the ICC's Pre-Trial Chamber II merely requested Nigeria to arrest and surrender Al Bashir, and no further action was taken.¹¹⁶

Typically, the Trial Chamber would be expected to determine a finding of non-cooperation and subsequently refer the matter to the ASP. However, this did not occur. This does not imply that the ASP cannot intervene, irrespective of the Chamber's inaction. According to the Assembly's Procedures, the ASP is authorized to take action even if the Chamber has yet to reach a finding of non-cooperation, provided it is apparent that a state is likely to become non-cooperative or has already exhibited non-cooperative behaviour.¹¹⁷

¹¹² Ibid, paras 49 and 52

¹¹³ Ibid, paras 16 and 17. See also the Court's report of Hungary's withdrawal to the United Nations. The Document indicates that Hungary's withdrawal would take effect a year after submission of its request to withdraw from the Court – 2 June 2026, C.N.225. 2025.TREATIES-XVIII.10 (Depositary Notification).

¹¹⁴ Article 127 (1) of the Rome Statute

¹¹⁵ Article 127 (2) of the Rome Statute

¹¹⁶ Olympia Bekou, *Dealing with Non-cooperation at the ICC: Towards a More Holistic Approach*, p.5

¹¹⁷ Assembly procedures relating to non-cooperation (ICC-ASP/10/Res.5, annex), para 7b.

This option was overlooked by the ASP when addressing Nigeria's non-compliance. The existence of preferential treatment poses a tremendous challenge, as it perpetuates an environment that fosters impunity for international crimes. Lack of a uniform sanction standard not only weakens the credibility of the international justice system but also encourages perpetrators, allowing them to act without fear of consequences for non-compliance.

5.1.3 Lack of Coercive Powers

One of the major challenges facing the ASP is its lack of coercive power to compel states to comply with the directives or requests of the ICC. The proceedings within the ASP suggest that it can play a role in raising awareness among relevant states to encourage full cooperation.¹¹⁸ In the instance of Hungary's failure to comply, the ASP engaged directly with Hungary via its Minister of Trade and Foreign Affairs. The ASP reiterated Hungary's obligations under the Rome Statute concerning the execution of the arrest warrant issued for Netanyahu. This interaction took place on March 31, 2025.¹¹⁹

The ASP promptly initiated this action following credible intelligence indicating Hungary's plans to host Prime Minister Netanyahu. This was substantiated by the Hungarian Minister of Trade and Foreign Affairs, who, on 23 January 2025, affirmed Netanyahu's proposed visit.¹²⁰ However, Hungary did not heed to the ASP's reminder of cooperation with the Court showing the powerless situation of the ASP.

The measures adopted by the ASP do not necessarily compel a state to cooperate, nor do they impose sanctions that would effectively coerce compliance or deter other states from non-cooperation. Consequently, in the instances of Netanyahu and Gallant, non-cooperating states are unlikely to face sanctions, which perpetuates a climate of impunity.¹²¹

5.2 The United Nations Security Council

An alternative approach to address non-cooperation with the Court includes reporting the non-compliant state to the UNSC. This procedure is pertinent in cases where the UNSC has referred

¹¹⁸ Ibid, para 19.

¹¹⁹ The Situation in the State of Palestine, Pre-Trial Chamber I, 'Prosecution's Observations on Hungary's Submissions for the purposes of proceedings under article 87(7) of the Rome Statute (ICC-01/18-433-AnxII)', 13 June 2025, ICC-01/18-442-US-Exp, para 13.

¹²⁰ Ibid, para 7.

¹²¹ Ibid. see also Article 97 of the Rome Statute.

the situation to the Court.¹²²

Once again, it should be noted that countries allied with Israel, such as Germany, the USA, and the UK, are not parties to the Rome Statute. As previously discussed, non-state parties are not required to cooperate with the Court. Consequently, it will be impossible for the Court to declare non-cooperation against the aforementioned states. Additionally, since the United Nations Security Council did not refer the situation in Palestine to the ICC, non-cooperation cannot be reported to the Council either. Thus, addressing non-cooperating states will not be feasible in the case against Netanyahu and Gallant.

6. Conclusion

The anticipated prosecution of Benjamin Netanyahu, the former Prime Minister of Israel, alongside Yoav Gallant, emphasizes the ongoing and complex tensions between the ICC and the geopolitical realities that influence state cooperation. While the ICC has established a robust legal framework designed to address individual criminal responsibility and assert jurisdiction over serious international crimes, it faces significant practical challenges that hinder its effectiveness.

One of the primary obstacles is selective compliance among states, where certain nations choose to cooperate with the ICC while others intentionally evade its jurisdiction. The geopolitical landscape further complicates this issue, as powerful allies of Israel, notably the United States, Germany, and the United Kingdom, express support for Israel's position, thereby influencing the likelihood of compliance with ICC mandates. This lack of uniform support continues to undermine ICC's mandate to investigate and prosecute cases.

Additionally, the ICC's sanctions mechanism remains relatively weak, as highlighted by the ASP. This weakness hampers the Court's ability to compel states to adhere to its rulings and cooperate with investigations. There are also significant evidentiary challenges associated with cases like that of Netanyahu and Gallant, stemming from Israel's steadfast refusal to collaborate with the ICC. Also, the fact there exists witness and victim intimidation for Palestinian atrocities goes to show how the ICC might eventually struggle to prove the case beyond reasonable doubt.

¹²² Article 87(7) of the Rome Statute

However, in the face of these obstacles and the potential for non-compliance, the Court's assertive stance represents a crucial declaration that international crimes must not be tolerated or left unpunished.