



INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS

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ICC ARREST WARRANTS FOR NETANYAHU AND GALLANT: A STEP TOWARDS ENDING IMPUNITY

I. The International Association of Democratic Lawyers (IADL) welcomes the International Criminal Court’s issuance of arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Minister of Defence Yoav Gallant for war crimes and crimes against humanity in Gaza.

This announcement was made on Day 441 of Israel’s genocidal war against the Palestinian people in Gaza, the West Bank, and East Jerusalem, and its recent aggression against Lebanon.

On 21 November 2024, the ICC’s Pre-Trial Chamber I announced its decision to grant the ICC Prosecutor’s Application for Arrest Warrants, filed six months ago - on 20 May 2024. On the same day, the Chamber issued two procedural decisions, rejecting Israel’s jurisdictional and admissibility challenges, pursuant to Articles 18(1) and 19(2) of the Rome Statute.

The fact that Israel is not a Party to the Rome Statute is not a bar to the ICC’s jurisdiction. The State of Palestine is a State Party to the Rome Statute, which was entered into force for it on 1 April 2015. Hence, the ICC’s territorial jurisdiction is conferred under Article 12(2)(a). In addition, the State of Palestine, on 1 January 2015, pursuant to Article 12(3) of the Rome Statute, lodged a declaration accepting the jurisdiction of the Court.

In its decision in February 2021, Pre-Trial Chamber 1 held that the Court could exercise criminal jurisdiction in the Situation in Palestine, pursuant to Article 12(2)(a) and, by a majority, that the territorial scope of this jurisdiction extended to Gaza and the West Bank, including East Jerusalem.

As Al-Haq, Al Mezan Center for Human Rights (Al Mezan) and the Palestinian Centre for Human Rights (PCHR) point out, the decision to issue these arrest warrants is “a historic and pivotal moment in the battle against Israel’s impunity, in which the Palestinian people have been denied justice, and subjugated for decades under a genocidal, settler-colonial apartheid regime.”

This is the first time that the ICC has issued arrest warrants against an Israeli official for crimes against the Palestinian people. It is also only the second time in its 22 years of existence that the ICC has issued an arrest warrant for someone who is not from the African Continent.

II. An ICC Press Release states that the Chamber found “reasonable grounds” that both Netanyahu and Gallant bore criminal responsibility for the war crime of starvation as a method of warfare, and for crimes against humanity (murder, persecution and other inhumane acts) which were part of a widespread and systematic attack against the civilian population of Gaza. In addition, both officials are alleged to have intentionally directed an attack against the civilian population.



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The Chamber considered that there are “reasonable grounds” to believe that both Netanyahu and Gallant “intentionally and knowingly deprived the civilian population in Gaza of objects indispensable to their survival, including food, water, and medicine and medical supplies, as well as fuel and electricity, from at least 8 October 2023 to 20 May 2024.” The Chamber noted that Israel’s decisions to allow minimal humanitarian aid into Gaza were made in response to international pressure, and not in fulfillment of Israel’s obligations under international humanitarian law. Therefore, the Chamber found “reasonable grounds” to believe that both Netanyahu and Gallant bore criminal responsibility for the war crime of starvation. These deprivations of food, water and medicine violated Palestinians’ fundamental right to life and health.

The Pre-Trial Chamber’s finding of reasonable grounds for criminal responsibility carries significant legal weight, because it triggers the commencement of a criminal case.

III. IADL notes that the crime of genocide, one of the core crimes in the Rome Statute, and the crime of apartheid were missing from the Prosecutor’s Application for arrest warrants. Notwithstanding the gravity of the crimes included in the arrest warrants, the crimes of genocide and apartheid are grievous crimes which Israel has been perpetrating for decades, long-before the temporal jurisdiction of 8 October 2023 and continuing far beyond its limit of 20 May 2024 (the date of the Application). Especially in light of the failure of Israel to comply with repeated orders issued by the ICJ in 2024 to implement provisional measures to prevent the commission of all genocidal acts, in contravention of the Genocide Convention, the Prosecutor’s failure to include genocide and apartheid is significant.

IV. Nevertheless, the issuance of arrest warrants is a momentous legal development in the broader political context. Cloaked in impunity, Netanyahu’s reaction was expected. In an address on 21 November, Netanyahu called the ICC’s arrest warrant decision an “antisemitic move with one goal: to deter me, to deter us, from exercising our natural right to defend ourselves against our enemies who seek to destroy us.” Netanyahu called the court “biased” and said its accusations of “fictitious crimes” are “absurd” and “distorted.” “This is a moral bankruptcy,” he said, that harms the “natural right of democracies to defend themselves against murderous terrorism.” (As reported in *The Washington Post*, 20 November 2024 (on-line))

IADL rejects Netanyahu’s attacks on the rule of law, including his assertion that Israel has a right to self-defense against the Palestinian people. In its 2004 advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the ICJ established the non-applicability of “self-defence” under Article 51 of the UN Charter in the situation between Israel and the Occupied Palestinian Territory. In fact, under the Fourth Geneva Convention, Israel, as Occupying Power, has a duty to protect the occupied Palestinian people, which it has failed to do. Moreover, it is Israel’s genocidal actions that are fomenting antisemitism, not the ICC’s arrest warrants.



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IADL notes that many countries who are among the 124 which have ratified the Rome Statute, including the European Union countries, have announced their commitment to fulfill their legal obligations. The Netherlands (the ICC's host country) was one of the first to declare that it would arrest Netanyahu and send him to the Hague if he sets foot in that country. This affirms that an overwhelming majority of the world believes it is important for the rule of law to apply to everyone, and that the principles of international law must be respected and implemented.

V. The U.S., as is well-known, remains the major “outlier” State. It has been in this position since the Preparatory Meetings for the International Criminal Court starting in the late 1990's. The U.S. has sent at least \$17.9 billion in military aid to Israel, since October 7, 2023, according to *AP News*. Therefore, the U.S. reaction, jumping to the defence of Netanyahu, comes as no surprise. Together, Israel and the U.S. continue to flaunt international law and the obligations of the member States of the UN. Most recently, the Israeli Parliament voted to ban UNRWA from operating within Israel and occupied East Jerusalem and to ban contact between UNRWA employees and Israeli officials, effectively making it impossible to operate in Gaza and the West Bank. This is another example of Israel's deliberate obstruction of humanitarian access to Gaza, demonstrating that Israel has only contempt for the UN and its mission, and the Palestinian people.

VI. IADL joins with the proposals of Al-Haq, Al Mezan and PCHR in their 22 November 2024 statement.

***IADL calls on State Parties to the Rome Statute to:**

- implement arrest warrants if Netanyahu and Gallant set foot on their territory, and facilitate their transfer to the Hague;
- investigate and prosecute nationals or those present on their territory who have committed international crimes in the Occupied Palestinian Territory;
- work with civil society organizations to protect the Office of the Prosecutor, the ICC, lawyers representing Palestinian victims and NGOs working with the Court from attack, and counter any sanctions against the ICC; and
- increase their financial support to the ICC, for the continued investigation of crimes in the Occupied Palestinian Territory, as well as to “anchor” the Court's independence and impartiality from attack.



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***IADL calls on the Office of the Prosecutor to:**

- continue its investigations of those responsible for crimes, under the Rome Statute, in the Occupied Palestinian Territory, including examination of additional new charges against Netanyahu and Gallant;
- continue to investigate every individual complicit in genocide, war crimes and crimes against humanity, and every complaint relating to those supplying weapons and troops for the commission of these crimes in Palestine, regardless of nationality or country of origin.
- submit further Applications for Arrest Warrants for Israeli officials and military commanders responsible for crimes against the Palestinian people, including but not limited to, the war crime of transfer of civilians of the Occupying Power into occupied territory, crimes related to the establishment of settlements, crimes committed against Palestinian prisoners and detainees, the crime against humanity of apartheid, and the crime of genocide;

***IADL calls on all States to:**

- end military aid to Israel, launch an arms embargo, and end complicity with the crimes of Netanyahu and Gallant;
- sever economic relations with Israel, which maintains its unlawful occupation of Palestinian territory (West Bank, East Jerusalem and the Gaza Strip) - consistent with the conclusions of the ICJ's *Advisory Opinion on the legal consequences arising from the policies and practices of Israel in the OPT, including East Jerusalem*, 24 July 2024.

The International Association (IADL) is a world-wide organization of jurists, founded in 1946, to implement the UN Charter. IADL is in consultative status II with ECOSOC, and is represented at UNESCO and UNICEF. More information is available at www.iadllaw.org.