



By: *Tomorrow's Affairs Staff*

# The International Criminal Court—probably the biggest loser of its decision on Netanyahu



The issuing of the arrest warrant for Israeli Prime Minister Benjamin Netanyahu by the International Criminal Court (ICC) will further complicate relations in connection with the Middle East crisis.

It will certainly complicate the position of PM Netanyahu; it will expose him to pressure both in the world and at home. In view of the opposition to the decision from numerous influential states, the authority of the ICC will also face major challenges.

Furthermore, even though many believe the court's decision in The Hague will strengthen the mechanism of international legal obligations, it will shake the entire system.

South Africa is a prime example of being flexible with the ICC's decisions. Although it is one of 124 **states** that recognise the jurisdiction of the ICC, South Africa ignored the arrest warrant against Sudanese President Omar al-Bashir in 2015.

South Africa then **received** him as a participant in the African Union summit, despite the ICC's indictment and arrest warrant for the crimes he committed against his own people.

South Africa, however, welcomed the ICC's decision to issue an arrest warrant for Netanyahu and recently dismissed Defence Minister Yoav Gallant following the indictment.

In the meantime, the Pretoria government had been desperately looking for a way out of another complicated situation with the ICC last year, when it was due to receive Vladimir Putin, also wanted by the ICC, at the BRICS summit in Johannesburg. Putin refused to attend the summit, even though the South African hosts assured him that nothing terrible would happen to him, just like Omar al-Bashir.

## There is no principled answer

Based on these three cases, how could one describe the attitude of the South African government towards the obligations arising

from its acceptance of the ICC as an international authority?

Is South Africa really a reliable partner of the ICC, or is it merely selective when certain decisions of the court are in line with its foreign policy?

Any nation can be asked this question, not just the 124 that have adopted the Rome Statute, the founding document and jurisdiction of the ICC.

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Their answers will rarely be principled, and they will almost always focus on foreign policy interests rather than the obligations arising from international law.

If asked to decide whether to execute the arrest warrants against Vladimir Putin and Benjamin Netanyahu, most countries in the world probably would not pass the test of loyalty to the international legal order.

These ICC orders are equally binding, but all, or even the vast majority of states, will approach them selectively, placing their political interests above their international legal obligations.

## A precedent with Putin

The US government warmly welcomed the ICC's decision in March 2023 to indict Vladimir Putin for war crimes and issue an arrest warrant for him. President Joe Biden **said** at the time that the ICC "made a very strong point" and that Putin had "clearly committed war crimes."

However, the White House strongly condemned the indictment of both Hamas and the Israeli leadership for crimes against the Palestinians in Gaza last May. "There is no

equivalence—none—between Israel and Hamas," President Biden said at the time.

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In view of the ICC's arrest warrant, many Western governments are still **unsure** how to deal with their ally, the Israeli prime minister.

One of the few that has stated unequivocally that it will implement the decision and arrest Netanyahu if he visits its territory is the government of the Netherlands, which is also the host of the ICC in The Hague.

Most of Israel's most important allies also accept the jurisdiction of the ICC. These are EU member states, followed by the UK, Canada, and Australia. Their governments will have to approach future communication with the Israeli Prime Minister with considerable caution and even effort, especially when it comes to face-to-face meetings.

Talking to a "wanted person" is risky and opens room for a clean attack by the opposition on any government whose members will meet with Netanyahu in the future. This is the reason why most European governments did not have a clear response to the ICC's decision regarding the Israeli Prime Minister, because it is neither easy nor without risks.

## ICC—the biggest loser

Prime Minister Netanyahu has rejected the ICC's decision against him as "anti-Semitic" and emphasised in a very sharp criticism of the court in The Hague that it will in no way affect his government's war goals. "No war is more just than the war Israel is waging in Gaza after Hamas attacked us unprovoked," said the Israeli Prime Minister.

Although the ICC's decision will undoubtedly

complicate the Israeli prime minister's diplomatic affairs, the biggest loser of the whole case could be the ICC itself. It seems paradoxical that those who make the decisions bear the brunt of the consequences.



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This international court simply has no mechanism to enforce its decisions, and their enforcement depends solely on the will of the states that respect its jurisdiction.

But the experience of the indictment and arrest warrant against Vladimir Putin has shown that foreign policy interests will sooner or later prevail over legal decisions whose authority many have accepted in advance.

Putin's **visit** to Mongolia in early September marked a significant milestone, marking his first visit to a country that acknowledges the jurisdiction of the ICC. A precedent has been established, and it is only a matter of time before there is a repeat.

In the case of Netanyahu, the situation will develop similarly, facilitated by the broad support of influential countries for Israel and its democratically elected leader. Their interest in the Middle East, which concerns Israel, is greater than the question of whether they respect or violate the decision of an international court.