



By: Shlomo Ben-Ami

The ICC's days were always numbered



International criminal tribunals once focused on bringing defeated leaders, such as Serbia's Slobodan Milošević and Liberia's Charles Taylor, to justice.

But the International Criminal Court has gone further, issuing arrest warrants for incumbent leaders—notably, Russian President Vladimir Putin and Israeli Prime Minister Benjamin Netanyahu.

While there is a certain boldness in such actions, they fail to account for political reality. In fact, the ICC's new, more forceful posture may well have incited its downfall.

Western governments were united in applauding the ICC's 2023 arrest warrant for Putin, but they remain deeply divided over the 2024 **arrest warrant for Netanyahu**.

Whereas Ireland has supported the move, Czech Foreign Minister **Jan Lipavský** decried it: "Putting a terrorist and someone defending their country against [terrorists] on the same level ... undermines the credibility of the court."

In the United States, nearly **half of the population** believes that Netanyahu should be arrested if he enters the country, in accordance with the ICC warrant.

But President Donald Trump's administration considers the ICC's actions part of an unacceptable new front in the "war" that Secretary of State **Marco Rubio** claims the institution has been waging on the US and its allies.

Rubio has vowed to dismantle the ICC "brick by brick," including through asset freezes, visa bans on ICC judges, and pressure on member states, such as US client Venezuela, to withdraw from the Court.

Burkina Faso, Mali, and Niger have also begun the **withdrawal process**, denouncing the ICC as a "tool of neocolonial repression."

Existential test for the ICC

This is not just about Netanyahu: though the **US has supported ICC** action when it aligned with US interests, the Trump administration insists—at precisely the moment when it is carrying out military operations that violate international law—that the Court should have no jurisdiction over Americans.

But Netanyahu's case has become an existential test for the ICC, one that the institution will almost certainly fail.

A court whose indictments do not lead to arrests lacks legitimacy. And the chance that Netanyahu—or Putin, for that matter—will be taken into custody is close to zero.

"I don't think there is a single European country that would arrest Mr. Netanyahu," said Belgian Prime Minister **Bart De Wever**, noting that within the "framework of realpolitik, practical considerations prevail over ethical considerations."

Such defiance is hardly unprecedented. The ICC first charged Sudan's then-president, Omar al-Bashir, with war crimes in 2009 and issued a **second arrest warrant** in 2010 for his role in the Darfur genocide. Yet Bashir remained in power until the 2019 coup d'état.

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When Bashir visited Turkey in 2017, President **Recep Tayyip Erdoğan** said he could "only laugh" at the ICC's demand for an arrest.

Erdoğan has praised the ICC's warrant for Netanyahu, however, highlighting the extent to which support for the Court is about politics, not respect for the institution.

Turkey is not an ICC member. Nor are Indonesia, Israel, or Pakistan, let alone major powers like China, India, Russia, and the US.

European countries are—and they, too, have

refused to help enforce arrest warrants.

In January 2025, Osama Elmasry Njeem, a senior Libyan military officer charged with war crimes and crimes against humanity, was arrested in Turin under an **ICC warrant**.

But Italy then released Njeem and sent him back to Libya, without so much as notifying the Court—a violation of its obligations under the ICC's Rome Statute. Njeem was **arrested** in Tripoli the following November.

Undermining the ICC's credibility

Further undermining the ICC's credibility are charges of “selective justice,” which are reinforced by a structural constraint of the Court: in cases where the crime took place on a non-member state's territory, the ICC may exercise jurisdiction if the state agrees or if the United Nations Security Council refers the case to the Court.

This explains why the ICC has not been able to indict former Syrian dictator Bashar al-Assad, who oversaw the massacre of roughly **half a million people**.

Nor has the Court charged any Chinese leaders over the cultural genocide perpetrated against the Uyghur minority in Xinjiang.

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And despite the Trump administration's claims that the ICC has an anti-American vendetta, the US and its British allies remain shielded from accountability over the **hundreds of thousands** of civilian deaths in non-member Iraq.

In Netanyahu's case, the ICC found a way around this constraint. It **asserts** that it can

“exercise its jurisdiction on the basis of territorial jurisdiction of Palestine,” which has acceded to the Rome Statute, even though the legal status of the State of Palestine is a source of considerable disagreement, among both states and legal scholars.

To push the case forward, the Court also arguably failed to uphold the principle of complementarity, which requires the Court to defer to national authorities that are willing and able to investigate and prosecute the relevant crimes.

Tendency toward selective justice

The ICC was meant to be a court of last resort, and while Israel's political class warrants reproach, its judicial system remains capable and respected.

Yet Israel seems not to have been given a reasonable opportunity to claim complementarity before the ICC issued its arrest warrant.



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This amounts to a significant blunder—especially given that, as of last October, **74% of Israelis** supported the establishment of a state commission of inquiry into the war in Gaza.

There is every reason to believe that, sooner or later, Israeli leaders will be held accountable for the horrors they have overseen.

The Netanyahu arrest warrant has underscored the ICC's impotence and tendency toward selective justice, but it did not create them.

In fact, the Court's days were arguably always numbered. Born amid the euphoria of the West's Cold War victory, it embodied the aspiration that international law could transcend politics, and that a single institution could fairly and impartially defend human rights around the world.

But the ICC always represented victors' justice, and it was never equipped to operate in a world shaped by Machtpolitik.

In this context, non-judicial mechanisms—such as political pressure, bilateral agreements, economic sanctions, and the promotion of complementarity—may well prove more effective.

In any case, the ICC's record clearly does not vindicate its purported role as the universal arbiter of international criminal justice, and it might have to relinquish it.

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