



Ramifications of the ICC Arrest Warrant in Resolving the Israel-Palestine Conflict

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Abstract. The situation in Palestine was referred to the International Criminal Court (ICC) in 2015. This study highlights the various hurdles that remain ahead of the Court and argues that the key essence of international law is to ensure the harmonious coexistence of nations, while at the same time respecting states' sovereignty. The study employed a qualitative research and normative legal approach, relying on primary and secondary sources of international law. The study reveals that following the establishment of the Court's jurisdiction and upon conducting a thorough investigation, the Court affirmed the commission of war crimes by Israel, which fall within the ambit of the Rome Statute, thus allowing the Court to prosecute the war criminals. Consequently, in 2024, the Office of the Prosecutor (OTP) issued arrest warrants against Israeli and Hamas leaders. Despite the ICC having the mandate to try individuals for the alleged commission of international crimes, the enforcement of such arrests has often been a matter of speculation, since the ICC is encircled with numerous stumbling blocks in effectuating the arrests. The Court uses arrest warrants to pressure states to prosecute perpetrators domestically and avoid armed conflicts, as shown by urgent mediation and ceasefire proposals after the OTP announcement.

Keywords: ICC, Arrest Warrant, Ceasefire, Israel-Palestine, Mediation, Rome Statute

Abstrak. Situasi di Palestina dirujuk ke Pengadilan Pidana Internasional (ICC) pada tahun 2015. Penelitian ini menyoroti berbagai hambatan yang masih dihadapi oleh Pengadilan dan berargumen bahwa inti dari hukum internasional adalah untuk memastikan eksistensi yang harmonis antar negara, sambil tetap menghormati kedaulatan negara-negara tersebut. Penelitian ini menggunakan pendekatan penelitian kualitatif dan pendekatan hukum normatif, dengan mengandalkan sumber primer dan sekunder dari hukum internasional. Penelitian ini mengungkapkan bahwa setelah penetapan yurisdiksi Pengadilan dan dilakukan penyelidikan menyeluruh, Pengadilan mengaskan adanya kejahatan perang yang dilakukan oleh Israel, yang masuk dalam lingkup Statuta Roma, sehingga memungkinkan Pengadilan untuk mengadili para pelaku kejahatan perang. Akibatnya, pada tahun 2024, Kantor Jaksa Penuntut Umum (OTP) mengeluarkan surat perintah penangkapan terhadap pemimpin Israel dan Hamas. Meskipun ICC memiliki mandat untuk mengadili individu atas dugaan pelanggaran kejahatan internasional, pelaksanaan penangkapan tersebut seringkali menjadi spekulasi, karena ICC dikelilingi oleh berbagai hambatan dalam melaksanakan penangkapan tersebut. Oleh karena itu, melalui surat perintah penangkapan ini, Pengadilan berusaha untuk memaksa negara-negara agar mengadili pelaku kejahatan tersebut secara domestik dan untuk menghindari konflik bersenjata, seperti yang terlibat dari upaya mediasi yang mendesak dan proposal gencatan senjata setelah pengumuman OTP.

Kata kunci: ICC, Surat Perintah Penangkapan, Gencatan Senjata, Israel-Palestina, Mediasi, Statuta Roma



1. Introduction

As early as the 19th century, the Israel-Palestine conflict has admittedly been the longest-standing dissension in history.¹ The discord is claimed to be a part of the wider Arab-Israeli conflict, and despite numerous attempts, the conflict remains unresolved to this day.² However, the discord has apparently taken a deadly turn following a 'surprise attack' by Hamas in October 2023. Since then, Israel has employed aggressive and disproportionate force in the Palestinian territories, resulting in the mass killing of thousands of Palestinians, including children and elderly citizens, and the total destruction of hospitals, schools, and Palestinian residences. Israel has even been accused of targeting safe zones that were considered threat-proof. Israel has justified its heinous actions as a response to the Hamas attack and in self-defense against any future attacks. Nevertheless, it is undeniable that Israel has been committing systematic war crimes in Palestine, and in return, Hamas argues that its attack was in retaliation for previous Israeli actions.³ Palestine referred its situation to the ICC in 2015. The first hurdle the Court had to resolve was the issue of 'jurisdiction,' since Palestine was not recognized as a state and Israel had not ratified the Rome Statute. This issue was resolved by relying on Article 12, which states that the ICC is entitled to try war crimes committed by countries that are not signatories to the Rome Statute, so long as the territory affected is that of a signatory state.⁴ Subsequently, in 2019, the Office of the Prosecutor (OTP) announced it would initiate an investigation into the situation in Palestine under Article 18(1), and the commission of war crimes and crimes against humanity was affirmed.⁵

In May 2024, Karim Khan, the International Criminal Court prosecutor, declared the issuance of arrest warrants against leaders from Israel and Hamas.⁶ The OTP emphasized focusing on crimes of 'starvation' and the expropriation of

¹ Ze'ev Safrai, *Seeking out the land: land of Israel traditions in ancient Jewish, Christian and Samaritan literature (200 BCE-400 CE)*, (Leiden: Brill, 2018), 141.

² Benny Morris, *1948: a history of the first Arab-Israeli war*, (New Haven: Yale University Press, 2008), 32.

³ Marta Bo, "Autonomous Weapons and the Responsibility Gap in light of the Mens Rea of the War Crime of Attacking Civilians in the ICC Statute," *Journal of international criminal justice* 19, no. 2 (2021): 282.

⁴ Khaled Elgindy, "Palestine goes to the UN: understanding the new statehood strategy," *Foreign Aff.* 90 (2011): 106.

⁵ Ramisa Jahan, "Can Israel Prevent The Icc From Conducting An Investigation In The Situation In Palestine?," *Malaysian Journal of Law & Society* 31 (2022): 199.

⁶ International Criminal Court, "Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine," *International Criminal Court*, May 20, 2024. <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>.

materials vital to the existence of Palestinian civilians, resulting in the willful commission of crimes, including degrading treatment, murder, and crimes against humanity, among others. The OTP accused the Israeli government of mechanizing ‘starvation’ to free its hostages, eliminate Hamas, and impose punishment on Palestinians. It can be said that the OTP has pioneered the prosecution of the war crime of starvation, as such a crime has never been tried internationally. Despite global support for the OTP’s announcement, the stumbling blocks that deter the effectuation of the arrest warrant remain a concern. Some critics have gone further to speculate on the effectiveness and existence of international law in resolving global disputes.⁷

To date, the discord between Israel and Palestine, alongside the ICC’s role in the dispute, has been explored extensively from various perspectives.⁸ For instance, the issues of jurisdiction, admissibility, recognition of Palestinian statehood, diplomatic relations, and international law have all been examined.⁹ Nonetheless, many gaps remain that are still open to research and exploration. In this paper, the author highlights the obstacles in executing the arrests, namely, the principle of complementarity, states’ immunities, and reliance on states’ cooperation in arresting the alleged individuals. Furthermore, the author contends that the primary purpose behind the construction of international law was to ensure global harmony and tranquility through the congruous and amicable co-existence of nations, while also respecting the sovereignty of independent states. Hence, the arrest warrant and the obstructing elements serve as tools to catalyze the resolution of disputes

⁷ Allard Duursma, “Pursuing justice, obstructing peace: the impact of ICC arrest warrants on resolving civil wars,” *Conflict, Security & Development* 20, no. 3 (2020): 345.

⁸ John Dugard, “Palestine and the International Criminal Court: Institutional Failure or Bias?,” *Journal of International Criminal Justice* 11, no. 3 (2013): 564. See also, David Bosco, “Palestine in The Hague: Justice, Geopolitics, and the International Criminal Court,” *Global Governance* 22 (2016): 155; Andreas Zimmermann, “Palestine and the International Criminal Court quo vadis? Reach and limits of declarations under Article 12 (3),” *Journal of International Criminal Justice* 11, no. 2 (2013): 307; Daniel Benoliel and Ronen Perry, “Israel, Palestine, and the ICC,” *Michigan Journal of International Law* 32, no. 1 (2010): 97; Yaël Ronen, “Israel, Palestine and the ICC—territory uncharted but not unknown,” *Journal of International Criminal Justice* 12, no. 1 (2014): 21; Alain Pellet, “The Palestinian declaration and the jurisdiction of the International Criminal Court,” *Journal of International Criminal Justice* 8, no. 4 (2010): 981-999.

⁹ Eugene Kontorovich, “Israel/Palestine—the ICC’s uncharted territory,” *Journal of International Criminal Justice* 11, no. 5 (2013): 981; Hyeyoung Lee, “Defining State for the Purpose of the International Criminal Court: The Problem ahead after the Palestine Decision,” *University of Pittsburgh Law Review* 77 (2015): 345; Seada Hussein Adem, *Palestine and the International Criminal Court*, (Den Haag: TMC Asser Press, 2019), 121; Yaël Ronen, “ICC jurisdiction over acts committed in the Gaza Strip: Article 12 (3) of the ICC Statute and non-state entities,” *Journal of International Criminal Justice* 8, no. 1 (2010): 23; Robert P. Barnidge Jr, “Palestinian engagement with the International Criminal Court: From preliminary examination to investigation?,” *The Journal of the Middle East and Africa* 7, no. 2 (2016): 120; Adam G. Yoffie, “Palestine Problem: The Search for Statehood and the Benefits of International Law,” *Yale Journal of International Law*. 36 (2011): 497.

by the nations themselves, as otherwise their global reputation and credibility would be at stake. This is evident from the urgent mediation efforts undertaken by the United States (a key supporter of Israel) and other Middle Eastern countries, as well as the subsequent ceasefire proposal, which the author also discusses in this article.

2. Research Method

The author has utilized the qualitative research method, and a normative legal approach has been applied. The author has relied on primary and secondary sources of international law, ranging from customary international law and international treaties, such as the Rome Statute—the legal sources available to the ICC—and the Geneva Conventions of 1949, as well as other legal codes from organizations such as the United Nations Security Council and the Assembly of State Parties. The author has also made use of a wide variety of literature, research papers, and blogs. First, the author discusses the background of the Israel-Palestine conflict and how it has shaped the current situation, as well as the application of the Rome Statute to the situation. Second, the obstacles ahead of the ICC arrest warrants are highlighted. Finally, the author reiterates the true essence of international law, asserting that the so-called 'stumbling blocks' are, in reality, certain measures allowing state parties to comply with their international obligations.

3. Result and Discussion

3.1 Israel-Hamas War and ICC Arrest Warrants

On the 7th of October, 2023, Hamas, along with other Palestinian military groups, for the very first time in history, initiated a coordinated armed attack in southern Israel. Coincidentally, it occurred on a Jewish religious holiday (*Simchat Torah*). The attackers launched around 30,000 rockets and carried out vehicle-transported and powered paraglider assaults into Israel.¹⁰ The fighters allegedly violated the Gaza-Israel barrier by bombarding military camps and killing civilians in at least twenty-one communities. A total of 1,139 people were killed during the incursion. Furthermore, more than 200 Israeli civilians and soldiers were taken as hostages to compel the exchange of captives for imprisoned Palestinians. Hamas

¹⁰ Ninda Soraya, Ali Muhammad, and Suyatno Ladiqi, "ICC Jurisdiction: Against Israeli War and Humanitarian Crimes Targeting Palestinian Civilians 2023," *Jurnal Media Hukum* 31, no. 1 (2024): 66.

claimed that the incursion was in retaliation for the ongoing and recent escalation of Israel's occupation and blockade of Palestinian territories and the Gaza Strip.¹¹

In response, Israel has been incessantly attacking the Palestinian territories and committing mass atrocities on Palestinian soil, which has now gone beyond the “proportionate use of force” in ‘self-defense’ that Israel has claimed.¹² During the year 2023, according to reports from the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Israel has allegedly used excessive lethal force and killed almost 500 Palestinians, one-third of whom were children. Furthermore, according to the Israeli Prison Service, the authorities have held nearly 3,000 Palestinians in detention, without any charges or trial. The figure is said to mark a ‘three-decade’ high, according to HaMoked, a human rights organization in Israel.¹³

The transfer of civilians to an occupied territory is a war crime; and in 2023, Israel approved the construction of approximately 13,000 new housing units in settlements in the occupied West Bank, a record-breaking number since 2012, according to the Israeli group Peace Now. In the same year, incidents of brutality by Israeli settlers against Palestinians reached the highest daily average (five per day) since October 2023.¹⁴ A video clip circulated on social media showed Israeli soldiers unleashing a dog on an elderly Palestinian woman because she refused to vacate her residence. This is one of thousands of examples of inhumane and derogatory treatment of Palestinians by Israel.

Soon after the October attack, Israel suspended all essential services to Gaza, including water and electricity. The authorities even barred the entry of critical humanitarian aid. There has been unlawful use of phosphorus by Israeli forces in densely populated Palestinian territories. In various reports, Gaza authorities have claimed that almost 19,000 civilians were killed between October 7 and December 12, 2023. The cutting off of electricity, fuel supply, desalination facilities, and clean water has resulted in telecommunication blackouts and a public health crisis.¹⁵ According to the OCHA, almost 60 percent of the housing stock in Gaza was

¹¹ Marta Bo, “Autonomous Weapons and the Responsibility Gap in light of the Mens Rea of the War Crime of Attacking Civilians in the ICC Statute,” *Journal of international criminal justice* 19, no. 2 (2021): 290.

¹² Aneta Brockhill, and Karl Cordell, “The violence of culture: the legitimization of the Israeli occupation of Palestine,” *Third World Quarterly* 40, no. 5 (2019): 988.

¹³ Ninda Soraya, Ali Muhammad, and Suyatno Ladiqi, “ICC Jurisdiction: Against Israeli War and Humanitarian Crimes Targeting Palestinian Civilians 2023,” *Jurnal Media Hukum* 31, no. 1 (2024): 70.

¹⁴ Abdalfatah Mohammed Asqool, Shahrul Mizan Ismail, and Rohaida Nordin, “The Protection of Children during Armed Conflicts: Israeli Violations of International Humanitarian Law in Three Wars in Gaza,” *UUM Journal of Legal Studies* 14, no. 2 (2023): 540.

¹⁵ Taylor Kate Woodcock, “Human/machine (-learning) interactions, human agency and the international humanitarian law proportionality standard,” *Global Society* 38, no. 1 (2024): 111.

demolished amidst the intense Israeli military operations. The World Health Organization (WHO) reported that 187 attacks were carried out on healthcare facilities, destroying 24 hospitals.¹⁶ As of August 9, 2024, over 40,000 civilians have been killed in the war, with the majority in the Gaza Strip. It has been reported by the PCOSR that over 60% of Gazans have lost family members since October 7. The Gaza Health Ministry announced on April 30, 2024, that 24,686 casualties had been specifically identified through hospitals, family members, and media reports.¹⁷ Francesca Albanese, the United Nations Special Rapporteur on Palestine, has claimed that Israel is committing 'genocide' in Gaza by targeting its neighborhoods, hospitals, schools, and even refugee camps and safe zones.

Amid the ongoing unrest in Palestine, the OTP's announcement of arrests remains the latest development. The warrants have been directed at Israeli Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant, accusing them of intentionally deploying starvation as a means of military action under Article 8(2)(b)(xxv) of the ICC Statute. The Prosecutor has alleged that the Israeli government has used 'starvation' to free its hostages, eliminate Hamas, and impose punishment on Palestinians, as well as committing "crimes against humanity, including murder, extermination, and other inhumane acts." Furthermore, Hamas leaders Mohammed Diab Ibrahim al-Masri, Yahya Sinwar, and Ismail Haniyeh have been incriminated in the case.¹⁸ The pre-trial chamber is convinced that the deaths and suffering caused have been deliberate, pointing to certain incidents, such as the closing of border crossings, the siege of the Gaza Strip, and the disruption of humanitarian supplies, electricity, food, and water to Gaza, among others.

The International Criminal Court (ICC) is the primary international court with jurisdiction to prosecute crimes of genocide, crimes against humanity, war crimes, and crimes of aggression, as enshrined in Article 5 of the Rome Statute.¹⁹ The primary objective behind the establishment of the Court arose from the need for a

¹⁶ Human Rights Watch, "Gaza Findings on October 17 al-Ahli Hospital Explosion," (2023), <https://www.hrw.org/news/2023/11/26/gaza-findings-october-17-al-ahli-hospital-explosion>.

¹⁷ Emanuel Fabian, "Defense Ministry contractor succumbs to wounds sustained in southern Gaza mortar attack,"

The Times of Israel, (2024), https://www.timesofisrael.com/liveblog_entry/defense-ministry-contractor-succumbs-to-wounds-sustained-in-southern-gaza-mortar-attack/.

¹⁸ United Nations, "ICC Seeking Arrest Warrants for Hamas Leaders and Israel's Netanyahu," *United Nations Publications*, May 21, 2024. <https://un.dk/icc-seeking-arrest-warrants-for-hamas-leaders-and-israels-netanyahu/>.

¹⁹ The Hon David Hunt, "The International Criminal Court," *Journal of International Criminal Justice* 2, no. 1 (2004): 69. See also, Mahnoush H. Arsanjani, "The Rome Statute of the international Criminal court." *American Journal of International Law* 93, no. 1 (1999): 27; Antonio Caesius, "The Statute of the International Criminal Court: some preliminary reflections." *European Journal of International Law* 10, no. 1 (1999): 149.

tribunal at the global level to resolve and settle disputes involving international political leaders.²⁰ Ordinarily, proceedings at the Court are initiated through a preliminary examination. At this stage, the OTP analyzes whether an independent investigation is necessary. Thus, issues of jurisdiction, principles of admissibility, and the interests of justice are examined. The ‘*principle of complementarity*’ is applied in testing admissibility. Hence, the Court’s role comes into play only when states have demonstrated ‘unwillingness’ or ‘inability’ to prosecute an alleged individual. In this case, the outcome of domestic proceedings remains immaterial. Furthermore, the OTP conducts investigations when a situation is referred to it either by a member state, the United Nations Security Council (UNSC), or in the Prosecutor’s own capacity (*proprio motu*).²¹ Subsequently, upon application from the OTP, if a pre-trial chamber is satisfied that ‘reasonable grounds’ exist to be convinced that an alleged person has committed war crimes under Article 5 of the Rome Statute, the chamber can issue an arrest warrant, to be enforced by the state parties, as provided by Article 58. Furthermore, Article 59 obligates state parties to immediately take action in order to arrest the alleged person once the state receives requests from the Court and to hand over the person as soon as possible.

3.2 The Significance of the ICC Arrest Warrant

The significance and challenges of an arrest warrant from the International Criminal Court (ICC) are also important to consider. In simple terms, the ICC arrest warrant does not necessarily infer a judgment; it implies that the Court has taken significant hold of accusations against an individual, who consents to appear for trial and will not stand in the way of the Court's investigation or proceedings.²² Nevertheless, in the absence of a law enforcement agency, it seems improbable that members of the Israeli government would voluntarily appear before the Court. Even so, such a warrant would significantly deter the accused persons' "freedom of movement," and the 124 member states of the Rome Statute remain under an obligation to arrest such individuals and turn them over to the ICC if the arrestees set foot on their territory.²³ On that account, following an ICC arrest warrant, Russian President Vladimir Putin had to refrain from traveling to ICC signatory states for international meetings. Hence, the only real difficulty for the alleged

²⁰ Céline Braumann, “The settlement of tax disputes by the International Court of Justice,” *Leiden Journal of International Law* 36, no. 4 (2023): 917.

²¹ C. Klobucista, and M. Ferragamo, “The Role of the International Criminal Court, Council of Foreign relations,” *Council on Foreign Relations* (cfr. org), (2022), <https://www.cfr.org/background/role-international-criminal-court>.

²² Zoë Jay, and Matt Killingsworth, “To Arrest or Not Arrest? South Africa, the International Criminal Court, and New Frameworks for Assessing Noncompliance,” *International Studies Quarterly* 68, no. 2 (2024): sqae005.

²³ Renata Mantovani de Lima, and Renata Carvalho Martins Lage, “The States' Duty of Cooperation before the International Criminal Court,” *Beijing Law Review*. 14 (2023): 1308.

Israeli officials would be restrictions on their visits to ICC signatory states, which would be under a legal obligation to arrest them if they set foot in their country. Nevertheless, such an obligation also has a significant impact; for instance, in 2023, Russian President Vladimir Putin postponed his plans to participate in the BRICS summit in South Asia, since Pretoria was under an obligation to arrest him. Furthermore, in the case of Israel, the warrants could impede the distribution of military aid from supporting nations.²⁴

Since the ICC transcends national boundaries and authorities, it does not have its own military or police force and, consequently, relies primarily on the members of the international community.²⁵ Article 86 of the Rome Statute obliges all its member states to 'cooperate' to the full extent with the Court, with regard to the investigation and prosecution of crimes within the scope of the statute. This obligation includes cooperation in the form of identifying and arresting accused individuals, presenting them before the ICC, interrogating any person, conducting investigations, and gathering and providing evidence to the Court. Thus, one can argue that the effectiveness of the ICC is directly proportional to the degree of cooperation afforded by the states. Such an obligation is imposed solely on member states and not on non-member states; however, the latter may voluntarily enter into a special arrangement of cooperation with the Court. Furthermore, Article 88 of the Statute provides that state parties must incorporate procedures into their domestic system to fulfill their 'cooperation' obligation. In the case of non-compliance, the Court may refer the situation to the Assembly of State Parties (ASP) or to the United Nations Security Council (UNSC). Therefore, in the event of the 'unwillingness' of member state parties to cooperate with the ICC, the effectiveness and accountability mechanism of the Court could be significantly jeopardized.²⁶

Nonetheless, the Rome Statute also takes into account states' international law obligations with respect to the immunities of a person or property of a third state, and the ICC would not request surrender under such circumstances, as laid down in Article 98(1) of the treaty. Hence, it is evident from this provision that the Court respects the sensitivities of states in performing their duty to cooperate, while not infringing upon diplomatic law. Furthermore, it has been contended that Article 98(1) applies to non-state parties, as otherwise, it would operate as an escape clause

²⁴ Mogomotsi Magome, "South African leader says that arresting Putin if he comes to Johannesburg next month would be 'war'" *AP News*, 18 Jul, (2023), <https://apnews.com/article/south-africa-ramaphosa-putin-arrest-warrant-c62b4be0fd177d827214199cb60db98f>.

²⁵ Adele E Erasmus, "Revisiting Schwarzenberger today: The problem of an international criminal law," *South African Journal of Criminal Justice* 16, no. 3 (2003): 400.

²⁶ Arthur Bjuhr, *Law and Justice in Johannesburg: Understanding the interaction between head of state immunity and the ICCs jurisdiction when issuing arrest warrants*, (Umeå: Umea University, 2023), 132.

to Article 27. Additionally, in relation to the duty of cooperation of states, the Pre-Trial Chamber concluded that states are not bound to regard the ‘personal immunity’ of heads of state when exercising their duty of cooperation, and this is an exception to customary international law. Subsequently, the supremacy of jus cogens in this aspect remains significant. The concept finds its legal basis in the Vienna Conventions on the Law of Treaties (1969, VCLT). It has been provided that any international law, customs, or treaty rules that contradict a jus cogens shall be null and void. The draft of the International Law Commission (ILC) highlights the superiority of jus cogens norms over any other rules of international law. Therefore, it could be said that the crimes recognized in the Rome Statute – the crimes of genocide, crimes against humanity, war crimes, and the crime of aggression – constitute violations of jus cogens. Consequently, it can be argued that crimes against the global community as a whole have reached the level of jus cogens and, as such, form *erga omnes* obligations for each individual state towards the rest of the international community. Arguably, such an obligation also includes the duty of cooperation to prosecute and punish these crimes.²⁷

Another significant hurdle is *the principle of complementarity*, as enshrined in Article 17 of the Rome Statute, which safeguards the priority of national jurisdiction. In its true sense, the International Criminal Court should be a last recourse after all means of justice at the national level have been exhausted.²⁸ A two-step process is involved that mandates asking whether a national investigation has been conducted and if the state has concluded to discharge the suspect; otherwise, the case would be inadmissible at the ICC. The Statute recognizes the primacy of states as having the initial duty and right to try their citizens for international crimes. The international court’s jurisdiction could only be resorted to when domestic proceedings are defective or if the states are ‘unwilling or unable’ to conduct trials. Thus, the ICC fully respects the sovereignty and independence of its state parties. Nonetheless, Article 17(2) allows the Court to analyze the acceptability of domestic proceedings. If the Court is of the opinion that the national proceedings have failed to deliver justice, it can initiate its own proceedings. It is a well-established rule that if a state has genuinely initiated an investigation, the ICC shall never intervene in that case, according to Luis Moreno Ocampo, the ICC’s first Chief Prosecutor.²⁹ Hence, under the complementarity rule, if Israel can successfully prove that it has

²⁷ Dikran.M Zenginkuzucu, “Enforcement of the Cooperation Obligation with the ICC for the Accountability under International Criminal Law,” *Journal of International Criminal Law* 2, no. 1 (2021): 6.

²⁸ S. Rademaker, “The ICC’s fundamental design flaws have only become more evident,” *International Criminal Justice Today* 24 (2021): 121-143.

²⁹ International Criminal Court, *The Principle of Complementarity in Practice, ICC-OTP*, 12 Des, 2003. <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/20BB4494-70F9-4698-8E30-907F631453ED/281984/complementarity.pdf>.

conducted investigations in good faith, the ICC would not exercise its jurisdiction. Nevertheless, if there are any defects in domestic proceedings, the criteria of ‘good faith’ would be less likely to be established. Having said that, the announcement of the OTP to arrest Netanyahu and Gallant comes in light of prosecuting for the crimes of starvation. Although Israeli authorities might have initiated certain investigations into the Gaza incidents, these investigations certainly do not include the crimes of starvation.

3.3 International Community's Response and Global Initiatives

The Israel-Palestine conflict has received widespread global attention following the mass atrocities that Israel began to commit after the Hamas attack in 2023. Israel's acts of atrocity and barbarity have been strongly condemned and denounced globally. The Organization of Islamic Cooperation (OIC) and several other Palestinian resistance organizations have criticized Israel's bloodbath and accused Israel of using false pretexts to justify its crimes.³⁰ The EU foreign policy, along with the Turkish and Jordanian Foreign Ministries, have demonstrated their censure of attacks on Palestinian schools, labeling them as brutal crimes against displaced unarmed civilians. Shortly after the Prosecutor announced the issuance of an arrest warrant, it received mixed responses from nations. While some nations heavily criticized the requests, citing the court's incapacities and the ineffectiveness of such warrants in putting an end to the war, others have rejoiced and welcomed the decision.

For instance, Netanyahu has accused the court of impartiality and of demonstrating ‘anti-Semitic’ sentiments.³¹ Israeli authorities have denied the court's authority and declared their intention to establish a ‘special committee’ within the ministry to counter the arrest warrant request. Leaders of various nations, such as Austria, the Czech Republic, Hungary, and Paraguay, have termed the warrant as ‘incomprehensible and absolutely unacceptable.’³² On the other

³⁰ Organization of Islamic Cooperation, “OIC Strongly Condemns the Successive Massacres Committed by the Israeli Occupation against the Palestinian People,” *Organization of Islamic Cooperation*, November 18, 2023, https://www.oic-oci.org/topic/?t_id=39945&t_ref=26762&lan=en.

Middle East Monitor, “Israel Uses ‘Fake Pretexts’ to Justify Shedding of Palestinian Blood, Claims PA,” *Middle East Monitor*, September 17, 2016, <https://www.middleeastmonitor.com/20160917-israel-uses-fake-pretexts-to-justify-shedding-of-palestinian-blood-claims-pa/>.

³¹ Middle East Monitor, “Netanyahu Accuses ICC of Anti-Semitism in Pursuit of War Crimes Probe,” *Middle East Monitor*, December 23, 2019, <https://www.middleeastmonitor.com/20191223-netanyahu-accuses-icc-of-anti-semitism-in-pursuit-of-war-crimes-probe/>.

³² Selman Aksünger, “West Divided over ICC Arrest Warrants for Netanyahu, Gallant,” *Anadolu Agency*, May 22, 2024, updated May 27, 2024, <https://www.aa.com.tr/en/europe/west-divided-over-icc-arrest-warrants-for-netanyahu-gallant/3227073>.

hand, the announcement of the arrest warrants has been applauded as an affirmative step toward justice by countries like Belgium, Oman, and Slovenia, emphasizing the need for immediate prosecution at the highest level. There has been a global movement calling for a boycott of Israeli products, which has gained widespread acceptance. According to activist Tulay Gokcimen of the Palestine Initiative, people worldwide are boycotting Israeli products to stand in solidarity with Palestine.³³ Gokcimen highlighted that since Israel depends on international trade for its resources and weapons, targeting its products and sales can disrupt its financial system and impose pressure on Israel. The boycotts have been part of the broader BDS movement — a boycott led by Palestine — with the goal of globally pressuring Israel to cease its occupation of Palestinian territories.³⁴ The movement, inspired by the South African anti-apartheid struggle, where sanctions and boycotts played a key role in the eventual toppling of apartheid, began almost two decades ago.³⁵ The organizers strategically target companies believed to have a significant impact, including HP, Siemens, Chevron, McDonald's, Pizza Hut, and Burger King, in an effort to pressure investment funds to sell their shares.³⁶

Furthermore, after the OTP issued arrest warrants, the international community has been actively engaging to mediate and bring an end to the dispute. Following the global backlash and the announcement from the ICC Prosecutor, international mediators have made an urgent appeal to reach a ceasefire and hostage deal between Israel and Hamas. A proposal, termed the “bridging proposal,” has been put forward to address the remaining gaps between both sides, initiated by the United States, Qatar, and Egypt.³⁷ The American President Joe

³³ Middle East Monitor, “Israel's Attacks on Gaza Increase Support for Worldwide Boycott Against Israeli Products: Activist,” *Middle East Monitor*, February 17, 2024, <https://www.middleeastmonitor.com/20240217-israels-attacks-on-gaza-increases-support-for-worldwide-boycott-against-israeli-products-activist/>.

³⁴ Morrison, Suzanne, “The emergence of the Boycott, Divestment, and Sanctions movement,” In *Contentious politics in the Middle East: Popular resistance and marginalized activism beyond the Arab uprisings*, pp. 229-255, New York: Palgrave Macmillan US, 2015. See also, Omar Barghouti, “BDS: Nonviolent, globalized Palestinian resistance to Israel's settler colonialism and apartheid,” *Journal of Palestine studies* 50, no. 2 (2021): 111; Amro Sadeldeen, “The Emergence of the BDS Movement through an Israeli Mirror,” *Radical History Review* 19, no. 1 (2019): 212.

³⁵ , Sriram, “The politics of the Palestinian BDS movement,” *Socialism and Democracy* 27, no. 3 (2013): 131. See also, Barghouti, “BDS: Nonviolent, globalized Palestinian resistance,” 122; Sadeldeen, “The Emergence of the BDS Movement through an Israeli Mirror,” 217.

³⁶ Palestinian BDS National Committee (BNC), “Guide to BDS Boycott & Pressure Corporate Priority Targeting,” **BDS Movement**, December 6, 2024, <https://bdsmovement.net/Guide-to-BDS-Boycott%20Guide%20to%20BDS%20Boycott%20&%20Pressure%20Corporate%20Priority%20Targeting>.

³⁷ Rob Picheta et al., “US and Allies Push for Israel-Hamas Ceasefire to Be Reached Next Week after Presenting Fresh Proposal to Warring Sides,” *CNN*, August 16, 2024,

Biden outlined a ceasefire proposal comprising three stages: negotiations regarding the interchange of detainees, reconstruction of demolished homes and other public facilities, and an ultimate cessation of hostilities, expulsion of Israel from Gaza, prevention of further attacks from both sides, and the final rebuilding of the strip.³⁸ While Hamas immediately responded affirmatively to the proposal, the Israeli government responded in a mixed manner, demonstrating its intention to continue attacks until Gaza is fully destroyed.

The armistice scheme consists of three phases. The first phase, lasting for six weeks, includes an “absolute” ceasefire, the removal of Israeli soldiers from all areas of Gaza, and the liberation of all Israeli detainees in exchange for Palestinian prisoners. During this phase, negotiations between Israel and Hamas would also take place. In the second phase, hostages from both sides would be evacuated, and a complete cessation of hostilities would be implemented, provided both parties refrain from further aggression and uphold their commitments. In the final phase, Gaza would undergo radical rebuilding, hostages would be reunited with their families, and Arab nations would play a key role in the reconstruction effort.³⁹

Mediation efforts have been taken up by Qatari and Egyptian officials, acting as peacemakers through the adoption of shuttle-style diplomacy, which involves delivering messages between Israeli and Hamas representatives. There are different forms of mediation, and the choice of method depends on its effectiveness in the ongoing dispute. Shuttle diplomacy is particularly effective when the parties involved are not in the same location and are unwilling to meet face-to-face. The role of mediators in this context is critical; they typically assist in organizing the agenda, determining negotiating partners, providing a secure location for meetings, facilitating the exchange of information, suggesting options, and helping to implement mutually agreed-upon solutions.⁴⁰

At this point, it is also worth mentioning that, in the past, several mediation efforts have been undertaken to resolve the Israel-Palestine conflict, but they have failed for various reasons. Therefore, for the current mediation attempts to have an impact, it is essential to consider past factors. First, Israel has demonstrated

<https://edition.cnn.com/2024/08/16/world/israel-hamas-hostage-truce-talks-bridging-intl/index.html>.

³⁸ Rami G. Khouri, “There Is a Measure of Desperation in Biden’s Ceasefire Plan,” *Al Jazeera*, June 4, 2024. <https://www.aljazeera.com/opinions/2024/6/4/there-is-a-measure-of-desperation-in-bidens-ceasefire-plan>. See also, Kanishka Singh, “What’s in the New Israel Ceasefire Proposal Biden Announced?” *Reuters*, June 1, 2024. <https://www.reuters.com/world/middle-east/whats-new-israel-ceasefire-proposal-biden-announced-2024-05-31/>.

³⁹ M. Salem, “Gaza tailors take in clothes as Palestinians go hungry,” *Reuters*, June, 2024. <https://www.reuters.com/world/middle-east/gaza-tailors-take-clothes-palestinians-go-hungry-2024-05-30/>.

⁴⁰ Louis Kriesberg, “Mediation and the transformation of the Israeli-Palestinian conflict,” *Journal of Peace Research* 38, no. 3 (2001): 375.

dominance and significant control over the mediation process between Hamas and Fatah. Additionally, Israel receives unconditional support from the United States, while Palestine heavily relies on foreign support and cooperation due to the Israeli occupation. Second, the legitimacy of the governing party has also been a concern. Third, various categories of mediators have been involved in this dispute. However, given the systemic barriers to reconciliation, it is difficult to foresee the role of any effective mediator in this scenario.⁴¹

3.4 State Immunity: Challenges to Accountability of Officials for International Crimes

Since the announcement of the Prosecutor marks the first time declaring the arrest of a democratically elected head of state, the principle of state immunities should play a key role in determining the privileges the individual could avail to evade arrest. Globally, all heads of state are accorded immunities at both personal and functional levels, in order to ensure the seamless performance of their duties as representatives of their state. These immunities extend to even indemnification from prosecution while both in and out of office. Nevertheless, such protection is not absolute in nature. Reiterating the words of Lord Millet:

“International law cannot be supposed to have established a crime... and at the same time to have provided an immunity which is co-extensive with the obligation it seeks to impose.”⁴²

Functional immunity is directly associated with the principle of sovereign equality. The immunity is granted to heads of state in respect of their actions as spokespersons of the state. Nonetheless, this immunity is not applicable to acts committed in their private capacity. Conversely, personal immunity provides full protection to officials for as long as they serve in a representative role for their state.⁴³ Thus, such impunity does not distinguish between crimes committed in an official capacity or in a private one. This type of impunity is generally regarded as

⁴¹ Tamer Qarmout, “Predictable in Their Failure: An Analysis of Mediation Efforts to End the Palestinian Split,” *International Peacekeeping* 31, no. 3 (2024): 283.

⁴² Christine M. Chinkin, “United Kingdom House of Lords. Regina v. Bow Street Stipendiary Magistrate ex parte Pinochet Ugarte (No. 3). [1999] 2 WLR 827,” *American Journal of International Law* 93, no. 3 (1999): 707. See also, Ernest K. Bankas, “Invoking State Immunity Before the ICJ, International Tribunals and Foreign Courts,” In *The State Immunity Controversy in International Law: Private Suits Against Sovereign States in Domestic Courts*, pp. 581-612, Heidelberg: Springer Berlin Heidelberg, 2022; Roger O’Keefe, “The European Convention on State Immunity and International Crimes,” *Cambridge Yearbook of European Legal Studies* 2 (1999): 509; Alexander Orakhelashvili, “State immunity from jurisdiction between law, comity and ideology,” In *Research Handbook on Jurisdiction and Immunities in International Law*, pp. 151-184. Edward Elgar Publishing, 2015.

⁴³ Bjuhr, *Law and Justice in Johannesburg*, 92.

absolute, since heads of state play a key role in maintaining diplomatic alliances. It denotes that once such immunity is granted, the respective individual cannot be detained or prosecuted on any basis.⁴⁴ The foundation of international law is based on respecting states' sovereignty, and prosecuting a head of state would also imply the prosecution of the entire state – this would, in turn, infringe upon the founding principle of international law.⁴⁵

On the contrary, functional immunity is unequivocal. Such immunity is subject to circumvention in myriad ways. For instance, in cases of offenses perpetrated beyond one's official role or offenses that infringe *jus cogens* (violations of customary international law) such as war crimes, genocide, and crimes against humanity, functional immunity would not safeguard the alleged individual. Since the extensiveness of the *ratione personae* creates barriers for states in holding officials accountable for international crimes,⁴⁶ international tribunals such as the International Criminal Court (ICC) were subsequently established, empowering them to supersede personal immunity. Consequently, when state parties sign and ratify the Rome Statute, the unconditional immunity of their officials is voluntarily relinquished. Furthermore, it is a well-established principle of international law that the ICC and other international courts have jurisdiction to try individuals irrespective of their personal immunities. Article 27 of the Rome Statute reiterates that an individual shall not be exempt from criminal liability, even if they are the head of state, a member of government, or an elected representative, and that personal impunity cannot deter the ICC from exercising its jurisdiction. The Rome Statute emphasizes that once a nation ratifies the treaty, it willingly submits to the Court's ability to prosecute officials even if they enjoy certain immunities. Although the provision primarily applies to signatory states, it can also apply to states that have been compelled by the United Nations Security Council (UNSC) to fully cooperate with the ICC.⁴⁷

Consequently, when a duty to abide by international law overrides national obligations, an individual cannot use statute authority as an umbrella. The ceiling of functional immunity has been upheld by the International Law Commission (ILC) and the General Assembly as Principle III of the Nuremberg Principles. It

⁴⁴ Robert Cryer, Darryl Robinson, and Sergey Vasiliev, *An introduction to international criminal law and procedure*, (United Kingdom: Cambridge University Press, 2019), 121.

⁴⁵ Malcolm Shaw, "international law," *Encyclopedia Britannica*, 13 Oct. 2024, <https://www.britannica.com/topic/international-law>.

⁴⁶ Sean D. Murphy, "Immunity Ratione Personae of Foreign Government Officials and Other Topics: The Sixty-Fifth Session of the International Law Commission," *American Journal of International Law* 108, no. 1 (2014): 47.

⁴⁷ Christian Tomuschat, 'Reconceptualizing the Debate on *Jus Cogens* and obligations *Erga Omnes*: Concluding Observations' in Christian Tomuschat and J.-M. Thouvenin (eds), *The Fundamental Rules of the International Legal Order: Jus Cogens and Obligations Erga Omnes* (Martinus Nijhoff 2006) 426-30

was established that such immunity does not shield core international crimes, and as such, heads of state can be held criminally liable. A pertinent example in this situation would be the Blaškić trial, where it was upheld that, although functional immunity is a well-established customary international law rule, exceptions to such immunity exist for crimes like genocide, war crimes, and crimes against humanity.⁴⁸ If such crimes are committed by an individual in their official capacity, they cannot rely on these immunities to evade international jurisdiction.⁴⁹

4. Conclusion

In light of the above discussion, it is possible to deduce that the core objective behind the creation of international law and its enforcing institutions has been to ensure global order while respecting the sovereignty of nations and compelling them to adhere to their legal boundaries. This is significantly evident from the role and approach taken by international courts in tackling disputes and maintaining order within the international community. With regards to the Israel-Palestine conflict, the ICC has made tremendous progress, from granting state recognition to a non-recognized state to finally announcing arrest warrants for powerful political leaders—who enjoy support from some of the most influential countries in the world. The stakes of international reputation and criticism have even caused the United States, an unapologetic supporter of the war crimes, to call for negotiation and ceasefire proposals. Israeli President Netanyahu has also restricted his international travels, fearing detention by member states and potential handover to the ICC.

Although various obstacles are apparent in the Court's pathway, they are strictly in adherence with the core objective of international law, which is to respect and protect states' sovereignty. Concurrently, although states reserve the right to not comply with international courts, in practice, they would rarely ever deny doing

⁴⁸ For the discussion of the relations of the Blaškić trial in the context of functional immunity, see Aziz Epik, "No functional immunity for crimes under international law before foreign domestic courts: An unequivocal message from the German Federal Court of Justice," *Journal of International Criminal Justice* 19, no. 5 (2021): 1265. See also, Rosanne Van Alebeek, "National courts, international crimes and the functional immunity of State officials," *Netherlands International Law Review* 59, no. 1 (2012): 31; Peter Malanczuk, "A Note on the Judgement of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia on the Issuance of Subpoenae Duces Tecum in the Blaškić Case," *Yearbook of International Humanitarian Law* 1 (1998): 232; Salvatore Zappalà, "Do heads of state in office enjoy immunity from jurisdiction for international crimes? The Ghaddafi case before the French Cour de Cassation," *European Journal of International Law* 12, no. 3 (2001): 598.

⁴⁹ Zenginkuzucu, "Enforcement of the Cooperation Obligation with the ICC," 14.

so. Law, even at the international level, is inherently designed to allow both parties to a dispute to rely on it. Although many have criticized the capacity of the ICC, arguing that the stumbling blocks merely serve as a scapegoat for perpetrators, this paper has thoroughly discussed how they are, in fact, the opposite. For instance, although the complementarity principle prioritizes states to conduct their own investigations and trials, it is also conditional upon proving their 'good faith.' Secondly, although the responsibility to cooperate has been vested in states, there are certain repercussions if they display unwillingness to comply with the ICC. Finally, state immunities, both personal and functional, grant significant immunities to heads of state; however, the author has pointed out their limitations and the circumstances under which such immunities can be overridden.

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