

# Arrest Warrants from The Hague: The ICC, Netanyahu and Gallant

By [Dr. Binoy Kampmark](#)

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*The slow, often grinding machinery of international law has just received a push along with the issuing of three arrest warrants by the International Criminal Court. They are for Israeli **Prime Minister Benjamin Netanyahu**, Israel's former defence minister, **Yoav Gallant**, and, rather incongruously, Hamas figure **Mohammed Deif**. The last issue is somewhat odd given claims by Israel that he was killed in an airstrike in July, though Hamas has never confirmed nor denied the fate of the man also known as Mohammed Diab Ibrahim Al-Masri.*

The issue of the warrants was the culmination of a [request](#) on May 20 by the ICC prosecutor to a Pre-Trial Chamber of the court to issue arrest warrants for Netanyahu, Gallant, and three senior Hamas officials. Two have been withdrawn, given the confirmed killings of both **Yahya Sinwar** and **Ismail Haniyeh**.

On November 21, the three-judge panel of Pre-Trial Chamber I [unanimously rejected](#) Israel's assertion that the ICC lacked jurisdiction over the Situation in the State of Palestine in general and over Israeli nationals more specifically, "as the Court can exercise its jurisdiction on the basis of the territorial jurisdiction of Palestine." The Chamber [also rejected](#) Israel's request that the Prosecution provide a new notification of an initiation of investigation into its authorities under the ICC Statute, given that the parameters of the investigation had not essentially changed. Nor had Israel pursued a request for deferral of the investigation when given the chance in 2021.

The arrest warrants, issued in accordance with the law of international armed conflict, remain the most telling aspect of the determinations. Despite being classified as "secret", the Chamber deemed it important [to release some degree of detail](#) on what they entail. Accordingly, it found reasonable grounds to believe that Netanyahu and Gallant bore criminal responsibility as "co-perpetrators for committing the acts jointly with others: the war crime of starvation as a method of warfare; and the crimes against humanity of murder, persecution, and other inhumane acts". There were also reasonable grounds to believe that both figures bore "criminal responsibility as civilian superiors for the war crime of intentionally directing an attack against the civilian population."

The ghoulish picture of alleged conduct is sketched with chilling detail. The alleged crimes against humanity against the civilian population in Gaza were deemed to be widespread and systematic. It was reasonable to believe that Netanyahu and Gallant had, with intent and knowledge, deprived the population of Gaza of such necessities to survival as food, water, medicine, medical supplies, fuel and electricity "from at least" October 8, 2023 to May 20, 2024. This finding was easy to reach, largely because humanitarian aid had been impeded and restricted without evident military necessity or justification under international

humanitarian law. When decisions to allow or increase humanitarian aid into Gaza were made, these were conditional.



People line up for water in Gaza ([Source](#))

The [warrant](#) for Deif, as chief commander of the military wing of Hamas (the al-Qassam Brigades) was issued because the chamber found “reasonable grounds” to believe he had allegedly been responsible for various crimes against humanity (murder, extermination, torture, rape and other forms of sexual violence) and traditional war crimes. **It remains to be seen whether that can be executed appropriately, given the likelihood that Deif is no longer alive.**

International law remains a curious creature, one of mixed shape and uneven maturity. Being based on the mutual, grudging acknowledgment of conventions between countries, its success, or failure, depends on mutual observance. ICC warrants to arrest international figures have been issued with varying results, with signatory states of the Rome Statute making their own decisions whether to execute them. Political interests can rear a nasty head, blowing off legally minded types keen to see judicial proceedings pursued by member states.

When an ICC warrant [was issued](#) against Russian **President Vladimir Putin** in March 2023 over the alleged directing of attacks on civilians in Ukraine and the unlawful deportation and transfer of Ukrainian children to the Russian Federation, the spectacle of such a figure being hauled off to The Hague was simply too much for countries keen to engage with the Kremlin. Putin, for instance, was assured by Mongolia on a state visit this year that he

[would not be arrested](#), despite the country being a party to the ICC.

More caution was exercised by Putin regarding the BRICS meeting in Johannesburg in 2023, probably due to such experiences as those of former Sudanese president, **Omar Al-Bashir**. Despite being the subject of ICC arrest warrants in 2009 and 2010, the defiant leader, wanted for a string of alleged war crimes and crimes against humanity against civilians in Darfur, tested the waters by visiting South Africa in 2015 for an African Union summit. His presence, however, interested the judicial authorities, who ordered him to stay in South Africa while consideration was given to his potential arrest.

Bashir's [exit was prompt](#), leading to a ruling the following year by the South African Court of Appeal that the failure by the authorities to arrest him was unlawful. A Pre-Trial Chamber of the ICC [also found](#) that the warrant should have been executed as part of South Africa's obligations, and the Sudanese leader could not rightly have claimed immunity from arrest during his visit.

The warrants against the Israeli figures will have some practical effects. Gallant and Netanyahu will think twice before travelling to member states of the Rome Statute, though such states will naturally reach their own decisions on the issue. But while it is hard to see these men being carted off to proceedings in The Hague bar exceptional circumstances, the warrants have provided a fillip for civil society groups in Israel.

The indomitable efforts of the non-profit B'Tselem organisation [called](#) the ICC efforts "a chance for us, Israelis, to realize what we should have understood long ago: that upholding a regime of supremacy, violence and oppression necessarily involves crimes and severe violation of human rights." Unfortunately for the starving and dying in Gaza, the pity of war will not, at least at this time, halt before any stern judicial eye, especially one cast from an international court.

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***Dr. Binoy Kampmark** was a Commonwealth Scholar at Selwyn College, Cambridge. He currently lectures at RMIT University. He is a Research Associate of the Centre for Research on Globalization (CRG). Email: [bkampmark@gmail.com](mailto:bkampmark@gmail.com)*

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Articles by: **Dr. Binoy  
Kampmark**

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