

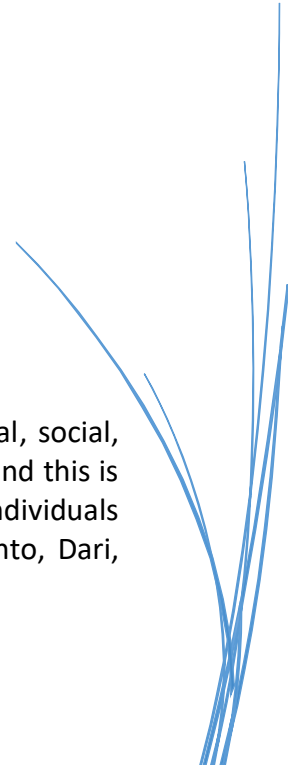
WEEKLY ANALYSIS

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THE INTERNATIONAL CRIMINAL COURT'S REQUEST FOR NETANYAHU'S ARREST: LEGAL ASSESSMENT AND IMPLICATIONS



Weekly Analysis is one of the CSRS publications analyzing significant weekly political, social, economic, and security events in Afghanistan and the region. The prime motive behind this is to provide strategic insights and policy solutions to decision-making institutions and individuals in order to help them design better policies. Weekly Analysis is published in Pashto, Dari, English and Arabic languages.



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Center for Strategic and Regional Studies (CSRS)



THE INTERNATIONAL CRIMINAL COURT'S REQUEST FOR NETANYAHU'S ARREST: LEGAL ASSESSMENT AND IMPLICATIONS

Introduction

Human society has long been dealing not only with domestic crimes but also with international crimes such as war crimes, genocide, and crimes against humanity, all of which have impacted peaceful coexistence in the international community. These crimes are not only committed by a few individuals but also by organized groups within the frameworks of states or their military forces. A significant and recent example of such crimes is those committed by Israel in Palestine, especially by its Prime Minister.

To prevent these crimes and ensure international criminal justice, the International Criminal Court (ICC) was established. How capable is this court of bringing Netanyahu to trial for the crimes he has committed and continues to commit in Palestine?

In this analysis, it is determined what impact the request by the International Criminal Court will have on Israel and other parties involved in the conflict.

THE INTERNATIONAL CRIMINAL COURT AND ITS JURISDICTION:

The International Criminal Court (ICC) was established in 1998 to address international crimes, with its statute coming into force in 2002. The ICC has 124 member countries and is located in The Hague, Netherlands. Notably, Israel, the United States, Russia, and China are not members, while Palestine joined the court in 2015.

According to Article 5, Paragraph 1 of the ICC's statute, the court has jurisdiction over the following crimes:

1. Crimes against humanity
2. War crimes
3. Genocide
4. The crime of aggression

Articles 1 and 17 of the statute stipulate that the ICC exercises its powers when a country commits the aforementioned international crimes within its territory and either these crimes are not prosecutable, or the country lacks an independent judiciary. It's essential to note that the ICC does not replace national or local courts but acts when these courts are unable or unwilling to prosecute the crimes. The primary responsibility for prosecution lies with the country where the crime occurred, but the ICC intervenes in cases specified in its statute.

Under Article 13 of the ICC's statute, the court addresses these crimes in the following scenarios:



1. When a member country requests the court to prosecute crimes under its jurisdiction.
2. When the United Nations Security Council requests the court to act.
3. When the ICC prosecutor initiates an investigation into these crimes.

Additionally, as stated in Article 16 of the statute, the UN Security Council can request the ICC to suspend its investigations for 12 months through a resolution, a request that can only be renewed once.

ASSESSMENT OF THE INTERNATIONAL CRIMINAL COURT PROSECUTOR'S REQUEST:

During the conflict between Hamas and Israel, thousands of innocent Palestinian civilians were killed by Israel, their homes destroyed, forcibly displaced, and faced numerous hardships including hunger. Based on these events, the ICC prosecutor, on May 20, 2024, requested the arrest of Benjamin Netanyahu, the Prime Minister of Israel, and Yoav Gallant, his defense minister, under Article 13 of the ICC's statute.

The prosecutor presented evidence to the jury, asserting that the Israeli Prime Minister committed war crimes and crimes against humanity in Palestine. He explained that Netanyahu deliberately starved civilians in Palestine and intentionally ordered military operations against them, describing these actions as a widespread systematic attack against Palestinians. He emphasized that international laws and the laws of war apply equally to everyone; no foot soldier, commander, or civilian leader is immune from punishment. No one can justify depriving women and children of basic needs, nor can anyone justify imprisoning and attacking civilians. In an interview with CNN, he stated, "No one is considered above the law."

Thus, he requested the court to issue an arrest warrant for the Prime Minister and his defense minister. This raises the question: Will Netanyahu be arrested? If he is arrested or not, what will be the consequences for both parties in the conflict and their allies?

Firstly, it must be clear that this is merely a request from the ICC prosecutor, and the preliminary judicial panel must review the evidence presented by the prosecutor. If the court panel approves the prosecutor's request, an arrest warrant for the Israeli Prime Minister will be issued under Article 58 of the statute. According to this article, if the court determines that the accused has committed the crimes specified in the statute and if the court is not independent, an arrest warrant will be issued.

Police and similar security organizations cannot act on their own to arrest him, but this court order creates a legal obligation for member countries to cooperate in executing the court's order, which includes arresting Netanyahu. For example, if the Israeli Prime Minister travels to a member country of the court, he will be arrested by that country and handed over to the ICC. Conversely, if the court panel finds the prosecutor's claim baseless and the crime unproven, an arrest warrant for Netanyahu will not be issued.

Currently, the request from the ICC prosecutor is being reviewed by a preliminary panel of three judges. "These judicial investigations are not unfounded. At this stage and in this significant case, which has drawn global attention, no unnecessary actions will be taken. Therefore, based on this, I am confident that the judges will reach an agreement on this request."



IMPACTS OF THE ICC PROSECUTOR'S REQUEST ON THE INVOLVED PARTIES:

Given that the Palestine-Israel conflict involves multiple dimensions and numerous allies, the ICC prosecutor's request has varying impacts on the involved parties, which are outlined below.

1- Impact on Israel:

a. As previously mentioned, the ICC has 124 member states, including all members of the European Union. If the preliminary judges approve the prosecutor's request, arrest warrants for Netanyahu and the Israeli Defense Minister will be issued. This would negatively affect Israel's foreign policy, impacting its war lobbyists and reducing its ability to receive foreign aid, thus increasing the likelihood of the country's isolation.

b. Many countries around the world have significant faith in the ICC. Once the court highlights Israel's war crimes to the global community, international trust in Israel will diminish, leading to increased hatred and animosity towards the country. This will result in the weakening of Israel's diplomatic and other relationships.

Impact on the ICC:

a. The International Criminal Court was established to prevent international crimes and to arrest, try, and punish offenders when convicted. When acts that are considered crimes under the ICC's statute occur globally, the responsibility to act falls on the court. Since the various aspects of genocide and war crimes outlined in the statute have been committed by Israel in Palestine, and the court has taken timely action in this regard, it has garnered attention from many countries. This increased attention to justice will positively impact trust in the court.

b. There may also be negative impacts on the court. High-ranking officials could face sanctions from the United States and some of its allies. Earlier this year, 12 U.S. senators warned the ICC prosecutor that if Israel is targeted, they would retaliate.

c. If the prosecutor's request is denied by the preliminary panel, the court will not issue a warrant for Netanyahu's arrest. This could result in the ICC losing its credibility, with many member countries potentially withdrawing their membership, and there is a possibility that the court could be dissolved.

Comparing the impacts of issuing an arrest warrant for Netanyahu, it becomes clear that the positive effects outweigh the negative ones. The court, with its 124 member countries, will gain popularity among these nations. Any negative financial impacts would likely be limited to a few individuals sanctioned by one country, which is relatively insignificant.

Impact on the United States:

Politically, this order will mark the first time since the establishment of the ICC that the court will hold the United States and Israel accountable. This will increase international trust in the ICC on one hand and expose the true nature of the United States to the world on the other, negatively impacting the country's international credibility and trust.

Furthermore, just as the U.S. reacted negatively to the ICC prosecutor's request, the European Union responded positively. Thus, differing reactions will negatively affect the relations between these countries, particularly regarding their joint stance on the Israel-Palestine conflict.



Additionally, the U.S.'s international double standards will become apparent. Last year, when the same court issued an arrest warrant for Russian President Vladimir Putin for allegedly hiding and deporting Ukrainian children, U.S. President Biden instructed the U.S. government to share information about Russian war crimes with the ICC. However, despite the significantly larger scale of war crimes occurring in Palestine compared to Ukraine, all Western countries, including the United States, turn a blind eye. Instead of cooperating with the ICC, they threaten it.

Impact on Palestine:

If the prosecutor's request is approved, it will strengthen the Palestinian people's case, convincing most countries that Israel is indeed attacking Palestine. Additionally, it will become clear to the world that a legal authority acknowledges and highlights the actions of Israel and the United States, leading these countries to lose trust and popularity in this context.

CONCLUSION

In summary, the prosecutor's request to the International Criminal Court, as a reputable international legal body, yields positive and beneficial outcomes for the Palestinian struggle. If the judicial panel deems the prosecutor's evidence sufficient, Israel's isolation and mistrust among other countries will increase. The evidence is as clear as daylight and has been presented by the prosecutor. This will be because the judicial panel, authorized to issue arrest warrants, will not succumb to political pressures from the United States, Israel, and their supporters, and will proceed impartially.

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