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The International Criminal Court, Netanyahu, and Berlin's Dilemma

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The International Criminal Court, created in 2002 and crystallised post-WWII, strives for a rules-based global order. Today that order is wobbly at best. Adherence to the Court's arrest warrant for Israeli prime minister Benjamin Netanyahu for alleged war crimes and crimes against humanity in Gaza is a litmus test for Germany's oft-stated commitment to global rules and norms.

- A known weakness of the International Criminal Court (ICC) is its dependence on cooperation from its 125 member states to execute arrest warrants. Disregarding such warrants challenges the Court's authority and damages its credibility.
- Sudan's former president Omar al-Bashir's visits to numerous member states following his arrest warrants exposed how states prioritised political alliances over ICC obligations.
- Similarly, political alliances with Israel have hindered the execution of the ICC's arrest warrant for Netanyahu. Although a non-member, the US announced sanctions against some ICC staff, which looms as an obstacle for ICC operations. Among ICC members, Hungary recently declared its withdrawal from the Court and German chancellor Friedrich Merz stated Netanyahu would be able to visit Germany without arrest.
- Western reactions to the Netanyahu government's conduct of the war in Gaza continue to fuel fierce allegations of double standards across the Global South. Welcoming Netanyahu in Germany would be read as a public signal of prioritising relations with the Israeli prime minister over international rules and Germany's commitment to human rights.

Policy Implications

Dereliction of ICC duties hastens the erosion of the rules-based global order. Meanwhile, welcoming Netanyahu in Germany would likely both complicate relations with numerous governments across the Global South and cause domestic tensions. Thus, for principle-based and strategic reasons, Germany should adhere to the Court's arrest warrants to shield itself from political reprisals and sanctions.

From Nuremberg to The Hague

Under the injunction of “Never Again,” the horrors of the Holocaust have led to an international commitment to preventing genocide. One direct result of this was the 2002 establishment of the International Criminal Court (ICC) in The Hague. Inspired by the Nuremberg Trials and the Tokyo War Crimes Trials, the impetus for the ICC’s creation can be traced to 1948 when the UN General Assembly invited the International Law Commission to reflect on establishing an international judicial body to prosecute individuals accused of committing genocide. However, Cold War geopolitics prevented the further development of a permanent criminal court. The wars in the former Yugoslavia and Rwanda in the 1990s, and their corresponding temporary courts – the International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda – paved the way for a permanent institution to prosecute genocide, crimes against humanity, war crimes, and crimes of aggression.

After years of drafting, the ICC’s founding treaty, the Rome Statute, was adopted in 1998 to promote the rule of law and the right to justice. Established in 2002 and based in The Hague, the ICC was envisioned as an independent body with the ability to autonomously initiate investigations through its prosecutor without requiring authorisation by the United Nations Security Council (UNSC). Ratifying the Rome Statute was an expression of support for accountability, non-impunity, and the importance of universally applicable international criminal law, regardless of political status.

Germany was one of the ICC’s most visible advocates during its establishment. In fact, the country’s support for the ICC is interconnected with its post-World War II identity, which entails vocal support for multilateralism, human rights, and international justice. This was clearly articulated by [Annalena Baerbock \(2023\)](#), who was serving as the minister of foreign affairs for Germany during the 25th anniversary of the Rome Statute:

My country, Germany, has waged inhuman wars of aggression and committed the most atrocious genocide, killing millions of people. Therefore, we have a special responsibility to do our part so that such crimes will never happen again – to help bring justice to the victims and ensure accountability for the perpetrators.

Germany’s importance for the ICC extends beyond its role in ensuring its establishment. The country is the second-highest financial contributor to the ICC’s budget and has several nationals among the staff of the Rome Statute bodies, including, until recently, a judge. On several occasions, Germany has made voluntary contributions to the ICC’s Trust Fund for Victims.

However, the issuance of an arrest warrant for Israel's prime minister Benjamin Netanyahu by the ICC Prosecutor has exposed cracks in the German government's support for the Court – and, by extension, for international justice and a rules-based global order. The investigations into the Gaza conflict pose a significant test of the German government's commitment to the ICC and to the norms that the Court embodies – norms that, until now, Berlin had embraced without reservation. As war rages across the Middle East, Friedrich Merz – and every world leader – must step up to defend the rule of law internationally.

When and how does the ICC operate?

During the drafting of the Rome Statute, debates centred on the ICC's independence from interference by the UNSC and states, whether its jurisdiction should be compulsory, and how to balance these issues with respect for state sovereignty. Consequently, the drafting process spanned more than a decade. To the disappointment of many, membership in the ICC remained voluntary, which limits its automatic jurisdiction to the territories and nationals of its member states, currently numbering 125.^[1]

The ICC can launch investigations only when certain admissibility criteria are met: one or more of the ICC's core crimes (genocide, crimes against humanity, war crimes, and crimes of aggression) are suspected of being perpetrated; the state in question is unwilling and/or unable to prosecute these crimes domestically; the alleged crimes are of sufficient gravity and there is sufficient evidence thereof; and investigations serve the interests of victims. There are three mechanisms through which the ICC's jurisdiction over such a crime may be triggered.

The first trigger mechanism is through referrals by member states to the Prosecutor for investigation, as per Article 13(a) of the Rome Statute. An unexpectedly popular use of this mechanism was to self-refer to the ICC, as exercised by Uganda, the Democratic Republic of the Congo, the Central African Republic (twice), and Mali. The investigations in Venezuela and Ukraine^[2] were each referred by other member states in 2018 and 2022, respectively. The second trigger mechanism is through an initiative of the ICC Prosecutor, *proprio motu* (Article 13[c] of the Rome Statute). Investigations in Kenya, Côte d'Ivoire,^[3] Georgia, Burundi, the State of Palestine, Bangladesh/Myanmar,^[4] Afghanistan, and the Philippines are all *proprio motu* investigations. The third trigger mechanism is a UNSC referral (Article 13[b] of the Rome Statute). Only the UNSC can extend the ICC's jurisdiction to non-member states. Furthermore, the UNSC may defer an investigation for a renewable term of one year (Article 16 of the Rome Statute). The ICC is independent of the UN and should not be confused with the International Court of Justice, also based in The Hague. However, these provisions were put into the Rome Statute in recognition of the potential tension between UNSC and ICC mandates regarding international peace and security. So far, the UNSC has referred two matters to the ICC, both of which involved non-member states: Darfur (Sudan) and Libya.

¹ The proper term for ICC member states is "States Parties," which indicates that they have ratified the ICC's founding treaty, the Rome Statute. However, "members" or "member states" has been used in this text to avoid jargon.

² Ukraine ratified the Rome Statute in 2024 but had previously accepted the ICC's jurisdiction, as per Article 12(3), through declarations lodged in 2014 and 2015.

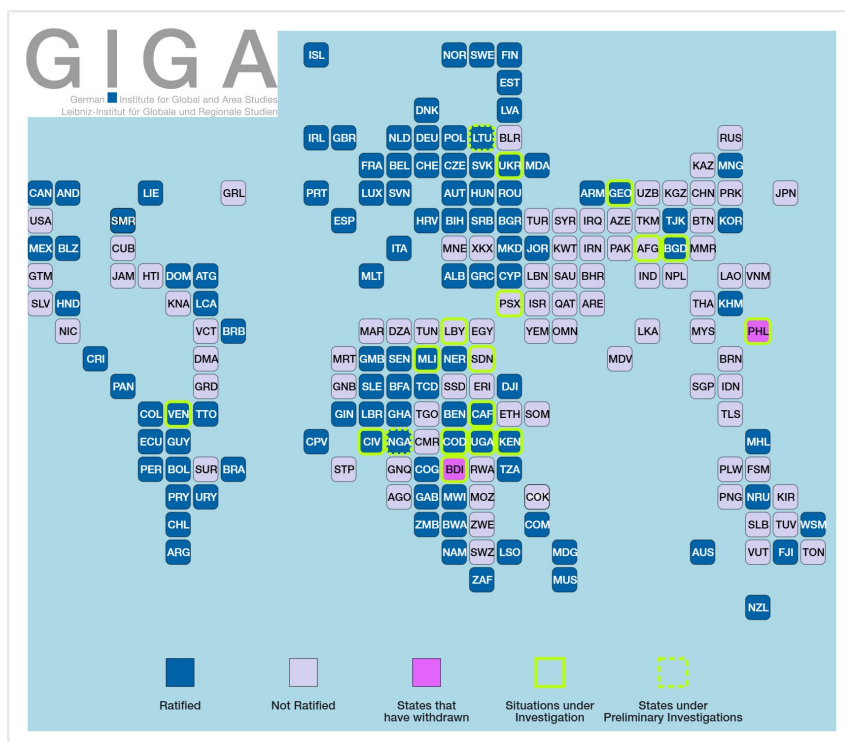
³ Côte d'Ivoire ratified the Rome Statute in 2013 but had previously accepted the ICC's jurisdiction through a declaration in 2003. It was the first state to exercise this mechanism.

⁴ For alleged crimes committed on Bangladeshi territory against the Rohingya population by Myanmar forces.

Presently, the ICC has twelve ongoing, five concluded, and three preliminary examinations into matters that could potentially become ICC investigations (see Figure 1).

Figure 1. Interactive Map of the ICC's Member States and Investigations

Switch between Grid and Geographical views using the buttons below. Hover over yellow-bordered countries for details.



Source: Author compilation based on [ICC active and closed investigations](#) and [ICC member states list](#). Visualisation by Eduardo Valencia | T4T.

What major operational challenges has the ICC faced?

Since its inception, the ICC has confronted several major internal and external challenges. Of course, not all criticism equates to undermining the Court's ability to fulfil its mandate. In fact, contestation within international organisations is an inevitable feature of multilateralism. Important changes to the ICC's operations have been implemented through engagements between member states and ICC staff.

However, the ICC has also faced attacks seeking to derail its activities. The first and second Trump administrations have sanctioned ICC employees (including judges) over its decisions to investigate US military conduct in Afghanistan and Israel's conduct of the war in Gaza. Another external challenge was a serious cybersecurity incident in September 2023, which some believe to be an espionage attempt in response to the Ukraine investigations ([van den Berg and Sterling 2023](#); Interview, ICC Official 2024).

Yet, the behaviour that most undermines the Court's authority, arguably, is open defiance by its members. Member states' defiance includes non-cooperation with arrest and surrender requests – i.e., non-compliance – as well as the non-payment

of assessed contributions. Both non-compliance and non-payment seriously impede the ICC's legitimacy and its ability to fulfil its mandate effectively.

State Cooperation with Arrest Warrants

The ICC is highly dependent on state cooperation. Like many other international organisations, it lacks coercive measures to secure compliance. For instance, the ICC cannot carry out arrests itself, as it does not have its own police force. Instead, it relies on states to capture and transfer suspects. The apprehension of the accused is a prerequisite for trials to take place, as the ICC does not carry out trials in absentia. To date, the ICC has issued 61 arrest warrants emanating from 33 cases. Of these, eight suspects passed away before apprehension, 30 suspects remain at large, and 22 people have been detained – most recently, former president of the Philippines Rodrigo Duterte. He was detained for alleged crimes against humanity committed during his so-called “war on drugs,” which resulted in thousands of deaths. The ICC's arrest warrant was issued on 7 March 2025, and Duterte was surrendered to the Court by Filipino authorities five days later. Albeit hugely controversial within the Philippines, Duterte's arrest is a positive example of state cooperation.

By contrast, two sets of ICC arrest warrants for Sudan's former president Omar al-Bashir remain unenforced, even though he is currently detained in Sudan and the Court has issued extradition requests. In fact, non-cooperation with the al-Bashir arrest warrant has plagued the ICC since it issued the warrants in 2009 and 2010, which seek to bring al-Bashir to stand trial for alleged war crimes, crimes against humanity, and genocide in the Darfur conflict. Sudan is not a Rome Statute signatory, and the ICC's jurisdiction over the matter was triggered by the first-ever UNSC referral. This was also the first time that the ICC exercised its Article 27 waiver of immunity for sitting officials.

Some states have questioned whether the waiver applies to non-members, and this debate came to the fore vis-à-vis the issuing of the al-Bashir warrant. Before the fall of his regime in 2019, al-Bashir paid 17 visits to nine ICC members between 2010 and 2017 without being arrested. Member states including Jordan and South Africa defended their non-compliance on the grounds that Article 98 of the Rome Statute permitted the non-execution of the arrest warrant if it brought them into conflict with other international obligations. They argued in separate proceedings before the ICC that such a conflict applied because the African Union called on its members not to comply with the al-Bashir arrest warrants. Furthermore, they contended that diplomatic immunity still applied to al-Bashir since Sudan was not an ICC member. In response, the Court found that member states did not have an automatic right to refuse compliance due to a perceived conflict in international obligations. Rather, they had to submit a request to the Court to determine if such a conflict existed ([International Criminal Court 2017](#)). Consequently, within the ICC's jurisprudence, its members are expected to comply with its arrest warrants – even for accused nationals of a non-member.

Another highly contentious matter before the ICC is that of Palestine. Palestine officially joined the ICC in 2015. After five years of investigating the matter, the Office of the Prosecutor (OTP) asked for guidance on the Court's jurisdiction over

Palestine given that its contested borders are central to its conflict with Israel. Although some states, including Germany, disagreed with the Court's decision, the judges unanimously authorised the OTP to investigate alleged crimes in Gaza, the West Bank, and East Jerusalem. Following the attacks on 7 October 2023 by Hamas and the ensuing war in Gaza, the OTP issued five arrest warrants for actors on both sides of the conflict for war crimes and crimes against humanity. It sought the apprehension of Hamas leadership (namely, Yahya Sinwar, Mohammed Diab Ibrahim Al-Masri, and Ismail Haniyeh), although these were all withdrawn following the confirmation of their deaths. Additionally, arrest warrants were issued for Netanyahu and former Israeli minister of defence Yoav Gallant. These arrest warrants have presented a dilemma for Berlin since they bring two key pillars of German post-WWII international policy into conflict: support for Israel's right to exist and commitment to the rule of law. Both pledges are viewed as important acts of repentance to Jewish victims of the Holocaust and to the international community for the atrocities committed across Europe under the Nazi regime.

Germany has long advocated a two-state solution to the Israel–Palestine conflict, is an important economic partner for Israel, and contributes humanitarian assistance to Palestine. Yet, until recently, Berlin's reluctance to openly criticise Israel over its military response to the 7 October attacks suggested it prioritised its allegiance with Israel over its conviction to uphold the rule of law internationally. Germany is Israel's second-largest arms supplier, providing 30 per cent of the weapons Israel imports. Consequently, the German government has been criticised for disregarding international humanitarian law transgressions by Israeli forces and for supplying weapons used in Israeli military campaigns that have resulted in the indiscriminate killing of tens of thousands of Palestinian civilians.

Unexpectedly, the new coalition government under Chancellor Friedrich Merz has changed course – at least discursively. On 26 May 2025 Merz indicated limits to his support for the Netanyahu government by expressing concerns about Israel's continual blocking of humanitarian aid to Gaza. Moreover, he stated that he did not see how this action related to Israel's objective of eradicating Hamas. Foreign Minister Johann Wadephul said at a meeting with his Israeli counterpart Gideon Sa'ar a week later that more humanitarian aid for Gaza was “not only a commandment of humanity, it is also applicable international law,” and he called the construction of new Israeli settlements in the West Bank “contrary to international law,” saying “it literally obstructs the [...] two-state solution” ([Euronews 2025](#)).

The new tone vis-à-vis the Netanyahu government contrasts with Merz's statement shortly after Germany's parliamentary elections in February 2025. In that statement to the press, Merz described having assured the Israeli prime minister on the phone that “we will find ways and means for him [Netanyahu] to visit Germany and also to be able to leave again without being arrested in Germany” ([Thurau 2025](#)). This promise was concerning, as it expressed an intent to violate Berlin's Rome Statute obligations. Moreover, if realised, it would have associated Merz with company he would ordinarily avoid – for instance, Hungary's prime minister Viktor Orbán, who infamously embraces undemocratic values, hosted

Netanyahu in April 2025 in Hungary despite its being an ICC member. Worse yet, mere hours later, Orbán announced his government’s withdrawal from the ICC.

After the year it takes for a withdrawal to come into effect, Hungary will be the third state to withdraw from the Rome Statute, alongside Burundi (2017) and the Philippines (2019). Whereas Burundi’s and the Philippines’ withdrawals were attempts to evade accountability by their respective leaders at the time, Hungary’s withdrawal was meant to demonstrate support for Netanyahu, a fellow politician of the populist right and an ideological ally to Orbán. Hungary’s withdrawal does not pose an existential crisis for the Court, especially since Hungary is not a major financial contributor. However, it fuels global frustrations with European member states who are accused of supporting the Court only so long as their allies are not in jeopardy.

Internal Operational Challenges

In the early to mid-2010s, the AU and some African states criticised the ICC’s focus on Africa. In fact, until 2017, nine of ten ICC countries under investigation were from the continent, although most of these comprised self-referrals. Yet, since then, the ICC has broadened its geographical scope. The new investigations (for example, Afghanistan, Venezuela, the Philippines, and Ukraine) were not self-referred and have come with more cooperation challenges and financial demands. As a result, progress with such cases has been slow. For critics, low conviction rates mean that the ICC does not deserve a bigger budget. By contrast, the ICC argues that its expanding caseload necessitates more resources – both financial and personnel-related.

The ICC’s budget is financed through annual contributions from member states, and a major challenge in the budget process is the collection of assessed contributions (see bottom two rows of Table 1 below). High arrears are a budgetary concern as they create shortfalls in the Court’s expected operating funds for a given year. Late payments have also become a contentious issue within the organ responsible for oversight of the ICC, the Assembly of States Parties (Interview WEOG 2024).

Table 1. Top Seven ICC Contributors by Year, 2019–2023

Year (31 Dec)	2019	2020	2021	2022	2023
Japan	€24.2M	€22.3M	€24.2M	€24.8M	€27.6M
	18.3%	17.4%	21.4%	19.5%	19.0%
Germany	€16.1M	€16.2M	€16.1M	€17.7M	€19.9M
	12.2%	12.6%	14.2%	13.9%	13.7%
France	€12.5M	€12.6M	€12.5M	€13.3M	€14.8M
	9.5%	9.8%	11.1%	10.5%	10.2%

UK	€12.1M 9.1%	€12.1M 9.4%	€12.1M 10.7%	€12.7M 10.0%	€14.2M 9.8%
Italy	€8.8M 6.7%	€8.8M 6.9%	€8.8M 7.8%	€9.2M 7.2%	€10.4M 7.2%
Canada	€7.2M 5.4%	€7.3M 5.7%	€7.2M 6.4%	€7.6M* 6.0%	€8.5M* 6.0%
Spain	€5.7M 4.3%	€5.7M 4.4%	€5.7M 5.0%	€6.2M 4.9%	€6.9M 4.8%
Total contribu- tions received	€132.2M	€128.1M	€113.1M	€127.1M	€145.1M
Total assessed contribu- tions	€148.1M	€148.7M	€148.3M	€154.9M	€173.2M

Source: Compiled by author.

Notes: All figures were derived from the annual financial statements of the ICC, which can be found on the respective page for each year at <https://asp.icc-cpi.int/sessions/documentation>. All figures were rounded up to the nearest decimal point. Figures are the actual collected amounts paid by the ICC member states. The symbol “%” designates the percentage of overall state contributions per state per year.

* Canada had credits from the previous year that contributed toward the final amount collected.

The budget process can be used in a political way. Although some states resist this, others see the refusal to disburse promised funding as an opportunity to exert influence or express dissatisfaction. For example, after blocking a budget increase for 2017, the Court’s main funders – Japan, Germany, the UK, France, Italy, Spain, and Canada (see Table 1) – approved a larger budget for 2023 ([Amnesty International 2022](#)). Most of these states, including Germany, made voluntary contributions to the Prosecutor’s Trust Fund for Advanced Technology and Specialized Capacity, explicitly referring to the Ukrainian case as their motivation. After years of fiscal restraint, the prioritisation of the Ukraine investigation over other ICC investigations was described as “systemic racism” by international criminal law expert [Mark Kersten \(2022\)](#). This critique is echoed by governments, academics, non-governmental organisations, and general publics concerned with the atrocities taking place daily in Gaza – the investigations into which have not been met with the same financial support.

Germany’s reputation as a reliable supporter of the ICC – as illustrated by its substantial financial contributions – is jeopardised by Merz’s announcement to defy the Netanyahu arrest warrant. The damage caused by the German government’s support of the Netanyahu government is already apparent. For example, a German ICC judge candidate failed to win the necessary support for election, lacking votes especially from Global South members. This is unusual for such a major budget contributor. Berlin’s muted reaction to the Israeli conduct of the war in

Gaza in the wake of 7 October is cited as among the reasons for this result (Schüller 2025).

Germany's diminishing esteem amongst ICC member states may also negatively affect its future activities within the ICC. For example, efforts to amend the crime of aggression provisions rely on cross-regional support, and Global South countries comprise the vast majority of states within the ICC – with Africa alone making up 37 per cent of all members. Together with Costa Rica, Sierra Leone, Slovenia, and Vanuatu, Germany proposed further amendments to the Rome Statute to enable the ICC to act whenever the victim state, or the territory where the conduct occurred, is covered by the Statute, even if the aggressor state is not. In the wake of Russia's full-scale invasion of Ukraine in 2022, Germany argues that there is an accountability gap in the current amendments whereby the prosecutor can investigate only those crimes of aggression in which both the aggressor and the victim are ICC member states. These amendments will be considered at the ICC's second-ever Review Conference in early July 2025.

A Moment of Choice: Reaffirming Germany's Commitment to Justice

The arrest warrant for Netanyahu presents Berlin with a true crisis of commitments: Merz's coalition government is torn between its avowed support for the Israeli state, as part of its atonement for the Holocaust, and its commitment to international justice and law, another repentance for its WWII politics. To safeguard its legacy from Nuremberg to The Hague, Berlin should rely on its commitment to a rules-based order and international justice.

As the death toll climbs in Gaza – breaching 50,000 mostly civilian deaths – in the midst of unrelenting bombing, deliberate starvation, and repeated mass relocations, a German commitment to the Israeli state should not be equated to an uncritical commitment to Netanyahu personally – a leader who scrambled to keep his position in office by forming a right-wing, ethnonationalist, extremist government. Merz's recent recognition of Israel's humanitarian aid blockades as a concern for Berlin is one step in the right direction, though many onlookers point to the incongruity between this statement and Merz's earlier comments about intending to defy the ICC arrest warrant for Netanyahu. The ICC is the product of hard-won lessons about the cost of impunity and the international community's duty to uphold accountability for the gravest crimes. Non-cooperation with the Court poses a grave threat to the prosecution of those suspected of perpetrating egregious international crimes – from Rodrigo Duterte to Ali Abd al-Rahman, the alleged Janjaweed commander in Darfur. If Germany, one of the ICC's most vocal champions and largest financial contributors, is seen to prioritise political expediency over principled support, the Court's credibility and authority will be severely weakened.

So far, Netanyahu has no plans to visit Germany. Moreover, Merz's coalition partners from the Social Democratic Party are likely to oppose a visit that would be potentially politically costly at home and abroad. Nonetheless, some damage has already been done. Given that Western support for ICC action vis-à-vis Ukraine relative to other cases is already a sore point within the Assembly of States Parties,

Germany should be careful to ensure it is seen as even-handed in applying the rule of law – including to its allies. Thus, Merz ought to unambiguously pledge his government's adherence to *all* ICC arrest warrants, leaving no doubt that Berlin will remain compliant with its ICC obligations and commitment to the rule of law.

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