



### OSSERVATORIO SUI TRIBUNALI INTERNAZIONALI PENALI N. 5/2024

#### 1. THE ICC ISSUED ARREST WARRANTS AGAINST NETANYAHU, GALLANT, AND HAMAS' COMMANDER-IN-CHIEF DEIF: *WHAT NEXT?*

##### 1. *Introduction: the Pre-Trial Chamber Decisions in the Situation in Palestine*

On Thursday 21 November 2024, six months after the Office of the Prosecutor (hereinafter: OTP) of the International Criminal Court (hereinafter: ICC) [filed applications](#) for warrants of arrest against five individuals in the Situation in the State of Palestine, Pre-Trial Chamber I (hereinafter: PTC I or the Pre-Trial Chamber) [issued warrants](#) against three of them: Israel's Prime Minister Benjamin Netanyahu (hereinafter: Mr. Netanyahu), Israel's former Minister of Defence Yoav Gallant (hereinafter: Mr. Gallant), and the Commander-in-Chief of Hamas, Mohammed Diab Ibrahim Al-Masri, commonly known as Deif (hereinafter: Mr. Deif).

The Pre-Trial Chamber has on the other hand granted the OTP's request to withdraw applications against two leaders of Hamas – Ismail Haniyeh and Yahya Sinwar –, [following confirmation of their deaths](#). PTC I decided to only release some information concerning these decisions, which they classified as “secret” «in order to protect witnesses and to safeguard the conduct of the investigations» (*Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel's challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant*, 21 November 2024).

Contextually, PTC I issued [two decisions rejecting challenges](#) brought by the State of Israel (hereinafter: Israel) with regard to the ICC's jurisdiction over Palestine and the OTP's failure to notify the start of an investigation pursuant to Article 18 of the ICC Statute. The judges dismissed the said challenges on procedural grounds – that is, due to the fact that Israel could only challenge the Court's jurisdiction after the issuance of arrest warrants (see [Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19\(2\) of the Rome Statute](#), para. 17) – and on the ground that according to consistent practice of the Court, a new notification was not necessary (see [Decision on Israel's request for an order to the Prosecution to give an Article 18\(1\) notice](#), para.15), respectively (on such decisions, see K.J. HELLER, “*The PTC Decisions on Israel's Legal Challenges to the Arrest Warrants*”, in *Opinio Juris*, 22 November 2024, available [here](#)).

Considering that Mr. Deif would have been [killed in an airstrike in July 2024](#) (information which the OTP is still trying to confirm before applying for the withdrawal of the arrest warrant), this comment will focus on matters relating to the issuance of warrants

against Mr. Netanyahu and Mr. Gallant. In particular, as the Pre-Trial Chamber has disclosed information mostly regarding the crimes in respect to which the warrants have been issued, Section 2 of this article will draw on this information to reflect upon the scope of the charges, the underlying prosecutorial strategy, and the prospects for future investigations into the Situation in Palestine. In Section 3, I will then turn to the obligation to execute the warrants of arrest in light, on the one hand, of the ICC Statute and the most recent practice of the Court, and on the other, of States' reactions to the issuance of the warrants. In the Conclusion, I will share a couple of additional considerations on the said aspects as well as (some of) the implications of this decision.

## 2. *The Warrants of Arrest Against Netanyahu and Gallant: "Spectacular" Starvation Obliterates "Ordinary Misery" of Palestinians?*

At the time of the [filing](#) of the application for the warrants of arrest against Mr. Netanyahu and Mr. Gallant, ICC Prosecutor Karim A.A. Khan KC (hereinafter: Mr. Khan or the Prosecutor) explained that there were «reasonable grounds to believe» that they were responsible for «the following war crimes and crimes against humanity committed on the territory of the State of Palestine (in the Gaza strip) from at least 8 October 2023:

- Starvation of civilians as a method of warfare as a war crime contrary to article 8(2)(b)(xxv) of the Statute;
- Wilfully causing great suffering, or serious injury to body or health contrary to article 8(2)(a)(iii), or cruel treatment as a war crime contrary to article 8(2)(c)(i);
- Wilful killing contrary to article 8(2)(a)(i), or Murder as a war crime contrary to article 8(2)(c)(i);
- Intentionally directing attacks against a civilian population as a war crime contrary to articles 8(2)(b)(i), or 8(2)(e)(i);
- Extermination and/or murder contrary to articles 7(1)(b) and 7(1)(a), including in the context of deaths caused by starvation, as a crime against humanity;
- Persecution as a crime against humanity contrary to article 7(1)(h);
- Other inhumane acts as crimes against humanity contrary to article 7(1)(k).»

All such crimes would have been committed, according to Khan and the OTP, by «intentionally and systematically» depriving «the civilian population in all parts of Gaza of objects indispensable to human survival (...) through the imposition of a total siege over Gaza that involved completely closing the three border crossing points, Rafah, Kerem Shalom and Erez, from 8 October 2023 for extended periods and then by arbitrarily restricting the transfer of essential supplies – including food and medicine – through the border crossings after they were reopened» (emphasis mine).

Although it does not provide information concerning individual charges, in the [statement](#) concerning the issuance of the warrants, PTC I stated that it found that war crimes had been committed in the context of an international armed conflict, while crimes against humanity were committed as part of a widespread and systematic attack against the civilian population of Gaza (on the qualification of the conflict and its impact on the charges, see A.A. HAQUE, "*The International Criminal Court's Classification of Armed Conflicts in the Situation in Palestine*", in *Just Security*, 12 December 2024, available [here](#)). According to PTC I, Mr. Netanyahu and Mr. Gallant «intentionally and knowingly deprived the civilian population in

Gaza of objects indispensable to their survival, including food, water, and medicine and medical supplies, as well as fuel and electricity, from at least 8 October 2023 to 20 May 2024.»

Restriction of access to food and other objects indispensable to survival is all but news for Palestinians and particularly Gazans. Just to name a few, the impact of the pre-existing Israeli blockade on Gazans has been denounced, among others, by the *UN Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory*, the *United Nations Office for the Coordination of Humanitarian Affairs*, and the *Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Francesca Albanese (see, more recently and before 7 October 2023: 1) “[Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory](#)” published in 2019, concluding that «the ongoing blockade of Gaza and its impact on the health-care system in Gaza, and the ensuing deprivation of essential goods and services necessary for a dignified life, including basic medical supplies, safe drinking water, electricity and sanitation, constitute violations of the fundamental rights to life and health, in particular of wounded demonstrators» (para. 892); 2) “[Gaza Strip: The Humanitarian Impact of 15 Years of the Blockade](#)”, published in June 2022, finding that «1.3 million out of 2.1 million Palestinians in Gaza (62%) require food assistance», and that «the Gaza Power Plant can only meet[...] about 50% of the electricity demand in Gaza»; and 3) [Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese](#) published in September 2022, finding, among other things, that «large-scale Israeli military offensives, coupled with Israeli-imposed electricity shortages, have compounded the difficulties faced by the Palestinian people in Gaza, for whom a dignified life is rendered unattainable» (para. 50)).

These reports refer to a period falling under the geographical and temporal scope of the jurisdiction of the ICC according to PTC I’s “Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine”” (which I [commented](#) for this journal in 2021). However, no charges have been sought by the Prosecutor with regard to any of the above-mentioned allegations – which might indeed suggest that Israeli officials have committed crimes against humanity of extermination, persecution, and/or other inhumane acts against civilians in Gaza (for a conceptualization of blockades as crimes against humanity, see, for instance, J. ZHENG, “*Unlawful Blockades as Crimes Against Humanity*”, in *ASIL Insights*, 20 April 2018, available [here](#)).

There are several considerations worth sharing with regard to the scope of the charges brought by the OTP, having to do with both the “micro” level – that is, prosecutorial policies and standard of evidence with regard to cases brought before the ICC – as well as with the “macro” level – that is, the blind spots of international criminal law.

Concerning the “micro” level, there are two aspects to take into account.

First, it is important (and only fair) to recall that in November 2023, the Prosecutor explained, in an op-ed he penned for [The Guardian](#), that he would «not hesitate to act» pursuant to his mandate (that is, to apply for arrest warrants in the Palestine situation) when the evidence «reaches the threshold of realistic prospect of conviction». This is a policy that has been harshly criticized by some scholars for not being grounded in the core texts of the ICC (see T. MARINIELLO, “*The ICC Prosecutor’s Double Standards in the Time of an Unfolding Genocide*” in *Opinio Juris*, 3 January 2024, available [here](#)), but that has been informing the work of the OTP since this Prosecutor took office (see the [statements](#) he had made earlier, for instance on 14 October 2021 at the opening of the confirmation of charges hearing in the case against Mahamat Said Abdel Kani). The OTP has taken this “minimalist charging” approach also in respect to the investigation into the situation in Ukraine (a comparison I will

return to in Section 3 below), where for the purpose of the application for arrest warrants against the President of the Russian Federation, Vladimir Putin, and the Commissioner for Children's Rights in the Office of the President of the Russian Federation, Maria Alekseyevna Lvova-Belova, the OTP decided to only focus on the unlawful transfer of children from occupied areas of Ukraine to the Russian Federation (on the decision to issue these arrest warrants, see M. GIUFFRÈ, L. PROSPERI, "Alea Iacta Est: *The ICC Issues Arrest Warrants Against Vladimir Putin and Maria Lvova-Belova*", in this journal, No. 2/2023, available [here](#)). Meaning this is not at all a new trend.

Second, it needs be stressed that in welcoming the issuance of the arrest warrants on the part of PTC I, the Prosecutor has recently [stated](#) that the OTP «is continuing to pursue its independent and impartial investigation in the situation in the State of Palestine», focusing on Gaza and the West Bank, including East Jerusalem, and that he is «deeply concerned about reports of escalating violence, further shrinking humanitarian access, and continued expansion of allegations of international crimes in Gaza and the West Bank». This clarification is very important. In fact, what is also striking about the crimes in respect to which the OTP sought arrest warrants against Mr. Netanyahu and Mr. Gallant is that they fall outside the scope of all three lines of inquiry that the then Prosecutor Fatou Bensouda pursued in the context of the preliminary examination into the Situation in Palestine (see the "[Summary of Preliminary Examination Findings](#)" published by the OTP, paras. 2 through 4; and P. PARISI, "[The Opening of an Investigation into the Situation in Palestine by the Office of the Prosecutor of the International Criminal Court: The Road Uphill](#)", in this journal, No. 3/2021, available [here](#)). The future is unwritten, but it is paramount that the OTP pursues all lines of investigation keeping in mind that «[the lives of all human beings have equal value](#)» – in Gaza as [in the West Bank](#) (it is worth recalling, in this regard, that in December 2023, 14 European countries and the European Union [expressed](#) «their grave concern about the record number of attacks by extremist settlers against Palestinians in the West Bank»; and that [in July](#) and [in November](#) 2024, the US Government has imposed sanctions on Israeli individuals and entities connected to acts of violence in the West Bank).

Concerning the "macro" level, this development provides us with a further opportunity to reflect on a very peculiar blind spot of international criminal law. In particular, the arrest warrants seem to show once again how international criminal justice institutions tend to focus on «incidences of spectacular, not structural, violence» (see A. G. KIYANI, "*International Crime and the Politics of Criminal Theory: Voices and Conduct of Exclusion*", in *New York University Journal of International Law and Politics*, Vol. 48, 2015, pp. 129-206, at 185 – building on the work of, among others, I. TALGREN, "*The Sensibility and Sense of International Criminal Law*", in *European Journal of International Law*, Vol. 13, 2002, pp. 561-595). Another conduct carried out by Israeli authorities that may amount to a crime falling under the jurisdiction of the ICC is the so-called "domicide", a concept coined by Porteous and Smith to describe «the deliberate destruction of homes that causes suffering to its inhabitants» (see D. PORTEOUS, S.E. SMITH, "*Domicide: the Global Destruction of Home*", Montreal, 2001, p. IX). On 20 October 2023, the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (hereinafter: UN Special Rapporteur on housing) [called](#) for the recognition of domicile as a crime. His plea has so far been ignored despite the military operation launched by Israel on Gaza on 8 October 2023 has resulted in unprecedented levels of infrastructure destruction. On 5 March 2024, the UN Special Rapporteur on housing denounced that since October 2023, «more than 70 per cent of all housing stock in Gaza, and more than 80 per cent in parts of northern region have been

damaged or destroyed». In April 2024, UN experts [denounced](#) that «more housing and civilian infrastructure has now been destroyed in Gaza as a percentage, compared to any conflict in memory». Yet, this unprecedented level of destruction has not met the eye of international criminal justice institutions (despite the underlying conduct could amount to war crimes and/or crimes against humanity).

In 2011, Rob Nixon warned that we should engage «a different kind of violence, a violence that is neither spectacular nor instantaneous, but rather incremental and accretive, its calamitous repercussions playing out across a range of temporal scales» (R. NIXON, “*Slow Violence and the Environmentalism of the Poor*”, Cambridge/London, 2011, p. 2). In 2024, time has come for international criminal justice institutions – and particularly the ICC – to consider broadening the focus from the “eruptions” of violence that catch the news cycle to the “structural” violence that inevitably leads to such events (and full-scale conflicts). To consider, in other words, focusing on the “spectacular” post-7 October 2023 starvation of Gazans without turning a blind eye to the “ordinary misery” of Gazans and West Bankers since *at least* 13 June 2014 (that in light of the [declaration](#) lodged by the Palestinian government on 1 January 2015 represents the *dies a quo* in terms of the ICC’s temporal jurisdiction).

### 3. *Obligations Arising From the Issuance of the Warrants of Arrest and Impacts of States Parties’ Reactions*

The *Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Francesca Albanese, called the issuance of the arrest warrants a «[rare moment of euphoria](#)». The Palestinian Authority said that «[the ICC’s decision represents hope and confidence in international law and its institutions](#)». Human Rights Watch claimed that the arrest warrants «[break through the perception that certain individuals are beyond the reach of the law](#)». But *does it*?

A first aspect to consider with regard to the impact of the issuance of the arrest warrants is the legal effect of such decision. In particular, it remains to be seen whether states parties will enforce the ICC’s request to arrest and surrender the sitting Head of government of Israel, Benjamin Netanyahu. (The position of Mr. Gallant being much less *legally* problematic, especially after Netanyahu [dismissed him](#) from the position of Minister of Defence in early November 2024.)

Pursuant to Article 27, paragraph 2 of the Rome Statute of the ICC «[i]mmunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.» Meaning that states parties are not allowed to invoke functional or personal immunities of their officials before the ICC. However, Article 98, paragraph 1 of the Statute prescribes that the Court «may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.» The question whether states parties have an obligation to arrest acting Heads of States of non-states parties in light of Articles 27 and 98 of the Statute has arisen multiple times since 2011, especially in light of the failure, on the part of several states parties, to arrest the then President of Sudan Omar Al Bashir. Considering I have discussed this very issue – and the relevant ICC case law – in an article concerning the arrest warrant against the sitting President of the Russian Federation, Vladimir Putin, I will not return on it (*see* M. GIUFFRÈ, L. PROSPERI, “*Alea Iacta Est: The ICC Issues Arrest Warrants Against Vladimir Putin and Maria Lvova-Belova*”,

in this journal, No. 2/2023, available [here](#) – immunities are discussed in Section 3). Suffice it to say that Mr. Netanyahu would enjoy personal immunities as a member of the “*trojka*” encompassing the Head of state, the Head of government and the Minister of Foreign Affairs (see [Case Concerning the Arrest Warrant of 11 April 2000 \(Democratic Republic of the Congo v. Belgium, Judgment of 14 February 2002](#), para. 51).

However, it is interesting to note that on 24 October 2024, Pre-Trial Chamber II (PTC II) of the ICC has [found](#) that by failing to arrest Mr. Putin while he was on its territory and surrender him to the Court, Mongolia has failed to comply with the Court’s request to cooperate. In such decision, PTC II has found that:

- 1) states parties have an obligation to arrest and surrender any person for whom the Court has issued a warrant of arrest, irrespective of their official capacity and nationality ([Finding under article 87\(7\) of the Rome Statute on the non-compliance by Mongolia with the request by the Court to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and referral to the Assembly of States Parties](#), para. 27);
- 2) any bilateral obligation that states parties might have vis-à-vis a non-state party is not capable of displacing the obligation they owe to the Court because this multilateral obligation «cannot be altered or superseded by any bilateral commitments that may conflict with the Rome Statute’s objectives» (ivi, para. 28);
- 3) in fact, «while personal immunities operate in relations between States, they do not protect individuals, including Heads of State, from prosecution by international criminal courts» and particularly the ICC, as the Court «is not only indisputably international in nature but also inherently independent of State influence» and «performs functions that align with the general interests of the international community by exercising jurisdiction over the most serious international crimes» (ivi, paras. 30-31);
- 4) as to Article 98(1), it «neither supplements, modifies, nor provides exceptions to article 27(2)», but «refers only to acts of government activities which are typically conducted abroad and are protected by the safeguards on diplomatic immunity for certain officials and buildings», so that «when the provision mentions State immunity, it does not address the immunity of the Head of State, but that of the State per se, with reference to diplomatic premises, property, documents or other assets belonging to the State of whom the sought person is a national» (ivi, paras. 34-35).

As mentioned above, I have already discussed criticisms shared by a number of scholars with regard to the Court’s approach to this matter. Irrespective of the solidity of scholars’ arguments (many of which I personally find convincing), it seems that also in light of the 24 October 2024 decision concerning Mongolia, this shall be considered as a “settled” matter before the ICC. Meaning that according to what can now be considered *consistent* practice of the ICC, states parties are under an obligation to cooperate with the ICC in arresting and surrendering a sitting Head of state or Head of government of non-states parties – being that Putin or Netanyahu. Will that happen? Well... *It is complicated*.

Following the issuance of the arrest warrant against Mr. Netanyahu, only 25 states parties (including 13 European states, Canada, Colombia, Chile, and South Africa) have announced they would comply with the Court’s request (see R. INGBER, “*Mapping State Reactions to the ICC Arrest Warrants for Netanyahu and Gallant*”, in *Just Security*, 23 November 2024 – available [here](#)). This is a worrying development, especially considering that one year and a half

earlier, 35 states parties – including the the UK and 26 out of 27 EU member states – had supported the issuance of an arrest warrant against Mr. Putin (see A. GURMENDI, “*Tracking State Reactions to the ICC’s Arrest Warrant against Vladimir Putin*”, in *Opinio Juris*, 29 March 2023, available [here](#)). Even more worryingly, states that only one month earlier had [bashed Mongolia](#) for not complying with the Court’s request, such as France, would make a U-turn [stating](#) that immunities apply to Mr. Netanyahu.

In addition, US President Joe Biden has called the arrest warrants «[outrageous](#)», and Republican senators have gone as far as [calling for sanctions](#) against ICC officials, which would [not be an unprecedented decision](#) (on these threats, see J. ESKAURIATZA, “*Wait a Minute, Mr. Postman’: Legal Implications of Threats Issued by U.S. Republican Senators*”, in *Opinio Juris*, 30 May 2024, available [here](#)). While the US are not a party to the Statute, it is noteworthy that in March 2023, President Biden had [hailed](#) the issuance of the arrest warrant against Mr. Putin.

With regard to such reactions, scholars have quickly denounced that «[t]he double standards tainting these contrasting responses are glaring» (A. SPADARO, “*The ICC arrest warrants in the Palestine Situation: double standards, limitations and opportunities*”, in *CIL Dialogues*, 11 December 2024, available [here](#)). Others have warned the US not to go to war with the ICC, as «sanctions on ICC staff would undermine Washington’s efforts to bring Russia to justice for its crimes in Ukraine» (O.A. HATHAWAY, “*Don’t Go to War With the ICC*”, in *Foreign Affairs*, 24 May 2024, available [here](#)).

While taking note of the worrying developments, particularly concerning the *double standards*, it is important not to fall into the despair trap. Personal immunities, it is worth recalling, may eventually be invoked only for the purpose of shielding a *sitting* Head of government from arrest and prosecution in foreign jurisdictions. Meaning that should political circumstances change in Israel, resulting in the collapse of Mr. Netanyahu’s government, he would not be in the position to invoke such immunities. This is not all.

The issuance of arrest warrants does not only mean that states parties are under an obligation to arrest Mr. Netanyahu and Mr. Gallant, if so requested by the ICC. This decision has political repercussions. Regarding the recent statements of France concerning immunities, journalists [suggested](#) that «this statement was meant to avoid severing ties with the Israeli prime minister, who contested the role of mediator claimed by Paris in the search for a hard-fought ceasefire in Lebanon». There is of course no trade-off between enforcing an arrest warrant and achieving peace. However, this is further indication that arrest warrants *have* consequences. Mr. Netanyahu might not risk being arrested if he decided to travel to “friendly” countries (which is by the way [highly unlikely](#)), but the warrant against him may represent the “[leverage](#)” that the US and other allies of Israel have been looking for, in recent months, for the purpose of bringing him to the negotiating table. Only future can tell.

## 5. Conclusions

Six months after the Prosecutor applied for them, at the end of long and [criticized](#) proceedings, PTC I has issued arrest warrants against Israel’s Prime Minister Benjamin Netanyahu, Israel’s Minister of Defence Yoav Gallant, as well as the Commander-in-Chief of Hamas, Mohammed Diab Ibrahim Al-Masri (who seems to have been killed in July 2024). This decision has been welcomed by legal experts and NGOs alike, expressing their belief that it (somewhat) restored faith in international law. Two of the most reputable human rights NGOs, Amnesty International and Human Rights Watch, have welcomed it as a breakthrough with regard to «[the persistent and pervasive impunity at the heart of the human rights crisis](#)

[in Israel and the Occupied Palestinian Territory](#)» and «[the perception that certain individuals are beyond the reach of the law](#)», respectively. This would be, according to Prosecutor Khan, a vindication of the work of his Office, carrying out its mandate «[in order to fulfil the fundamental commitment forming the basis of the Rome Statute: that the lives of all human beings have equal value.](#)»

In this short article, I have focused on two main issues relating to these arrest warrants.

First, I have analysed the decision with regard to the scope of the arrest warrants against Mr. Netanyahu and Mr. Gallant. In this respect, I noted that the arrest warrants only encompass charges relating to conducts consisting in hampering the access to objects indispensable to survival for civilians in Gaza. While this is consistent with the current prosecutorial policies, it is important to stress that investigations into the Situation in Palestine are ongoing, and further charges might (and should) be brought in relation to crimes allegedly committed in Gaza and in the West Bank since 2014. In particular, I believe that the OTP should also look into “structural” violence such as the impact of the blockade of Gaza as well as the destruction of Palestinian homes.

Second, I have dealt with the question of whether Mr. Netanyahu – as Head of government of a non-state party to the ICC Statute – would enjoy immunity from arrest on the part of states parties. While for years this has been considered a very contentious issue, it needs be stressed that according to the more recent and consistent practice of the ICC, states parties would be under an obligation to arrest Mr. Netanyahu and surrender him to the ICC. Unfortunately, the mixed reactions to the issuance of the warrants suggest that powerful states might not be willing to do so. This is in stark contrast with statements issued by some of the very same states after the issuance of an arrest warrant against the President of the Russian Federation, Vladimir Putin. These reactions might represent a warning of what comes next.

In commenting PTC I’s decision and its impact, Sergey Vasiliev has recently said:

*«The battle for the soul of the International Criminal Court and international criminal justice as a whole has been won, I think. But the battle for the body of international criminal law is just beginning»* (“[Justice Update – ICC Arrest Warrants for Netanyahu, Gallant and Deij](#)”, in *Asymmetrical Haircuts*, 22 November 2024, minute 4:31).

Back in 1998, Antonio Cassese, one of the founding fathers of the international criminal justice project, deplored the fact that the International Criminal Tribunal for the former Yugoslavia remained «very much like a giant without arms and legs» because it could only fulfil its functions through «artificial limbs» – namely, the cooperation of states (A. CASSESE, “*On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law*”, in *European Journal of International Law*, Vol. 9, 1998, pp. 2-17, at 13).

Twenty-six years later, the ICC has shown to the world that its soul *can* be brave and that *nobody* should be beyond its reach. It will need “artificial limbs” to turn this aspiration into reality and set out on a new path.

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