

LEGAL CORRECTOR

UK Government Response to International Criminal Court Arrest Warrants

On 28th June 2024, it was made public that the United Kingdom has submitted a request to make written observations to the International Criminal Court (ICC), in which it is suggested that Chief Prosecutor Karim Khan KC is mistaken in his application for arrest warrants against Israeli Prime Minister Benjamin Netanyahu and Defence Minister Yoav Gallant.¹

The United Kingdom's request,² signed by Foreign Office Legal Advisor Sally Langrish, is a transparent attempt to derail the pursuit of accountability for Israeli war crimes. In essence, the UK's claims are that the ICC lacks jurisdiction over crimes committed by Israelis in Palestine.

Oslo Accords

This is derived, firstly, from the Oslo II Accord and the Protocol Concerning Legal Affairs, in which Israel was granted, *inter alia*, exclusive criminal jurisdiction over Israeli-committed crimes in the occupied Palestinian territory. Secondly, the submission relies upon the failure of the ICC's Pre-Trial Chamber I to settle the matter of Oslo's pertinence to the question of ICC jurisdiction, ahead of its issuing of its Jurisdictional Decision on Palestine in 2021. Langrish's submission states that this 'Oslo Accords issue' could, if not resolved, lead to "*an arrest warrant being issued when relevant legal bases may be lacking.*"³

Neither of these are consequential legal arguments, as Langrish and the Foreign Office will be well aware. Firstly, while the question was indeed left open as to the impact of Oslo *on territorial jurisdiction* of the Court, the contours of Oslo itself make clear that the agreement cannot bar the Court's jurisdiction in Palestine. Oslo's provisions concerned *enforcement jurisdiction*, which regulates the ability of Palestinian authorities to ensure compliance with legislation. There is no question as to Palestinians' protected right to *prescriptive jurisdiction* to make law regarding crimes committed in their territory, including their ability to vest the ICC with jurisdiction - and certainly not since their membership of the ICC was accepted in 2015. For the occupying power, Israel, to strip Palestinians of prescriptive jurisdiction under the Oslo Accords would stand in stark violation of the peremptory rights of protected persons under occupation established under the Fourth Geneva Convention.⁴

¹ International Criminal Court. (20th May 2024). '[Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine.](#)'

² International Criminal Court (27th June 2024). '[Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103.](#)'

³ International Criminal Court, Pre-Trial Chamber I. (5th February 2021). '[Decision on the 'Prosecution request pursuant to article 19\(3\) for a ruling on the Court's territorial jurisdiction in Palestine.'](#)

⁴ Yassir Al-Khadyri (10th June 2020) '[Are the Oslo Accords Still Valid? For the ICC and Palestine. It Should Not Matter.](#)', *OpinioJuris*.

Complementarity under international law

Secondly, the UK's submission cannot be considered without attending to the crucial issue of complementarity under international law. It is the case that, in principle, the ICC only has *secondary* jurisdiction after national courts (in this case those in the State of Israel). This principle, however, loses power in situations where 'relevant states are unwilling or unable to prosecute the crimes within their jurisdiction'. Such a situation is evident in Israel, where a governmental assault on the independence of the judiciary – let alone recent attacks on the ICC itself - has gone hand-in-hand with senior law enforcement officials' total disinterest in investigating and prosecuting alleged war crimes committed by the Israeli military, in both Gaza and the West Bank. This must also be considered in light of Israel's non-response to the Article 18 Notification made in March 2021, in which the State of Israel was informed of, and provided the opportunity to launch investigation in response to the ICC's intention to investigate the 'Situation in the State of Palestine'.⁵

In sum, the UK's argument, if taken to be a legitimate jurisprudential submission, would advocate for the deprivation of Palestinian's prescriptive jurisdiction for crimes committed in Palestinian territory. This would leave Palestinians' only recourse to justice as appeals to Israeli Courts and legal officials, which are uninterested in investigation, let alone prosecution of Israeli nationals for war crimes.

Alternatives to UK's intervention

If the UK has a legitimate motivation for the safeguarding of legal process, the Foreign Office would and should use the means available to them, first and foremost the creation of a Special Tribunal constituted by the Security Council. Instead, this submission is a transparent attempt to further undermine the international rules-based order, to derail the one institution showing itself both able and willing to pursue accountability, and to recover the sense of impunity which Israel has long enjoyed.

Impact of UK's intervention

1. ⁵ International Criminal Court, Office of the Prosecutor. (3rd March 2021). '[Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine.](#)'; Panel of the Experts in International Law (20th May 2024). '[Report of the Panel of Experts in International Law](#)' (in support of the investigation into the 'Situation in the State of Palestine').

Irrespective of whether or not the UK's intervention is successful in the Pre-Trial Chamber, the intervention is at the very least likely to delay the issuing of arrest warrants, potentially by months. This would buy time for alleged Israeli war criminals such as Netanyahu, Gallant, and others, while muddying the waters of international law and the pursuit of accountability in The Hague.

The arrest warrants were initially applied for on the 20th May 2024. A decision on the issuing of these warrants will now take far longer to reach as the Pre-Trial Chamber considers the UK's submission. With other ICC Member States and interested parties still able to request to make submissions until 12th July, this act will further diminish the fleeting hopes for Palestinians under attack in Gaza, while serving to undermine the Court's established authority and the international rules-based order.

