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THE SITUATION IN THE STATE OF PALESTINE BEFORE THE INTERNATIONAL CRIMINAL COURT: A CRITICAL TEST OF THE EFFECTIVENESS OF INTERNATIONAL CRIMINAL JUSTICE

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Abstract
This study examines the effectiveness of international criminal justice through the situation in the State of Palestine before the International Criminal Court (ICC), a situation that crystallises the legal, enforcement, and political challenges facing the Court. It traces the legal trajectory from Palestine's lodging of a declaration accepting jurisdiction under Article 12(3) and deposit of its instrument of accession to the Rome Statute, through the determination of territorial jurisdiction (ratione loci), admissibility, and the principle of complementarity, to subject-matter jurisdiction (ratione materiae) and the issuance of warrants of arrest. It critically focuses on the arduous transition from the issuance of a warrant of arrest to securing the appearance of the person sought and conducting a substantive trial, in light of normative and institutional obstacles arising from complementarity challenges, immunities (ratione personae and ratione materiae), statutory obligations of cooperation versus state non-cooperation, Articles 16 and 98 of the Rome Statute, and geopolitical pressures exerted by major powers. The study concludes that the Palestinian situation tests not only the Court's ability to establish jurisdiction, but fundamentally the structural capacity of the international criminal justice regime to give its judicial determinations coercive and practical effect. It exposes an inherent systemic tension between centralised judicial adjudication and decentralised interstate enforcement.

Keywords: Palestine; International Criminal Court; Principle of Complementarity; Warrant of Arrest; State Cooperation; State and Diplomatic Immunities.

Highlights
- Palestine's situation before the ICC serves as a litmus test for whether warrants of arrest can effectively translate into custodial appearance and trial proceedings.
- The 2021 ruling on territorial jurisdiction decoupled criminal competence from the political determination of Palestine's permanent status and final borders.
- The admissibility of cases under the principle of complementarity remains dynamic and susceptible to challenge where genuine domestic proceedings are initiated.
- The finding of non-compliance against Hungary underscores the structural inability of the Court to execute its own warrants of arrest without state enforcement apparatuses.
- Article 16 of the Rome Statute constitutes a mechanism for temporary deferral of investigation or prosecution, rather than a judicial review or annulment of warrants.

1. Introduction
The establishment of the International Criminal Court (ICC) marked a profound qualitative transformation in international criminal justice. The prosecution of individuals bearing individual criminal responsibility for the most serious crimes of international concern shifted from ad hoc and temporary tribunals contingent upon specific historical and political conjunctures to a permanent international judicial body operating within an autonomous

statutory framework. However, more than two decades of practice have demonstrated that the statutory existence of the Court and its jurisdictional competence to render judicial decisions do not per se guarantee the effective administration of justice. Institutional effectiveness cannot be appraised merely through the formal assertion of jurisdiction or the issuance of a warrant of arrest; it must be assessed against whether judicial pronouncements trigger interstate enforcement and culminate in the transfer of the suspect and trial proceedings.

The situation in the State of Palestine illustrates this critical progression. Initial doctrinal debate centred upon Palestine's legal personality, statehood, and capacity to lodge a valid declaration accepting the Court's jurisdiction. Following Palestine's accession to the Rome Statute, scrutiny pivoted towards the precise delineation of jurisdiction ratione loci, alongside questions of admissibility and the principle of complementarity. The ruling rendered by Pre-Trial Chamber I on 5 February 2021 constituted a watershed: it held that, for statutory purposes, the Court's territorial jurisdiction extends to the territories occupied by Israel since 1967, specifically the Gaza Strip and the West Bank, including East Jerusalem (ICC, 2021).

The issuance of warrants of arrest on 21 November 2024, followed by successive interlocutory determinations by the Pre-Trial Chamber and Appeals Chamber, inaugurated a distinct and challenging phase. The fundamental inquiry was no longer confined to whether the Court possessed the legal title to exercise jurisdiction over the situation. It extended to whether the international criminal justice regime possesses the institutional resilience to progress from the judicial issuance of a warrant of arrest to securing the custodial surrender of the persons sought for trial.

This study interrogates the systemic friction between these sequential phases. A complex web of substantive, procedural, and political impediments operates between the issuance of a warrant of arrest and the commencement of trial proceedings. The principle of complementarity may re-open the threshold of admissibility; the normative interaction between Articles 27 and 98 revives intractable controversies over state and personal immunities; and States Parties may default on their statutory obligations of cooperation. Concurrently, Article 16 equips the United Nations Security Council, under circumscribed conditions, with the prerogative to defer an investigation or prosecution, while unilateral coercive pressures from non-States Parties threaten the institutional and judicial independence of the Court.

Accordingly, the overarching research question is: To what extent does the situation in the State of Palestine expose the structural limits of international criminal justice in translating the exercise of jurisdiction and the issuance of warrants of arrest into coercive enforcement, surrender, and substantive trial proceedings?

Section 2 deconstructs the legal parameters governing the establishment and exercise of jurisdiction in the Palestinian situation. Section 3 analyses the structural limits of international criminal enforcement, dissecting the normative and institutional obstacles dividing a warrant of arrest from a trial. Section 4 presents the study's analytical findings and policy recommendations, and Section 5 concludes.

2. Establishing the Court's Jurisdiction in the Palestinian Situation

The establishment of jurisdiction in the Palestinian situation transcends a mere chronological compilation of depositary acts, sovereign declarations, and judicial decisions. At its core lies a contested legal question: can the Court exercise international criminal jurisdiction without prior determination of the complex territorial sovereignty and statehood disputes that have historically characterised the Israeli-Palestinian conflict? The normative answer carries implications far beyond Palestine, testing the structural capacity of the Rome Statute to function as a self-contained legal regime that prevents impunity without subordinating individual criminal accountability to the conclusion of a comprehensive peace settlement. The analysis distinguishes between the statutory title of jurisdiction (competence-competence) and the procedural conditions governing the exercise of that jurisdiction over specific individuals and conduct.

2.1. The Legal Basis of Jurisdiction

The determination of jurisdiction engages two distinct yet interrelated legal questions: first, whether Palestine satisfies the criteria of a State Party competent to trigger the Court's statutory mechanisms without a definitive determination of statehood under general international law; and second, the spatial delimitation of that status, particularly where belligerent occupation and transitional bilateral accords complicate the nexus between territory and criminal prescriptive competence.

2.1.1. Palestine's Status as a State Party and Its Jurisdictional Consequences

Palestine's initial engagement with the Court posed a profound doctrinal question: did the acceptance of jurisdiction under Article 12(3) presuppose definitive statehood under public international law? The declaration lodged by the Palestinian National Authority on 22 January 2009 brought this conundrum into sharp focus, exposing a doctrinal divide between a teleological, functional interpretation of the Rome Statute and a formalistic reading of international legal personality.

Pellet (2010) advanced a functional approach, contending that the Court was not called upon to resolve in abstracto the general status of Palestinian statehood, but rather to ascertain whether the statutory criteria for the exercise of jurisdiction were fulfilled for the functional purposes of the Rome Statute. Conversely, restrictive doctrine questioned the validity of an Article 12(3) declaration absent formal recognition of statehood under general international law and within the United Nations system (Zimmermann, 2013). This doctrinal impasse shifted decisively with the adoption of United Nations General Assembly Resolution 67/19 on 29 November 2012, which formally accorded Palestine non-member observer State status within the United Nations (UN General Assembly, 2012).

On 1 January 2015, the Government of the State of Palestine lodged a formal declaration pursuant to Article 12(3) of the Rome Statute, accepting the jurisdiction of the Court over alleged crimes committed in the occupied Palestinian territory, including East Jerusalem, since 13 June 2014. On 2 January 2015, it deposited its instrument of accession with the UN Secretary-General, pursuant to which the Rome Statute entered into force for the State of Palestine on 1 April 2015, in accordance with Article 126(2) (State of Palestine, 2015a, 2015b). On 22 May 2018, Palestine submitted a formal state referral to the Prosecutor pursuant to Articles 13(a) and 14. Subsequently, on 22 January 2020, the Prosecutor requested a ruling from the Pre-Trial Chamber under Article 19(3) concerning the territorial scope of the Court's jurisdiction (State of Palestine, 2018; Office of the Prosecutor, 2020). On 3 March 2021, the Prosecutor formally initiated an investigation into the Situation in Palestine (Office of the Prosecutor, 2021).

The majority decision rendered by Pre-Trial Chamber I on 5 February 2021 resolved the primary jurisdictional hurdle. The Chamber drew a rigorous legal distinction between statehood under general public international law and Palestine's accession and status as a State Party strictly for the internal purposes of the Rome Statute, underscoring that its ruling did not adjudicate border delimitations or final political status (ICC, 2021). Relying upon Palestine's valid accession as accepted by the depositary and the Assembly of States Parties, the Chamber concluded that Palestine constitutes a State Party to the Rome Statute within the terms of Article 12(2)(a). Judge Péter Kovács appended a partly dissenting opinion vigorously challenging the majority's methodology and territorial conclusions (Kovács, 2021). This judicial divergence confirmed that the determination was a consequential judicial interpretation resolving the tension between functional statutory competence and orthodox international legal requirements of sovereign control. The paramount doctrinal merit of the ruling lies in ensuring that political deadlock does not operate as an institutional bar to the exercise of international criminal jurisdiction.

2.1.2. The Territorial Scope of Jurisdiction (Ratione Loci)

The territorial dimension of the 2021 ruling addressed whether the statutory territory to which the Court's jurisdiction attaches must strictly mirror the domestic prescriptive and enforcement jurisdiction of Palestinian authorities. Pre-Trial Chamber I resolved this by determining that the Court's jurisdiction ratione loci encompasses the territories occupied by The Zionist entity since 1967, namely the West Bank, including East Jerusalem, and the Gaza Strip (ICC, 2021). The Chamber carefully circumscribed its holding, identifying the spatial reach of statutory criminal jurisdiction without transforming the Court into a boundary commission or an arbitral forum for territorial disputes.

A pivotal legal challenge arose concerning the Oslo Accords (specifically the 1995 Interim Agreement), which restricted the Palestinian Authority's criminal jurisdiction over Israeli nationals. It was argued that Palestine could not delegate to the Court a jurisdictional competence (nemo dat quod non habet) which it did not domestically possess under the bilateral accords. The majority held that bilateral jurisdictional limitations contained in the Oslo framework did not impair the Court's statutory territorial jurisdiction under Article 12(2)(a), reserving the assessment of specific delegated enforcement issues for prospective case-by-case determinations (ICC, 2021).

This reasoning fundamentally dissociates the Court's objective statutory competence from domestic treaty-based jurisdictional limitations. In scholarly commentary, Jamal (2021) appraised the limits and teleological function of the Court's jurisdiction, while Ronen (2020) demonstrated that the realization of self-determination in international law cannot be subordinated to physical, effective sovereign control under circumstances of prolonged belligerent occupation.

2.2. Exercising Jurisdiction: From Admissibility to Warrants of Arrest

The affirmation of jurisdiction ratione loci establishes only the abstract territorial competence of the Court; it does not resolve the admissibility of a specific case or the attribution of individual criminal responsibility. The transition from a situational investigation to concrete judicial proceedings against designated individuals demands a rigorous examination of admissibility under the principle of complementarity, the classification of alleged international crimes, and the evidentiary threshold governing the issuance of warrants of arrest.

2.2.1. Admissibility and the Principle of Complementarity as Recurring Thresholds

The principle of complementarity enshrined in the Preamble and Article 17 of the Rome Statute is not a derogation from jurisdiction, but an essential statutory condition governing the admissibility of cases. The Court does not exercise universal or primary jurisdiction; it functions as a jurisdictional default mechanism. Under Article 17, a case is inadmissible where it is being investigated or prosecuted by a State possessing domestic jurisdiction, unless that State is genuinely unwilling or unable to carry out the investigation or prosecution.

In the Palestinian situation, the complementarity dynamic remains perpetually active. Following the hostilities of 7 October 2023, The Zionist entity submitted applications seeking, inter alia, an order directing the Prosecution to issue a fresh notification pursuant to Article 18(1) and requesting the suspension of ongoing investigative proceedings. On 21 November 2024, Pre-Trial Chamber I dismissed the request, holding that the statutory notification provided in 2021 remained legally operative and had not been invalidated by subsequent operational developments (ICC, 2024a).

Procedurally, preliminary notification proceedings under Article 18 must not be conflated with formal jurisdictional and admissibility challenges governed by Article 19. The rejection of a preliminary challenge does not extinguish the admissibility inquiry: under the "same person, substantially the same conduct" test consistently applied in ICC jurisprudence, genuine and tangible domestic investigative or prosecutorial steps taken by national authorities may revive an admissibility challenge under Article 19(2) at any stage prior to the commencement of the trial. Complementarity thus subjects domestic jurisdictions to continuing international judicial scrutiny while maintaining the primacy of genuine national proceedings.

2.2.2. Subject-Matter Allegations (Ratione Materiae) and Warrants of Arrest

The transition to concrete judicial proceedings requires matching abstract statutory jurisdiction under Article 5 with specific evidentiary allegations meeting the statutory threshold of Article 58. On 20 May 2024, the Prosecutor submitted applications for warrants of arrest. On 21 November 2024, Pre-Trial Chamber I issued warrants of arrest for Benjamin Netanyahu and Yoav Gallant (Office of the Prosecutor, 2024; ICC, 2024b).

Applying the evidentiary standard of "reasonable grounds to believe" under Article 58(1)(a), the Chamber determined that there were reasonable grounds to believe that each suspect bears individual criminal responsibility:

- As co-perpetrators acting jointly with others pursuant to Article 25(3)(a) of the Rome Statute, for the war crime of starvation of civilians as a method of warfare under Article 8(2)(b)(xxv), and the crimes against humanity of murder (Article 7(1)(a)), persecution (Article 7(1)(h)), and other inhumane acts (Article 7(1)(k));
- As civilian superiors exercising effective responsibility and control pursuant to Article 28(b), for the war crime of intentionally directing attacks against the civilian population under Article 8(2)(b)(i) (ICC, 2024b).

Critically, the standard of "reasonable grounds to believe" represents an ex parte threshold for securing the appearance of a suspect; it is conceptually and procedurally distinct from a judicial determination of guilt. The presumption of innocence under Article 66 remains fully operative until guilt is established beyond reasonable doubt at a substantive trial conducted in accordance with the fair trial guarantees of Article 67.

Subsequent procedural skirmishes further illustrate this dynamic. On 21 November 2024, Pre-Trial Chamber I rejected an Article 19(2) challenge brought by The Zionist entity. On 24 April 2025, the Appeals Chamber reversed that decision in part, remanding the matter for reconsideration on the ground that the Pre-Trial Chamber had erroneously deemed aspects of the challenge premature (ICC, 2025a). This remand did not vacate or invalidate the warrants of arrest. Subsequently, on 16 July 2025, the Pre-Trial Chamber dismissed an application by The Zionist entity to withdraw, vacate, or suspend the legal effect of the warrants of arrest (ICC, 2025b). These interlocutory determinations demonstrate that the proceedings remain subject to ongoing judicial contestation within the statutory architecture.

3. The Limits of Effective International Criminal Justice: From Warrant of Arrest to Trial

The issuance of a judicial warrant of arrest does not conclude the verification of the Court's institutional effectiveness; rather, it inaugurates its most vulnerable phase. The central thesis of this study resides in the structural contradiction between centralised judicial adjudication and decentralised interstate enforcement. While the Court possesses autonomous authority to adjudicate and issue warrants, it possesses no independent enforcement mechanism, executive branch, or international police force to execute its judicial orders.

3.1. Cooperation, Immunities, and Non-Cooperation as Obstacles to Enforcement

The enforcement regime established by Part 9 of the Rome Statute rests upon a web of interstate obligations, where mandatory duties of cooperation conflict with customary norms governing state immunity and bilateral international commitments.

3.1.1. From the Statutory Duty to Cooperate to Structural Non-Enforcement

Under **Article 86 of the Rome Statute**, States Parties are under a general and mandatory obligation to cooperate fully with the Court in its investigation and prosecution of crimes. Article 89(1) obligates States Parties to execute requests for the arrest and surrender of persons sought. Sluiter (2018) identified this structural dependence on national authorities as the "Achilles' heel" of the Rome Statute system.

The visit of Benjamin Netanyahu to Hungary between 3 and 6 April 2025 provided an acute empirical demonstration of this structural vulnerability. Despite its statutory obligations as a State Party, Hungary declined to execute the Court's request for provisional arrest and surrender. Consequently, on 24 July 2025, Pre-Trial Chamber I rendered a formal finding of non-compliance against Hungary pursuant to Article 87(7) and referred the matter to the Assembly of States Parties (ASP) (ICC, 2025c).

Although Hungary subsequently deposited an instrument of withdrawal from the Rome Statute on 2 June 2025, that notification did not alter its legal obligations at the time of the visit, nor did it extinguish the Court's jurisdiction, as expressly reaffirmed by Article 127(2). Nevertheless, the referral mechanism under **Article 87(7)** remains devoid of direct coercive sanctions. The Court is competent to make a judicial finding of breach, but lacks the executive competence to compel compliance. The failure to execute a warrant must therefore be diagnosed not as a failure of judicial reasoning by the Court, but as an enforcement failure attributable to the fragmented architecture of the international legal order.

3.1.2. Article 98 and the Conflict of Immunities

The enforcement conundrum cannot be attributed solely to political defiance; it involves genuine normative friction between conflicting international legal obligations. The central doctrinal challenge consists of reconciling Article 27 with Article 98(1) of the Rome Statute.

Article 27(1)-(2) codifies the irrelevance of official capacity, providing that personal immunities (ratione personae) and functional immunities (ratione materiae) attached to an official capacity—including that of a serving Head of State or Head of Government—shall not bar the Court from exercising its jurisdiction. In stark contrast, Article 98(1) prescribes that:"The Court may not proceed with a request for surrender or assistance 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."

While Article 27 governs the vertical relationship between the individual suspect and the Court, Article 98(1) addresses the horizontal relationship between the requested State Party and a non-State Party ("third State"). This distinction is critical where the person sought is a high-ranking official of a State not party to the Statute (Jacobs, 2015; Daoudi, 2018).

The controversy parallels the jurisprudential debates in the Al-Bashir proceedings. In its definitive Judgment of 6 May 2019 (Jordan Referral), the Appeals Chamber held that under customary international law, there is no Head-of-State immunity applicable before international criminal courts, and therefore no horizontal immunity survives that would bar a State Party from executing a request for arrest and surrender (ICC, 2019). However, because jurisdiction in the Palestinian situation is grounded upon the territorial referral of a State Party (Articles 12(2)(a), 13(a), and 14) rather than a United Nations Security Council Chapter VII referral (as in Darfur), the customary abolition of immunity vis-à-vis officials of a non-State Party remains heavily disputed in international legal doctrine.

We contend that Article 98(1) does not confer a unilateral prerogative upon a requested State to disregard an ICC warrant. In the event of a genuine conflict of conventional or customary obligations, the requested State is legally bound to initiate consultations with the Court pursuant to Article 97.

A secondary procedural question concerns overflight and transit. While Article 89(3) regulates the formal transit of a person already detained and being surrendered to the Court, it does not directly govern the transit of a non-detained suspect through a State Party's sovereign airspace. Unilateral overflight cannot be mechanically assimilated to a failure of cooperation under Article 87(7) without assessing the territorial state's practical capabilities and the precise terms of the transmission of the warrant.

3.2. Political and Institutional Obstacles to Trial

The progression from a warrant of arrest to trial is equally vulnerable to political and institutional counter-measures designed to stall proceedings or penalise the Court.

3.2.1. The Mechanism of Deferral Under Article 16

The relationship between the International Criminal Court and the Security Council exposes a fundamental tension within the institutional architecture of international criminal justice. While the Rome Statute establishes an independent judicial institution entrusted with prosecuting the most serious international crimes, Article 16 empowers the Security Council, a predominantly political organ, to request the temporary deferral of investigations or prosecutions. Although this mechanism seeks to reconcile criminal accountability with the Council's primary responsibility for international peace and security, it raises a question that goes beyond the formal distribution of institutional powers: whether the independence of international criminal justice can be effectively preserved when the continuation of judicial proceedings may be affected by decisions shaped by the political interests of the Council's permanent members. This concern is particularly significant because Article 16 does not establish a judicial review mechanism but an exceptional form of institutional intervention, whose consequences for the Court's effectiveness depend on the manner in which the Council exercises its authority (Rome Statute, 1998, Art. 16; El Amine, 2012).

The practical implications of this tension became apparent through Security Council Resolutions 1422 (2002) and 1487 (2003), adopted following United States opposition to the possibility that personnel from non-States Parties participating in United Nations-established or authorised operations might become subject to proceedings before the Court. Rather than addressing a particular investigation or prosecution, these resolutions requested deferral in relation to a broadly defined category of persons. Their general and anticipatory character generated considerable controversy over the permissible scope of Article 16, especially because an exceptional mechanism intended to reconcile international peace and security with judicial proceedings risked operating as a form of preventive protection against criminal accountability. The principal legal difficulty was therefore not merely the Council's authority to request deferral, which the Statute expressly recognises, but whether that authority could legitimately be exercised without a sufficiently specific connection to an identifiable threat to international peace and security (UN Security Council, 2002, 2003; El Amine, 2012).

The controversy became more pronounced when the African Union requested the deferral of proceedings concerning Sudanese President Omar Al-Bashir, arguing that the continuation of criminal proceedings could adversely affect peace efforts in Sudan. The Security Council did not adopt the requested deferral, and the African Union expressed concern over the absence of a response to its request in its decision of July 2009 (African Union, 2009). A comparable institutional disagreement subsequently arose in the Kenyan situation, when the draft resolution seeking to defer proceedings against President Uhuru Kenyatta and Deputy President William Ruto failed to obtain the required majority on 15 November 2013, receiving seven affirmative votes and eight

abstentions. During the debate, Rwanda's representative challenged the apparent inconsistency between the Council's earlier willingness to invoke Article 16 for personnel from non-States Parties and its response to requests concerning African leaders (UN Security Council, 2013). These situations were not legally identical, and their different outcomes do not establish that either African request necessarily satisfied the requirements for deferral. Nevertheless, the comparison reveals an important institutional vulnerability: the availability of a mechanism capable of interrupting international criminal proceedings is influenced not only by legal considerations but also by the distribution of political influence within the Security Council.

This institutional difficulty helps explain South Africa's 2009 proposal to amend Article 16 by allowing a requesting party to seek the involvement of the United Nations General Assembly, in accordance with Resolution 377(V), where the Security Council fails to decide on a deferral request within six months (United Nations, 2009). Although the proposal has not been incorporated into the Rome Statute and therefore confers no existing authority on the General Assembly to suspend the Court's proceedings, it reflects an attempt to address the concentration of deferral powers within the Council. Its relevance lies in identifying a structural problem rather than providing an immediately available legal solution. Indeed, transferring or expanding political authority over judicial proceedings would not necessarily strengthen international criminal justice unless accompanied by safeguards capable of preventing the selective use of deferral. The essential requirement is therefore to ensure that institutional mechanisms designed to reconcile peace and justice do not become instruments through which political interests displace the legal standards governing criminal accountability.

These considerations acquire particular significance in the Palestinian situation following the arrest warrants issued against Benjamin Netanyahu and Yoav Gallant on 21 November 2024. The sanctions imposed on the International Criminal Court under United States Executive Order 14203 of 6 February 2025 demonstrate the political resistance that international criminal proceedings may encounter when they concern officials of a State closely allied with a major power (Executive Office of the President, 2025). Nevertheless, political pressure and unilateral sanctions must be distinguished from a legally effective deferral under Article 16, which requires a Security Council resolution adopted under Chapter VII of the United Nations Charter, with at least nine affirmative votes and no veto by a permanent member (United Nations, 1945, Art. 27(3)). Even where those conditions are met, the provision permits only a renewable twelve-month deferral of investigations or prosecutions; it does not authorise the Council to annul arrest warrants, extinguish the Court's jurisdiction or review judicial decisions. Accordingly, the Palestinian situation raises a broader question than the hypothetical adoption of a deferral resolution: whether political influence may undermine the practical effectiveness of international criminal justice without formally altering the legal validity of the Court's decisions. In our view, safeguarding judicial independence requires preserving the exceptional character of Article 16, interpreting its scope restrictively and preventing the pursuit of international peace and security from becoming a justification for selective protection from criminal accountability,

3.2.2. External Coercive Measures and Judicial Independence

The international criminal justice framework is structurally sensitive to geopolitical pressure. The imposition of unilateral coercive sanctions against Court personnel represents an overt threat to institutional integrity. On 6 February 2025, United States Executive Order 14203 imposed financial and visa sanctions against the ICC, expressly citing the warrants of arrest issued in the Palestine situation (Executive Office of the President, 2025).

As a matter of international law, unilateral sanctions do not impair the legal validity of the Court’s judicial orders or diminish its statutory jurisdiction. However, they alter the operational environment, obstructing banking transactions, victim representation, and investigative logistics. A rigorous distinction must be maintained between the institutional protection of the Court’s judicial independence (independence of the judiciary) against external retaliation, and the internal accountability and integrity mechanisms governing ICC officials. Both are indispensable to the Court’s perceived and actual legitimacy.

3.3. The Structural Hiatus: From Warrant of Arrest to Substantive Trial

The path from a warrant of arrest to a substantive trial is punctuated by essential procedural gateways:

1. Initial appearance before the Court pursuant to Article 60;
2. Confirmation of charges hearing under Article 61, where the Prosecution must satisfy the heightened evidentiary threshold of "substantial grounds to believe" (Article 61(7));

3. The absolute requirement under Article 63(1) that "the accused shall be present during the trial", strictly proscribing trials in absentia.

The Court cannot bypass these mandatory procedural guarantees. Consequently, an unexecuted warrant of arrest freezes proceedings at the pre-trial phase. The Court has substantially fulfilled its judicial mandate in establishing jurisdiction and finding reasonable grounds for arrest; the remaining obstacle is an enforcement deficit inherent in the decentralized international legal system.

4. Findings and Recommendations

4.1. Findings

1. Decoupling of Jurisdiction from Final Status: Pre-Trial Chamber I successfully affirmed that the exercise of statutory criminal jurisdiction under Article 12(2)(a) is independent of the definitive resolution of sovereignty disputes under general public international law, preventing political impasse from creating a zone of criminal impunity.
2. Individualisation of Responsibility: The issuance of warrants of arrest on 21 November 2024 marked the formal transition from situational investigation to concrete allegations of individual criminal responsibility, satisfying the Article 58 evidentiary threshold without prejudicing the presumption of innocence.
3. The Dynamic Nature of Admissibility: The principle of complementarity under Article 17 remains an ongoing inquiry. Admissibility may be formally contested under Article 19 if genuine, bona fide domestic investigations or prosecutions covering substantially the same conduct emerge.
4. The Adjudication-Enforcement Gap: The fundamental structural challenge facing the Court is the dichotomy between centralised judicial adjudication and decentralised interstate enforcement. The finding of non-compliance against Hungary under Article 87(7) illustrates that the Court possesses normative authority to declare breaches, but no executive apparatus to effectuate arrests.
5. The Irrelevance of Article 98 as a Unilateral Shield: Article 98(1) cannot be invoked by States Parties as a blanket, unilateral exemption from the duty to cooperate under Article 86 and Article 89; genuine normative conflicts mandate prior consultations with the Court under Article 97.
6. Strict Demarcation of Article 16: Article 16 provides solely for a temporary, renewable 12-month deferral of investigation or prosecution via a Chapter VII resolution; it does not constitute an appellate procedure or a mechanism for the substantive invalidation of warrants.

4.2. Recommendations

1. Strengthening Article 87(7) Non-Compliance Mechanisms: The Assembly of States Parties (ASP) must institutionalize robust, diplomatic, and operational follow-up procedures upon receiving referrals of non-compliance, ensuring that non-cooperation carries measurable diplomatic and institutional costs.
2. Judicial Clarification on the Interplay of Articles 27 and 98: The Court should seize future opportunities to deliver detailed interlocutory guidance harmonising the relationship between the removal of immunities ratione personae under Article 27 and third-state obligations under Article 98(1) in the context of territorial referrals.
3. Harmonisation of National Implementing Legislation: States Parties should systematically review and align their domestic criminal procedural frameworks with Part 9 of the Rome Statute, ensuring unambiguous legal authority to execute provisional arrest and surrender requests without executive interference.
4. Preserving the Exceptional Threshold of Article 16: The UN Security Council should preserve the integrity of the Rome Statute by resisting attempts to weaponize Article 16 as an instrument of political expediency, ensuring its use is strictly confined to genuine threats to international peace and security under Chapter VII.
5. Countering Unilateral Coercive Measures: The ASP and States Parties must establish comprehensive protective and legal mechanisms to shield Court officials, counsel, and cooperating witnesses from unilateral extraterritorial sanctions, reinforcing the institutional independence of international criminal justice.

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