



RAFTO

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## **Appeal to European Governments for unequivocal support of ICC**

A rules-based global order, until recently declared by most European states as a fundamental value to respect and pursue, requires credible commitment to norms of justice.

A declared commitment to such norms will only be credible if the states bound by them accept that the judicial authority they establish to apply these norms are given the resources to do so; that the processes of investigation, trial, and adjudication are allowed to run their course without interference; and that rulings are respected even if the outcome is painful to themselves or if they disagree about the justice of the outcome.

When state executives have declared commitment to the Rome Statute and the establishment of the International Criminal Court (ICC) to apply these norms, they cannot reserve for themselves a right to execute rulings selectively or based on a justification which would not apply equally to all state parties.

The ICC has recently issued warrants for the arrest of the President of Russia Vladimir Putin, as well as for Commissioner for Child Rights Maria Lvova-Belova, Minister of Defense Sergei Shoigu, Admiral Viktor Sokolov, and Generals Sergey Kobylash and Valery Gerasimov. The court has also issued arrest warrants for the Head of Hamas in Gaza Yahya Sinwar (killed in October 2024), the Head of Hamas' Political Bureau Ismail Haniyeh (killed in July 2024), and Commander-in Chief of the Al-Qassam Brigades Mohammed Deif.

None of these warrants have been disputed, and the suspects still alive would presumably be apprehended if appearing in the European states addressed below. However, several state executives in European state parties to the Rome Statute and the ICC have now declared that two other warrants issued may not be respected, namely those for the arrest of Israeli Prime Minister Benjamin Netanyahu and former Israeli Minister of Defense Yoav Gallant.

The French Ministry for Foreign Affairs has [indicated](#) that Ministers of the Israeli government have diplomatic immunity and that it is not likely to pursue their arrest if they visit France.

Senior state officials in Italy have also [suggested](#) that immunity for heads of government preclude arrest, while recent [news](#) indicate that the Israeli government has been assured that Netanyahu will not be arrested if traveling to Italy.

In Germany the current Minister of Foreign Affairs Annalena Baerbock has [declared](#) that arrest will be a legal obligation, while the likely next Chancellor Friedrich Merz has [stated](#) that an arrest would be a “scandal”. In between the two, the spokesperson of current Chancellor Olaf Scholz has [commented](#) that an arrest is “difficult to imagine”. .

The Polish government has responded to the warrant by [declaring](#) that Netanyahu will be arrested if he visits Poland, except for a possible visit to attend the upcoming Auschwitz commemorations, which are to take place on 27 January 2025.

The Rafto Foundation deeply regrets these declarations and signaling of executive attitude. We perceive them as seriously weakening the position of the ICC, and by extension the position of all international tribunals authorized to adjudicate on whether human rights have been violated by states, and to hold executive authorities accountable for such violations.

We perceive such statements to damage international rule of law in several ways:

Firstly, the statements demonstrate a general lack of resolve among the executive authorities in question to respect the independent and final authority of the court which they have themselves established as state parties to the Rome Statute, undermining the fundamental principle and function courts have as institutions established precisely to overrule other competing authorities and resolve disagreements among them.

Secondly, these statements contribute to spreading unjustified suspicions about the ICC as acting beyond its legitimate authority when issuing the warrants in question. As pointed out by a group of [distinguished German scholars, judges, and war crimes specialists](#), the [Appeals Chamber ruling of the ICC of 6 May 2019](#) concluded that Jordan had violated its obligation to cooperate with the Court by failing to arrest serving President of Sudan Omar Hassan Ahmad Al Bashir when he visited Jordan, a case which would be parallel to one where Vladimir Putin or Benjamin Netanyahu visits a state party to the Rome statute. It is not disputed that the ICC has the authority to pass such a judgement, which the panel of five judges of the Appeals Chamber did unanimously. Neither, as the same group of scholars point out, is it disputed that the ICC in their refusal to grant immunity relies on solid precedents reaching back to the [judgment of the](#)

[Nuremberg Tribunal in 1 October 1946](#) that one “who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the State if the State in authorizing action moves outside its competence under international law”.

Thirdly, in the context of the ongoing and unprecedented attacks on the international legal order, from within the camp of liberal democracies as well as from authoritarian states outside it, we consider the unequivocal support of European states to protect that order to be critically important. We agree with the [statement of former President of the ICC Piotr Hofmański](#), that European governments refusing to fulfill their obligations under the Rome Statute “call into question the very purpose of the ICC's existence.”

The appeals to immunity expressed by representatives of the executives in France and Italy fundamentally undermine accountability for the actors holding the most consequential authority and, in some cases, the most acute responsibility for crimes under the Rome Statute. The implicit German and explicit Polish appeals to special circumstances allowing them to make exceptions from their obligations sets a dangerous precedent for states to produce and exploit loopholes justified in local discourse, considerations, or interests. Legitimate exceptions can only be determined by courts.

In the case of Poland [Judge of the Criminal Chamber of the Supreme Court Professor Włodzimierz Wróbel has stated](#) explicitly that “if the International Criminal Court has issued an arrest warrant for a specific person, it sends a separate request to the country where the person is staying to arrest them” which according to Polish law “goes to the Minister of Justice, who is obliged to forward it to the competent district court”, which then in turn “is obliged to apply temporary arrest”.

We expect the relevant courts in all state party jurisdictions to handle the request from the ICC expediently, and the executive authorities to declare explicitly that they will respect their full obligations under the Rome Statute as interpreted by the relevant courts, without exceptions.

Yours sincerely,

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