

Netanyahu and the International Criminal Court

by GWYNNE DYER

The indictment of Israel prime minister Binyamin Netanyahu and former defence minister Yoav Gallant by the International Criminal Court on charges of war crimes and crimes against humanity in Gaza has triggered a great deal of public moralising, both pro and con. Almost all of it is missing the point.

Netanyahu and Gallant have not been found guilty of anything. However, Israeli weapons under their ultimate control have killed more than 44,000 people, most of them innocent civilians, in the past year, and no Israeli court or official inquiry has examined the circumstances of their deaths.

Moreover, it is extremely unlikely that any Israeli authority will conduct such an investigation so long as Netanyahu is in power. It is in cases like this that the ICC must act ? even though it can only expect compliance from countries that have signed the Rome Statute and accepted its authority.

So why have most countries signed up to the ICC, while a minority have not?

As American mobster Al Capone once put it, ?You get more with kind words and a gun than with kind words alone.? That is why Russia, China, the United States and India do not recognise the jurisdiction of the ICC. As great powers (at least in their own minds), they still have guns that work.

For ?gun' read guns, rockets, bombers, aircraft carriers, submarines and nuclear weapons in large enough numbers to frighten lesser powers into submission, or kill enough of their citizens to make the rest obey.

For ?kind words' read diplomacy, the rule of law, the United Nations Charter, the whole edifice of non-violent dispute settlement that weaker countries hope will protect them from the untrammled power of the strong. Sometimes it does protect them. Sometimes it doesn't.

Whether a country signs up for the ICC or rejects its authority is not a moral choice (although supporters of the ICC often pretend it is). By and large, countries that think they can still get their own way by force usually reject the ICC, while those that doubt their ability to protect themselves sign up.

The latter group includes even most of the former great powers (Germany, France, the United Kingdom, Japan) that would once have relied exclusively on their own military power for their security. It's not enough any more, and so they seek at the same time to create the international rule of law (an activity they would once have despised).

Yet Israel, which is not even a former great power, has refused to join the ICC and indeed regularly condemns it in the harshest terms. Why?

We might reasonably assume that it is because Israel can still get more with a gun (and can even skip the kind words). This is largely because a genuine superpower, the United States, is pledged to protect it from retaliation. But the question remains: how can the ICC bring charges against two leading Israeli politicians if Israel has not signed the treaty?

It can do so because of the legal principle of ?complementarity'. The ICC has no power to interfere if alleged war crimes and crimes against humanity are being properly investigated and, if necessary, prosecuted by the courts of a law-abiding sovereign state. But it is the court of last resort for places where such investigations are not taking place.

Netanyahu could have avoided these arrest warrants simply by opening a credible investigation by Israel's own legal authorities into

his own and his government's conduct before, during and since the Hamas attacks of October 7, 2023. He chose not to do so because he rightly feared that such an investigation would cause his coalition government to fall.

Member states are obliged to carry out the ICC's arrest warrants. Non-members are not, so Netanyahu is not in any immediate danger of arrest. If he sets foot in any of the 124 countries that have signed the treaty, however, he could be arrested and transported to The Hague for trial.

Netanyahu won't go to jail over this, but even long-term friends and de facto allies of Israel like the United Kingdom say they will follow the law? if he shows up on their soil. (Russian dictator Vladimir Putin participated in a recent summit in South Africa entirely by Zoom because he feared arrest on an ICC warrant.)

The Israeli prime minister's world has suddenly shrunk by more than half. Moreover, his trial at home on charges of breach of trust, accepting bribes, and fraud, halted a year ago when the war began, will reopen early next month. Netanyahu may be running out of rope.