

## **Biden's Response to Israel's ICC Prosecution Is an Attack on International Law**

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On Monday, a prestigious team of international jurists and legal scholars released a [report](#) to the International Criminal Court (ICC) recommending the indictment of Israeli Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant (along with three Hamas leaders) for war crimes. The angry reactions from President Joe Biden's administration and Congressional leaders are not simply another defense of Israel's war crimes, but an attack on international humanitarian law itself.

[Biden](#) denounced the report as "outrageous," marking the first time in U.S. history a sitting president has openly sided with suspected war criminals against the ICC. And, despite nothing in the report questioning Israel's right to self-defense, Biden insisted on pledging, "We will always stand with Israel against threats to its security."

Similarly, Secretary of State Antony Blinken called it "[shameful](#)" and "[a profoundly wrong-headed](#)" decision, which the United States "[fundamentally rejects](#)."

ICC prosecutor [Karim Khan](#), in accepting the British-based panel's unanimous recommendations, noted how the report indicated that he had reasonable grounds to believe that Netanyahu, and Gallant, along with Hamas leaders Yahya Sinwar, Ismail Haniyeh and Mohammed Deif, "bear criminal responsibility for alleged war crimes and crimes against humanity." Ironically Khan, a British lawyer, was considered to be Israel's preferred candidate for the position of ICC prosecutor. He was seen as less likely to prosecute Israeli officials than his predecessor, Gambian lawyer Fatou Bensouda.

One of the members of the panel was the prominent British human rights lawyer Amal [Clooney](#), who has [represented other victims](#) of mass atrocities and had been [criticized previously](#) for not speaking out against Israeli war crimes. Clooney supported the panel's decision to apply for ICC arrest warrants, noting that "regardless of the reasons for a conflict," as a human rights lawyer, "I will never accept that one child's life has less value than another's. I do not accept that any conflict should be beyond the reach of the law, nor that any perpetrator should be above the law."

Human rights groups have praised the decision, with Amnesty International's Secretary General [Agnes Callamard](#) noting that none of the parties is above international law. "This move by the ICC Prosecutor sends an important message to all parties to the conflict in Gaza and beyond that they will be held accountable for the devastation they have waged on the peoples of Gaza and Israel."

[Human Rights Watch](#) observed, "This principled first step by the prosecutor opens the door to those responsible for the atrocities committed in recent months to answer for their actions at a fair trial. ICC member countries should stand ready to resolutely protect the ICC's independence as hostile pressure is likely to increase while the ICC judges consider Khan's request."

Internationally, France, Ireland, Belgium, Slovenia, and most other [European Union](#) countries have come out in support of the ICC, as have [South Africa](#) and other nations in the Global South. Outside the United States,

criticisms have been largely restricted to right wing European governments like Britain and Italy, yet another indication of Washington's isolation in the international community when it comes to international law.

[Sen. Bernie Sanders](#) (I-Vermont), one of the most prominent Jewish lawmakers in the United States, defended the court's recommendation, saying "The ICC prosecutor is right to take these actions," and that it is "imperative that the global community uphold international law." [Rep. Ilhan Omar](#) (D-Minnesota) noted how the ICC "must be allowed to conduct its work independently and without interference," referring to the allegations as "significant." In reference to efforts by House Republican leaders to invite Netanyahu to address [another](#) joint session of Congress, [Rep. Marc Pocan](#) (D-Wisconsin) said that "If Netanyahu comes to address Congress, I would be more than glad to show the ICC the way to the House floor to issue that warrant."

Supporters of the ICC on Capitol Hill, however, were a distinct minority.

Republicans in both the [House](#) and the [Senate](#) are pushing legislation that would sanction officials and associates of the ICC who investigate or prosecute allied governments such as Israel. [Sen. Tom Cotton](#) (R-Arkansas) tweeted, "My colleagues and I look forward to making sure neither Khan, his associates nor their families will ever set foot again in the United States." In testimony before the Senate Foreign Relations Committee on Tuesday, [Blinken](#) said he welcomed working with Republicans in passing some kind of sanctions legislation.

Democrats also piled on. [Sen. Ben Cardin](#) (D-Maryland), who chairs the Senate Foreign Relations Committee, also criticized the ICC, stating "I see it as a step in the wrong direction." He and seven other members of the committee put out [a press release](#), which claimed that seeking accountability for war crimes would somehow "jeopardize efforts to bring about sustainable peace in the Middle East." Similarly, [Sen. Richard Blumenthal](#) (D-Connecticut) tweeted that the timing of the indictment recommendation is "catastrophic" and "inflaming hate & fueling distrust." Sen. [Jackie Rosen](#) (D-Nevada) joined right-wing Sen. Marco Rubio (R-Florida) in issuing a joint statement condemning the recommendation as "a shameful political move by the ICC, which seeks to undermine Israel."

Former House majority leader [Steny Hoyer](#) (D-Maryland) argued that while indicting Hamas leaders was appropriate, the charges against the Israeli leaders were "not based in facts and are ill-advised," stating categorically that, despite the panel's findings, "Israel has not committed war crimes or crimes against humanity in the course of defending its people against Hamas," and praising what he claimed were Israel's efforts to avoid noncombatants. Though this is the first time the ICC has ever recommended indictment against Israeli officials in its history, Rep. Josh Gottheimer (D-New Jersey) declared that the report was a "blatant display of their continued, longstanding bias against the Jewish state." Similarly, despite the fact that none of the ICC's 54 indictments have ever included Israelis and the ICC has also sought warrants for three Hamas officials, [Kathy Manning](#) (D-North Carolina) criticized what she called "efforts to single out Israel."

A key argument put forward by the [Biden administration](#) and Congressional leaders against the likely indictments is that the ICC doesn't have jurisdiction to indict Israeli leaders because Israel isn't a party to the Rome Statute, the 1998 treaty which established the International Criminal Court. However, the State of Palestine [acceded to the Rome Statute](#) in 2015, giving the ICC authority to prosecute parties who commit crimes on or from Palestinian territory (including the Gaza Strip, which has been held by Hamas since 2007). [Clooney](#), referencing the panel in her statement, underscored the fact that "We have unanimously determined that the Court has jurisdiction over crimes committed in Palestine and by Palestinian nationals."

Although neither Russia nor Ukraine are parties to the Rome Statute, there was no U.S. opposition to the ICC's March 2023 [indictment](#) of Russian President Vladimir Putin and Maria Lvova-Belova, Russia's Commissioner for Children's Rights, for war crimes related to the Russian invasion of Ukraine.

The administration has long been opposed to any examination into Israel from the ICC. Back in 2021, when the court first launched an investigation into war crimes committed in Palestinian territories, State Department spokesperson at the time [Ned Price](#) rejected the announcement. Despite the State of Palestine being recognized by over 140 countries, Price said in a briefing that year that "The Palestinians do not qualify as a sovereign state." *Associated Press* reporter Matt Lee asked Price no less than 12 times where the Biden administration believed the Palestinians should seek accountability, but he refused to offer an alternative to the ICC.

On Monday, current spokesperson [Matthew Miller](#) reiterated the Biden administration's position that the ICC has no jurisdiction regarding Israeli war crimes. When Lee again asked who would have jurisdiction through which Palestinians could seek justice for war crimes committed against them, he replied with the novel concept that "The government of Israel has jurisdiction and we have jurisdiction with the use of our military that we have provided."

This claim that Israel can hold its leaders and soldiers accountable has little bearing on reality, as has been repeatedly documented by human rights organizations.

[Amnesty International](#), in its investigations of Israeli assaults on civilian population centers in Gaza, has documented evidence that "Israeli forces continue to flout international humanitarian law, obliterating entire families with total impunity." Similarly, [Human Rights Watch](#) noted how "Victims of serious abuses in Israel and Palestine have faced a wall of impunity for decades." Israeli human rights groups like [B'Tselem](#) have long documented how Israeli policy "effectively grants immunity to soldiers and officers, with the result that soldiers who kill Palestinians not taking part in hostilities are almost never held accountable for their misdeeds."

In response to the ICC's application to issue arrest warrants, [B'Tselem](#) said: "The era of impunity for Israeli decision-makers is over," adding, "The international community is signaling to Israel that it can no longer maintain its policy of violence, killing and destruction without accountability."

A recurring refrain from Washington officials — including [Matt Miller](#), Sen. [Sherrod Brown](#) (D-Ohio), former Democratic National Committee chair [Rep. Debbie Wasserman Schultz](#) (D-Florida), and others — is that the request put forward some kind of "equivalence" between the Israeli government and Hamas. On Monday, [Biden](#) himself stated that "Whatever this prosecutor might imply, there is no equivalence — none — between Israel and Hamas."

In reality, however, the panel's report charged Israeli and Hamas officials with separate crimes, citing specific and distinct wrongful conduct by both. For example, Hamas leaders were charged with more "crimes against humanity," the more serious of the charges, while Netanyahu and Gallant were more frequently charged with lesser "war crimes." Indeed, some [critics](#) have pointed out that the panel's findings overlook more systematic crimes committed by Israeli officials.

Despite efforts by Biden and Congressional leaders to assert that the ICC has some kind of anti-Israel bias, nearly every leader ever prosecuted by the ICC prior to 2023 has been African, including presidents of Liberia, Libya and Sudan. Netanyahu and Gallant would be the first US-allied leaders ever indicted by the ICC.

It appears, then, that in Washington's view, international humanitarian law should only apply to leaders not supported by the United States.

Indeed, the response to these proposed indictments should not be seen as simply another knee-jerk “pro-Israel” reaction so commonplace in Washington. The U.S. government has long opposed the very existence of the ICC.

[A bill](#) passed with bipartisan support in 2001 and signed by President George W. Bush prohibits the United States from cooperating in any way with ICC investigations, calls for punishing countries that do, and even authorizes the president to use “all means necessary and appropriate,” including military force, to secure the release of American or allied personnel held by or on behalf of the court.

The reaction to the likely indictments of Netanyahu and Gallant, therefore, should not be seen in isolation. Indeed, past U.S. support for genocidal military campaigns by allies in Indonesia, Turkey, Pakistan, Guatemala and Saudi Arabia is indicative of the longstanding contempt for international humanitarian law among Washington officials. As long as the current administration and Congressional leadership is in power, future war criminals from allied states will know that they can slaughter people with impunity and the United States will have their backs.

*Related By [Chris Walker](#) , [Truthout](#)*

### **[Biden Criticizes ICC Warrant Request Against Israel Despite Evidence of Genocide](#)**

*Several international figures have described Israel’s disproportionate and indiscriminate war on Gaza as genocide.*