

## Reaction to ICC Indictment Reveals Bipartisan Contempt for International Law

The international community wants to hold Israeli leaders accountable for war crimes committed in Gaza. Why is the United States standing in the way?

The Biden Administration and bipartisan leaders of Congress have launched a full-scale attack against the integrity of the International Criminal Court (ICC) in response to its November 21 indictments of Israeli Prime Minister Benjamin Netanyahu, former Defense Minister Yoav Gallant, and Hamas military commander Mohammed Deif on war crimes, including crimes against humanity.

The ICC has indicted sixty-seven individuals since its founding in 2002, but this marks the first time the organization has indicted members of a key U.S. ally, as well as the first time the U.S. government has disagreed with its official moves to prosecute war criminals.

The ICC [asserts](#) it had reasonable grounds to believe that Netanyahu and Gallant are criminally responsible for crimes against humanity including murder and persecution, as well as the war crime of “starvation as a method of warfare.” Two additional Hamas leaders were [recommended](#) for prosecution by chief ICC prosecutor Karim Khan back in May, but they have since been assassinated by Israel. Deif’s whereabouts are unknown; [Israeli officials claim](#) to have killed him in an airstrike in July, while [Hamas officials claim](#) he is still alive.

In an official statement, President Joe Biden [described](#) the internationally supported effort to hold Netanyahu and Gallant accountable for war crimes as “outrageous,” marking the first time a sitting president has openly sided with alleged war criminals against the ICC. The European Union foreign affairs chief, Josep Borrell, [has said](#) that the ICC’s findings should be “respected and implemented,” and most EU countries, along with Canada, Australia, and Great Britain, and most nations of the Global South, [appear to support](#) the ICC and have signaled willingness to arrest any of the indicted leaders if they enter those countries’ territories. Biden, however, has sided with far-right leaders like Viktor Orbán of Hungary and Javier Milei of Argentina in opposition to the indictments, placing the United States well outside the international legal consensus.

Biden further claimed that “whatever the ICC might imply, there is no equivalence—none—between Israel and Hamas.” Far from implying equivalence, however, the ICC has charged Deif and the Israeli leaders with separate crimes, citing specific and distinct wrongful conduct by each. Deif, for example, was [charged](#) with more serious crimes against humanity, including extermination, torture, rape, and other forms of sexual violence. Some [critics](#) have pointed out that the ICC has overlooked more systematic crimes committed by Israeli officials.

The Biden Administration and Congressional leaders have [argued](#) that the ICC does not 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, it [welcomed](#) the ICC’s [indictments](#) of Vladimir Putin and six other Russians last year for war crimes related to the Russian invasion of Ukraine, despite the fact that neither Russia nor Ukraine are [parties](#) to the Rome Statute.

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 informally governed by the rebel Hamas group since 2007. The [panel of experts](#) who originally requested the indictments

“unanimously determined that the Court has jurisdiction over crimes committed in Palestine and by Palestinian nationals.” The Biden Administration, however, insists that despite being recognized by 146 countries, Palestine—a “non-member state” of the United Nations which has been kept out of full membership by the threat of U.S. veto—has no rightful claim to statehood within the ICC jurisdiction.

[Claims](#) by the Administration and Congressional leaders that the ICC should not be involved since Israel can hold its leaders and soldiers accountable have little bearing on reality. As [Amnesty International](#), [Human Rights Watch](#), and Israeli human rights groups like [B’Tselem](#) have noted, Israeli soldiers and officials have long been able to commit war crimes with impunity.

Republicans have largely responded with hostility toward the ICC. Trump’s pick for national security adviser, [Representative Mike Waltz](#) of Florida, said the Court “has no credibility,” and accused both the ICC and the United Nations of “antisemitic bias.” (Netanyahu and Gallant are the first Jews to be indicted by the ICC.) Both the incoming Senate majority leader, [John Thune](#) of South Dakota, and the incoming House speaker, [Mike Johnson](#) of Louisiana, have called on Congress to pass bipartisan legislation to impose sanctions on members of the ICC and their families for their refusal to limit accountability to U.S. adversaries. Senator Tom Cotton of Arkansas even appeared to suggest [a military attack](#) on the Netherlands, where the ICC is based, referring to [a 2002 U.S. law](#) authorizing the use of military force to free any citizen of the U.S. or an allied country held by or on behalf of the ICC.

Some Congressional Democrats, meanwhile, have defended the ICC. Progressive Caucus chair Representative Pramila Jayapal (Washington) [called](#) the indictments “a very important step” in pursuit of accountability in wartime. [Democratic Representatives Rashida Tlaib](#) (Michigan) and [Hank Johnson](#) (Georgia) both voiced similar support, while Representative Mark Pocan of Wisconsin [told Axios](#) “it’s not a matter for Congress to be telling [the ICC] what to be doing.”

But other Democrats have joined Republicans in condemning the ICC. House Minority Leader Hakeem Jeffries of New York has [called](#) the ICC’s indictments “shameful,” while Senator John Fetterman of Pennsylvania [posted](#) on X that the ICC had “[n]o standing, relevance, or path.” Similar sentiments have been echoed by Senator [Jacky Rosen](#) of Nevada, Representative [Ritchie Torres](#) of New York, and Representative [Brad Sherman](#) of California.

President-elect Trump has already indicated his contempt for international law: His nominee for Secretary of Defense, Pete Hegseth, has explicitly [stated](#) that the United States should not be bound by the Geneva Convention Relative to the Protection of Civilian Persons in Time of War. But Biden has demonstrated that even under a Democratic administration, the United States holds little regard for international humanitarian law, insisting that it only be applied selectively to weaken governments and armed groups the United States opposes. The response of the Biden Administration and Congressional leaders is not simply another defense of Israel’s war crimes, but an attack on international humanitarian law itself.

Given the hysterical reaction of the Biden Administration and Democratic Congressional leaders to the indictments of suspected war criminals from an allied nation, it appears that hostility to the principles of the post-World War II international legal order is truly bipartisan. The “[rules-based international order](#)” so often touted by the Biden Administration is little more than a tool to be applied only when politically expedient. Leaders of allied states now know that no matter which party is in power, they can slaughter people with impunity—and the United States will have their backs.