



THE CASE AGAINST SANCTIONING THE INTERNATIONAL CRIMINAL COURT

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In the wake of the [announcement](#) by ICC Prosecutor Karim Khan that his office is seeking arrest warrants against three senior Hamas officials, as well as Israeli Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant, some Members of Congress are pushing for sanctions on ICC personnel that are a throwback to Trump-era sanctions on the court. Last month, Republican Senators issued a [threat](#) to impose sanctions and visa bans against the Prosecutor, his associates, employees, and their families. Secretary of State Antony Blinken [committed](#) to working with Congress on a “bipartisan basis to find an appropriate response” to the ICC. The White House, however, has explicitly [ruled out](#) sanctions on the ICC, stating that they “are not an effective or appropriate tool to address US concerns” and that legislation against the ICC “is not something the Administration is going to support.”

This issue brief indicates why imposing US sanctions on the ICC would be a drastic mistake that lawmakers must avoid, even if they oppose the Prosecutor’s actions. (For additional information and analysis, see our previous brief: “[Israel, Palestine, and the International Criminal Court.](#)”)

What is the substance of the charges against Netanyahu and Gallant?

Specific court filings are not yet available, but [statements from the Prosecutor](#) and an [independent panel of experts](#) indicate that present charges against Israeli leaders are focused on the crime of “intentionally using starvation of civilians as a method of warfare” and related charges. This indicates a decision – at this point – not to focus on litigating specific targeting decisions or the balancing acts of distinction, precaution, and proportionality.

Why should Congress reject sanctions against the ICC?

Sanctioning court officials for discharging their duties undermines America’s international reputation, long-term interests, and commitment to the rules-based order. It is in the US national interest to support lawful means of achieving justice and deterrence for atrocity crimes – and the instability, mass migration, and intensified extremism they foster. Attempts to “impede, intimidate or improperly influence” the court [violate international law](#).

As former Ambassador Todd Buchwald has [noted](#), sanctions against the ICC are seen by traditional allies and friends of the US as a violation of shared basic values, “aligning the United States with despots keen on undermining justice and rule of law efforts in their own countries.” He states, “Amidst global democratic backsliding, belligerently threatening an independent tribunal is not a good look for a country that holds itself up as the leader of the free world.”

Upholding the rules-based international system is a pillar of America’s economic, strategic, and security interests. It is also central to US policy and strategy vis-a-vis Russia and China. US lawmakers welcomed Prosecutor Khan’s decision to open an investigation into allegations of Russian atrocities in Ukraine and lauded the ICC Pre-Trial Chamber’s support for arrest warrants for Russian President Vladimir Putin. Congress responded by adopting [legislation](#) broadening authority to provide US support for the Prosecutor’s investigation.

Imposing sanctions carries a significant risk of unintended consequences. Prosecutors are pursuing sensitive investigations in Darfur, the DRC, Côte d'Ivoire, Mali, Burundi, Myanmar, Ukraine, and elsewhere. Sanctions risk impeding investigations and preventing international cooperation, undermining witness protection, weakening deterrence, and impacting those who rely on the Court for justice. The US risks significant reputational damage by sanctioning a body born from Nuremberg and supported by the majority of our allies. Undoubtedly, Russia would point to US sanctions to justify its own [sanctions](#) against the ICC.

What happened following President Trump's sanctions against the ICC?

In June 2020, President Trump issued an [Executive Order](#) authorizing asset freezes and family entry bans against ICC officials. Reaction was swift:

- Western allies including the [UK](#), [the EU](#), [France](#), [Germany](#), and many others rebuked the Trump Administration for its action.
- Former senior Obama officials described the step as the action of a “[unilateralist bully](#),” “[self-defeating](#),” and [damaging to US leadership](#).
- The [ACLU](#) stated it was a “dangerous display” of “contempt for human rights and those working to uphold them” that plays “directly into the hands of authoritarian regimes.”

Following the [urging](#) of 80 organizations (including J Street), President Biden [repealed the Trump sanctions](#) in April 2021. Secretary Blinken [stated](#), “Our support for the rule of law, access to justice, and accountability for mass atrocities are important US national security interests that are protected and advanced by engaging with the rest of the world.” He noted that US concerns about ICC actions are “better addressed through engagement with all stakeholders in the ICC process rather than through the imposition of sanctions.”

Indeed, Ambassador Buchwald [notes](#) that Trump's sanctions “made it more difficult” to pursue ICC reforms “that would have been in the interests of the United States” and “undermined the willingness and ability” of allies to work with the US as a partner in other contexts.

As a democracy with an impartial judiciary, can't Israel undertake this investigation?

According to its [principle of complementarity](#), the ICC prosecutes cases only when States are “unwilling or unable to do so genuinely.” The Prosecutor [has stated](#) his hope that Israeli authorities will conduct investigations, reiterating that his office will defer to national authorities if they engage in “independent and impartial judicial processes” including “thorough investigations at all levels” into the “policies and actions” underlying the arrest warrant application. Notably, Israeli military law enforcement officials lack authority to prosecute political leaders. Additionally, use of starvation as a weapon of war is not an offense under Israeli law; Israeli prosecutors thus lack a framework to investigate this charge.

Are there other ways for the US to raise concerns with the Prosecutor's actions?

The Biden Administration has articulated a number of [concerns](#) with Prosecutor Khan's warrant applications, including on procedural grounds. Rather than emulating the Trump Administration by imposing punitive measures, there are legitimate – and likely more effective – [options](#) for the US to raise its concerns. These center on the kind of constructive engagement Secretary Blinken embraced in 2021, namely: Diplomacy with the Prosecutor; applications in ICC proceedings; and engaging with the [Assembly of States Parties](#) (the Court's management, oversight, and legislative body).