



ISSUE BRIEF: THE CASE AGAINST SANCTIONING THE INTERNATIONAL CRIMINAL COURT

Avraham Spraragen, Policy Associate

Issue Brief #29 | Updated January 13, 2025 (from prior version: May 30, 2024)

On November 21, 2024, the [International Criminal Court](#) (ICC) [issued](#) arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Israeli Defense Minister Yoav Gallant for crimes against humanity and war crimes in Gaza, prompting Republicans in the 119th Congress to reintroduce legislation to sanction the Court. During the last Congress, the House passed the Illegitimate Court Counteraction Act ([H.R.8282](#)) in response to the ICC Prosecutor [filing](#) applications for the arrest warrants. In the 119th, this Act has been reintroduced as [H.R.23](#) which recently [passed](#) in the House and is now making its way to the Senate. The second bill is almost identical to the first, except for the added condemnation “in the strongest possible terms” of the ICC arrest warrants for Netanyahu and Gallant. The Biden Administration “[strongly opposes](#)” the proposed bill and has urged Congress to pursue a “[more effective](#)” response than sanctioning the Court.

In a [statement](#) about the warrants, J Street “expressed deep sadness that we have now come to a point whereby the International Criminal Court feels it justified to issue arrest warrants for two top Israeli government officials,” while also [urging lawmakers](#) not to respond by attacking the Court, scoring political points, and undermining the rule of law. There are other ways to express substantive disappointment with the ICC, as a number of Democratic lawmakers – many of whom voted to oppose H.R.23 – did in a [letter](#) led by Representative Eugene Vindman to the ICC President. It is important to understand the [drastic consequences](#) that H.R.23 would have for the interests and reputation of the United States, as well as for the rules-based global order. This issue brief outlines the potential repercussions of imposing US sanctions on the ICC and makes the case for rejecting the Illegitimate Court Counteraction Act.

Who could be sanctioned by Trump under this bill in his second term?

Under this bill, any “foreign person” determined by President Trump to have “directly engaged in or otherwise aided any effort by the International Criminal Court to investigate, arrest, detain, or prosecute a protected person” could be sanctioned. The bill defines a “protected person” as any US person or foreign person that is a citizen or lawful resident of a NATO ally or country designated as a “major non-NATO ally” of the United States that has not consented to ICC jurisdiction or is not party to the ICC Rome Statute.

US persons anywhere in the world could be subject to criminal and civil penalty under this bill for transacting with sanctioned parties. According to the American Civil Liberties Union ([ACLU](#)), “US persons would not be able to continue working in their ICC positions and any work that non-ICC US persons are doing with the sanctioned ICC personnel could also be subject to criminal and civil penalty.” These prohibitions “[sweep incredibly broadly](#),” potentially affecting large numbers of people, and are unclear as to what constitutes sanctionable engagement with the ICC. This vagueness could be interpreted expansively by President Trump, creating a “[severe chilling effect](#)” that undermines the First Amendment free speech rights of US persons.

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 the former head of the State Department's Office of Global Criminal Justice 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 the ICC Prosecutor'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 Trump's sanctions against the ICC in his first term?

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 of State 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.

What other options are available for the US to raise concerns with the ICC?

President Biden called the ICC arrest warrants for Netanyahu and Gallant “[outrageous](#),” and Secretary Blinken [raised](#) concerns with the ICC Prosecutor’s warrant applications, including on procedural grounds. Instead of imposing US sanctions on the ICC over these concerns, the Biden Administration [responded](#) to H.R.23 by stating that “there are more effective ways to defend Israel, preserve US positions on the ICC, and promote international justice and accountability.”

The other available [options](#) 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).