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Israeli war criminals: can the ICC lock them up?

The ICC's bold pursuit of arrest warrants for western-allied Israeli leaders could redefine international justice. Even if Netanyahu and Co aren't tossed behind bars, 'their world will suddenly become a lot smaller.'

The International Criminal Court (ICC) prosecutor's announcement on 20 May of [arrest warrants](#) for five Israeli and Hamas leaders immediately triggered a torrent of comments and opinions worldwide.

The legal initiative represents an unprecedented milestone in international relations, marking the first time leaders of a western-allied state have been accused of war crimes and crimes against humanity.

According to ICC Chief Prosecutor Karim Khan, there are reasonable arguments that Israeli Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant are criminally responsible for starvation, murder, intentional attacks against civilians, extermination, and persecution, among other crimes. As Khan [explained it](#):

[These crimes] were committed as part of a widespread and systematic attack against the Palestinian civilian population pursuant to state policy. These crimes, in our assessment, continue to this day.

Khan has also requested arrest warrants for Yahya Sinwar, Hamas' leader in Gaza, Mohammed Deif, leader of Hamas' military wing, and Ismail Haniyeh, the group's political leader.

Main effects of ICC sanctions

The ICC, established in 2002 as the permanent court of last resort to prosecute individuals for war crimes, crimes against humanity, genocide, and the crime of aggression, comprises [124 state parties](#). However, the court relies on its member states' cooperation for enforcement, a collaboration not forthcoming from influential states such as the US, Russia, China, and Israel that do not recognize the court's jurisdiction.

Issuing arrest warrants for top Israeli leaders is, therefore, likely to involve an unprecedented degree of political and logistical complexity – with many obstacles erected by Tel Aviv's western allies.

Speaking to *The Cradle*, Boston University School of Law's International Human Rights Clinic Director Susan Akram points out that the ICC prosecutor must first address numerous legal questions to provide supporting evidence to the pre-trial judges. The timeline for their deliberations and decisions on the warrant requests remain uncertain.

Kenneth Roth, former executive director of Human Rights Watch and visiting professor at Princeton's School of Public and International Affairs, highlights the main effect of the ICC arrest warrants, *should* they be issued as requested. Netanyahu and Gallant would be unable to travel to any of the 124 ICC member states, as they risk arrest and surrender to The Hague for trial.

“Their world will suddenly become a lot smaller,” he tells *The Cradle*, adding that he hopes “governments think twice about sending them more arms, given that they will have been formally accused of using them to commit war crimes and will presumably try to avoid answering these charges in court.”

Gentian Zyberi, professor of international law and human rights at the Norwegian Centre for Human Rights, University of Oslo, notes that the ICC could impose other sanctions, such as seizing funds and property abroad to use as reparations to victims.

“The most important political consequence would be to their legitimacy as political leaders once the ICC confirms the charges,” he warns.

Realistically, though, some states may refuse to surrender Netanyahu, citing his status as head of government and thus immunity while in their territory, argues Professor John Quigley from Ohio State University. Though the ICC does not honor this immunity itself, international law has not conclusively resolved the matter. He adds:

As for a penalty, there would be no question of any penalty before a conviction. The typical penalty is imprisonment. A fine can also be imposed. If the person had assets in a state party to the Rome Statute, it could be asked by the ICC to seize them.

ICC under threat from the US and Israel

The potential issuance of these warrants has prompted [mixed reactions](#) globally. While several EU states, including France, Belgium, Slovenia, Ireland, and Spain, have responded positively, the US and Israel have predictably responded furiously.

US President Joe Biden, for example, expressed outrage over the court jointly seeking warrants for both Israel and Hamas leaders that accuse them of similar crimes: “Whatever this prosecutor might imply, there is no equivalence – none – between Israel and Hamas.” Biden also denied outright the existence of a genocide in Gaza: “What’s happening is not genocide. We reject that,” he said during a speech at the White House.

In turn, US Secretary of State Anthony Blinken said the court has no jurisdiction over Israel’s action into question the “legitimacy and credibility of this investigation.” But the ICC pre-trial chamber has already rejected that argument, based on the UN General Assembly’s overwhelming vote granting Palestine the status of a “non-member observer state.

Washington further claims that the ICC prosecutor should have deferred to Israeli self-investigations under what is known as the principle of complementarity. But Roth fully debunks the notion that Israel is capable of investigating itself objectively over war crimes: “Israel has announced 70 investigations but none into the starvation strategy that is at the heart of the ICC’s current case.”

Moreover, Roth points out that “Israel has no history of prosecuting senior officials for war crimes” and is unlikely to do so anytime soon, based on Netanyahu’s contemptuous response to the ICC request in which he labeled Khan an “antisemite.”

Sanctioning justice

In the meantime, the US House of Representatives passed legislation to [sanction the court](#) for seeking arrest warrants for senior Israeli leaders, which now awaits its approval in the US Senate. The legislation seeks to sanction individuals who have “directly engaged in or otherwise aided” the ICC in prosecuting Americans or citizens of US allies that do not recognize the ICC, including Israel.

Washington’s primary interest in restricting the ICC’s reach is concern that the court might turn its attention and legal clout toward American troops and officials engaged in unlawful military aggressions and operations across the globe.

This is not the first time Washington and Tel Aviv have threatened the ICC and the Special Prosecutor's Office. Professor Akram recalls that former President Donald Trump issued an executive order freezing the US accounts of former special prosecutor [Fatou Bensouda](#) and her staff members and denying them visas to enter the US to report to United Nations HQ in New York.

A recent investigative report in the *Guardian* [has revealed that Israel](#) ran a campaign of harassment and threats against Bensouda and her family for 10 years, in which its [intelligence agencies](#) were deployed “to surveil, hack, pressure, smear and allegedly threaten senior ICC staff in an effort to derail the court's inquiries.”

But, as Zyberi argues, sanctioning the ICC or its staff for investigating the Palestine situation violates the ICC Statute, interfering with justice administration, and thus – itself – warrants sanctions under Article 70.

Quigley contends that Washington's reaction signals a disregard for the rule of law: it supports the ICC against adversaries but denounces it when allies are targeted. This duality was underscored by Prosecutor Khan in an [interview](#) with CNN when he revealed an astonishing admission by a senior leader: “This court [the ICC] is built for Africa and for thugs like Putin.”

For Akram, the ICC's past focus on African and Balkan perpetrators effectively ignores the crimes of western powers, for example, by the US and the UK in Iraq and Afghanistan. The case against Netanyahu and Gallant, she believes, tests the court's credibility today - while Roth sees the potential warrants as proof that even powerful leaders can be held accountable under the law.

If the process Khan initiated is seen through to fruition, the ICC will be uniquely positioned to reshape the boundaries of international justice and hold war criminals – irrespective of nationality, race, or religion – accountable. That moves us one step closer to international law and another step away from the western-led era of impunity.

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