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Resistance to the International Criminal Court by the World's Most Powerful Nations



Image by Yunus Tuğ.

The International Criminal Court's recent [issuance of arrest warrants](#) to Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant for crimes against humanity and war crimes in Gaza has stirred up a considerable backlash. Dismissing the charges as [“absurd and false.”](#) Netanyahu announced that Israel would [“not recognize the validity”](#) of the ICC's action. U.S. President Joe Biden denounced the arrest warrants as “outrageous,” while the [French government](#), after agreeing to support them, reversed its stance.

Thanks to a vigorous [campaign by human rights organizations](#), the [International Criminal Court](#) (ICC) became operational in 2002, with the mandate to prosecute individuals for genocide, war crimes, crimes against humanity and, after 2018, the crime of aggression. Nations ratifying the Rome Statute, the ICC's authorizing document, assumed responsibility for arresting these individuals and submitting them to the Court for trial. The ICC prosecutes cases only when countries are unwilling or unable to do so, for it was [designed to complement](#), rather than replace, national criminal justice systems.

Operating with clearly delimited powers and limited funding, the ICC, headquartered at the Hague, has thus far usually [taken modest but effective action](#) to investigate, prosecute, and convict perpetrators of heinous atrocity crimes.

Although [124 nations have ratified the Rome Statute](#), Russia, China, the United States, India, Israel, and North Korea are not among them. Indeed, the world's major military powers, accustomed to the privileged role in world affairs that their armed might usually affords them, have often been at odds with the ICC, for it has the potential to investigate, prosecute, and convict their own government officials.

The desire of the "great powers" to safeguard themselves from the enforcement of international law is exemplified by the record of the U.S. government. Although [President Bill Clinton](#) signed the Rome Statute in December 2000, he warned about "significant flaws in the treaty," among them the inability to "protect US officials." Refusing to support U.S. Senate ratification, he recommended that his successor continue this policy "until our fundamental concerns are satisfied."

[U.S. President George W. Bush](#) "unsigned" the treaty in 2002, pressured other nations into bilateral agreements requiring them to refuse surrendering U.S. nationals to the Court, and signed the American Servicemembers Protection Act, authorizing the use of military force to liberate any Americans held for crimes by the ICC.

Although, subsequently, the [Bush and Obama administrations](#) warmed somewhat toward the Court, then engaged in prosecuting African warlords and Libyan dictator Muammar Gaddafi, [President Donald Trump](#) reverted to staunch opposition in 2018, informing the UN General Assembly that the U.S. government would not support the ICC, which he claimed had "no jurisdiction, no legitimacy, and no authority." In 2020, [the Trump administration](#) imposed economic sanctions and visa restrictions on top ICC officials for any effort to investigate the actions of U.S. personnel in Afghanistan.

Like the United States, [Russia initially signed the Rome treaty](#). It withdrew its signature, however, after [Ukraine appealed to the ICC in 2014 and 2015](#) to investigate war crimes and

crimes against humanity that Russia committed in Ukraine. The ICC did launch a preliminary investigation that, after the full-scale Russian military invasion of February 2022 and Russian [murder of Ukrainian civilians and prisoners of war in Bucha](#), expanded into a formal investigation. Taking bold action in March 2023, [the ICC issued arrest warrants](#) for Russians President Vladimir Putin and Commissioner for Children’s Rights Maria Lvova-Belova for the mass kidnapping of Ukrainian children.

Having previously [denied wrongdoing in Bucha](#), the Russian government reacted furiously to the kidnapping charge. “The very question itself is outrageous,” [declared Kremlin spokesman Dmitry Peskov](#), and the ICC’s decisions “are insignificant for the Russian Federation.” [Dmitry Medvedev](#), deputy chair of the Russian Security Council and a former Russian president, publicly threatened a Russian hypersonic missile attack upon the ICC headquarters, remarking: “Judges of the court, look carefully at the sky.” Subsequently, [Moscow issued arrest warrants](#) for top ICC officials.

Meanwhile, the United States has continued its ambivalence toward the ICC. President Joe Biden [scrapped the Trump sanctions](#) against the Court and [authorized](#) the sharing of information and funding for it in its investigations of Russian atrocities in Ukraine. But [he reaffirmed](#) “our government’s longstanding objection to the Court’s efforts to assert jurisdiction” over U.S. and Israeli officials.

The incoming Trump administration seems likely to take a much harsher line. The [Republican-led House of Representatives](#) recently passed legislation to sanction the ICC, while [Republican Senator Lindsay Graham](#), calling the Court a “dangerous joke,” urged Congress to sanction its prosecutor, and warned U.S. allies that, “if you try to help the ICC, we’re going to sanction you.”

Given the policies of the “great powers,” are the Court’s efforts to enforce international law futile?

Leading advocates of human rights don’t think so. “This is a big day for the many victims of crimes committed by Russian forces in Ukraine,” [declared Amnesty International](#) upon learning of the Court’s arrest warrants for top Russian officials. “The ICC has made Putin a wanted man and taken its first step to end the impunity that has emboldened perpetrators in Russia’s war.” Similarly, [Kenneth Roth](#), the former executive director of Human Rights Watch, stated that the ICC’s issuance of arrest warrants for top Israeli officials represented “an important step toward justice for the Palestinian people. . . . Israeli generals must now think twice about proceeding with the bombing and starving of Palestinian children.”

And, indeed, the ICC's actions have started to bear fruit. Invited to South Africa to participate in a BRICS conference, [Putin canceled his visit](#) after his hosts explained that, in light of the arrest warrant, he was no longer welcome. Also, later that year, Russian officials returned [hundreds of Ukrainian children](#) to their parents. Although the results of the ICC's action against Israeli officials are only starting to unfold, [numerous countries](#) have promised to honor the arrest warrants for Netanyahu and Gallant.

Even so, the ICC's enforcement of international criminal justice would be considerably more effective if the major powers stopped obstructing its efforts.

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