

## Australia's Anti-ICC Lobby

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*Throwing caution to the wind, grasping the nettle, and every little smidgen of opportunity, Australia's opposition leader, **Peter Dutton**, was thrilled to make a point in the gurgling tumult of the Israel-Hamas war. Israel's leaders, he surmised, had been hard done by the International Criminal Court's meddlesome ways. Best for Australia, he suggested, to cut ties to the body to show its solidarity for Israel.*

Dutton had taken strong issue with the announcement on May 20 by ICC prosecutor **Karim A.A. Khan** that requests for five arrest warrants had been sought in the context of the Israel-Hamas War. They included Hamas chief **Yahya Sinwar**, the commander-in-chief of the Al-Qassam Brigades **Mohammed Al-Masri**, **Ismail Haniyeh**, head of the Hamas Political Bureau, Israeli **Prime Minister Benjamin Netanyahu** and Defence Minister, **Yoav Gallant**.

The measure was roundly condemned by Israel's closest ally, the United States. US **President Joe Biden's** [statement](#) called the inclusion of Israeli leaders "outrageous". There was "no equivalence - none - between Israel and Hamas." US lawmakers are debating steps to sanction ICC officials, while the US **Secretary of State Antony Blinken** has promised to cooperate with the measure.

The United Kingdom also struck the same note, "There is no moral equivalence between a democratically elected government exercising its lawful right to self-defence and the actions of a terrorist group," [declared](#) UK **Prime Minister Rishi Sunak** during a Prime Minister's Questions (PMQ) session in the House of Commons. When asked if he would, in the event of the warrants being issued, comply with the ICC and arrest the named individuals, a cold reply followed. "When it comes to the ICC, this is a deeply unhelpful development ... which of course is still subject to final decision."

Australia, despite being a close ally of Israel, has adopted a somewhat confused official response, one more of tepid caution rather than profound conviction. Australian **Prime Minister Anthony Albanese** thought it unwise to even take a formal stance. “I don’t comment on court processes in Australia, let alone court processes globally, that which Australia is not a party,” he [told](#) journalists.

In light of what seemed like a fudge, the Department of Foreign Affairs and Trade thought it appropriate to issue a clarifying statement that “there is no equivalence between Israel and Hamas.” **Treasurer Jim Chalmers** [followed suit](#). “There is no equivalence between Hamas the terrorist organisation and Israel, we have it really clear in condemning the actions of Hamas on October 7, we have made it clear we want to see hostages released, and we want to see the Israeli response comply completely with international humanitarian law.”

Albanese’s opposite number [preferred](#) a punchier formula, coming out firmly on the side of Israel and donning gloves against the ICC and its “anti-Semitic stance”. The PM had “squibbed it”, while his response had tarnished and damaged Australia’s “international relationships with like-minded nations”. “The ICC,” Dutton [insisted](#) on May 23, “should reverse their decision and the prime minister should come out today to call for that instead of continuing to remain in hiding or continuing to dig a deeper hole for himself.”

Opposition Liberal MP and former Australian ambassador to Israel, **Dave Sharma**, is also [of the view](#) that Australia examine “our options and our future co-operation with the court” if the arrest warrants were issued. Swallowing whole the conventional argument that Israel was waging a principled war, he told Sky News that everything he had seen “indicates to me Israel is doing its utmost to comply with the principles of international humanitarian law”.

The ears of Israeli officials duly pricked up. Israel’s Strategic Affairs Minister and Observer of its War Cabinet, **Ron Dermer**, was delighted to hear about Dutton’s views. “I didn’t know the head of your opposition had said that,” Dermer [told](#) 7.30, “I applaud him for doing it.”

In a sense, Dutton and his conservative colleague are expressing, with an unintended, brute honesty, Australia’s at times troubled relationship with international law and human rights. Despite being an enthusiastic signatory and ratifier of conventions, Canberra has tended to blot its copybook over the years in various key respects. Take for instance, the brazen contempt shown for protections guaranteed by the UN Refugee Convention, one evidenced by its savage “Turn Back the Boats” policy, the creation of concentration camps of violence and torture in sweltering Pacific outposts and breaching the principle of non-refoulement.

On the subject of genocide, Australian governments [had no appetite](#) to domestically criminalise it till 2002, despite ratifying the UN Genocide Convention in 1949. And as for the ICC itself, wariness was expressed by the Howard government about what the body would actually mean for Australian sovereignty. Despite eventually ratifying the Rome Statute establishing the court, the sceptics proved a querulous bunch. As then **Shadow Foreign Affairs Minister Kevin Rudd** [noted](#), “John Howard is neither Arthur nor Martha on ratification of the International Criminal Court.”

While serving as Home Affairs minister, Dutton preferred to treat his department as an annex of selective law and order indifferent to the rights and liberties of the human subject. For him, bodies like the ICC exist like a troublesome reminder that human rights do exist

and should be the subject of protection, even at the international level.

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