



PRIMER: U.S. Response to International Criminal Court (ICC) Arrest Warrants on Israeli Officials

November 22, 2024

On the 79th anniversary of the Nuremberg Trials, the ICC affirmed its decision to issue arrest warrants for Israel's Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant. This decision, which would obligate the 124 member nations of the ICC to arrest these officials upon entry into their territory, is demonstrative of the erosion of moral clarity and the repugnant antisemitism that has festered within international institutions undermining the noble principles upon which they were founded. The United States must take action to hold the ICC accountable for this egregious decision and maintain its unwavering commitment not only to Israel's security and sovereignty but to our own.

WHY THIS DECISION IS MORALLY BANKRUPT

Defending your citizens from genocidal terrorists is not a war crime.

The ICC has historically limited its prosecution of heads of state. The only previous ICC head of state warrants include Sudanese dictator Omar al-Bashir for orchestrating a campaign of murder, rape, and deportation in Darfur; Libya's Muammar Gaddafi, for deliberately murdering unarmed civilians during the Libyan Civil War; and Vladimir Putin, following his unprovoked invasion of Ukraine, to say nothing of his horrible record of imprisoning and killing his political opposition. Meanwhile, Netanyahu leads a multiparty democracy in the Middle East's only democracy and has undertaken herculean efforts to try to reduce civilian casualties despite the use of human shields by Hamas and Hezbollah. Even as his country engages in a defensive war against terrorists who seek to destroy Israel, political rights, and freedom of expression in the form of anti-government demonstrations are permitted to take place and aid is regularly delivered to the Palestinians. Placing Netanyahu and officials like Gallant among these villains is horribly ignorant and deeply misguided. More than that, criminalizing self-defense will set a dangerous precedent for all freedom-loving nations around the world. It risks these same tactics being used against American officials who undertake necessary action to protect their civilians — such as the American decision to rescue the world from the evil of Qasem Soleimani.

The ICC has drawn a false equivalence by issuing warrants for Israeli and Hamas leadership.

Mohammed Deif, the leader of Hamas' military wing, was also charged by the ICC for crimes against humanity and war crimes over Hamas' barbaric attack against Israel on October 7, 2023 — the deadliest single-day attack on Jews since the Holocaust. This implies that the ICC equates Hamas' atrocities, including their use of civilians as human shields, with Israel's efforts to defend itself against such attacks. Further, Israel has confirmed that they killed Deif in a targeted strike in July 2024, rendering the ICC's politically motivated warrant meaningless.

The ICC's prioritization of pursuing charges against Israel, while delaying action on major human rights atrocities committed by other world leaders, underscores its antisemitic bias.

Heads of state like Xi Jinping, who is leading an ongoing genocide against Uyghurs, Kim Jong Un, whose government has committed systematic, widespread, and gross human rights violations for three

generations, and Bashar al-Assad, who used brutal methods — including chemical weapons — to kill hundreds of thousands of Syrians, walk unscathed. The ICC has also refused to act against crimes against humanity committed in Venezuela despite reporting of human rights abuses that have been public for years. It is not because they have committed the most egregious crimes, but rather because they lead the world's only Jewish state, that Netanyahu and Gallant have been targeted in this way.

The ICC's decision on this case, despite lacking jurisdiction over Israel, is its latest example of judicial overreach and is a violation of sovereignty.

Israel is not a party to the Rome Statute, which governs the territories over which the ICC has jurisdiction. Despite this, activist prosecutors within the ICC have rejected Israel's jurisdictional challenge. This is just the latest example of a supranational institution trying to claw authorities it does not have to expand its power and undermine national sovereignty. As we fight the weaponization of the judicial system here at home, we cannot allow it to go unchecked abroad.

The United States is next.

The ICC's weaponization of its prosecutorial authorities will not stop at Israel. In 2020, then Chief Prosecutor for the ICC Fatou Bensouda opened an investigation into "alleged atrocity crimes" committed by U.S. personnel within Afghanistan. The United States rightly responded with sanctions and visa restrictions on Bensouda and other prosecutors involved. If this attack on our allies in Israel is allowed to stand without a reaction by the United States or our allies, our armed services personnel will be next to be targeted.

ACTIONS FOR U.S. POLICYMAKERS

Reinstate and expand Executive Order 13928, which sanctioned certain ICC prosecutors.

Originally implemented by the Trump administration in 2020 and repealed by President Biden in 2021, its absence has allowed the ICC to advance its anti-Western agenda. This executive order should be reimplemented expeditiously. It should also be expanded to (1) sanction any countries that comply with the ICC's decision to issue these arrest warrants and (2) issue sanctions against the ICC itself, not just its prosecutors.

Pass and enact the Illegitimate Court Counteraction Act.

This bill would sanction and revoke visas for those involved in prosecuting U.S., Israeli, or any other allied citizen wrongfully targeted by the ICC. Senator Tom Cotton (R-AR) introduced this legislation in the Senate after it passed the House with bipartisan support in June, yet it has not advanced out of the Senate Foreign Relations Committee. Passing this bill must become a top legislative priority to demonstrate America's steadfast and bipartisan support for Israel

Encourage allies who are ICC members to publicly declare that they do not recognize the warrants as legitimate and will not enforce them.

The ICC will target other Western nations like the United States next. If allies and likeminded partners do not step up and denounce this misguided ICC decision now, they are signing up for enforcing future ICC arrest warrants against Western soldiers and officials.

