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America Must Impose Consequences on the ICC

Memo

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On November 21, the International Criminal Court (ICC) reached a new low in its morally bankrupt and legally baseless attacks against the Jewish state.

The Court issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant — the first time such an action has been taken against a democratic country.

The charges of “war crimes” and “crimes against humanity” are baseless, outrageous and illegitimate.

Israelis across the political spectrum have denounced the ICC’s decision as an attack on Israel itself.

This outrageous action sets a dangerous precedent. This Court, which has already investigated U.S. actions in Afghanistan, may seek to prosecute additional democracies with robust judicial systems like Israel.

The Biden administration and members of Congress must:

- Condemn the ICC’s actions in the strongest terms.
- Impose consequences on the Court for its disgraceful actions. The Senate should immediately take up and pass the Illegitimate Court Counteraction

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- Make clear America will act against any country that detains an Israeli official, in accordance with long-standing U.S. law.

What is the ICC?

Intended as a court of last resort, the International Criminal Court (ICC) is supposed to adjudicate the most serious international crimes – genocide, crimes against humanity, crimes of aggression and other war crimes – when member states prove unwilling or unable to act. But over its 20-year history, the Court has spent more than \$5 billion with limited results.

What does the ICC allege?

The ICC accuses Prime Minister Netanyahu and former Defense Minister Gallant of war crimes and crimes against humanity. Specifically, the Court alleges Israel deliberately targeted civilians, used starvation as a method of war, and willfully caused great suffering and cruel treatment of the Palestinians in Gaza.

The ICC originally sought to balance their attack on Israel by also charging senior Hamas leaders of war crimes and crimes against humanity. The prosecutor alleged that Yahya Sinwar, Mohammed Deif and Ismail Haniyeh committed murder, hostage taking, torture, rape and cruel treatment amongst other crimes. The three Hamas officials have since been killed by Israeli forces for their crimes.

Does this case also threaten Americans?

This case is dangerous for America. Since the Court's establishment, Democratic and Republican presidents have chosen not to join the ICC and submit the Ur

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case against the U.S. for actions in Afghanistan.

Why are the charges factually wrong?

Israel has gone to great lengths to provide enormous amounts of humanitarian aid to Gaza. Israel has placed no limits on the amount of aid that can enter Gaza. More than 98% of trucks carrying aid have entered Gaza without being flagged by Israeli security inspections. Israel has carried out its legal obligation to facilitate the entry of food to Gaza. To the extent aid has not reached Gazan civilians, the fault lies with the Hamas and the various United Nations entities on the ground that have failed to adequately and efficiently distribute aid. This challenge is compounded as Hamas and criminal gangs deliberately steal and resell aid.

Israel does not deliberately target civilians. Every civilian death — Israeli or Palestinian — is a tragedy. However, the reality that civilians die in war in no way means Israel's actions are illegal or unjustified. Israel fully abides by the legal requirement of proportionality. It seeks to determine in advance whether the anticipated military advantage gained from an attack outweighs the expected civilian casualties. Hamas violates international law by deliberately using its civilians as human shields. This explicit Hamas strategy unnecessarily increases civilian losses. Contrary to Hamas' disregard for Palestinian civilians, Israel goes above and beyond to avoid civilian casualties in Gaza, taking unprecedented steps to avoid civilian casualties — warning Palestinian civilians to evacuate prospective targets; establishing safe corridors for non-combatants to exit combat areas; and calling off air strikes when civilians are unexpectedly present.

Does the ICC have jurisdiction?

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that Palestine is not a state and has no legal capacity to join the Court or accept ICC jurisdiction. Moreover, Israel has a robust judicial system with a proven willingness and capability to act if needed – which should further preclude any ICC investigation. The Court is ignoring its judicial limits and attempting to influence the outcome of Israeli-Palestinian negotiations.

What is the U.S. view of the ICC and its efforts against Israel?

The Biden administration has repeatedly rejected the Court's effort to prosecute Israel and reiterated the Court has no jurisdiction in the matter.

In response to the ICC's announcement, President Biden said: "The ICC issuance of arrest warrants against Israeli leaders is outrageous. Let me be clear once again: whatever the ICC might imply, there is no equivalence – none – between Israel and Hamas. We will always stand with Israel against threats to its security."

Speaker of the House Mike Johnson said: "The ICC's decision to target America's ally, Israel, is antisemitic, reprehensible, and completely ridiculous. It has absolutely no jurisdiction over Israel or the United States, and these illegitimate warrants are an attack on the very concepts of sovereignty and due process."

Senate Majority Leader Chuck Schumer said: "Once again the ICC has shown its blatant anti Israel bias. Israel has every right to defend itself against murderous terror by Hamas and other hateful entities and the US will continue to support Israel right to self-defense. I condemn and reject the ICC's harmful action."

House Democratic Leader Hakeem Jeffries said: "The decision by the International Criminal Court to issue arrest warrants against senior Israeli officials is shameful. I stand with the Biden administration in fundamentally rejecting this unserious



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outrageous, unlawful, and dangerous. Israel has a right to defend itself, and the ICC’s rogue actions only enable the terrorists who seek to wipe Israel off the map. These actions threaten Israel, but, left unchecked, they could pose a threat to the United States in the future.”

What does current U.S. law say regarding the ICC?

In 2002, Congress passed the American Service-Members Protection Act. The law generally prohibits all U.S. cooperation with the Court. The law also authorizes the president to “use all means necessary and appropriate” to bring about the release of any Americans or certain allied personnel detained by the Court. Prime Minister Netanyahu and Minister Gallant are covered under the law.

What is the Illegitimate Court Counteraction Act (H.R. 8282/S. 224)?

The Illegitimate Court Counteraction Act (H.R. 8282/S. 224) was passed by the House in May. The bill imposes sanctions on any foreign persons that directly engage in or otherwise aid any effort by the ICC to investigate, arrest, detain, or prosecute U.S. persons or covered allies. The Senate has yet to act on the legislation.

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