Israel Must Fight Back Against the ICC and Not Be Intimidated by Its Charges

February 11, 2021

By [Dore Gold](https://jcpa.org/researcher/dore-gold/)

Jerusalem Center for Public Affairs

<https://jcpa.org/israel-must-fight-back-against-the-icc-and-not-be-intimidated-by-its-charges/>

People forget that when the International Criminal Court (ICC) was created in 1998, through the Rome Statute, the Clinton administration ordered the U.S. delegation to vote against its formation. Later, after deciding to sign the statute, the administration still refused to submit it to the Senate for ratification. President Bush took Clinton’s advice in this regard and held back from seeking Senate support.

Washington had rightfully backed the overall idea to deny war criminals impunity. After all, the 1990s had been a horrible decade for human rights. Two cases of genocide had transpired in Bosnia and Rwanda. There was another case in Darfur in western Sudan. The institutions of the UN had done nothing to prevent these actions. The establishment of the ICC was supposed to change all that. It didn’t. Perhaps there was a sense right from the start that the ICC might not work out.

In fact, over the next two decades, the ICC repeatedly failed to fulfill its mission to protect human rights. Take, for example, its decision to do nothing about the crimes of ISIS in Syria and Iraq. True, neither state was a member of the ICC, for neither signed the Rome Statute that would give the court jurisdiction. In April 2015, ICC Prosecutor Fatou Bensouda issued a statement that there was nothing she could do about ISIS, despite all the reports of mass executions, torture, and the wanton destruction of religious properties. Bensouda had not been motivated to explore the implications of the fact that ISIS was made up of volunteers from states that were signatories to the ICC statute. Had there been a will, there could have been a way. But the political will was clearly absent. It was noteworthy that Bensouda issued a statement that her office believed Boko Haram had committed crimes against humanity in Nigeria.

Still, the ICC did not serve as a factor in halting some of the most serious alleged abuses of human rights in recent years. It has not ordered an investigation of the assault on the Uighur minority in China, including their forcible mass transfer. It might be argued that China is a superpower. That has not held the ICC back from moving against the U.S. over its military’s actions in Afghanistan. ICC prosecutions fell apart in several high-profile legal actions over the last decade in Kenya, the Central African Republic, and the Ivory Coast.

Despite its flaws and past performance, the ICC has demonstrated striking determination to pursue legal actions against the State of Israel. But in these cases the ICC runs into a wall it fails to consider. For any legal process to proceed, the establishment of its jurisdiction is a prerequisite. But if there is no Palestinian state that can delegate to the ICC its criminal jurisdiction, then the jurisdiction of the ICC is a real problem. As Israel’s Deputy Attorney General for International Law, Roy Schondorf, points out, seven states have submitted their view that the ICC has no jurisdiction in this case, including Germany, Australia, Canada, Brazil, Hungary, Uganda, Austria, and the Czech Republic. Bensouda’s predecessor, Louis Morano Ocampo, stressed in an interview this week that when he was the ICC Prosecutor, his organization did not agree to recognize the Palestinians’ territorial jurisdiction because no Palestinian state existed and still doesn’t exist.

Israel must resist these efforts to turn the ICC into a political weapon against it. An ICC indictment might have the aura of international law. But Israel must not allow these moves at the ICC – which are essentially political – to undercut its own self-assurance about the fundamental justice underpinning its cause.