



Congress of the United States  
House of Representatives  
Washington, DC 20515-3605

March 31, 2021

The Honorable Joseph R. Biden  
President  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 205000

The Honorable Antony J. Blinken  
Secretary of State  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

Dear President Biden and Secretary Blinken:

We are writing to implore the White House and the State Department to uphold longstanding law regarding the threat posed to American soldiers and our allies by the misuse of the International Criminal Court. These are commitments that we as a Congress have made to the American people, on a bipartisan basis, and repeatedly enacted over many years.

Most recently, when Congress passed the Consolidated Appropriations Act of 2021<sup>1</sup> with a large bipartisan majority in both Houses, we again specifically included language forbidding funding assistance for the Palestinian Authority (PA) if they were to violate either of two conditions:

- (1) if they were to initiate an International Criminal Court (ICC) judicially authorized investigation, or
- (2) if they were to actively support such an investigation into alleged crimes committed against the Palestinians by Israel.<sup>2</sup>

We believe that this type of unilateral lawfare flies in the face of American objectives to help both parties achieve a negotiated, lasting, and comprehensive peace. Such language clearly warned of the ramifications should such action be taken and has been a part of our appropriations process since 2014,<sup>3</sup> with massive bipartisan consensus every year.

Unfortunately, the PA has unequivocally violated the first condition of that provision by, among other things, submitting a formal referral to the ICC in 2018.<sup>4</sup> The PA has indisputably violated the second

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<sup>1</sup> Consolidated Appropriations Act, 2021, Public Law No: 116-260, enacted on December 27, 2020  
<https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf>

<sup>2</sup> Pub. L. No. 116-20, div. K, Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021, § 7041(k)(2)(A), <https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf>

<sup>3</sup> Consolidated Appropriations Act, 2014, Public Law No: 113-76, enacted on January 17, 2014,  
<https://www.congress.gov/113/plaws/publ76/PLAW-113publ76.pdf>

<sup>4</sup> “Referral by the ‘State of Palestine’ Pursuant to Articles 13(a) and 14 of the Rome Statute,” [https://www.icc-cpi.int/itemsDocuments/2018-05-22\\_ref-palestine.pdf](https://www.icc-cpi.int/itemsDocuments/2018-05-22_ref-palestine.pdf), May 22, 2018; See also: “Declaration Under Article 12(3) of

condition by its public and official statements,<sup>5</sup> repeated submission of purported evidence and materiel to the ICC, and official visits and communications with the ICC Prosecutor and staff, actively in support of the Court's investigation.

As we enter a new administration, we strongly believe, on a bipartisan basis, that it is imperative to continue to uphold the established law of the land. Those commitments include barring any funding assistance for the PA, as well as the continued closure of the Palestinian Liberation Organization's mission in Washington, D.C. That mission was shuttered in 2018 in compliance with the law prohibiting such an office, in light of the fact that the President was obviously unable to certify that "the Palestinians have not initiated or actively supported an ICC investigation against Israeli nationals for alleged crimes against Palestinians".<sup>6</sup> Accountability and respect for U.S. law is, of course, a linchpin of any successful American foreign policy.

As you know, the United States is not a party to the Rome Statute of the ICC, and neither is our ally Israel. Administrations of both parties have feared the court's politicization and misuse. Those fears were borne out last year when, in an open attack on our national sovereignty, the ICC initiated an investigation into American soldiers.<sup>7</sup> In the last month, the Prosecutor and the Pre-Trial Chamber of the Court have proceeded to approve and open an investigation of our closest ally, Israel. The move is an attack on the fundamentals of international law, including respect for consent, sovereignty, and the concept of complementarity in the case of countries, like the United States and Israel, that are governed by the rule of law.

The ICC move concerning Israel, and the PA's active support, initiation, participation and encouragement of it, are major impediments to the peace process and America's strong commitment to a negotiated settlement. It also has serious negative implications for Americans. As Palestinian Prime Minister Dr. Mohammad Shtayyeh remarked on Palestine TV in March of this year, "...if Israel is in fact indicted in the ICC, American companies and organizations could be taken to court as well for helping Israel..."<sup>8</sup>

We recognize and commend your administration's firm initial stance against this perversion of justice.<sup>9</sup> At the same time, it is equally important to adhere firmly to established law that already provides an unambiguous response to efforts to use the ICC to challenge our sovereignty, our defense, and that of our ally Israel. Invoking a court that was once envisaged as a vital response to the Holocaust to now

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the Rome Statute Accepting the Jurisdiction of the International Criminal Court," January 1, 2015, [https://www.icc-cpi.int/iccdocs/PIDS/press/Palestine\\_A\\_12-3.pdf](https://www.icc-cpi.int/iccdocs/PIDS/press/Palestine_A_12-3.pdf);

<sup>5</sup> See "Palestine welcomes decision by ICC Prosecutor to proceed with investigation," *Wafa News Agency*, March 3, 2021, <https://english.wafa.ps/Pages/Details/123512>; "Presidency appreciates ICC Prosecutor's decision to open a criminal investigation into the Situation of Palestine," *Wafa News Agency*, March 4, 2021, <https://english.wafa.ps/Pages/Details/123529>

<sup>6</sup> See: Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018, Public Law No: 115-141, div. K, § 7041(m)(2)(B), enacted on March 23, 2018, <https://www.congress.gov/115/bills/hr1625/BILLS-115hr1625eah.pdf>

<sup>7</sup> Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, ICC-02/17-138, March 5, 2020, [https://www.icc-cpi.int/CourtRecords/CR2020\\_00828.PDF](https://www.icc-cpi.int/CourtRecords/CR2020_00828.PDF)

<sup>8</sup> "Palestinian PM Dr. Mohammad Shtayyeh: As International Criminal Court Members, We Can Take American Companies And Organizations To Court," The Middle East Media Research Institute, March 1, 2021, <https://www.memri.org/tv/palestinian-pm-mohammad-shtayyeh-icc-we-can-take-american-companies-to-court>

<sup>9</sup> "Opposing International Criminal Court Attempts to Affirm Territorial Jurisdiction Over the Palestinian Situation," Press Statement by Ned Price, U.S. Department of State Spokesperson, February 5, 2021, <https://www.state.gov/opposing-international-criminal-court-attempts-to-affirm-territorial-jurisdiction-over-the-palestinian-situation/>

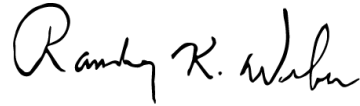
criminalize its victims and their descendants is an affront that will not be tolerated by the United States of America.

Sincerely,



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Jeff Duncan  
Member of Congress



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Randy K. Weber  
Member of Congress



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Gus M. Bilirakis  
Member of Congress



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James R. Baird  
Member of Congress



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Brian Babin, D.D.S.  
Member of Congress



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Ashley Hinson  
Member of Congress



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Chuck Fleischman  
Member of Congress



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Louie Gohmert  
Member of Congress



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Guy Reschenthaler  
Member of Congress



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Ralph Norman  
Member of Congress



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Doug Lamborn  
Member of Congress



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Andrew R. Garbarino  
Member of Congress



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Matt Gaetz  
Member of Congress



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Diana Harshbarger  
Member of Congress



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Andy Biggs  
Member of Congress



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Bill Posey  
Member of Congress



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Lance Gooden  
Member of Congress



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Ted Budd  
Member of Congress



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Tom McClintock  
Member of Congress



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Jody Hice  
Member of Congress



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W. Gregory Steube  
Member of Congress



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Cathy McMorris Rodgers  
Member of Congress



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Robert B. Aderholt  
Member of Congress



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Bob Good  
Member of Congress



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Michael Cloud  
Member of Congress