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Facts & Logic About the Middle East

February 16, 2021



The ICC's political attack on Israel makes a mockery of international law

Dear Friend of FLAME:

The recent pre-trial chamber of three International Criminal Court (ICC) judges, which ruled two to one that the court has jurisdiction to investigate potential war crimes by Israel, is a classic example of an international institution debasing and delegitimizing itself in the service of an anti-Israel agenda.

In short, the ruling gave lie to any presumption the ICC is a legal body, exposing its raw political purpose.

The ruling centered on whether “the Court's territorial jurisdiction in the Situation in Palestine, a State party to the ICC Rome Statute, extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem.”

As the dissenting judge noted, the ICC's majority conclusion ignores international law and conventions, as well as its own rules. It is thus both a non-legal and an illegitimate ruling.

First, the ICC lacks universal territorial jurisdiction, and may only investigate and prosecute crimes committed within member states, crimes committed by nationals of member states, or crimes in situations referred to the Court by the United Nations Security Council.

However, the State of Israel, like the United States, is not a signatory to the Rome Statute, which established the court and its jurisdiction, and thus is not a “Member State,” so none of the legal criteria are met. The worry about joining the Rome Statute was that the ICC would be used as a tool for “Lawfare” against democracies, like Israel and the U.S., a concern borne out by this decision and a decision in 2020 to authorize an investigation against *American soldiers* in Afghanistan.

Despite the ICC's ruling, there exists no “State of Palestine,” since it does not meet the basic criteria of statehood. The Palestinian Authority does not exercise complete control over any territory and has only partial control over a small

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YOU DESERVE TO KNOW THE TRUTH...
No Fool's Deal with Iran
Any new agreement with Iran must halt its development of weapons of mass destruction and its sowing of terror against the U.S. and our Middle East allies.

While the Biden administration wants to negotiate with Iran, it must understand the terms of the 2015 deal, which allowed Iran to enrich uranium to 3.67% in a reactor, and to build up its nuclear arsenal. The deal was a betrayal of the U.S. and its allies, and it is a disgrace that the Biden administration is now negotiating with Iran. The deal was a betrayal of the U.S. and its allies, and it is a disgrace that the Biden administration is now negotiating with Iran.

What are the facts?
As the world's greatest exporter of terror—and militarily anti-American—Iran stands as one of the greatest threats to the United States and the global community. This danger is underscored by Iran's threats and outright attacks on its Middle East neighbors, as well as its efforts to spread its nuclear program to other states. It is the only state in the world that has threatened to use nuclear weapons. Iran's nuclear program is a threat to the U.S. and its allies, and it is a disgrace that the Biden administration is now negotiating with Iran.

The U.S. is under zero pressure to make a deal with Iran.
Iran has been developing nuclear weapons for decades, and it is a disgrace that the Biden administration is now negotiating with Iran. Iran has been developing nuclear weapons for decades, and it is a disgrace that the Biden administration is now negotiating with Iran.

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More importantly, from a legal standpoint, the global standards for Palestinian statehood have not been met within recognized international institutions. The United Nations Security Council provides official recognition for new states, and in 2014, the Palestinians failed to pass a resolution to recognize it as an independent state. In 2012, the UN General Assembly passed a resolution providing the Palestinians with a "non-member observer state" status in the United Nations, but as with all General Assembly resolutions, it is an advisory and *not binding* opinion.

The pre-trial chamber should have understood that the territories that were the subject of the Palestinian referral to the Court are already under an agreed and internationally accepted dispute-settlement and negotiation process—the Oslo Accords and other subsequent agreements.

Thus, by any legal logic, the judges should have rejected the principle behind the proceedings itself, rather than attempt to prejudge and undermine the outcome of the negotiating process by determining that there already exists sovereign Palestinian territory.

Moreover, this decision was a derogation of the ICC's responsibility and its idealized role to act as an independent court in order to go after real human-rights abusers. As Alan Baker, an expert in international law states: "What was intended to be an independent juridical body devoted to preventing impunity enjoyed by the most serious and atrocious war criminals, by bringing them to justice, is now being *politically manipulated* against the one state that since the early 1950s has consistently advocated the establishment of such a body, the State of Israel."

Israel's Attorney General Avichai Mandelblit published a 34-page-long legal opinion on the matter before the decision and stated that by turning to the ICC, the Palestinians were "seeking to breach the framework agreed to by the parties and to push the Court to determine political issues that should be resolved by negotiations, and not by criminal proceedings."

Importantly, the judges appeared to give absolutely no weight to Israel's legal and legitimate claims to the territories in question, whether the Balfour Declaration, the League of Nations Mandate, or the UN Partition Plan of 1947. Furthermore, the rights of the Jewish people under the Mandate were preserved by virtue of Article 80(1) of the UN Charter, the inclusion of which was advanced precisely by those supporting the establishment of a Jewish national home in Palestine.

To make this travesty even starker, there are other similar cases that were ended precisely because of the same issues raised above. The ICC Prosecutor has repeatedly stated that it has no jurisdiction over China because it is not a signatory to the Rome Statute, despite being asked to investigate it by numerous parties in recent years.

It is for these and a host of other reasons, that the ICC's legitimacy has taken a battering with this decision. Germany, Australia, Austria, the Czech Republic, Hungary, Uganda, and Brazil, are just some of the Rome Statute signatory nations which have slammed the decision of the pre-trial chamber.

editorial hasbarah messages placed in media nationwide every month: The dire threats from Iran, Hamas and Hizbollah, the injustice of BDS, Palestinian anti-Semitism and more. If you support a bold voice that tells the truth about Israel in American media, please donate now.

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At least the dissenting judge, Peter Kovacs, brought some light and truth to the proceedings when he wrote in his lengthy decision that it has “no legal basis in the Rome Statute, and even less so in international law,” as well as noting that “acrobatics with provisions of the Statute cannot mask legal reality.”

While we are still a long way from an actual investigation and trial of senior Israeli officials, these initial steps amply demonstrate that there is an agenda among ICC officials to prosecute Israel, despite there being little to no legal justification to do so.

I hope you will point out to friends, family, colleagues and your elected representatives that unfortunately the ICC has become just one more international institution that deems its agenda against Israel to supersede its own mandate—which is legal justice, not political propaganda. Rather, the ICC has demonstrated its utter incompetence in the legal realm, while creating a global publicity storm to support crass political motivations.

I hope you'll also take a minute, while you have this material front and center, to forward this message to friends, visit FLAME's lively [Facebook page](#) and review the P.S. immediately below. It describes FLAME's new hasbarah campaign—which exposes the dangerous folly of the U.S. trying to entice Iran back into the failed “Iran Deal” of 2015.

Best regards,

Jim Sinkinson

President, Facts and Logic About the Middle East (FLAME)

P.S. The Biden administration and many members of Congress seem determined to reengage with Iran over the coming year—and some reports indicate a willingness to return to the failed “Iran Nuclear Deal” without preconditions. As you know, this would be disastrous—for the U.S. and for Israel and our other allies in the Middle East. The Iran Deal gave the Islamic Republic a roadmap to nuclear weapons and did nothing to check their jihadi activities, including development of long-range ballistic missiles. To warn Americans of this danger, FLAME has created a new *hasbarah* message called “[No Fool's Deal with Iran](#).” I hope you'll review this convincing, fact-based paid editorial, which will run in *USA Today*, the *New York Times*, *Washington Post*, and other media nationwide. It spells out specifically the protections any new Iran deal must provide. This piece will also be sent to all members of Congress, Vice President Harris and President Biden. If you agree that this kind of public relations effort on Israel's behalf is critical, I urge you to support us. Remember: FLAME's powerful ability to influence public opinion—and U.S. support of Israel—comes from individuals like you, one by one. I hope you'll consider giving a donation now, as you're able—with \$500, \$250, \$100, or even \$18. (Remember, your donation to FLAME is tax deductible.) To donate online, just go to [donate](#) now. Now, more than ever, we need your support to ensure that the American people, the U.S. Congress and President Biden stay committed to realistic policies in relation to Iran, Israel and the entire Middle East.

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