

SPECIAL REPORT FOR DEFEND JERUSALEM 2025



The Case for U.S. Sanctions Against the International Criminal Court (ICC): Ensuring Accountability, Integrity, and Justice

The International Criminal Court (ICC) was founded with the noble goal of addressing the world's gravest crimes, including genocide, war crimes, and crimes against humanity. However, recent actions by the ICC prosecutor and judicial chambers have strayed from this mission, raising significant concerns about fairness, bias, and overreach. Among these troubling developments is the ICC's selective and disproportionate focus on Israeli officials and its unprecedented decision to admit the Palestinians as a member state. These actions undermine the court's credibility, jeopardize its impartiality, and challenge the broader pursuit of international justice.

To address this concerning trajectory, the United States has imposed sanctions against the ICC. These measures, far from being a rejection of justice, aim to hold the court accountable to its founding principles and ensure that it operates within its mandate. This brochure will explore how the ICC has overstepped its authority, why its focus on Israel is deeply problematic, and why U.S. sanctions are a necessary response to correct the court's course and restore its credibility.



The ICC's Mission and Its Failures

The ICC was established in 2002 under the Rome Statute, a treaty that sought to create a permanent court for prosecuting serious crimes under international law. The court was intended to act as a mechanism of last resort, intervening only when national governments were unable or unwilling to prosecute grave offenses.

However, instead of adhering to its mission, the ICC has increasingly become a tool for political agendas, with a disturbing pattern of selective prosecutions and questionable jurisdictional decisions. Nowhere is this more evident than in its approach to Israel, a democratic state with an independent judiciary capable of investigating and prosecuting alleged violations of international law.

Selective Targeting of Israeli Officials

The ICC prosecutor's focus on Israeli officials reflects a deeply troubling pattern of selective justice. In 2021, the ICC announced it would investigate alleged war crimes committed by Israel in the West Bank, Gaza, and East Jerusalem. This decision was met with widespread criticism from legal scholars, policymakers, and international observers, who argued that the investigation was politically motivated and lacked a solid legal basis.

A Double Standard in International Justice

While the ICC has targeted Israel, it has conspicuously ignored egregious violations in other parts of the world. For instance, the court has failed to address serious allegations against regimes known for systemic and widespread human rights abuses, such as Iran, Syria, and North Korea. By disproportionately focusing on Israel—a small democracy defending itself against terrorist threats—the ICC undermines its credibility and raises questions about its impartiality.

A Misrepresentation of Complex Realities

The ICC's investigation into Israel disregards the complex realities on the ground. Israel faces ongoing security threats from terrorist organizations like Hamas, which routinely target civilians and use human shields. These actions constitute clear violations of international law, yet the ICC has largely ignored these crimes while scrutinizing Israel's defensive measures. This approach not only distorts the truth but also emboldens those who seek to delegitimize Israel on the global stage.

Overstepping Jurisdiction: The Palestinian Membership Issue

One of the most controversial decisions by the ICC was its acceptance of the Palestinians as a member state in 2015. This decision was both legally and politically flawed, as it contradicted the court's own foundational principles and international law.

The Question of Statehood

Under the Rome Statute, only sovereign states can become members of the ICC. The Palestinians, however, do not meet the criteria for statehood under international law, as outlined in the Montevideo Convention. They lack defined borders, effective governance, and the capacity to engage in foreign relations independently. By admitting the Palestinians, the ICC not only overstepped its authority but also inserted itself into one of the world's most contentious political disputes.



The ICC's Overreach: Granting Membership to the Palestinians

One of the most troubling actions taken by the International Criminal Court (ICC) has been its acceptance of the Palestinians as a member state in 2015. This decision not only violated the court's own rules and principles but also undermined the integrity of international law. By granting the Palestinians membership, the ICC has overstepped its authority and inserted itself into one of the world's most complex and contentious political disputes.

As stated above, under the Rome Statute, only sovereign states may become members of the ICC. Sovereignty is a clear and established legal concept defined by the Montevideo Convention on the Rights and Duties of States. To qualify as a state, an entity must meet four essential criteria:

1. A permanent population.
2. A defined territory.
3. A government capable of exercising effective control over that territory.
4. The capacity to engage in foreign relations.

The Palestinians do not meet these criteria. They lack defined and recognized borders, with the status of the West Bank, Gaza Strip, and East Jerusalem subject to ongoing negotiations. Moreover, governance over these territories is divided, with the Palestinian Authority controlling parts of the West Bank and Hamas, a terrorist organization, exercising *de facto* authority over Gaza. This fragmentation further undermines the Palestinians' claims to sovereignty. The ICC's decision to admit the Palestinians as a state directly contradicts its own mandate and the fundamental principles of international law. By allowing a political entity that does not meet the legal standards for statehood to join, the ICC has set a dangerous precedent, undermining the court's legitimacy and impartiality.

Politicization of International Law

The ICC's recognition of the Palestinians as a member state has transformed the court into a political actor rather than a neutral arbiter of justice. This decision has allowed the Palestinians to exploit the court as a platform to pursue legal actions against Israel, further politicizing the already fraught Israeli-Palestinian conflict.

The admission of the Palestinians was not driven by legal considerations but by political pressure from states and organizations with long-standing biases against Israel. This politicization damages the court's credibility, turning it into a tool for advancing agendas that have little to do with justice or accountability.

Impact on the Peace Process

By admitting the Palestinians as a member state, the ICC has dealt a significant blow to the prospects for peace between Israelis and Palestinians. The court's actions incentivize unilateral measures rather than dialogue and compromise, encouraging the Palestinians to pursue legal warfare ("lawfare") against Israel instead of engaging in good-faith negotiations.

The ICC's involvement has also emboldened extremist factions within Palestinian society, who view the court's actions as validation of their rejectionist stance. By legitimizing the Palestinians' membership, the ICC has further polarized the conflict, making it more difficult to achieve a negotiated two-state solution.

The ICC's decision to recognize the Palestinians as a state has further undermined efforts to achieve a negotiated peace between Israelis and Palestinians. By granting the Palestinians a platform to pursue legal action against Israel, the court has incentivized unilateral measures rather than dialogue and compromise. This approach risks deepening divisions and perpetuating the conflict, rather than fostering resolution.



A Breach of Its Founding Principles

The ICC's acceptance of the Palestinians undermines the court's founding principles. The Rome Statute was designed to hold individuals accountable for the world's most serious crimes—not to be weaponized in political conflicts or to interfere in disputed territorial claims. By deviating from its original purpose, the ICC has eroded its credibility and damaged its standing as an impartial institution of justice.

The decision to grant membership to the Palestinians exemplifies the ICC's willingness to abandon legal rigor in favor of political expediency. This dangerous precedent threatens not only Israel but also the broader principles of international law and the future of the ICC itself. Holding the court accountable for this overreach is essential, and the U.S. sanctions serve as a necessary step in compelling the ICC to respect its mandate and correct its course.

The Role of U.S. Sanctions

In response to the ICC's troubling actions, the United States has imposed targeted sanctions on the court. These measures are not an attack on international justice but a necessary step to ensure that the ICC adheres to its founding principles and respects its jurisdictional limits.

Restoring Accountability

The U.S. sanctions aim to hold the ICC accountable for its overreach and selective prosecutions. By targeting individuals involved in the court's politicized investigations, the sanctions send a clear message: the ICC must operate within the bounds of its mandate and avoid becoming a tool for political agendas.

Protecting U.S. and Allied Interests

The sanctions also reflect the United States' commitment to defending its allies, including Israel, from politically motivated prosecutions. By standing firmly against the ICC's actions, the U.S. underscores its support for Israel's right to self-defense and its opposition to efforts to delegitimize the Jewish state.

Antisemitism and the ICC's Direction

The ICC's focus on Israel cannot be separated from the broader context of antisemitism in international institutions. For decades, Israel has faced disproportionate scrutiny and condemnation in global forums, often driven by bias rather than evidence. The ICC's actions reflect this troubling trend, as it singles out Israel while ignoring far more severe violations elsewhere.

A Disturbing Pattern

The ICC's decision to investigate Israel and its acceptance of the Palestinians as a member state align with a broader pattern of discrimination against the Jewish state. This bias is not only unjust but also undermines the court's credibility as an impartial arbiter of justice.

Criticism by the Experts

Several legal experts and international figures have expressed criticism of the International Criminal Court's (ICC) issuance of arrest warrants against Israeli officials, citing concerns over the court's jurisdiction, impartiality, and potential political motivations.

Alan Dershowitz, a prominent American lawyer and professor emeritus at Harvard Law School, condemned the ICC's actions, stating that the court's decision "disgraced the rule of law." He emphasized that the ICC's move breaches its own foundational principles and undermines its credibility as an impartial judicial body. He has organized a legal "Dream Team" to challenge the ICC's prosecution of Israeli leaders.

The Australian newspaper criticized the ICC's arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant, suggesting these warrants are deeply flawed and biased. The article argues that the ICC's credibility and impartiality are compromised, pointing out that the advisory panel to the ICC's chief prosecutor, Karim Khan, is composed of individuals with publicly known anti-Israel sentiments. Additionally, it notes procedural unfairness, as the arrest warrants were issued before Israeli officials could present their explanations regarding the Gaza war. The article suggests that Australia should withdraw from the ICC because it has departed from accepted standards of rigor and impartiality, not necessarily to support Israel, but due to the court's compromised integrity and perceived bias.

These critiques highlight a broader concern among jurists and international observers regarding the ICC's recent actions toward Israeli officials, suggesting that the court may be overstepping its mandate and compromising its role as an impartial arbiter of international justice.

The Moral Imperative to Act

Antisemitism in any form must be confronted and condemned. By imposing sanctions on the ICC, the United States is taking a principled stand against this bias and reaffirming its commitment to justice, fairness, and equality.

Hope for Change

The U.S. sanctions against the ICC are not an end but a means to an important goal: compelling the court to reverse its biased and politicized direction. There is hope that these measures will prompt the ICC to reconsider its actions, restore its integrity, and refocus on its mission of addressing the world's most serious crimes.

A Call for Reform

The ICC has the potential to be a force for good in the world, but only if it operates within its mandate and upholds the principles of fairness and impartiality. By addressing its biases and overreach, the court can regain the trust of the international community and fulfill its promise of justice.

A Vision for Justice

The United States and its allies envision a world where international institutions like the ICC are guided by fairness, integrity, and respect for the rule of law. This vision includes a court that does not target democratic states defending themselves against terrorism but instead focuses on addressing genuine atrocities and holding the worst offenders accountable. Only the most severe sanctions brought against the ICC can achieve this goal.