The ICC is Flirting with Disaster

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According to reports, Karim Khan, chief prosecutor of the International Criminal Court, is widely expected to issue several arrest warrants in the coming days.

These warrants will not be against Ayatollah Khamenei, leader of the world's foremost state sponsor of terror, Iran, or Syrian President Bashar Assad, who has presided over the massacre of more than 500,000 civilians in Syria over the last 12 years.

No, instead Khan is planning to indict Israeli leaders, including Prime Minister Benjamin Netanyahu and IDF Chief of Staff Herzi Halevi, for the crime of defending the Jewish state against Hamas, who committed the worst mass slaughter of Jews since the Holocaust.

While Khan's decision will no doubt be applauded by the pro-Hamas mobs at Harvard Yard and the Columbia Quad, this will be an unconscionable and unprecedented misuse of the law, upending the very framework upon which the international legal order is based.

The ICC was established in 2002 as "a court of last resort," with the primary goal of ending impunity for those accused of the most heinous of crimes, including war crimes, crimes against humanity and genocide.

It was never intended to be applied in the Orwellian circumstances of prosecuting Israeli leaders as they defend the Jewish state against the murderers and rapists of Hamas and seek to bring back hostages held captive by the terror group in Gaza.

The IDF has gone to unprecedented lengths, not seen in the history of modern warfare, to abide by the laws of war and avoid harm to civilians, even when doing so has put the IDF's own soldiers at risk. This has included warning of impending attacks and creating safe corridors for civilians to evacuate through. They have done this while continuing to facilitate the provision of humanitarian aid and

supplies, including more than 25,000 aid trucks to date, notwithstanding Hamas continuing to intercept and syphon much of this aid.

As White House national security spokesman John Kirby has emphasized in the last two weeks, “we’ve not seen any indication they [Israelis] have violated International humanitarian law.” In response to the accusation that Israel is committing genocide, Kirby emphatically replied, “Absolutely not. There is no evidence.”

As a court of last resort, the ICC is governed by the principle of complementarity, meaning the ICC may assert jurisdiction only in circumstances where a national legal system fails to act, or to do so in a genuine manner.

Even Karim Khan has stated, during a visit to Israel after the October massacre, that “Israel has trained lawyers who advise commanders and a robust system intended to ensure compliance with international humanitarian law.” This should have automatically precluded even entertaining the idea to exercise jurisdiction — how quickly must have Khan forgotten his own words?

Not only is there absolutely no legal basis to issue arrest warrants against Israeli leaders, doing so now would only reward Hamas and unleash a further firestorm of antisemitism.

Moreover, it will severely curtail every democracy’s fight against radical Islamic terrorism by exposing them to spurious and unfounded charges, based purely on political considerations. There is a reason neither the United States nor Israel have formally ratified the Rome Statute.

The U.S., and indeed all western allies, cannot stand idly by now as the court is dragged into irredeemable disrepute. This is not the time for quiet, timid diplomacy. It must be made clear, in no uncertain terms, that if Khan chooses to proceed with issuing warrants, it will be the death knell of the court’s very legitimacy.

In response to news about the proposed warrants, the White House press secretary said on Monday “We don’t believe the ICC has the jurisdiction, we don’t support this investigation.” Meantime, House Speaker Mike Johnson (R-La.) said this would also “directly undermine U.S. national security interests,” calling on the Biden administration to “immediately and unequivocally demand that the

ICC stand down and the U.S. should use every available tool to prevent such an abomination."

The administration and Congress should immediately declare that the U.S. will re-impose sanctions on the ICC prosecutor and senior staff that were previously imposed by the Trump administration after the court investigated U.S. forces in Afghanistan. Revoking Prosecutor Khan's entry visa into the United States must also be raised, and withdrawing the court's funding, which comes from member states. (Its 2024 budget is $200 million.)

Rep. Ritchie Torres (D-N.Y.) perhaps best summed up the gravity of the situation when he said, "the issuance of arrest warrants would represent the culmination of a long process of criminalizing the world's only Jewish State. The weaponization of international law—in the service of terror—cannot be allowed to stand."

The decision is now entirely in the hands of ICC Prosecutor Khan; he must either uphold the principles upon which the court was founded and refrain from issuing the warrants or become a willing pawn in the Palestinian lawfare campaign and shut the lights on the court.

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