

International Criminal Court ruling paves way for legal proceedings against Israel for war crimes

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The International Criminal Court (ICC) has ruled that it does have jurisdiction over war crimes and crimes against humanity in the Palestinian territories of the West Bank, Gaza and East Jerusalem.

This paves the way for investigations into Israel and Hamas' conduct during Israel's murderous assault on Gaza in 2014 and Israel's response to the weekly protests held under the banner of the Great March of Return that started in March 2018 and lasted for more than a year.

According to United Nations figures, Israel's bombardment of Gaza in 2014 killed 2,251 Palestinians, including 1,462 civilians, and injured 11,231. Of the Palestinians who lost their lives, 521 were children and 283 were women. The civilian death toll was far higher than that of the estimated 400 fighters belonging to Hamas, the Islamist group that controls Gaza and the ostensible target of the war. Just 67 Israeli soldiers, along with six civilians, were killed, and 1,600 soldiers were injured. The UN's Human Rights Council (UNHRC) concluded that the mass killing and destruction were deliberate, not accidental, resulting from explicit decisions taken at the highest level of the Israeli government.

Israeli forces responded to the largely peaceful Great March of Return protests, held in Gaza near its border with Israel, by firing tear gas canisters, some of them dropped from drones, rubber bullets and live ammunition, mostly by snipers. As a result, 214 Palestinians, including 46 children, were killed, and over 36,100, including nearly 8,800 children were injured. One in five of those injured (over 8,000) were hit by live ammunition. In contrast, just one Israeli soldier was killed and seven others injured during the

demonstrations.

The ICC ruling constitutes a potential legal barrier to Israel's plans to extend and/or build new settlements and Prime Minister Benjamin Netanyahu's plans, now on hold, to annex the Jordan Valley in breach of the ban on an occupying power settling civilians in or annexing occupied territory.

While Fatou Bensouda, the ICC's chief prosecutor in The Hague, announced in December 2019 that there was sufficient evidence to investigate allegations of war crimes, she requested a jurisdictional ruling from ICC judges to confirm that the court has the necessary territorial jurisdiction before proceeding to a full investigation. The Palestinian Authority, which is an observer state at the UN, joined the ICC in 2015 and asked it to investigate Israeli war crimes.

Until now, the ICC has largely confined its investigations to Africa, which accounts for virtually all of those indicted or arrested by the court since its founding nearly two decades ago. The announcement reflects the increasing international opposition, and within Israel itself, to the wars, repression, occupation, dispossession, torture and collective punishment inflicted on the Palestinian people.

This latest ruling has infuriated Israel and its patron in Washington, which rejects any constraints on its geostrategic interests and plans for a new imperialist carve up of the world in which Israel plays a central role in carrying out this agenda and suppressing the working class in the region.

Neither state signed up to the 1998 Rome Statute that established the ICC with powers to prosecute individuals—not states—accused of genocide, crimes against humanity or war crimes committed since July

2002, when the statute came into force. This was because their record of wars of aggression and criminal actions would open their officials to prosecution.

As the ICC came under pressure from the major powers, Bensouda sought to deflect allegations of anti-Israel bias by accusing the Palestinians of committing war crimes, despite the grossly uneven nature of Israel's seven-week long war against Gaza in 2014 and provisions in the UN Charter recognizing the right of self-defence when attacked.

Last April, the Trump administration revoked Bensouda's entry visa to the US and two months later announced that it was placing sanctions on the ICC in response to the court's intention to probe the conduct of US forces in Afghanistan. Netanyahu called the ICC a "kangaroo court" and a "politicized court obsessed with conducting witch hunts against Israel, the United States and other democracies that respect human rights."

While any investigation or prosecution of Israeli officials by the ICC is fraught with practical difficulties, which Israel will seek to exploit, and Bensouda's term of office expires in June, the ICC's ruling poses two threats to Israel.

It opens up the possibility that hundreds of Israeli government and military officials could be open to arrest if they travel abroad to countries that have "universal jurisdiction", although countries including the UK have refrained from using such powers against Israelis. A senior Israeli official in the Justice Ministry said that it had prepared a list of hundreds of Israelis who might be at risk and that "We are preparing to mount a full defence for any Israeli citizens that the court attempts to legally persecute if an investigation is opened."

Second, the ruling, by recognising the Palestinian Authority as a state with the right to seek redress from the court, paves the way for legal action against Israel in the ICC over any construction in West Bank and East Jerusalem settlements that are now home to nearly 700,000 Israelis, or the demolition of homes belonging to Palestinians. As an Israeli official told *Ynet News*, the online outlet for the *Yedioth Aharonot* newspaper, "It is unprecedented that every action taken on the West Bank can now be investigated by the court."

Attacking this latest ICC ruling, Netanyahu said, "Today, the court proved once again that it is a political

body and not a judicial institution. The court ignores real war crimes, and instead persecutes Israel, a country with a stable democratic regime that holds up the rule of law and is not a member of the court. With this decision, the court harmed democratic nations' right to defend themselves from terrorism and played into the hands of elements that undermine efforts to expand the circle of peace."

Netanyahu released a video statement accusing the court of "pure anti-Semitism," even as it "refuses to investigate brutal dictatorships like Iran and Syria, who commit horrific atrocities almost daily." He pledged to "fight this perversion of justice with all our might."

Netanyahu's statements distort the ICC's actual ruling that merely determined that Palestine, which is recognised by the UN General Assembly and whose Palestinian Authority, established under the 1993 Oslo Accords had joined the ICC, could delegate its jurisdiction to the ICC. The court insisted that it had no authority to rule on Palestinian statehood and that its ruling on jurisdiction is "neither adjudicating a border dispute... nor prejudging the question of any future borders."

In Washington, the incoming Biden administration continued former President Donald Trump's support for Israel, with State Department spokesman Ned Price saying, "The United States objects to today's [ICC] decision regarding the Palestinian situation. Israel is not a State Party to the Rome Statute..."

"The United States has always taken the position that the court's jurisdiction should be reserved for countries that consent to it, or that are referred by the U.N. Security Council," he added, concluding, "We will continue to uphold President Biden's strong commitment to Israel and its security, including opposing actions that seek to target Israel unfairly."

The furious response by Tel Aviv and Washington to the ICC's ruling flows from the ever-escalating pursuit of their predatory interests by means of military force.



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