# The International Criminal Court plays politics in Palestine

February 17, 2021

By David Davenport

Washington Times

https://www.washingtontimes.com/news/2021/feb/17/the-international-criminal-court-plays-politics-in/

The [International Criminal Court](https://www.washingtontimes.com/topics/international-criminal-court/) will celebrate its 20th birthday next year. It was touted at its founding as a permanent judicial solution to mass cases of injustice such as the genocide in Rwanda and war crimes in the Balkans in the 1990s. This aspect of the [new court](https://www.washingtontimes.com/topics/international-criminal-court/)’s work has certainly been disappointing as it approaches 20 years and $2 billion of expenses with a handful of convictions of African warlords to show for it.

Beyond its legal agenda, from its inception the [ICC](https://www.washingtontimes.com/topics/international-criminal-court/) has had a political one as well. The political designs of the [ICC](https://www.washingtontimes.com/topics/international-criminal-court/) took a big step forward recently when it decided it had jurisdiction over alleged war crimes in Gaza and the West Bank, potentially bringing Israeli soldiers before the [court](https://www.washingtontimes.com/topics/international-criminal-court/). This controversial decision flies in the face of international law, but drives right up the middle of the political agenda of the [court](https://www.washingtontimes.com/topics/international-criminal-court/) to bring military powers such as Israel and the United States under its jurisdiction.

In response, Israeli Prime Minister Benjamin Netanyahu rightly called out the [court](https://www.washingtontimes.com/topics/international-criminal-court/) as a “political body and not a judicial institution.” U.S. State Department representative Ned Price correctly pointed out that Palestine is not a sovereign state and therefore it was not qualified to call for an [ICC](https://www.washingtontimes.com/topics/international-criminal-court/) investigation. Not everyone agrees, of course. Human Rights Watch called the decision “pivotal,” as it finally offers victims of serious crimes some legal recourse. It’s pivotal alright, but pivots in the wrong direction.

When the [court](https://www.washingtontimes.com/topics/international-criminal-court/) was formed, the plan had been for cases to be taken up when they involved state parties to the treaty creating the [court](https://www.washingtontimes.com/topics/international-criminal-court/). This is one of the limitations of international law, requiring agreement from sovereign nations to be acted upon. There was also a way for cases to be referred to the [court](https://www.washingtontimes.com/topics/international-criminal-court/) by the U.N. Security Council.

But late in the negotiations, a group of small and medium-sized nations joined with aggressive human rights groups to take the [court](https://www.washingtontimes.com/topics/international-criminal-court/) in a much more expansive direction. In the end, cases could be brought for crimes on the territory of nations that were members of the [court](https://www.washingtontimes.com/topics/international-criminal-court/), regardless of the nationality of those committing them. And an independent prosecutor would have the power to bring cases.

These aggressive changes to the structure of the [court](https://www.washingtontimes.com/topics/international-criminal-court/) caused the U.S., an early proponent of the [court](https://www.washingtontimes.com/topics/international-criminal-court/), to drop out and even today, some 70 nations have not joined the [court](https://www.washingtontimes.com/topics/international-criminal-court/), including the U.S., Israel and other world powers. This must not surprise the founders of the [court](https://www.washingtontimes.com/topics/international-criminal-court/) because they intentionally pursued an aggressive and independent direction, saying they wanted “a court worth having.” A court worth having meant one that could come after the U.S., Israel and other nations that had significant military deployments.

The [court](https://www.washingtontimes.com/topics/international-criminal-court/) has rattled its sword over alleged American war crimes in Afghanistan, but it has not taken the bold step of bringing cases against Americans there. Israel, however, sometimes finds itself a proxy for the U.S., a younger brother easier to pick on. The recent 2-1 decision of a three-judge panel of the [ICC](https://www.washingtontimes.com/topics/international-criminal-court/) does just that, advising the prosecutor of the [court](https://www.washingtontimes.com/topics/international-criminal-court/) that the [ICC](https://www.washingtontimes.com/topics/international-criminal-court/) does have jurisdiction over alleged war crimes in Gaza and the West Bank, so now the fuller political agenda of the [ICC](https://www.washingtontimes.com/topics/international-criminal-court/) is in play.

There is more politics here, too, namely the politics of the Middle East peace process. Palestine has long angled to be accepted as a state, but its statehood has been wrapped up in the larger peace negotiations. As a consequence, Palestine has tried to join any number of international organizations to bolster its case, signing on to the treaty of the [ICC](https://www.washingtontimes.com/topics/international-criminal-court/) in 2015. That, too, was objectionable, since only states may join the [court](https://www.washingtontimes.com/topics/international-criminal-court/).

To paraphrase Carl von Clausewitz, the [International Criminal Court](https://www.washingtontimes.com/topics/international-criminal-court/)’s larger agenda is politics by other means. Its decision to allow cases against Israelis, whose nation is intentionally not a member of the [court](https://www.washingtontimes.com/topics/international-criminal-court/), violates international law and is politics by other means. It must be opposed.