Take a stand against ICC politicization - opinion

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On March 3, the International Criminal Court (ICC) Prosecutor Fatou Bensouda declared she would be initiating an investigation into “the Situation in Palestine.” This follows the ICC Judges declaration a month prior, by majority, that she had jurisdiction to investigate and that her jurisdiction included the areas of the West Bank, Gaza and east Jerusalem.

Bensouda’s decision to investigate, as well as the judges’ decision regarding jurisdiction, undermines legal opinions expressed by top international law experts and seven governments that submitted amici briefs to the Court. These opinions clearly articulate that given that Israel is not a party to the Rome Statute and that Palestine is not a state, the ICC does not have jurisdiction to investigate the allegations. Following the judges’ decision in February, democracies around the world, including the US, Canada and Germany, opposed the Court’s decision and its attempt to exercise jurisdiction over Israelis. The US has already condemned the March 3 decision by the prosecutor to initiate an investigation, with Secretary of State Antony Blinken proclaiming that the US opposes “actions that seek to target Israel unfairly.”

All trustees of international law and human rights must follow the US lead and condemn this decision. Countries must take this stand not only because it singles out and applies double standards against the Jewish state, thereby violating the consensus International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism, but because it undermines the foundational principles of the ICC – namely, as a Court of last resort for victims of the most heinous crimes, including genocide and war crimes.

It is further not only the responsibility of diplomats and ministries of foreign affairs, but imperative for members of parliament around the world to also take a stand and ensure their governments reiterate concerns regarding this politicization of the Court and the need for reform. Parliamentary discussions must take place regarding what can be done to ensure the Court’s resources are used as intended in the Rome Statute and are dedicated to cases where there is no complementarity, where domestic systems of justice do not exist to hold war criminals to account. The prosecutor’s decision to investigate a democracy with a renowned legal system, such as Israel, poses a risk to all law-abiding states and promotes a culture of impunity against abusive regimes whose crimes are sidelined in favor of politically-motivated cases.

Members of Parliament must also question and audit their international aid apparatuses, which have provided millions of tax payer dollars to nongovernmental organizations for activities involving lobbying the ICC to investigate Israel. For example, in 2018, Switzerland provided CHF 280,000 to Palestinian Center for Human Rights (PCHR) for “Conduct[ing] communications with the Office of the General Prosecutor of the ICC and other intn’l litigation mechanisms.” In the same year, Switzerland also provided CHF 20,000 to the Palestinian NGO Addameer for “follow up for the submission to the ICC, and to file a new report.” Both PCHR and Addameer have documented ties to the Popular Front for the Liberation of Palestine (PFLP), designated as a terrorist organization by governments including the EU, the US, Canada, and Israel.

Similarly, within Israel, members of Knesset must too take responsibility and utilize the resources available to them to understand the implications of the ICC investigation for all Israelis and to engage with fellow parliamentarians from around the world. The Knesset, like legislatures around the world, is fortunate to have numerous “friendship groups” with global allies and to have representation in inter-parliamentary forums. In each of these forums, members of Knesset must be equipped to discuss the imperative for reform of the Court and the detriment the investigation of Israel will cause to all. Further, the position of Official Knesset Liaison on Matters Concerning the ICC must be enshrined as a permanent role, so that there continues to be leadership on this issue from within Knesset and supervision of the executive branch.

While the prosecutor claimed in her March 3 statement that the investigation would be “conducted independently, impartially and objectively, without fear or favour,” the fact that Bensouda discounted the opinions of renowned legal scholars, international legal principles, and amici briefs of seven governments, instead favoring information provided by terror-tied NGOs and non-legally binding UN General Assembly and UN Human Rights Council Resolutions, demonstrates the politicization of the Court. It is imperative that all parliamentarians act in the name of international law and human rights and call for reform of the Court. Only then will the “limited resources” noted in Bensouda’s statement be utilized for the true victims of atrocities.