Pompeo Pounds the ICC and its Defenders Fight Back

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U.S. Secretary of State Mike Pompeo announced on Friday new U.S. visa restrictions on those individuals directly responsible for any International Criminal Court (ICC) investigation of U.S. personnel in connection with U.S. and allied military and intelligence activities in Afghanistan. The ICC prosecutor had previously requested approval from the ICC’s judges to launch a formal investigation into what the prosecutor called the “situation in Afghanistan.” That request is still pending.

Secretary Pompeo warned all those working for the ICC that “if you’re responsible for the proposed ICC investigation of U.S. personnel in connection with the situation in Afghanistan, you should not assume that you will still have or will get a visa, or that you will be permitted to enter the United States.”

Secretary Pompeo added that the “visa restrictions will not be the end of our efforts. We are prepared to take additional steps, including economic sanctions if the ICC does not change its course.” Secretary Pompeo said that the Trump administration, which has already begun to implement the visa restrictions, would also use such visa restrictions “to deter ICC efforts to pursue allied personnel, including Israelis, without allies’ consent.”

The president of the Assembly of States Parties, the management oversight and legislative body of the ICC established by the Rome Statute treaty, responded that “the States Parties reconfirmed their unwavering support for the Court as an independent and impartial judicial institution, and reiterated their commitment to uphold and defend the principles and values enshrined in the Rome Statute and to preserve its integrity undeterred by any threats against the Court, its officials and those cooperating with it. This unwavering support continues today.”

The 123 or so State Parties to the Rome Statute decided, as was their sovereign right, to delegate their own domestic authority to adjudicate specific criminal atrocities involving genocide, war crimes, crimes against humanity, and aggression to the ICC. If they want to indulge in the fiction that the ICC is an impartial and non-political judicial body, they have the right to wear blinders when it comes to ceding jurisdiction over their own citizens to the ICC.  However, they do not have the legal or moral right to use the ICC they have embraced to assert jurisdiction over countries such as the United States and Israel, which exercised their sovereign right to decline joining the ICC Rome Statute treaty. Both countries have robust independent judiciaries that have demonstrated their capabilities and willingness to take legal action themselves against those within their respective jurisdictions responsible for crimes violating domestic or international laws. The United States and Israel do not need any help from the ICC and have steadfastly refused to recognize its jurisdiction.

### **While the ICC is formalistically distinct from the United Nations, it is inextricably woven into the UN’s designs for global governance**

The globalist architects of the Rome Statute, however, wanted to establish a standing international criminal court with universal jurisdiction over individuals anywhere in the world. While the ICC is formalistically distinct from the United Nations, it is inextricably woven into the UN’s designs for global governance and so receives significant support from the UN Secretary General and various UN bodies. The Rome Statute empowers the ICC to prosecute crimes committed on the territory of a State Party that has ratified the Rome Statute even if the accused is not a citizen of that country – or is a citizen of a country that is not a party to the Rome Statute. This is the hook used by the ICC prosecutor and judges to potentially ensnare the United States and Israel, basing the purported jurisdiction of the ICC on the Rome Statute membership of Afghanistan and of the so-called Palestinian state where the alleged crimes covered by the Rome Statute were said to have occurred.

As Secretary Pompeo explained during his press conference announcing the Trump administration’s visa restrictions, the United States intends to “protect the American and allied military and civilian personnel from living in fear of unjust prosecution for actions taken to defend our great nation. We feared that the court could eventually pursue politically motivated prosecutions of Americans, and our fears were warranted.”

ICC proponents claim that the ICC prosecutor’s office and judges must be insulated against any national reprisals for their actions, citing the need for judicial independence of the ICC to carry out its “universal justice” mission. In fact, the Rome Statute immunizes ICC judges, the ICC prosecutor, the deputy prosecutors and the registrar for anything they do in the course of their work for the ICC. These ICC personnel enjoy diplomatic immunity while in office and, even after the expiration of their terms of office, “continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.” (Article 48) However, the Rome Statute specifically states that the “official capacity as a Head of State or Government, a member of a Government or parliament… shall in no case exempt a person from criminal responsibility under this Statute.” (Article 27)

### **Prosecuted by the ICC for “war crimes” or “crimes against humanity,” as interpreted by unaccountable ICC**

Thus, on the one hand, the advocates of ICC “universal” jurisdiction insist that U.S. and Israeli elected officials and military personnel trying to defend their countries against armed hostilities be investigated and possibly prosecuted by the ICC for “war crimes” or “crimes against humanity,” as interpreted by unaccountable ICC prosecutorial staff and judges. On the other hand, an ICC judge or prosecutor who conducts his or her “official” duties in a corrupt or biased manner would be immune from any legal consequences whatsoever for his or her actions. No wonder the Trump administration is casting aside this whole farcical scheme and putting the ICC prosecutor’s office and judges on notice that there will be serious consequences for attempting to extend the ICC’s tentacles to reach U.S. citizens.

Note that the ICC houses both the judges and the prosecutor within the same governmental institution—the direct opposite of the U.S. Constitution’s principle of separation of powers. Both the ICC’s judges and the prosecutor are appointed by the same group of unelected State Party representatives—the Assembly of States Parties. The prosecutor has a roving mandate to search out any act he or she believes would rise to the level of a covered crime. If the prosecutor is authorized to issue an arrest warrant against an individual, any country in which that individual is present can execute the warrant and send the individual to the Hague for prosecution. The Rome Statute has no provision for trial by jury—a basic U.S. Constitutional right that is afforded to persons accused of crimes in the United States.

In short, once the ICC is allowed to assert any form of jurisdiction over U.S. citizens, Americans would be deprived of the full measure of self-government for which the Founding Fathers fought. To quote from the Declaration of Independence, Americans caught up in the ICC’s web would be (1) subjected “to a jurisdiction foreign to our constitution and unacknowledged by our laws”; (2) “depriv[ed] of the benefits of Trial by Jury”; and (3) “transport[ed] beyond [the] Seas to be tried for pretended offences.”

The American Civil Liberties Union counts itself among the progressive so-called human rights groups that defend the ICC despite its glaring flaws. Indeed, the ACLU has advocated for the ICC’s assertion of jurisdiction against members of the U.S. military and CIA for alleged torture of less than 100 detained foreigners in Afghanistan - a number that is way below any reasonable threshold of gravity or systematic nature that would rise to the level of crimes against humanity or war crimes.

### **Jamil Dakwar is all too typical of the ICC advocates who hypocritically claim to be concerned about “international accountability**

Jamil Dakwar, director of the ACLU’s “Human Rights Program” and its main representative to the United Nations, denounced Secretary Pompeo’s announcement of punitive actions against ICC personnel who stick their noses where they do not belong. Dakwar called such actions “an unprecedented attempt to skirt international accountability for well-documented war crimes that haunt our clients to this day. It reeks of the very totalitarian practices that are characteristic of the worst human rights abusers, and is a blatant effort to intimidate and retaliate against judges, prosecutors, and advocates seeking justice for victims of serious human rights abuses.”

Jamil Dakwar is all too typical of the ICC advocates who hypocritically claim to be concerned about “international accountability.”

Dakwar, who has described himself as a Palestinian citizen of Israel, and his anti-American, anti-Semitic colleagues want to use the unaccountable ICC for crass political purposes to exact a pound of flesh from U.S. and Israeli citizens.

Last month, for example, [Dakwar tweeted:](https://twitter.com/jdakwar/status/1101106501006053376)“UN commission of inquiry finds that Israeli forces may have committed war crimes and crimes against humanity over killings of Palestinians during #Gaza protests. Israel’s failure to conduct credible investigations may trigger @IntlCrimCourt investigation.” Dakwar cited a completely biased UN report, commissioned by the anti-Israel UN Human Rights Council, which contained misinformation and total distortions of the truth about the context in which Israel’s use of force took place to quell Hamas-instigated violence. Any inconvenient facts about Hamas’s role in committing war crimes and crimes against humanity would not bother Dakwar, who has [praised the terrorist organization in the past for showing “national responsibility and political pragmatism](http://weekly.ahram.org.eg/Archive/2007/833/op3.htm)” and has called upon the United States to deal directly with Hamas.

Moreover, Dakwar falsely claimed that Israel has failed to conduct any credible investigations of the actions of Israel Defense Force (IDF) personnel, using this falsehood as a justification for an ICC investigation. Israel’s High Court has examined the IDF’s rules of engagement in response to a petition for review. It approved the rules within the context of the armed hostilities facing the IDF that originate from territory controlled by Hamas near the Gaza border with Israel. The High Court did so on the condition that specific claims of infractions of the rules of engagement be carefully investigated through IDF channels, subject to appeal to the Israeli civilian courts. This process is now well underway.

### **The International Criminal Court is an illegitimate globalist institution being used by enemies of the United States and Israel as a political lawfare weapon**

Jamil Dakwar came to the ACLU in 2004 following his stint as a senior attorney with Adalah, a Palestinian Arab-run legal center in Israel that advocates for Palestinians living in Israel and in Palestinian territories. Ironically, [Adalah’s own most recent annual report issued in June 2018](https://www.adalah.org/uploads/uploads/Final_2017_Adalah_Annual_Report_Activities_10.6.2018.pdf)demonstrated its success in Israeli courts to secure the rights of Palestinian litigants. “Over the course of 2017,” the report stated, “Adalah filed over 50 new legal cases and interventions, which resulted in 10 legal successes, in addition to 4 interim successes and 1 partial success, and 4 losses.”

Adalah’s report mentioned, as one successful example, a case brought against the Settlements Regularization Law, which purported to “regularize” under domestic Israeli law settlements in the West Bank that were built on privately-owned Palestinian land. The Israeli Supreme Court issued a partial injunction freezing the operative parts of the law while the case is pending.

Such a decision, and others mentioned in Adalah’s report, undermine the validity of any assertion by the ICC prosecutor or judges that Israeli courts are unable or unwilling to provide a fair judicial forum for Palestinian claims against the Israeli government.

Since working for the ACLU, Dakwar has continued his pro-Palestinian, anti-Israel advocacy. [He has accused Israel,](https://www.haaretz.com/misc/writers/WRITER-1.5602628) for example, of “institutionalized racism directed at its Arab citizens” and claimed that Boycott, Divestment and Sanctions (BDS) is the only way to “force Israel to prove it’s a democracy for Its Arab citizens too.”

In 2017, [Dakwar tweeted](https://twitter.com/jdakwar/status/881497780560302080), “Israeli leaders exploit horrible acts of anti-Semitism to encourage Jews to move to Israel.” Of course, Israel’s raison d’etre as an independent Jewish state is to serve as a safe haven for the Jewish people, who have suffered centuries of persecution and anti-Semitism in other countries around the world. Dakwar is essentially trying to delegitimize Israel’s right to exist as a Jewish state and advocating use of the ICC to help accomplish this purpose.

As for the United States, which Dakwar’s ACLU is fighting to drag before the ICC, Dakwar has accused the U.S. of “systemic discrimination and injustice that exists in its own backyard.” He has also parroted what he described as the UN Human Rights Council’s “strong message of no-confidence in the U.S. human rights record.” At the time the discredited Human Rights Council issued its report critiquing the U.S. human rights record in 2015, the Council included among its members such human rights abusers as Pakistan, Venezuela, China, Russia, Saudi Arabia, China, and Cuba.

The International Criminal Court is an illegitimate globalist institution being used by enemies of the United States and Israel as a political lawfare weapon. The United States must push back, together with Israel and other freedom-loving countries, against the ICC’s outrageous overreach. Secretary of State Pompeo’s announcement of visa restrictions is a good first step. If the ICC persists on its present course, further action such as sanctions will be necessary.