**Biden Must Pick: Israel or Blind Faith in International Institutions**

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The key to understanding Biden administration policy on virtually any issue is to see what its predecessor did and then assume the administration will do the precise opposite. In the weeks since President Joe Biden took the oath of office, that has seemed to be the case in just about every domestic and foreign policy decision that has come up. But if Biden is going to keep his word to have Israel's back in international forums, he's going to have to reverse that trend and do exactly as his predecessor did with respect to the International Criminal Court (ICC).

That's going to mean taking concrete action against the ICC, as the Trump administration did last year, rather than merely paying lip service to complaints against the organization as it prepares to press bogus war crimes against the Jewish state. But while the Biden administration has said the right things about the ICC's outrageous trashing of international law, everything we know about the Biden foreign policy team makes it highly unlikely that it will do anything to sanction this prototypical multilateral institution.

The ICC's decision announced last Friday that it has the right to investigate alleged war crimes to the 2014 fighting between Israel and Hamas in the Gaza Strip, as well as the question of Jewish settlement in the West Bank, is a flagrant violation of the international law the Court is supposed to uphold. It has no jurisdiction over either matter and the attempts to criminalize both the Jewish presence in parts of the country and Israel's legitimate right to self-defense against a terrorist organization are about politics, not law.

To its credit, the Biden administration wasted no time in denouncing the ICC's brazen overreach. On Friday, a State Department spokesman said the U.S. objected to the decision, noting that there were "serious concerns" about the right of the Court to investigate anything in the area. "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," the statement said.

The argument against the ICC here is overwhelming. Israel is not a member state of the ICC and though the Palestinian Authority joined it in 2015, its admission lacks legitimacy since it is not a sovereign state by any known legal definition and therefore had no right to invite the Court's interference in the first instance.

That procedural question also ignores the basic absurdity of the ICC treating the roles that Israel and Hamas played in that 2014 conflict as morally equivalent, with the Court saying it would investigate both Hamas' indiscriminate firing of rockets at Israeli civilian areas and Israel's "disproportionate" effort to suppress the rocket fire and repelling of the Islamist group's other blatant acts of terrorism.

The attempt to portray Israeli settlement activity in Jerusalem and the West Bank as not merely politically and legally debatable—under Trump, the U.S. rightly accepted Israel's arguments that international agreements dating back to the 1922 San Remo Conference guaranteed the right of Jews to settle throughout the territory of their ancient homeland—but a war crime is equally outrageous. Involving itself in an argument that must be resolved, if it ever will be, by political negotiations between the parties, is an act of legal mischief-making—not justice.

But if the only U.S. response to the ICC is a strongly worded tweet, then it's far from clear what Biden's "commitment" is worth. To send an appropriate message, the new administration will have to do two things that make it uncomfortable: affirm Trump's judgment and face the truth about the world bodies that liberal Democrats and the foreign policy establishment revere.

Like so many international institutions, the ICC is hopelessly mired in political agendas that have driven it far from the idealistic goals it was created to pursue. The ICC is the inheritor of the process that began at the post-World War Two Nuremberg trials and was intended to be reserved for international crimes on a mass scale—not mired in the sort of political games in which various parties engage in transparent "lawfare."

With only five successful prosecutions in the last 20 years, the ICC may well be the least effective international tribunal ever created. It has been subjected to withering criticism for its top-heavy bureaucracy, inexperienced judges and scandals involving its own personnel. Current chief prosecutor Fatou Bensouda was handed a mess by her predecessor, but she has now mired the court in an effort to target Israel that calls into question not merely her own judgment, but the broader legitimacy of the institution.

Much like the disproportionate attention paid by the United Nations and its various agencies to allegations against Israel while massive human rights violations elsewhere are largely ignored, the ICC's interest in the 2014 Gaza war and West Bank Jewish settlement is similarly prejudicial in nature. Israel is clearly being judged by a double standard not applied to any other nation—let alone a democracy defending itself against terrorist groups. As such, the anti-Semitism definition of the International Holocaust Remembrance Alliance, which specifically cites such double standards (and was accepted by the United States under Trump and confirmed by Biden), applies here.

What can the United States do to deter the ICC's efforts to exacerbate a conflict that has begun to recede from the international agenda, as Arab and Muslim states have begun to make peace with Israel?

First, the U.S. should reaffirm and implement Trump's executive order in which the U.S. sanctioned ICC officials involved in the attack on Israel. Trump's administration also specifically sanctioned Bensouda and her aide Phakiso Mochochoko for launching an equally illegitimate and legally dubious investigation of American forces in Afghanistan.

Unfortunately, the Biden State Department is considering backing down on both efforts in the face of international opposition. Should the administration lift those sanctions in response to pleas from European allies, it will be in accord with the new administration's belief that international institutions must be propped up by the U.S. despite those institutions' obvious flaws and failures. This faith in multilateralism is at the heart of the mindset of the foreign policy establishment stalwarts who have returned to power in the last month after four years of Trump's highly critical view of such world bodies.

Much like the administration's stated intention to rejoin the UN Human Rights Council—an institution that is, if anything, far more prejudiced against Israel and engaged in ongoing anti-Semitism than the ICC—a concerted stand against Bensouda's politicization of the Court goes against every instinct of the new foreign policy team.

If the administration fails to act now, its rhetorical condemnation of the ICC's excursion into anti-Israel propaganda and its stand against anti-Semitism will be meaningless. Nor will it be inconsequential for the direct interests of the United States.

While Bensouda's term will expire in the next year, it is vital that Biden make clear that her successor understand that not only will he not stand for the Court going to war against Israel, but that he won't tolerate efforts to prosecute Americans fighting the Taliban and its allies in Afghanistan. If Biden fails to do so, you can bet that the ICC will continue to insinuate itself into international disputes where it has no standing—and where its efforts will, like the Israeli-Palestinian conflict, only make peace less likely. A failure to act would also likely result in more unfair attacks against Americans defending their country against Islamist terrorists.

Avoiding that outcome, rather than the obsession with contradicting Trump or extolling corrupt and failed international bodies, should be Biden's priority.