

Netanyahu's Vision: A World Without the ICC

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"Today the prosecutor of the International Criminal Court Fatou Bensouda opened a preliminary examination into the situation in Palestine." - The Times of Israel, Jan 16, 2015

It had to come. With the International Criminal Court receiving bad press for its inefficiency, and a seeming lethargy in its prosecuting nerve, Israel came storming in with the clearest of messages against announcements of a preliminary investigation into the Palestinian issue. It will do everything it can to prevent its soldiers from being investigated for war crimes by a foreign body citing universal jurisdiction.

The Israeli Prime Minister Benjamin Netanyahu and Foreign Minister Avigdor Liberman led the charge. Liberman released a statement to the press on Friday finding it repugnant that Israel should be the subject of any "probe".

"The same court which after more than 200,000 deaths didn't see fit to intervene in what was taking place in Syria or in Libya or in other places now finds it worthwhile to 'examine' the most moral army in the world" (Jerusalem Post, Jan 16).

The importance of Israel's statement lies precisely in its own assessment about the role of international institutions, which it deems inadequate before superior domestic experiments. Otherwise, any international entity is only useful as long as the rules are appropriately adjusted.

This is the very definition of law that ceases to be law, one that slips into the area of pure power politics. This concept lies at the core of those critical of ICC procedure, such as former US Secretary of State Henry Kissinger. This is not in itself surprising, as Kissinger might himself, given the appropriate circumstances, face a successful prosecution suit. Writing for *Foreign Affairs* (July/August 2001), Kissinger called the move towards an international court as "an unprecedented movement... to submit international politics to judicial procedures."

The argument that seems to be limping rather than galloping, is that of "substituting the tyranny of judges for that of governments; historically, the dictatorship of the virtuous has often led to inquisitions and even witch-hunts." History gave us the Nuremberg trials, the specific tribunals of Rwanda and former Yugoslavia. But an international tribunal?

Kenneth Roth of Human Rights Watch came with an appropriate rejoinder to Kissinger's argument against a universal war crimes court. "Behind much of the savagery of modern history lies impunity. Tyrants commit atrocities, including genocide, when they calculate

they can get away with them" (*Foreign Affairs*, Sept/Oct 2001).

Another tactic has become clear in targeting the ICC. Its judiciary, and its practices, are seen as tyrannical by powers which can have no truck with internationally directed scrutiny that refers to solid legal principle. For that reason, any judicial measures on its part are deemed "political" rather than "legal."

Since the ICC is the enemy for the practice of Israeli politics and power, it is deemed a body that, by its very nature, is political. The only legal upholders, by a somewhat perverse sleight of hand, is Israel itself, with the "most moral army in the world", as Liberman cites.

Israel is the righteous guardian of law, a sort of dangerous virtue that Kissinger attributed to the universal jurisdiction movement. It is impossible to imagine any violations from the guardian. Benjamin Netanyahu's statement about the ICC is typically aligned to this view: "It's scandalous that mere days after terrorists massacred Jews in France, the ICC prosecutor opens a probe against the Jewish state. And this is because we defend our citizens from Hamas, a terror group that signed a unity pact with the Palestinian Authority and war criminals who fired thousands of rockets at Israeli citizens."

The ICC's chief prosecutor, Fatou Bensouda, has had to provide words of calm instruction for critics. "A preliminary examination is not an investigation but a process of examining the information available in order to reach a fully informed determination on whether there is a reasonable basis to proceed with a (full) investigation."

Israel's opposition is not unique. From the other side of the fence, Russia and China have been foremost in opposing efforts to refer the Syrian conflict to ICC procedures. In January, 2013, a statement from the Russian Foreign Ministry expressed alarm at the suggestion. "We view this initiative as untimely and counterproductive to achieving today's main goal - an immediate end to the bloodshed in Syria."

This was repeated in May 2014, when other powers on the UN Security Council insisted that Syria account for war crimes before the ICC. Samantha Power, the grandee of human rights at the Security Council, and US Ambassador, would exhort how, "Our grandchildren will ask us years from now how we could have failed to bring justice to people living in hell on earth" (ABC, May 22, 2014).

Hells vary, and Power's suggestion is that a Palestinian hell does not quite float so well on the international morality market as a Syrian one. Syrians were obvious bogeymen in need of legal chastising, while Israel was not. In fact, Power was keen to keep the ICC away from meddling in the Palestinian issue with a suitably long barge pole. "The ICC is of course something that we have been absolutely adamant about. I mean, this is something that really poses a profound threat to Israel." When law is inconvenient, politics shall reserve its right to judge.

Israel has become something of a shock soldier against the ICC. Other powers will be quietly supporting its mission, seeing this as a chance to push back against a globalised jurisdiction that nets, rather than avoids, placing leaders before a court of law. For them, the very idea of universal jurisdiction is anathema to power politics. It is precisely for that reason that such efforts should fail.

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