

Trump Is Trying to Hide US and Israeli War Crimes by Attacking the International Criminal Court

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A war crimes [complaint](#) has been filed against Donald Trump, Israeli Prime Minister Benjamin Netanyahu and Trump adviser Jared Kushner in the International Criminal Court (ICC). It is now up to the ICC's Office of the Prosecutor to decide whether the complaint should be pursued. If the prosecutor launches a preliminary examination and finds reason to believe they committed war crimes, the court could then authorize a full investigation.

The complaint, filed by Middlesex University law professor William Schabas on June 30 on behalf of four Palestinians who live in the West Bank, states “there is credible evidence” that Trump, Netanyahu and Kushner “are complicit in acts that may amount to war crimes relating to the transfer of populations into occupied territory and the annexation of the sovereign territory of the State of Palestine.” Under article 15 of the [ICC's Rome Statute](#), any individual, group or organization can bring a complaint to the Office of the Prosecutor.

Schabas's complaint comes on the heels of unusual moves last month from the Trump administration, which declared a “[national emergency](#)” in June in an effort to shield U.S. and Israeli officials from ICC accountability for war crimes and crimes against humanity.

Trump issued an executive order on June 11 declaring a national emergency because, he says, any ICC attempt to investigate, arrest, detain or prosecute any personnel of the United States or its allies (Israel) without consent to the court's jurisdiction “constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.”

The order authorizes the freezing of assets and family travel bans against ICC officials and others who have participated in, or provided assistance to investigations, arrests, detentions or prosecutions. It's not necessary that a person be involved with an ICC action, however, to be subject to Trump's new sanctions. His order covers any ICC employee or agent whom the secretary of state determines “would be detrimental to the interests of the United States.”

Trump's Endorsement of Israel's Illegal Annexation Is a War Crime

Schabas's complaint alleges that the Trump administration's endorsement of Israel's annexation constitutes a war crime.

Trump's “Peace to Prosperity” plan endorses the [illegal Israeli annexation](#) of 30 percent of the West Bank which, [Schabas alleges](#), “is intricately linked to the war crime of changing the

population of an occupied territory.” The annexation, slated to occur on July 1, has been delayed, likely for political reasons.

[Article 49](#) of the Fourth Geneva Convention states that an “occupying power shall not deport or transfer parts of its own population into the territories it occupies.” The [Rome Statute](#) says that an occupying power’s direct or indirect transfer “of parts of its own civilian population into the territory it occupies” is a war crime.

Sixty-seven special independent experts appointed by the UN Human Rights Council [declared in a statement](#) that Israel’s annexation of occupied territory “is a serious violation of the Charter of the United Nations and the Geneva Conventions, and contrary to the fundamental rule affirmed many times by the United Nations Security Council and General Assembly that the acquisition of territory by war or force is inadmissible.”

Trump Claims the ICC Has No Jurisdiction Over Americans and Israelis

In his June 11 order, Trump states that the ICC’s “illegitimate assertion of jurisdiction” over nationals of the U.S. and its allies would “threaten to infringe upon the sovereignty of the United States.” Trump notes that the U.S. is not a party to the ICC’s Rome Statute and has never consented to the jurisdiction of the court.

Although Bill Clinton signed the Rome Statute as he left office, [the United States never ratified it](#). In an unprecedented move, George W. Bush withdrew the U.S.’s signature from the statute in 2002.

Even though the United States isn’t a party to the Rome Statute, U.S. nationals can still be held liable in the ICC for crimes that occurred in the territory of a country that is a party. So although the United States has not ratified the Rome Statute, the ICC nevertheless has jurisdiction over crimes committed by U.S. nationals in the territory of Afghanistan, which is a party.

On March 5, the ICC Appeals Chamber accepted Bensouda’s [recommendation](#) to proceed with an investigation of war crimes allegedly committed by U.S. military and CIA officials in Afghanistan and at CIA black sites.

Less than three months prior, on December 20, 2019, Bensouda had found a [reasonable basis](#) to believe that Israeli forces and Palestinians committed war crimes in the occupied Palestinian territories. She recommended that the Pretrial Chamber launch an investigation if it decided the court had territorial jurisdiction over Gaza and the West Bank, including East Jerusalem.

The same day the Appeals Chamber announced its approval of an investigation of U.S. war crimes in Afghanistan, Secretary of State Mike Pompeo [threatened](#) to “take all necessary measures to protect our citizens from this renegade, so-called court.”

With his new national emergency declaration, Trump aims to ensure that no U.S. or Israeli persons are brought before the international court to answer for war crimes and crimes against humanity. He cited the [American Service-Members Protection Act](#), enacted after Bush removed the U.S.’s signature from the Rome Statute. The act contains the “Hague Invasion Clause,” which authorizes the U.S. military to use armed force to extricate any U.S. or allied national detained by the ICC. This provision has never been used but its

ramifications are frightening.

U.S. Pressure on the ICC Didn't Work the First Time

In November 2017, Bensouda's preliminary examination found reasonable grounds to believe that, pursuant to U.S. policy, members of the U.S. military and the [CIA had committed war crimes](#). They included torture and cruel treatment, and outrages upon personal dignity and sexual violence against people in detention facilities in the territory of states parties to the Rome Statute, including Afghanistan, Romania, Poland and Lithuania.

The alleged crimes by the CIA and U.S. military "were not the abuses of a few isolated individuals," but rather "part of approved interrogation techniques in an attempt to extract 'actionable intelligence' from detainees," Bensouda wrote. She concluded there was "reason to believe" that crimes were "committed in the furtherance of a policy or policies ... which would support US objectives in the conflict of Afghanistan."

Bensouda requested that the ICC's Pretrial Chamber approve an investigation into these allegations. The Trump administration threatened to deny visas to ICC judges and prosecutors and warned it would retaliate with sanctions if the court opened an investigation.

On April 5, 2019, the U.S. government [revoked Bensouda's visa](#) to travel to the United States.

A week later, on April 12, 2019, the Pretrial Chamber apparently succumbed to U.S. pressure and [declined to authorize](#) Bensouda's investigation. Although agreeing with Bensouda that there were reasonable grounds to believe that CIA members had committed war crimes, the Pretrial Chamber denied her request for an investigation "in the interests of justice." That chamber cited the "extremely limited" possibility of an effective judicial process due to the likely refusal of U.S. and Afghan authorities to cooperate.

But in a landmark decision, on March 5, 2020, the Appeals Chamber [overruled](#) the Pretrial Chamber's determination and authorized Bensouda to initiate an investigation.

Trump declared his "national emergency" three months later.

Bensouda Requested an Investigation of War Crimes Committed in Palestine

Trump's June 11 executive order was also designed to shield Israeli officials from liability in the ICC for their war crimes.

On December 20, 2019, Bensouda told the Pretrial Chamber there was a reasonable basis to launch an investigation of "[the situation in Palestine](#)." She had a reasonable belief that Israeli forces had committed war crimes of willful killing, willfully causing serious injury to body or health, disproportionate use of force, transfer of Israeli civilians into the Palestinian territory of the West Bank, and the killing of more than 200 Palestinians during protests at the Israel-Gaza fence. Bensouda also found a reasonable basis to investigate alleged war crimes by Palestinians, including intentional attacks against civilians, using civilians as human shields, and the commission of torture and willful killing.

Bensouda wrote that she was satisfied "(i) war crimes have been or are being committed in the West Bank, including East Jerusalem and the Gaza Strip ... (ii) potential cases arising

from the situation would be admissible; and (iii) there are no substantial reasons to believe that an investigation would not serve the interests of justice.”

But although Bensouda determined that the ICC has territorial jurisdiction over the West Bank, including East Jerusalem, and Gaza —she asked the Pretrial Chamber for a ruling on “the scope of the territorial jurisdiction” of the ICC.

Israel is not a party to the Rome Statute. But the ICC could take jurisdiction over Israelis if their crimes were committed in the territory of a state party. Israel maintains that Palestine is not a state so there is no ICC jurisdiction.

In 2012, the UN General Assembly recognized Palestine as a [non-member observer state](#) in the United Nations. Palestine acceded to the Rome Statute, thereby becoming a member of the States Parties of the International Criminal Court.

The International Association of Democratic Lawyers (IADL) filed an [amicus brief](#) on March 16, 2020, urging the ICC to confirm its jurisdiction over Palestine. IADL bureau member Richard Harvey wrote:

The ICC’s normative power and legal authority will be strengthened by confirming its jurisdiction over the State of Palestine, including the West Bank, East Jerusalem and Gaza, and opening an investigation into the Palestinian situation. Thereby the equal rights of all peoples to justice for international crimes will receive much-needed affirmation.

ICC States Parties and UN Security Council Members Express “Unwavering Support” for ICC

Sixty-seven ICC member countries representing regions throughout the world issued a [joint statement](#) expressing their “unwavering support for the Court as an independent and impartial judicial institution.” They pledged to remain “undeterred by any measures or threats against the Court, its officials, and those cooperating with it.”

Likewise, 10 members of the 15-member UN Security Council issued a [statement](#) to “reconfirm our unwavering support for the Court as an independent and impartial judicial institution” and “preserve its integrity undeterred by any threats against the Court, its officials and those cooperating with it.” The group, which included two permanent members of the Council – France and the United Kingdom – renewed their “resolve to stand against impunity which is at the core of the Rome Statute.”

The remarkable action of the Appeals Chamber in defying U.S. threats and blackmail and approving a war crimes investigation of U.S. officials indicates that the ICC is striving to fulfill its mandate to bring those who have committed the most serious crimes to justice.

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