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***"The International Criminal Court's Threat to the Sovereignty of the United States and Its Allies"***

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Chairman, Ranking Member, and distinguished Members of the Subcommittee, thank you for the opportunity to testify today.

My name is Abraham Bell. I am a professor of law at the University of San Diego School of Law and in the Faculty of Law of Bar Ilan University. I publish in the areas of courts, property, intellectual property and international law and I have been writing about and criticizing the International Criminal Court since the negotiations leading to its creation more than a quarter-century ago.

Secretary Rubio's call for the dismantling of the International Criminal Court is courageous and correct.[1] International institutions that not only fail to serve their purposes but affirmatively do harm must be dismantled. We owe it to ourselves to have the honesty to look past fine rhetoric—rhetoric as inspiring, and as hollow, as the guarantees written into the Soviet constitution—and to examine instead the actual record of this institution and the incentives that drive its behavior.

In the abstract, the mission of the ICC sounds noble: to build a system of international justice and accountability for the world's worst crimes, both to deter atrocities and to ensure the punishment of criminals who would otherwise escape all accountability.

The reality is very different, and it cannot be ignored. The ICC is a political institution. It shares the biases, the corruption, and the failures of the broader family of post-war international institutions—bodies like the United Nations that were launched with great promise only to become embarrassing disappointments. But the ICC compounds those shared failures with worse failures of its own—failures that inhere in the very nature of international criminal law, and that reflect an institution of such perverse internal values that its most recent prosecutor was removed from office following disciplinary proceedings arising from allegations of grave misconduct, including sexual assault of a subordinate and reprisals against those who supported the complainant.[3]

My aim in this testimony is to explain why the ICC has failed, why it is dangerous, and why the United States should act now to bring about its end.

## I. What International Law Is—and Why International Criminal Law Is an Anomaly

To understand the ICC's failures, one must first understand what international law is, because international criminal law is a sharp departure from the general norms of the field.

International law is not law in the conventional sense of the word. It is closer to a set of contracts among states than to law as we know it in the United States. International law consists of the rules of conduct that states agree upon among themselves—whether expressly, by treaty, or through a presumed traditional consent reflected in consistent state practice coupled with a shared belief that the practice is legally required.[4]

Several features follow from this, and each of them matters here. International law is not universal: its rules bind only consenting states, and it is both possible and common for a rule to bind one state and not another. It is not democratic: it is made by states bargaining among themselves, without regard to whether those states are democracies or whether their representatives have any democratic pedigree. It binds states, not individuals. It is generally unenforceable except through the mechanism of reciprocity. It is not consistently moral or just, and it frequently fails to reflect the values of this country. And because so much of it rests on what is called customary international law, it is often maddeningly vague and difficult to identify.[5]

In the best of circumstances, these features make international law a poor foundation for a criminal code. The subjects of ordinary criminal law have, at least in principle, a voice in its making and a reasonable ability to know what is expected of them. Not so here. International law is the product of agreements among states—yet international criminal law reaches past states to prosecute, and sometimes to persecute, individuals who had no part in making it and who often cannot know in advance what it demands of them.

The centrality of state sovereignty adds a further wrinkle. The system of international law that emerged from the 1648 Peace of Westphalia placed state sovereignty at the center of the world order, together with the companion principle of non-interference in the internal affairs of other states. The purpose was peace: to avoid conflict by forbidding states from poking into one another's domestic business.[6]

Traditionally, international criminal law respected these constraints. It consisted of commitments by states to use their own criminal justice systems to punish certain kinds of behavior. The International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism, for example, commit their state parties to criminalize various terrorist activities under domestic law.[7] The treaties do not themselves outlaw or punish any individual's conduct. The obligation runs to states, and states carry it out through their own sovereign institutions.

## II. The Rome Statute's Sovereign Bargain

This is the background against which the Rome Statute created the International Criminal Court in 2002. The Court was designed to *complement* the criminal justice systems of states—to exercise the state parties' own sovereign criminal jurisdiction only in those cases where a state party was genuinely unable or unwilling to act against its own citizens or others within its territorial authority.[8]

This subordination of the ICC to the principles of state sovereignty was not incidental. It was deliberate, explicit, comprehensive, and absolutely necessary for the Court to conform to the basic norms of international law.[9] A court exercising the delegated sovereign jurisdiction of consenting states could claim legitimacy. A court that slipped those bounds could not.

The reason such subordination matters goes to the heart of what courts are and what they do. A court that operates outside the law binding it is a Kafkaesque absurdity. But the danger is more than aesthetic. Courts exist to punish—to take away the liberty, and sometimes the life, of the accused and the convicted. A court that operates within the law, and that honors the requirements of due process and neutrality, can promote the rule of law and protect natural liberties. A court that does not obey the law, or that disregards due process and neutrality, does precisely the opposite: it undermines the rule of law and tramples the very liberties that courts are supposed to secure. There is no middle ground. The power to punish, unmoored from law, is simply the power to oppress dressed in a robe.

## III. How the ICC Placed Itself Above Sovereignty

The ICC decided that its own ambitions mattered more than the bounds of state sovereignty on which its legitimacy depended. It has done so in at least three distinct ways.

First, the Court has asserted jurisdiction over alleged crimes committed by the citizens of states that never joined the Rome Statute, on the theory that a victim state can hand the Court jurisdiction that the accused's own state never granted.[10] This is a jurisdictional bootstrap: it allows the Court to reach the nationals of non-consenting states—including the United States—by collecting jurisdictional grants from others.[11] A state that has deliberately declined to submit its citizens to the ICC finds them hauled before it anyway.

Second, the Court has shrunk the principle of complementarity—the sovereign safeguard at the center of the Rome Statute's bargain—almost to nothing. Complementarity was meant to keep the Court out whenever a state was genuinely addressing the matter itself. In practice, the Court now disregards nearly all national processes that do not amount to prosecuting the identical charges against the identical individual the ICC has chosen to target.[12] A state's good-faith investigations, its considered decisions about how to proceed, its own legal judgments—all are brushed aside unless they mirror the Court's own preferences exactly. The safeguard has been read out of the treaty.

Third, and most cynically, the Court has manufactured a category of pseudo-states—entities treated as "states" for purposes of the Rome Statute despite lacking the attributes of statehood—so that they may invoke the Court against the legal rights of real states. This category is populated, in the relevant instance, by a single entity: an alter-ego of the Palestine Liberation Organization that styles itself the "State of Palestine."[13] Its function within the ICC's machinery is not to vindicate any genuine sovereign, and obviously not to complement its imagined sovereign criminal justice powers, but, rather, to trample the legal rights of accused Israelis. The Court invented a state where none exists in order to reach defendants it had no lawful means to reach.

## IV. Why the ICC Has Failed

This brings us squarely to why the ICC has failed—and why it will continue to fail.

The Court began operations in 2002. By 2025, after more than two decades, it had brought roughly thirty-two cases and issued at least sixty arrest warrants. From all of that activity it had obtained only eleven convictions. And that figure substantially overstates the Court's success at its actual mission, because only six of those eleven convictions were for the core atrocity crimes the Court exists to prosecute; the remainder were for offenses such as witness tampering. Six core-crime convictions in more than twenty years.[14]

There are two reasons for this record of futility. The first is that the institution's true priorities are not the interests of justice but its own bureaucratic perpetuation and the politics that sustain it. The second is that the Court is professionally incompetent.

*Bureaucratic self-perpetuation.*

Consider the arithmetic. Against a budget in the neighborhood of $200 million a year, and a rate of roughly one core-crime conviction every four years, the Court is burning through something on the order of $800 million per core conviction.[15] No institution genuinely oriented toward criminal justice could tolerate such numbers. But criminal justice is not the operative purpose. The operative purpose is the maintenance of padded budgets, comfortable positions, and patronage. And because the funding flows largely from Europe, the bureaucracy has every incentive to flatter European prejudice—to pursue those whom European high society regards as inconsequential, such as a series of African defendants, and those whom European high society resents, such as the Jewish state, Vladimir Putin and his officials, and Americans. The selection of targets tracks the sensibilities of the paymasters, not the gravity (or even the existence) of crimes.

*Professional incompetence.*

The problem is not only motive but capacity. The Court's judges and prosecutors are the product of a political appointment process that rewards national horse-trading over demonstrated competence in the investigation and prosecution of mass atrocity.[16] Many arrive without the relevant background. The institution has shown a persistent inability to observe elementary standards of investigation and evidence collection. The results—six core convictions in two decades—speak for themselves. An institution that cannot reliably investigate, cannot reliably gather admissible evidence, and cannot reliably convict even those it targets after investigating charges, is not a court in any meaningful sense; it is an expensive transnational political campaign.

*A revealing illustration.*

The prosecutor's public posture during the war in Gaza captured the Court's character precisely. Speaking from Cairo on October 30, 2023, the prosecutor described the two sides in fundamentally different registers. As to Hamas and Palestinian perpetrators, he spoke in the conditional idiom of ordinary criminal justice: the Office claimed jurisdiction over crimes committed by Palestinian nationals on Israeli territory "if that is proven." As to Israel, he reversed the posture entirely. Israelis, he announced, "must be able to account for their actions" and "will need to demonstrate that any attack—any attack that impacts innocent civilians or protected objects—" was lawful; and he declared that "the burden of proving that the protective status is lost rests with those who fire the gun, the missile, or the rocket in question."[17] The asymmetry is the point. For one side, guilt to be established only "if proven"; for the other, a standing obligation to demonstrate innocence, strike by strike, with the burden of proof affirmatively assigned to the accused. That is not the administration of criminal justice. It is a presumption of guilt announced in advance and in public—the subordination of the most basic principles of criminal responsibility and due process to a predetermined political aim.

The charges the Court ultimately pursued are of a piece with that posture. The indictments themselves have not been released, but it is evident—at least to those of us who work in this field—that no available evidence would prove to the satisfaction of a competent criminal court the guilt of Prime Minister Netanyahu or Minister Gallant of any of the crimes cited in the Court's public statements, and that the interpretations of those crimes the Court has employed are at best dubious and at worst shocking departures from the traditional understanding of the law's requirements.[18] The marketing of the charges through what amounts to celebrity endorsement—from figures such as Amal Clooney—only underscores how far this exercise is from the orderly pursuit of justice through legal process, and how much closer it is to political theater.

## V. Why the ICC Will Get Worse, Not Better

It would be a mistake to hope that the Court will reform itself. The incentives point the other way.

As the ICC grows more controversial, it will feel a greater, not a lesser, need to flatter the prejudices of its European funders in order to justify its existence and its budgets. In practice that means reviving its efforts to find American defendants—as it attempted in connection with the war in Afghanistan, when it moved toward investigating U.S. personnel before political pressure caused it to pull back—accelerating its efforts against Israelis, and likely pressing further against Putin and other Russians.[19]

And here the Court's structural position becomes genuinely perverse. Because Israel, the United States, and Russia are exceedingly unlikely ever to cooperate in these prosecutions, the defendants will never actually appear in the dock. That means the Court's legal theories will never be tested by adversarial litigation before it. Freed from the discipline of ever having to defend its reasoning against a real defense, the Court can adopt ever more outlandish legal positions—confident that its pronouncements will never be challenged in an ICC courtroom. The absence of accountability does not restrain the institution; it emboldens it.

## VI. The Broader Danger

The dangers of the ICC are not confined to its lawless accusations against foreign nationals. There is a spillover effect at home.

Domestic political figures—Zohran Mamdani among them—have already begun to invoke lawless ICC actions as a supposed warrant for equally lawless domestic actions, such as threats to arrest visiting foreign officials. This is how the damage spreads. The prestige attached to the phrases "international law" and "international court" lends a borrowed legitimacy to conduct that would otherwise be recognized for what it is. The Court's pronouncements become a laundering mechanism, providing cover for domestic misbehavior in the United States and elsewhere. An institution that cannot itself observe the law nonetheless supplies the vocabulary that others use to justify abandoning it.

In this way the ICC is actively discrediting the very concepts of international law and international justice—concepts that, properly understood and properly limited, have real value. The sooner this institution is removed from the scene, the sooner those concepts can be rescued from the disrepute the Court is bringing upon them.

## VII. What Should Be Done

The question, finally, is what to do—and here the record of half-measures is instructive.

For nearly twenty years, the United States has had domestic legislation authorizing steps against the ICC should the Court act in specified ways against the United States and its allies.[20] The Court has plainly not taken that legislation seriously. For roughly the last decade, the United States has from time to time imposed sanctions on ICC personnel. That, too, has failed to produce any improvement in the Court's behavior. Individual states have at times succeeded in frustrating particular prosecutions—Kenya, for instance, foiled the cases against its officials through aggressive measures to prevent cooperation[21]—but such defensive victories do nothing to stop the

Court from other malign acts, such as issuing arrest warrants it knows will never lead to prosecution but that serve their purpose as instruments of political stigma.

The lesson is that partial pressure has failed because the institution's incentives are impervious to it. Secretary Rubio is right: the ICC must be dismantled, and the United States should move deliberately toward that end. The tools available include:

- **Diplomatic pressure** on state parties to withdraw from the Rome Statute and to cease funding the Court;
- **Criminalizing cooperation** with ICC activity directed at protected persons—including treating any ICC-directed arrest of such persons as what it would in fact be, an illegal kidnapping;
- **Broader sanctions**, reaching not only ICC personnel but the institution itself and those who promote and sustain it; and
- **A civil remedy**—the creation of a tort action for the victims of wrongful international prosecution, so that those who are injured by the Court's lawless conduct have recourse against those responsible.

None of this is an attack on the rule of law. It is a defense of it. A court that has cast off the legal limits that gave it legitimacy, that pursues political targets rather than justice, and that discredits the very ideals it invokes is not an instrument of international justice. Dismantling it is the beginning of restoring those ideals, not their abandonment.

Thank you for your time. I look forward to your questions.

# ENDNOTES

1. See Marco Rubio, U.S. Sec'y of State, Statement on Sanctions Against ICC Officials (2025); see also Press Statement, U.S. Dep't of State, The United States Sanctions International Criminal Court Officials (2025). Secretary Rubio has characterized the Court as a politicized body and called for measures against it.
2. Rome Statute of the International Criminal Court art. 1, opened for signature July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute] (entered into force July 1, 2002).
3. Member states of the ICC dismissed Prosecutor Karim Khan following disciplinary proceedings related to sexual-misconduct allegations. See *International Criminal Court Prosecutor Karim Khan Dismissed*, UN News (July 2026); *ICC Chief Prosecutor Karim Khan Removed from Post over Sexual Misconduct Allegations*, PBS News (July 2026). The allegations, which Khan denies, included coerced sexual contact with a subordinate and reprisals against those who supported the complainant; the Assembly of States Parties voted to remove him from office. A panel of judges had earlier reported that the U.N. Office of Internal Oversight Services findings did not, in its view, establish misconduct under the applicable framework. See *ICC Chief Prosecutor Khan Cleared of Sexual Misconduct by Judges: Report*, Al Jazeera (Mar. 21, 2026).
4. On the sources and character of international law, see Statute of the International Court of Justice art. 38(1), June 26, 1945, 59 Stat. 1055 (identifying treaties, custom, and general principles as sources); see generally *Anthony Aust, Handbook of International Law* (2d ed. 2010).
5. On customary international law and the twin requirements of state practice and *opinio juris*, see North Sea Continental Shelf (F.R.G. v. Den.; F.R.G. v. Neth.), Judgment, 1969 I.C.J. 3, ¶ 77 (Feb. 20).
6. On the Westphalian order and the principle of non-intervention, see U.N. Charter art. 2, ¶¶ 1, 7; see also Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 202 (June 27) (describing non-intervention as a corollary of sovereign equality).
7. International Convention for the Suppression of Terrorist Bombings art. 4, Dec. 15, 1997, 2149 U.N.T.S. 256 (obliging states parties to criminalize enumerated offenses under domestic law); International Convention for the Suppression of the Financing of Terrorism art. 4, Dec. 9, 1999, 2178 U.N.T.S. 197 (same).
8. Rome Statute, supra note 2, pmbl. & art. 1 (the Court "shall be complementary to national criminal jurisdictions"); *id.* art. 17 (admissibility and complementarity).
9. Id. art. 17(1)(a)–(b) (a case is inadmissible where a state with jurisdiction is investigating or prosecuting, or has done so, unless the state is "unwilling or unable genuinely" to proceed).
10. On the delegation theory and its limits, compare Rome Statute, supra note 2, art. 12 (preconditions to jurisdiction, including territorial-state consent), with the United States' longstanding objection that the Statute purports to bind nationals of non-parties without their state's consent. See David J. Scheffer, *The United States and the International Criminal Court*, 93 Am. J. Int'l L. 12 (1999).
11. On the exercise of jurisdiction over nationals of non-party states via territorial-state referral or acceptance, see Rome Statute, supra note 2, art. 12(2)(a); Situation in the Islamic Republic of Afghanistan, ICC-02/17.
12. On the narrowing of complementarity in practice, see Prosecutor v. Al-Senussi, ICC-01/11-01/11, Judgment on Admissibility (Appeals Chamber July 24, 2014) (analyzing the "same person, same conduct" test).
13. On the Court's treatment of the "State of Palestine," see Situation in the State of Palestine, ICC-01/18, Decision on the Prosecution Request Pursuant to Article 19(3) (Pre-Trial Chamber I Feb. 5, 2021) (majority finding territorial jurisdiction; see also the dissent questioning the statehood premise).
14. Aggregate case and warrant figures are drawn from the Court's public records and independent trackers. See *Cases*, Int'l Crim. Ct., https://www.icc-cpi.int/cases; *Q&A: International Criminal Court*, Human Rights First (July 2024) (reporting eleven convictions). The count of core-crime convictions excludes convictions for offenses against the administration of justice, such as witness tampering. See Rome Statute, supra note 2, art. 70.
15. The Assembly of States Parties adopted a 2025 programme budget of €195,481,500. See Press Release, *Assembly of States Parties Concludes Its Twenty-Third Session*, Int'l Crim. Ct. (Dec. 2024); see also *ICC Faces Slimmed-*

*Down Budget, Sanction Threats*, Courthouse News Serv. (Dec. 9, 2024) (reporting the figure as approximately $206 million). The per-conviction figure in text is the author's illustrative calculation dividing an approximate annual budget by the long-run rate of core-crime convictions and is offered as a measure of institutional cost-effectiveness, not as an accounting of marginal cost.

16. On the process for selecting judges and the Prosecutor, see Rome Statute, supra note 2, arts. 36, 42. On critiques of the nomination and election process, see, e.g., *Report of the Independent Expert Review of the International Criminal Court and the Rome Statute System* (2020).

17. Statement of ICC Prosecutor Karim A.A. Khan KC from Cairo on the Situation in the State of Palestine and Israel (Oct. 30, 2023), https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel. As to Palestinian and other non-Israeli perpetrators, the Prosecutor stated that jurisdiction "continues over any Rome Statute crimes committed by Palestinian nationals or the nationals of any state parties on Israeli territory, if that is proven." As to Israel, he stated that Israel "must be able to account for their actions" and "will need to demonstrate that any attack—any attack that impacts innocent civilians or protected objects—" complied with the law, and that "the burden of proving that the protective status is lost rests with those who fire the gun, the missile, or the rocket in question." The full transcript is available at the link.

18. The arrest warrants themselves, and the applications underlying them, have not been publicly released in full. The Court's public statements indicate that Pre-Trial Chamber I found "reasonable grounds to believe" that Netanyahu and Gallant bear responsibility for the war crime of starvation as a method of warfare and the crimes against humanity of murder, persecution, and other inhumane acts. See Press Release, *Situation in the State of Palestine: ICC Pre-Trial Chamber I Rejects the State of Israel's Challenges to Jurisdiction and Issues Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant*, Int'l Crim. Ct. (Nov. 21, 2024). "Reasonable grounds to believe" is the threshold for issuing a warrant under Rome Statute art. 58; it is far below the "beyond reasonable doubt" standard required for conviction under art. 66(3). On the outside panel convened by the Prosecutor to endorse the applications, see *Amal Clooney Publishes Expert Report Supporting ICC Arrest Warrant Applications*, Clooney Foundation for Justice (May 20, 2024). The interpretations of the underlying crimes—particularly the application of "starvation as a method of warfare" to the conduct of hostilities amid a functioning if strained humanitarian-relief effort—depart, in the author's assessment, from traditional understandings of the elements of those offenses.

19. On the Afghanistan investigation and the subsequent U.S. response, see Situation in the Islamic Republic of Afghanistan, ICC-02/17, Judgment on the Appeal (Appeals Chamber Mar. 5, 2020); Exec. Order No. 13,928, 85 Fed. Reg. 36,139 (June 11, 2020) (later revoked). On warrants against Russian officials, see Situation in Ukraine, ICC-01/22 (arrest warrant for Vladimir Putin, Mar. 2023).

20. On the American Service-Members' Protection Act, see 22 U.S.C. §§ 7421–7433 (2002). On sanctions practice, see Exec. Order No. 13,928 (2020) and subsequent designations of ICC personnel (2025).

21. On Kenya's response to the ICC proceedings arising out of the 2007–08 post-election violence, see Prosecutor v. Kenyatta, ICC-01/09-02/11, Decision on Withdrawal of Charges (Mar. 13, 2015) (charges withdrawn amid the Prosecutor's assertions of non-cooperation).