

The ICC's Brazen Anti-Israel Bias

Prosecutor Karim Khan selects advisers and experts who are openly hostile to the Jewish state.

By Eugene Kontorovich
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The House passed a [bill](#) last week to impose sanctions against officials of the International Criminal Court if it issues arrest warrants against Israeli leaders. The move came after ICC Prosecutor Karim Khan applied for warrants in late May based on war-crimes allegations against Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant. The bipartisan outrage is justified. By targeting a country with a well-functioning legal system that is taking unprecedented humanitarian precautions in an urban war, the ICC is making it more difficult for Western democracies to defend themselves against lawless terror groups. Further, Israel, like the U.S., hasn't accepted ICC jurisdiction.

The rot within The Hague runs deep. The prosecutor's decision to issue warrants was based in part on the advice of several consultants he had handpicked. Many of them already had a longstanding bias against the Jewish state; they've been publicly condemning Israel and declaring it guilty of war crimes for years. By picking experts who had taken clear positions on the questions they were being asked to consider, Mr. Khan further undermined the credibility and neutrality of any prosecution.

A particularly egregious example is University of Copenhagen professor Kevin Jon Heller, a special adviser to the prosecutor whom Mr. Khan singled out for [thanks](#) when announcing the charges. Mr. Heller's strong views on Israel are evident in his social-media and blog posts. In 2015 he [wrote](#) in an article: "I wholeheartedly support BDS"—the boycott, divestment and sanctions movement—"in its economic and cultural forms." He [elaborated in a comment](#), describing Israel as "committed to systematically depriving the innocent of their most basic rights."

Mr. Heller [wrote](#) in 2016: "Israel is truly the [Donald Trump](#) of repressive states—unable to tolerate any criticism that doesn't stay within the bounds of what it considers 'legitimate.'" In 2020, when he shared a link to a news story about Messrs. Trump and Netanyahu's Middle East peace plan, he [tweeted](#): "Two criminals conspiring to commit criminal acts against #Palestine and #Palestinians." Mr. Heller has also [given](#) the presumption of credibility to groups that are consistently critical of Israel while [dismissing](#) more pro-Israel nongovernmental organizations for spreading "fake law and propaganda."

Mr. Khan took the unusual step of convening a "panel of experts" in January "to support the evidence review and legal analysis" related to the Gaza case. He announced his pursuit of arrest warrants after the panelists' unanimous recommendation to do so.

That outcome appears to have been a foregone conclusion. One panelist is Baroness Helena Kennedy, a left-leaning Labour member of the British House of Lords. In 2019 Ms. Kennedy [urged](#) the ICC to investigate Israel's treatment of Palestinian civilians. In 2020 she signed a [letter](#) that claimed—mistakenly—that the Israeli government was planning to annex parts of the West Bank and called for the U.K. to impose sanctions on Israel should it do so. In October Ms. Kennedy [accused](#) Israel of cutting off Gaza's water, a charge that is deficient both factually (Israel provided only 9% of Gaza's supply prewar) and legally (siege is a recognized method of warfare). In March she [wrote](#) in an article published by the Guardian: "The ICJ"—International Court of Justice—"has given a warning to Israel; now is the time for all of us to say: enough is enough."

Another panel member is Jewish lawyer Danny Friedman. A [letter](#) he signed on Oct. 17 last year claimed—contrary to the U.S. Defense Department's Law of War Manual—that a siege encompassing a civilian population is illegal. He further accused Israel of dehumanizing Palestinians. In November he [wrote](#) that some of Israel's actions constitute war crimes and called for Israel to halt the war even while Hamas was holding hostages.

The panel's only Arab—Amal Clooney, actor George Clooney's wife—said about the 2014 Gaza War that she was "horrified by the situation in the occupied Gaza Strip, particularly the civilian casualties that have been caused."

Even the panel's token Israeli national, Theodore Meron, is best known for his criticism of the Israeli government's policy in the West Bank and Gaza.

The legal credentials of the prosecutor's consultants aren't in question. The problem is that while they're entitled to their opinions, picking them to assist in a criminal prosecution is different from inviting them to speak at a conference. Mr. Khan chose them despite their strong, legally controversial stances on the issues they were supposed to examine neutrally. They expressed these opinions in political, not merely academic, contexts. Not one expert with a public record of serious skepticism about the court's jurisdiction or alleged Israeli criminality was included on the panel.

It would have been easy for Mr. Khan to find experts with similar views who hadn't made their prejudices public. That Mr. Khan chose these advisers indicates that he valued certainty in the results above even the appearance of impartiality.

The selection of the panel seems to violate the ICC Code of Conduct for the Office of the Prosecutor, which demands that its officials "refrain from any activity which is likely to negatively affect the confidence of others in the independence or integrity of the Office." The Code of Conduct says the "impartiality" section requires "refraining from expressing an opinion that could, objectively, adversely affect the required impartiality, whether through communications media, in writing or public addresses." These rules don't apply to outside experts, but by selecting and relying on panel advisers who don't meet the ICC's own definition of impartiality, the prosecutor undermines his own.

Mr. Khan's selection of heavily prejudiced advisers calls into question the weighing of the evidence and credibility determinations that underlie the allegations. If despite these fundamental

flaws in the process—and all the underlying legal and substantive problems—the ICC judges confirm the arrest warrants, sanctions against the ICC will be fully justified.

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