# A 5-step plan to fight the ICC

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Last year, then MK Tzipi Livni convened senior officials from the Justice Ministry and Military Advocate General’s international affairs departments at the Knesset for a conference. The purpose of the conclave was to provide the officials with the opportunity to justify their interference with security decisions that by law are the exclusive purview of the IDF’s field commanders and Israel’s elected leaders.

As is their wont, the officials used the opportunity to proclaim, “the legal system is the IDF's legal Iron Dome against accusations of war crimes in foreign and international forums.”

Following International Criminal Court Prosecutor Fatou Bensouda’s decision over the weekend to prosecute Israel – including its armed forces and elected leaders – on phony war crimes allegations, we see that their conceit was a lie. The idea that Israel’s legal fraternity is Israel’s protection against the likes of Bensouda and the lawfare gang she runs with was first concocted in the 1990s by then Chief Justice Aharon Barak. The purpose of this fantasy was and remains to justify interference by the various components of the legal fraternity – the High Court, the Justice Ministry, the Attorney General and the Military Advocate General and others – in the decisions of IDF commanders and elected officials.

As Prof. Avi Bell of Bar Ilan University Law School explained in Israel Hayom earlier this week, Bensouda’s decision exposed the colossal failure of the legal fraternity’s strategy for protecting the country from the lawfare gang. Bensouda’s decision is a horrible, strategic blow for Israel. It endangers the very lives of IDF soldiers, commanders and elected officials.

Members of the legal fraternity asserted their competence to direct Israel’s responses by presenting the ICC as a legal body. But as the Rome Statute of 1998, which founded the ICC made clear, the institution’s political nature was evident from the outset, as was its inherent hostility to Israel. Now that Bensouda’s biased ruling has exposed this state of affairs, Israel must replace the lawyers’ failed legal strategy with a political one.

A political strategy for fighting the political ICC has five components:

The **first** component of the political strategy is institutional. Responsibility for handling the ICC has to be transferred from the lawyers who facilitated Bensouda’s hostile decision to the people who have to clean up the mess they made – the Prime Minister and the Foreign Minister. To this end, Prime Minister Benjamin Netanyahu needs to order all legal officials – from Attorney General Avichai Mandelblit to the Justice Ministry’s International Affairs Office to the Foreign Ministry’s Legal Advisor to the Military Advocate General’s International Law Department to cease and desist from all actions on the matter. These legal officials should be barred from making any statements to anyone about the ICC and prohibited from all communications with the ICC or regarding the ICC.

These government officials are charged with dealing with international legal matters. And Bensouda’s decision to prosecute Israel for imaginary war crimes proves beyond all doubt that the ICC is not engaged in anything resembling international law.

The **second** step is legislative. Whereas Israelis – the ICC’s #1 target – deluded themselves into believing that the ICC was a legal challenge best dealt with by lawyers, the Americans – its #2 target – were under no such delusions. To deal with this threat, in 2002 Congress passed the American Service Members’ Protection Act.

The goal of the ASPA, popularly dubbed “the Hague Invasion Act” is “to protect United States military personnel and other elected and appointed officials of the United States government against criminal prosecution by an international criminal court to which the United States is not party.”

The law authorizes the president to use “all means necessary and appropriate to bring about the release of any US or allied personnel being detained or imprisoned by, on behalf of, or at the request of the International Criminal Court.”

The ASPA bars all US government bodies from assisting the ICC in any way and prohibits the transfer of US military assistance to countries that are party to the court.

The Knesset needs to follow Congress’ example. The Knesset should convene from recess in emergency session to pass an identical law. Indeed, it is outrageous that no such law has passed to date.

The**third** part of the political strategy for fighting the ICC is diplomatic. Here too, it involves following the US’s example. Led by then Undersecretary of State for Arms Control and International Security John Bolton, between 2002 and 2005, the United States negotiated agreements with dozens of countries to prohibit them from turning Americans over to the ICC.

The Foreign Ministry must engage every country Israel has diplomatic relations with, and particularly those that receive aid from Israel, including African states, and ask them to sign similar agreements. Israel should strongly consider conditioning the provision of further aid on the conclusion of such agreements.

Step **four** of the political strategy for fighting political war against the political ICC pertains to public relations. For the duration of the ICC’s existence, every Israeli representative everywhere in the world should be directed to attack the ICC at every opportunity. The purpose of the attacks is to delegitimize the ICC’s very existence and work towards its enfeeblement, delegitimization and dismantlement.

It ought to go without saying that Israel needs to cut off all official and unofficial contact with the ICC. All of its officials – indeed anyone even remotely associated with the ICC – must be banned from entering Israel. And any ICC officials presently on territory under Israeli control must be immediately expelled.

The **final** step Israel must take to beat back the ICC relates to its policies regarding Judea and Samaria. For the past several years, Mendelblit and his comrades have used the ICC inquiry to prevent the government from implementing its policies in the areas. For instance, according to multiple government sources, the reason Netanyahu has failed to evacuate[Khan al-Ahmar](https://www.israelhayom.com/opinions/the-absurd-saga-of-khan-al-ahmar-continues/), despite a Supreme Court ruling requiring the illegal Beduin encampment that threatens the access road to Kfar Adumim to be dismantled, and the reason Netanyahu set aside his plan to apply Israeli law to the Jordan Valley and Jewish communities in Judea and Samaria is because Mendelblit and his fellow lawyers argued that implementing those policies would increase the likelihood that Bensouda would prosecute Israel.

If this is what happened, then it is now clear that Mendelblit and his associates misled Netanyahu. Bensouda didn’t need an excuse to prosecute Israel for nothing. So Israel should ignore her and act in its own interests. Netanyahu and Defense Minister Naftali Bennett need to order Khan al-Ahmar’s immediate evacuation. And within a week the government should pass a decision to apply Israeli law to all Israeli communities in Judea and Samaria and the Jordan Valley.

Israel’s legal system is responsible for defending Israel in foreign courts and international legal bodies. It is incompetent to defend the country from political onslaughts by hostile political bodies. The ICC’s anti-Semitic decision, which seeks to criminalize Zionism and the State of Israel demonstrates that it is a hostile political institution.

Israel’s political leaders made a grave mistake in heeding the counsel of our power-hungry jurists. Now that we know the truth, they must clear the decks and let political warriors fight the political war the ICC is waging against the country and its citizens.