International Criminal Court is New Battleground in the Fight Against Terror

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The realization of a nightmare scenario that threatens U.S. national security is playing itself out right now at the International Criminal Court (ICC), and many in Washington are unaware of it. The Palestinian Authority, a long-time recipient of American foreign aid, is using the court to achieve political and military goals against democratic Israel by seeking a legal judgment that delegitimizes Israel’s sovereign right to self-defense. If the ICC sides with the Palestinian Authority, America’s enemies will know how to use the ICC against the United States.

In the summer of 2014, Israel was provoked into a defensive operation against Hamas, a U.S. and United Nations-designated terrorist organization, who had for weeks been lobbing hundreds of rockets at the center of Israel’s most densely populated areas. Now, the ICC has launched a preliminary investigation into allegations by the Palestinian Authority that Israel’s defensive operation was a war crime. If the ICC decides to prosecute the case, the right of Israel, a sovereign democracy just like America, to defend itself against terrorists will be put on trial by a court made up of judges who have neither the right nor the expertise to pass judgment on a country’s security needs.

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Earlier this week, the ICC prosecutor, Fatou Bensouda, threatened that if Israel does not submit information to the Court, she “may perhaps be forced to just go with one side of the story.” If the ICC operates in such a way that removes the plaintiff’s responsibility to prove the defendant’s guilt “beyond all reasonable doubt,” a key legal concept in the United States, what’s to stop the ICC for siding with an enemy of the U.S. who accuses America of war crimes? What if Syria follows the Palestinian Authority’s lead and accuses the U.S. of war crimes for its anti-ISIS bombing campaigns? The answer, unfortunately, is “nothing.”

Many people have downplayed the significance of this case, but Bensouda in her remarks made it clear she is not dropping the issue: “It’s really difficult to say this is going to take just two months or three months, or one year or 10 years.” This issue is not going away, and it is a direct threat to American national security. It is the nightmare scenario envisioned 13 years ago when the American Servicemembers Protection Act (ASPA) became law.

ASPA is America’s recognition that the ICC can too easily be corrupted by despots who use it level the playing field by making the actions of responsible nations illegal under international law. Therefore, APSA prohibits U.S. cooperation with the ICC and gives the executive branch the authority to protect Americans and its most important allies from being prosecuted by the ICC.

Israel is among the list of specifically named countries in ASPA that the U.S. is authorized to protect against the ICC. At this juncture in the Palestinian Authority’s ICC case against Israel, there is much the U.S. government can do to protect Israel. The Palestinian Authority enjoys both substantial U.S. foreign aid and diplomatic support in international forums.

At this very moment, President Obama is considering supporting a United Nations Security Council Resolution that would mandate a settlement to the Israel-Palestinian conflict well before the historically corrupt and kleptocratic Palestinian Authority has displayed the ability and interest to establish and govern a democratic country that upholds fundamental rights and freedoms. American support for such a move should immediately be put on hold until the Palestinian Authority withdraws its complaint against Israel at the ICC, and then reconsidered.

In order to send the message that what is happening right now at the ICC cannot be tolerated, Reps. Jackie Walorski (R-Ind.) and Marc Veasey (D-Texas) have introduced House Resolution 209, which makes it clear that what the Palestinian Authority is doing is both a corruption of international law and a national security threat to America and its democratic ally, Israel.

Support for the resolution is building, as is the danger of the ICC becoming a place where America is attacked. The House Foreign Affairs Committee, a long-time leader on important issues of national security, must take up House Resolution 209 and pass it, and the House leadership should bring it up for a quick vote because a strong message must be sent: America will not allow the ICC to become a new battleground in the fight against terrorists and despots.