There Goes the International Criminal Court

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The International Criminal Court (ICC) was an experiment. From the beginning its potential success was threatened, as all United Nations-linked bodies are, by the danger of falling into U.N. Human Rights Council-like obsessions with Israel. Such actions would delegitimize the new ICC, certainly for Americans and anyone else taking a fair look at its activities.

The Court’s first prosecutor, the Argentine jurist Luis Moreno Ocampo, was well aware of this danger. He resisted it, whatever his personal views, in the interest of building the credibility of the institution. Same for his successor, the second and current prosecutor, the Gambian lawyer Fatou Bensouda.

When various groups tried to get the ICC to take on the case of the [Mavi Marmara](http://www.newsweek.com/mubarack-regime-misled-israel-over-mavi-marmara-incident-252178) (the Turkish vessel that tried to break the Israeli sea blockade of Gaza in 2010, with a resulting battle where nine were killed), she looked into it and said no.

Such a decision by the Prosecutor has never been overridden in the ICC’s history—until now. And of course in a case involving Israel. In a 2-1 ruling, the “Pre-Trial Chamber” set aside her decision and said the Prosecutor has to move forward with the case.

But what if she found no reason to do so, and no evidence suggesting crimes the ICC should prosecute? No matter; when Israel is concerned, new rules will be made up. Avi Bell, professor at Bar Ilan University’s Faculty of Law and the University of San Diego Law School, put it this way in [*The Times of Israel*](http://blogs.timesofisrael.com/the-icc-declares-war-on-israel/): under the new ruling, the Prosecutor should assume the truth of even the wildest accusations in deciding whether to bring charges; in other words, there should be an irrebuttable presumption of guilt in the preliminary investigation stage.

And most shockingly, it holds that crimes have sufficient gravity to interest the court, even if they have very few actual victims, as long as they are widely covered by the media, and are subject to a lot of political activity at the UN.

Needless to say, none of these holdings are accompanied by any citation to precedent. That’s because they are without any precedent.

And it’s a safe bet that last two of these “rules” will never be applied to any non-Jewish, non-Israeli defendant. That’s because the rules, if universally applied, would require the Prosecutor to investigate thousands of non-crimes every year, making the prosecution of real crime impossible. And it would make the Prosecutor throw away legal standards and make her choices based on the most political UN proceedings.

With this ruling, the ICC has degraded itself to the condition of the U.N. Human Rights Council and other U.N. bodies. It has thrown law out the window to lend itself to politics and the pursuit of Israel. It has sent a message to the PLO that the door is open to go after Israeli officials.

And it has put paid to the idea that a neutral and respected court of international criminal law can be created.