

United States Senate
WASHINGTON, DC 20510

May 13, 2020

The Honorable Michael R. Pompeo
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20230

Dear Mr. Secretary:

We urge you to continue your vigorous support of Israel as it faces the growing possibility of investigations and prosecutions by the International Criminal Court (ICC). Neither the United States nor Israel are members of the ICC. ICC actions currently underway could lead to the prosecution of Israeli nationals despite the fact the ICC does not enjoy legitimate jurisdiction in this case. Both Democratic and Republican administrations have refused to join the Court in part because they feared its politicization and misuse.

While we support the ICC's stated goal of ensuring accountability for the gravest crimes of concern to the international community, we are concerned that the Court's recent actions regarding the "Situation in Palestine" have infused politics into the judicial process. Specifically, we are troubled by Prosecutor Fatou Bensouda's December 20, 2019 announcement that, following a five-year preliminary examination of the situation, she established "a reasonable basis to proceed with an investigation" into crimes by Israelis and Palestinians. Prosecutor Bensouda also seeks a ruling by the ICC's Pre-Trial Chamber to confirm whether the Court has jurisdiction over territories such as the West Bank, including East Jerusalem, and Gaza.

We believe the Prosecutor's decision to investigate the Israeli-Palestinian situation and request to the Pre-Trial Chamber to determine the Court's jurisdiction over disputed territories constitutes a dangerous politicization of the Court and distorts the purposes for which the court was established. As the world's only permanent international court, the ICC is intended as a court of last resort for the prosecution of the most serious international crimes. The ICC can only consider allegations brought to it by states, yet "Palestine" does not meet the criteria to qualify for that designation. The ICC has never formally investigated any accusations within disputed territories; doing so now unfairly targets Israel. Additionally, ICC rules prohibit it from prosecuting cases against a country that has a robust judicial system willing and able to prosecute war crimes of its personnel. Therefore, the ICC's mandate should not supersede Israel's robust judicial system, including its military justice system.

By accepting Palestinian territorial claims over the West Bank, East Jerusalem, and Gaza, the Prosecutor is making a political judgment that biases any subsequent investigation or trial. Contrary to Prosecutor Bensouda's request to the Pre-Trial Chamber, the ICC does not have a mandate to determine whether the relevant territories are part of the State of Israel or occupied Palestinian lands. Establishing the boundaries of any future Palestinian state is a political decision that must be determined through negotiations between Israel and the Palestinians. Any ICC determination regarding its jurisdiction over the disputed territories or investigation of Israel

would further hinder the path to peace. Moreover, politicizing the Court in this way could further weaken and undermine the ICC.

Accordingly, we believe that the United States should stand in full force against any biased investigation of Israel. We ask that you give this matter your full attention and offer the State Department's support for Israel.

Sincerely,



Benjamin L. Cardin
United States Senator



Rob Portman
United States Senator

Joe Manchin III
Susan M. Collins
Dianne Feinstein
James E. Risch
Christopher A. Coons
Pat Roberts
Richard Blumenthal
John Boozman
Jacky Rosen
Marsha Blackburn
Robert P. Casey, Jr.
Shelley Moore Capito
Ron Wyden
Marco Rubio
Kirsten Gillibrand
Bill Cassidy, M.D.
Mark Warner
Cory Gardner
Tina Smith
Charles E. Grassley
Robert Menendez
Mitch McConnell
Kyrsten Sinema
Martha McSally
Michael F. Bennet
Kevin Cramer
Catherine Cortez Masto
Deb Fischer
Sheldon Whitehouse
Richard Burr

Cory A. Booker
Kelly Loeffler
Gary C. Peters
Roy Blunt
Debbie Stabenow
Josh Hawley
Doug Jones
Jerry Moran
Charles E. Schumer
Roger F. Wicker
Tammy Duckworth
Thom Tillis
Jon Tester
Pat Toomey
Margaret Wood Hassan
Mike Crapo
Kamala D. Harris
Steve Daines
Amy Klobuchar
James Lankford
Dan Sullivan
John Cornyn
Joni Ernst
John Hoeven
Ron Johnson
David A. Perdue
John Kennedy
Ben Sasse
James M. Inhofe
Michael S. Lee
Jim Thune
Lisa Murkowski
M. Michael Rounds
Ted Cruz
Tim Scott
Cindy Hyde-Smith
Lindsey Graham