



27 November 2024

H.E. Murat Nurtleu
Ministry of Foreign Affairs
D. Koanev Street
Bld. 31
Astana 010000
Republic of Kazakhstan

Re: Urging Kazakhstan to refuse participation in the ICC's infringement of Israel's sovereignty

Your Excellency:

By way of introduction, the European Centre for Law and Justice (ECLJ) is a non-governmental organisation located in Strasbourg, France. The ECLJ is dedicated to protecting human rights and religious freedom in Europe and around the world. The ECLJ also holds Special Consultative status with the United Nations Economic and Social Council.¹

As you know, Israel has been under a series of unprecedented assaults from terrorist groups, especially the Iran-supported proxy groups Hamas and Hezbollah. On 7 October 2023, Hamas struck Israeli civilians in a surprise attack that was one of the worst in Israel's history. Hamas operatives brutally murdered, mutilated, and sexually assaulted approximately 1,200 Israeli and foreign civilians, and took approximately 250 hostages. Two Kazak nationals also went missing during this attack. Rather than holding the perpetrators of such horrible crimes accountable, the International Criminal Court (ICC) has now issued arrest warrants for Israeli leaders, including Israeli Prime Minister Benjamin Netanyahu,² for simply acting in lawful self-defense.

Under a well-settled principle of customary international law, the ICC has no jurisdictional authority to issue arrest warrants for citizens of a State not a party to the Rome Statute (without that State's consent). The applicable customary international law principle is clear: "[a] treaty does

¹ Consultative Status for the European Centre for Law and Justice, U.N. DEP'T OF ECON. & SOC. AFFS: NGO BRANCH, <http://esango.un.org/civilsociety/> (follow "Advanced Search" hyperlink; then search organization's name for "European Centre for Law and Justice").

² *US rejects ICC arrest warrants for Israeli officials, White House spokesperson says*, REUTERS, 21 Nov. 2004, <https://www.reuters.com/world/us-rejects-icc-arrest-warrants-israeli-officials-white-house-spokesperson-says-2024-11-21/>.

not create either obligations or rights for a third State without its consent”.³ Like your State, Israel has not ratified the Rome Statute, nor is it subject to ICC jurisdiction. As such, the ICC’s arrest warrants violate clearly established international law principles.

Shockingly, the ICC Office of the Prosecutor (OTP) is not only appealing to all States Parties to the Rome Statute to comply with these unlawful arrest warrants, but the OTP is also asking non-party States to collaborate in what the OTP calls “working towards accountability and upholding international law”.⁴ The misguided irony of the OTP’s statement is startling.

First, as a sovereign State, which is not a party to the Rome Statute, your government has no obligation whatsoever to cooperate with the ICC’s requests. Second, under customary international law, heads of states as well as other higher government officials enjoy immunity in foreign States. This is regardless of international tribunals’ assertion of jurisdiction over such officials.⁵ Notably, even the Rome Statute requires the ICC to

not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.⁶

By not ratifying the Rome Statute, Israel has not agreed to waive immunity for its officials.⁷ Accordingly, by requesting collaboration by non-party States and even with States Parties, the OTP is asking the requested States to act inconsistently with their obligations under international law. Instead of upholding international law, your government’s cooperation with the OTP’s request would violate international law with respect to the immunity of Israeli officials. Additionally, and more importantly, Israel is exercising its lawful right to defend itself. Issuing warrants against Israeli officials, especially without having any jurisdiction over them, not only violates fundamental principles of international law, but constitutes a denial of the fundamental right to self-defence.

In light of the OTP’s brazen request, we emphasize that, as a non-party State, your government is under no obligation, legal or otherwise, to cooperate with the OTP. More specifically, we urge you to counter what the OTP is attempting to do and use all governmental authority at your disposal, including the imposition of sanctions on the ICC, to punish and deter this infringement on the sovereignty of Israel – an overreach that simultaneously threatens the sovereignty of all non-party States. The ICC has not only undermined the security of Israel and triggered a broader regional destabilization across the Middle East, but its actions also threaten all non-party States’ jurisdictional protections. For these reasons, the OTP’s actions constitute an unusual and

³ Vienna Convention on the Law of Treaties, art. 34.

⁴ Statement of ICC Prosecutor Karim A.A. Khan KC on the issuance of arrest warrants in the Situation in the State of Palestine, 21 Nov. 2024, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-issuance-arrest-warrants-situation-state-palestine>.

⁵ Rome Statute, art. 27.

⁶ Rome Statute, art. 98(1).

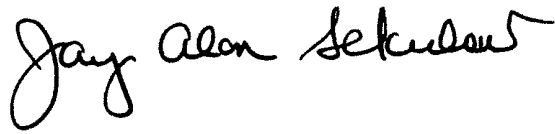
⁷ Rome Statute, art. 27.

extraordinary threat to the national security and foreign policy of all non-party States and merit immediate action.

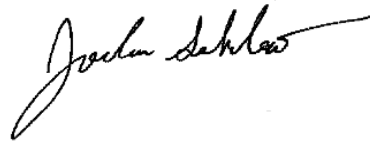
We humbly request that you do not stand idly by as unelected international bureaucrats threaten non-party States' sovereignty. We urge your government to refuse any cooperation with the OTP's requests and, instead, issue sanctions against the ICC and its officials, including restricting of visas and travel to your State as well as freezing of all assets of the ICC and any affiliated persons or parties posing a threat to international peace and security and well-established international law principles.

If the ECLJ may provide any assistance to you in this regard, we stand ready.

Respectfully submitted,



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