War crimes

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Israel does not commit war crimes.

That is the message Israel needs to send the world, in light of the recommendation on Friday by the International Criminal Court’s (ICC) chief prosecutor, Fatou Bensouda, to investigate Israel regarding alleged war crimes stemming from 2014’s Operation Protective Edge in Gaza; settlement activity since then; and the IDF’s response to weekly riots along the Gaza border fence.

Israel does have soldiers who have committed crimes while in action – as do all countries involved in active military campaigns. And when this happens, the country’s military and civil courts deal with the cases and hold those involved responsible.

Bensouda, in what seems like little more than a fig leaf, wrote that there is also a “reasonable basis” to believe that Hamas and “Palestinian armed groups” committed war crimes. As if there is any doubt that the indiscriminate firing of thousands of rockets on Sderot, Ashkelon and communities nearby – or purposefully setting alight thousands of dunams of agricultural land and forests – is anything but a war crime.

But it is obscene for Bensouda to place Israel and terrorist organizations on equal footing. Unlike Hamas – and what Bensouda called in sanitized language “Palestinian armed groups” – Israel does not intentionally harm civilians in Gaza or anywhere else.

Yes, civilians are harmed in Gaza by IDF actions, but they are not the target.

In 2015, a blue ribbon panel of former top military leaders and generals from eight democratic countries wrote a report after conducting an investigation into Operation Protective Edge. Their conclusion: Israel’s conduct in the conflict “met and in some respects exceeded the highest standards we set for our own nations’ militaries... The IDF not only met its obligations under the Law of Armed Conflict, but often exceeded these on the battlefield at significant tactical cost.”

Furthermore, Israel needs to say categorically that enabling Jews to live in the West Bank is not a war crime.

Jews living at the site of the biblical Shiloh, or in the shadow of the Western Wall and the Temple Mount, are not committing war crimes. One can argue the political wisdom of their living there, and one can say that making peace with the Palestinians is more difficult because they live there, but to say that a Jew living in Judea – the cradle of Jewish civilization – is a war criminal, is ridiculous.

Adolf Eichmann was a war criminal. Saddam Hussein was a war criminal. Those responsible for the Cambodian, Rwandan and Darfur genocides, those are war criminals. But Supreme Court judge David Mintz, who lives in Dolev in Samaria, is a war criminal? Get serious.

And that absurdity needs to be highlighted as Israel fights Bensouda’s recommendation and works to get the court to not pursue this case. Or, as Prime Minister Benjamin Netanyahu said on Sunday at the start of the weekly cabinet meeting: “To turn the fact that Jews are living in their land into a war crime is an absurdity of unimaginable proportions.”

There are many arguments Jerusalem will use to convince the Western democracies – first and foremost the US – to put pressure on the ICC to drop this case.

One argument will be that the court lacks jurisdiction in the matter because it only has standing when a state that is a signatory to the 1998 Rome Statute – which established the court – turns to it to take action. Israel’s position is that despite Palestinian claims to the contrary, and even though the Palestinian Authority signed the Rome Statute, there is no Palestinian state.

Jerusalem will also argue to the world’s democracies that what starts with Israel will not end with Israel, and that if today Israeli politicians and soldiers will be charged with war crimes for the unintentional death of innocents during a military campaign, then tomorrow the politicians and soldiers of other countries will also find themselves so accused.

Those arguments – which are strong and sound – are legalistic. They need to be presented, and they will be presented. But as they are being presented, a simple truth must be repeated over and over, because the lies about Israel committing war crimes are repeated over and over: Syria intentionally commits war crimes, Iran intentionally commits war crimes, Turkey intentionally commits war crimes – Israel does not.