Israel intends to fight back against war-crimes probe by International Criminal Court

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Yet another U.N. agency has stepped into the minefield that is the Israeli-Palestinian conflict, and as a result, appears in danger of losing its legitimacy.

The International Criminal Court’s chief prosecutor, Fatou Bensouda, announced last week that at the request of the Palestinian Authority, she is opening a probe into alleged war crimes committed by Israel in the 2014 Gaza war (dubbed “Operation Protective Edge” by the Israeli Defense Forces), as well as crimes in the disputed territories of Judea and Samaria, known internationally as the West Bank.

However, she has given the court’s tribunal 120 days to determine which territory it actually has jurisdiction over before she decides whether she will launch a full investigation.

Alan Baker, director of the international law program at the Jerusalem Center for Public Affairs, told JNS, “There is no legal basis to such requests since only sovereign states may appeal to the court, and there exists no sovereign Palestinian state with sovereign territory over which the court could extend its jurisdiction. If the court accepts the Palestinian requests and opens a formal investigation, it will damage its own juridical credibility and become politicized like other U.N. bodies. This is what the Palestinian leadership is trying to do to the great detriment, and possibly ruination, of the ICC.”

In 2015, the P.A. asked the ICC to investigate alleged charges of crimes committed by Israel since 2014. In the five years that have elapsed since then, Bensouda conducted a preliminary examination and decided that the “State of Palestine” could empower the ICC to conduct an investigation.

Attorney General Avichai Mandelblit published a 34-page statement refuting the ICC’s position. He said that the ICC has no jurisdiction to rule on matters in Israel, which is not a party to the Rome Statute of the ICC because the P.A. is not a state, and that the final status of the disputed territories must be settled diplomatically, not legally.

“The Palestinian attempts to draw the ICC into core political aspects of the Israeli-Palestinian conflict have brought into a sharp focus precisely the risk that the Court might be exploited for illegitimate political gain,” he wrote. “This is chiefly because … the Court manifestly lacks jurisdiction over the so-called ‘situation in Palestine.’ … The fundamental precondition to jurisdiction enshrined in the Rome Statute … is clearly not met. … A substantive legal inquiry into this matter cannot be sidestepped; and any such inquiry must lead to the conclusion that the precondition is indeed not satisfied.”

Israel gained control over the disputed territories of the West Bank from Jordan and the Gaza Strip from Egypt as a result of the 1967 Six-Day War. Under the 1994 Oslo Accords and subsequent agreements, the Palestinian Authority was established as an interim body to govern portions of West Bank (Areas A and B specifically) and the Gaza Strip until a final-status agreement could be reached. In 2007, the Palestinian terror group Hamas violently took control of the coastal territory from the P.A. and has acted as the de facto governing body there since.

Israeli Prime Minister Benjamin Netanyahu said on Sunday that efforts by the ICC were rooted in anti-Semitism.

“New edicts are being cast against the Jewish people—anti-Semitic edicts by the International Criminal Court telling us that we, the Jews standing here next to this wall … in this city, in this country, have no right to live here, and that by doing so, we are committing a war crime,” he said.

“Pure anti-Semitism,” he state simply.

**‘Complete delegitimization’ of a U.N. agency**

Other experts have also slammed Bensouda for her seemingly anti-Israel bias and hypocrisy.

Anne Herzberg, legal advisor of NGO Monitor, noted that “thanks to extensive lobbying efforts by European government funded NGOs, the ICC has willingly allowed itself to be exploited by the PLO and anti-Israel activists, granting Palestinians, in complete violation of the Rome Statute, the ability to join the court. Bensouda has been an outspoken cheerleader in this effort. If the prosecutor wants to prove [that] her efforts have not been driven by anti-Israel animus, she should begin by indicting and trying senior leaders of Fatah, over which she claims she has jurisdiction, for the many war crimes and crimes against humanity they have committed.”

Eugene Kontorovich, a scholar at Forum Kohelet and a professor at George Mason Antonin Scalia Law School, told JNS that by opening an investigation into alleged Israeli crimes, the ICC “ignores international law by inventing a Palestinian state that does not exist and creates a crime that no one in international law has ever been charged with before: the crime of people living in places.”

“To say it is a war crime for a Jew to live in the Jewish Quarter of the Old City is absurd,” he said. “It is quite clear that the crime of people living somewhere is a crime for which one must be Jewish to be eligible.”

Kontorovich pointed out that the Israeli government refrained from carrying out its agenda by not annexing the Jordan Valley or evacuating the illegal Bedouin encampment of Khan al-Amar out of concern that by doing so it would trigger an investigation. The government executed neither of these, and yet, the ICC still opened an investigation.

Kontorovich noted Bensouda’s hypocrisy after she “pretended, in the interest of evenhandedness, to investigate 150,000 Russians being moved into Crimea and concluded without any fanfare that is not a war crime.”

He also accused her of refusing to investigate Turkish settlers in Cyprus.

Moving forwards, Kontorovich called for the “complete delegitimization” of the ICC, and said that Israel must make every effort in this regard.

He suggested that one of the steps Israel should take is to prevent Palestinian leader Mahmoud Abbas from returning to Ramallah if he flies abroad.

He noted that the Palestinians prefer going the ICC route since “no matter how good the Trump administration’s peace plan is, it won’t be as good as the ICC option.”

Summed up Kontorovich: “This is a serious diplomatic problem, which must be resolved through diplomatic means.”