# The ICC has some nerve to target Israel

December 29, 2019

By Josh Hammer

New York Post

<https://nypost.com/2019/12/29/the-icc-has-some-nerve-to-target-israel/>

Among the institutions of the so-called international community, anti-Israel bias is so prevalent and obvious, it’s taken for granted and almost funny. The year-end statistics from the UN General Assembly tell nearly the whole story: Of the 25 condemnatory resolutions passed this year, 18 targeted the world’s sole Jewish state.

As I said, almost funny.

But now a more serious threat looms. The United Nations, for all its institutionalized anti-Semitism, remains a toothless body. Not so the Hague-based International Criminal Court, whose judgments can make life miserable for Israeli leaders and soldiers, rendering them vulnerable to arrest abroad.

On Dec. 20, Fatou Bensouda, a Gambian who has served as the ICC’s chief prosecutor since 2012, announced her intention to formally investigate the “situation in Palestine” and alleged Israeli war crimes that “have been or are being committed there.”

Bensouda served as a prosecutor and later justice minister under Gambia’s iron-fisted former dictator Yahya Jammeh. Speaking ­before a Gambian truth-and-reconciliation commission, one dissident accused her of “masterminding” the torture he suffered. (Bensouda has denied knowledge of this torture.)

No wonder she is bent on making a scapegoat of Jews. Specifically, she wants to probe Israel’s military operations in the Gaza Strip during the last full-scale war against Hamas, in 2014. She also plans to investigate the Jewish state’s response to Hamas’ attempt last year to infiltrate the border fence that separates Israel from the terrorist-run territory.

Bensouda’s prosecution is utterly lawless. As a political matter, the West must push back against this encroachment on the sovereignty of a democratic nation-state.

For starters, the ICC is structurally biased against Israel. As international-law expert Eugene Kontorovich noted when the Palestinian Authority sought formal ICC membership in 2015, the Rome Statute, which created the ICC, included language at the behest of the Arab states specifically designed to ­demonize Israeli “settlement” activity in the West Bank.

That should have given away the ICC game. But even under the ICC’s own terms, Bensouda’s attempted prosecution doesn’t pass muster. It lacks jurisdiction.

Under the Rome Statute, the ICC can go ahead with a prosecution in a country only if the state has delegated jurisdiction to the ­international court. But which state could delegate jurisdiction to the ICC in the case of the Palestinian territories? Certainly not the fictional “State of Palestine,” which even the United Nations doesn’t formally recognize as a state.

Plus, if Israel is a nefarious “occupier” of Palestine, as Palestinian propaganda constantly claims, then it means that the “State of Palestine” isn’t sovereign over its own claimed territory and therefore can’t delegate jurisdiction to the ICC.

An ICC prosecution, moreover, would flout the Oslo Accords, which call for direct negotiations between the parties to reach a final political settlement and under which Israel ­retains full civil and military control over the majority of the West Bank territory.

A still more glaring problem: Israel [is a democratic state with civilian control of the military](https://nypost.com/2019/12/27/netanyahu-thanks-trump-after-landslide-primary-win/) and an independent, rigorous judiciary that can adjudicate war-crimes allegations. This isn’t some war-torn, broken state or one transitioning out of recent dictatorship — like, er, Gambia. Israel doesn’t need ICC supervision to prosecute war crimes by its own soldiers.

But Bensouda cares not for legal niceties. She has previously opined that Gaza, from which Israel unilaterally withdrew in 2005, remains occupied, because the “international community” says so. The fact that she has gone ahead with this prosecution means she already buys the anti-Israel narrative wholesale: that “Palestine” is a sovereign state; that all of the West Bank belongs to that Palestinian state; and that Jews living in their biblical heartland are war criminals.

To use a favorite Uncle Joe Biden term, this [is malarkey](https://nypost.com/2019/12/03/heres-the-method-to-joe-bidens-malarkey/).

Israel’s attorney general has already issued a detailed legal opinion that establishes the ICC’s lack of jurisdiction. But an academic battle over the law is woefully insufficient. Israel must now follow the lead of US Secretary of State Mike Pompeo, who previously issued a visa ban for any ICC personnel ­investigating possible US war crimes in ­Afghanistan.

Israel should lead a team of like-minded ­allies in to fight the ICC jackals, including by exposing Bensouda’s own checkered past and her (at a minimum) alleged tacit involvement in ­African human-rights violations. The Jewish, democratic and rule-of-law state of Israel doesn’t need a Gambian dictator’s lackey to lecture it on the ethics of war and peace.