The International Criminal Court’s Latest Anti-Israel Salvo

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By Jimmy Quinn

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In a move singling out Israel, International Criminal Court head prosecutor Fatou Bensouda declared Wednesday that her office is beginning an investigation into “war crimes” committed in the West Bank and Gaza.

This investigation will ostensibly cover atrocities committed against Israelis as well, but Bensouda has for years shown a single-minded determination to take Israel to court, [navigating numerous procedural hurdles](https://www.nationalreview.com/corner/the-biden-administration-also-opposes-icc-overreach/) to lay the groundwork for yesterday’s announcement.

“Israel has come under attack,” Prime Minister Benjamin Netanyahu said yesterday in reaction to the announcement, calling it “undiluted anti-Semitism and the height of hypocrisy.”

Given the ICC’s record, one would be hard-pressed not to see a political motive to Bensouda’s decision. Even the Biden administration expressed its disappointment, reiterating its opposition to the February court ruling that granted the Palestinians standing to bring the case. “The ICC, as we have said, has no jurisdiction over this matter. Israel is not a party to the ICC, and it has not consented to the court’s jurisdiction,” State Department spokesman Ned Price said. “And we have serious concerns about the ICC’s attempts to exercise its jurisdiction over Israeli personnel.”

The ICC has decided to go after Israel, which is not a party to the court’s founding treaty, on the basis that Palestine, which is not a state but has formally submitted itself to the court’s jurisdiction, has standing. Why?

[As I reported in June](https://www.nationalreview.com/2020/06/international-criminal-court-ruling-prompts-harsh-response-from-washington/), the ICC is desperate to bolster its legitimacy after nearly two decades of limited success. Since its founding in 2002, the court has only won eight cases, and has also come under fire for focusing too much on crimes committed in Africa. With that in mind, Bensouda has fought to investigate U.S. conduct in Afghanistan and at CIA sites in Eastern Europe, despite the competence of American courts in trying alleged war crimes. (Under President Trump, the U.S., which, like Israel, is not party to the treaty, retaliated by imposing sanctions on the prosecutor and her staff.)

If Bensouda actually cared about international justice, as opposed to making a splashy declaration, she would have sought to investigate potential war crimes with more solid jurisdictional founding, such as China’s Uyghur genocide. Instead, she [turned down a petition](https://www.nytimes.com/2020/12/15/world/asia/icc-china-uighur-muslim.html) to do just that last year, claiming that the crimes associated with the genocide “have been committed solely by nationals of China within the territory of China.” The advocates who proposed the petition, however, noted that China’s efforts to apprehend Uyghur individuals also extended to Cambodia and Tajikistan, which are both parties to the ICC. Hence Netanyahu’s charge of hypocrisy: If the ICC wanted to go after China, it would have a considerably more solid jurisdictional claim than it does in the case of Israel and Palestine.

Bensouda’s term comes to an end in June, and she still has plenty of time to make progress on her priorities. Her announcement yesterday can only be seen as a direct challenge to the White House’s views on the matter. But will the Biden administration treat it as one?

Doing so would require Biden’s team to take off the kid gloves with which it’s treated major international bodies thus far. Biden officials have thus far made oblique references to the flaws of organizations such as the U.N. Human Rights Council and the WHO, while continuing to emphasize the need for cooperation. Price told reporters yesterday that “much as we disagree with the ICC’s actions relating to the Palestinian situation and of course to Afghanistan, we are thoroughly reviewing [the] sanctions” put in place by the Trump administration to deter malign ICC investigations. If Biden is serious about U.S. objections to the ICC’s dubious jurisdictional claims, he will need to expand those sanctions rather than curtail them.

The world’s crimes against humanity deserve to be investigated and prosecuted, but in its current incarnation, the ICC is unfit for the job. Politicizing such cases, as Bensouda has, harms the cause of international justice rather than serves it.