[The ICC Channels the Queen of Hearts on Israel](https://www.commentarymagazine.com/2015/07/17/the-icc-channels-the-queen-of-hearts-on-israel/)

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If the International Criminal Court ever had any pretensions of being a serious legal institution, they were effectively demolished by yesterday’s [ruling](http://www.icc-cpi.int/iccdocs/doc/doc2015869.pdf) overturning Prosecutor Fatou Bensouda’s decision not to investigate Israel’s botched raid on a 2010 flotilla to Gaza. Reading the ruling feels like falling down the rabbit hole straight into the Queen of Hearts’ courtroom, for many reasons. But here’s the one I found most astonishing: In a 27-page document devoted almost entirely to discussing whether the alleged Israeli crimes were grave enough to merit the court’s attention, not once did the majority judges mention one the most salient facts of the case: that flotilla passengers had attacked the Israeli soldiers with “fists, knives, chains, wooden clubs, iron rods, and slingshots with metal and glass projectiles,” causing nine soldiers serious injuries.

That fact appeared only in Judge Peter Kovacs’ [dissent](http://www.icc-cpi.int/iccdocs/doc/doc2015870.pdf). Anyone reading the majority decision would conclude that the soldiers opened fire no reason whatsoever.

This is not a minor detail; it was central to Bensouda’s decision to close the case. She noted that the soldiers opened fire, ultimately killing 10 passengers, aboard only one of the flotilla’s seven ships – the one where passengers attacked them. That strongly indicates there was no deliberate plan to kill civilians; rather, the soldiers intended to peacefully intercept all the vessels, and the killings were the unpremeditated result of a chaotic combat situation that unexpectedly developed aboard one ship. Or in her words, “none of the information available suggests […] the intended object of the attack was the civilian passengers on board these vessels.”

The majority judges, however, dismiss that conclusion, asserting that the lack of casualties aboard the other ships doesn’t preclude the possibility that soldiers intended from the outset to kill the Mavi Marmara’s passengers. They then offer a string of wild suppositions to explain why soldiers might have wanted to perpetrate a massacre aboard that ship but not the others. Perhaps, they suggest gravely, it’s because the Mavi Marmara carried the most passengers. Or, perhaps because it carried no humanitarian aid. In any event, the soldiers clearly used more violence against the Mavi Marmara than against other ships that also refused their orders to halt, so “It is reasonable to consider these circumstances as possibly explaining that the Mavi Marmara was treated by the IDF differently from the other vessels of the flotilla from the outset.”

But of course, the only way to make that unsupported speculation remotely plausible is by ignoring the fact that the Mavi Marmara was the only ship whose passengers brutally attacked the soldiers. Once you acknowledge this fact, it’s obvious that it’s a far more likely explanation for the ship’s different treatment than any of the majority judges’ outlandish theories.

So how do they get around this problem? Very simply: by refusing to admit the fact’s existence. At no point in those 27 pages do they ever acknowledge that the passengers attacked the soldiers. And then, having obliterated the actual reason why the soldiers opened fire from the record, they can accuse Bensouda of having erred by not considering their alternate-universe theory that the soldiers opened fire out of malice aforethought.

In the Queen of Hearts’ courtroom, the rule is “Sentence first – verdict afterwards.” The ICC judges, in contrast, are perfectly willing to let the verdict precede the sentence; they merely insist that said verdict exclude any evidence which might contradict their preconceived conclusions.

And, in that case, the Queen of Hearts’ approach actually makes much more sense. If you already know what the verdict is going to be, it’s much more efficient to move straight to the sentence. At least that way you don’t waste taxpayers’ time and money on lengthy legal proceedings.