**ICC investigation shows its problems go beyond just Israel**

By: The Editorial Board

Jerusalem Post

March 4, 2021

<https://www.jpost.com/opinion/icc-investigation-shows-its-problems-go-beyond-just-israel-660989>

International Criminal Court Prosecutor Fatou Bensouda’s decision to investigate Israel for alleged war crimes committed against the Palestinians lays bare the weaknesses of the tribunal in The Hague.

The ICC’s establishment was inspired by the Nuremberg Trials, where Nazis were prosecuted. It is meant to be a court of last resort, weighing in on the most severe cases – genocide, war crimes and crimes against humanity – that are not and cannot be tried in the countries in which they occurred.

One recent example is the conviction of Congolese rebel leader Bosco Ntaganda for crimes against humanity and war crimes: for conscripting child soldiers, forcing women into sexual slavery, and murdering large numbers of civilians. Another is an investigation into the ethnic cleansing of the Rohingya from Myanmar, with the military forcibly deporting the Muslim minority to Bangladesh.

By contrast, the investigation into Israeli actions begins the day after Hamas kidnapped and murdered three Israeli teenagers in 2014. It covers Operation Protective Edge, which followed in the aftermath of that heinous crime; Hamas’ ongoing targeting of civilians with rockets; plus the IDF’s response to Hamas-organized riots on the Gaza-Israel border. The probe also covers construction of, and in, settlements, very little of which actually occurred in the time period covered, and which – it must be acknowledged regardless of what one thinks of settlement legitimacy – took place without the forced displacement of anyone.

Beyond the weaknesses of the cases at hand, the ICC does not actually have jurisdiction on this matter. Israel has a strong judiciary that is very capable of prosecuting Israelis, including soldiers and commanders, and has previously done so many times.

Israel also is not a party to the Rome Statute establishing the court, which according to the ICC’s own rules means that it is outside the court’s reach. The Palestinians are members of the court, but they do not meet the minimum requirements to be considered a state.

All of this taken together indicates a deeply political decision by Bensouda and the judges handing down the majority opinion that Israel is open to investigation. Palestinian statehood will not and cannot be determined by a panel of judges, and Israel’s borders can only be decided through diplomacy, not forced onto Israelis and Palestinian by a decision made in The Hague.

“I’m going to fight for the truth, fight against this perversion of justice until it is null and void,” Prime Minister Benjamin Netanyahu vowed yesterday in an interview on Fox News.

“I think this is an outrageous decision. It goes against the one democracy in the Middle East. They don’t put on [trial] Syria...or Iran. This is pure antisemitism…This is an affront for all democracies.”

Israel’s allies should stand together to protest and take action against this travesty of justice and total departure from the ICC’s stated aims and rules.

Several of them have already taken a stand, and pointed out the weaknesses of the decision saying Bensouda may investigate Israel. The US sanctioned Bensouda and other ICC officials during the Trump administration, and the Biden administration has left those sanctions in place.

US Secretary of State Antony Blinken criticized the decision on Thursday, saying “The United States firmly opposes and is deeply disappointed by this decision. The ICC has no jurisdiction over this matter. Israel is not a party to the ICC and has not consented to the Court’s jurisdiction, and we have serious concerns about the ICC’s attempts to exercise its jurisdiction over Israeli personnel.”

If international justice means anything to Israel’s other allies, they must make their voices heard. Countries around the world, members of the ICC, have recognized that the court has major shortcomings in its operations and ordered a comprehensive review initiated by the Netherlands that resulted in a 348-page report released in September calling for reform.

This is a clear indication that the ICC’s rot goes deeper than just Israel, and this is a problem that many member states must step in to solve.

What starts with Israel will not end with Israel. If the court thinks it can determine Israel’s borders, it could easily do the same for other countries as well. If the ICC’s latest decision is not met with a fight, the court could start adjudicating political questions instead of prosecuting perpetrators of genocide. That would be a total miscarriage of justice.