**Legal experts argue impartiality, point to ICC bias in alleged Israeli ‘war crimes’ case**

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The Jewish state has long been no stranger to criticism and double standards in international bodies. For decades, the United Nations and its associated bodies have singled out Israel for criticism, while ignoring human-rights abuses elsewhere.

A recent decision by the International Criminal Court’s top prosecutor has led to concerns that Israel is once again being singled out, while leading to questions from legal experts over the court’s jurisdiction over issues pertaining to the Israeli-Palestinian dispute, as well as its impartiality in the case.

ICC chief prosecutor Fatou Bensouda stated last week that she considers “Palestine” as a state for the purposes of transferring criminal jurisdiction over its territory to The Hague, which sets in motion an investigation into alleged war crimes committed by Israel in the “Occupied Palestinian Territory,” or the West Bank, Gaza Strip and eastern Jerusalem.

Eugene Kontorovich, director of International Law at the Jerusalem-based Kohelet Policy Forum and director of the Center for International Law in the Middle East at George Mason University in Washington, D.C., told JNS that Bensouda “has come to the absurd decision that a non-country can sue a non-member of the ICC for a non-crime that nobody has ever been prosecuted for, in which the ICC prosecutor herself has said does not exist when it comes to Russia and Crimea or Turkey and Cyprus.”

As an initial signatory to the Rome Statue in 2000, which established the International Criminal Court, the country hoped that the court would act in good faith, yet just two years later, Israel it no longer intended to become a party to the statute over concerns that the ICC, subjected to political pressures and its impartiality compromised, would invent new crimes and treat Israel unfairly.

Now that Bensouda has declared that the ICC has jurisdiction to rule on Israeli “crimes” in “Palestine,” one issue she is looking at are “war crimes” Israel allegedly committed “by facilitating the transfer of Israeli civilians into the West Bank since June 13, 2014.”

The other issue she is investigating is “whether efforts by Israeli authorities, beginning in 2018, to disperse demonstrations along the Gaza border fence constitute a disproportionate use of force that rises to the threshold of an international crime.”

In response to a number of difficulties raised as to the court’s jurisdiction to decide on matters related to the Israeli-Palestinian conflict, Bensouda said she believes that “Palestine is a state; it is a party to the Rome Statute; and its territory, in which the ICC may exercise jurisdiction, is the West Bank, including East Jerusalem and the Gaza Strip.”

In December 2019, Israel’s Attorney General Avichai Mandelblit released a detailed memorandum to explain why the ICC has no jurisdiction over Palestine, arguing that “Palestine” has failed to meet the necessary precondition of possessing criminal jurisdiction over its territory since a sovereign Palestinian state does not exist at this time.

Five years ago, Bensouda initiated a preliminary investigation into alleged Israeli crimes against Palestinians. Then, in December 2019, she announced her conclusion that the court has jurisdiction over events in “Palestine” since June 13, 2014, and that the other necessary preconditions for investigation have been met.

Following the announcement, the pre-trial chamber—comprised of three-judges Péter Kovács of Hungary, Marc Perrin de Brichambaut of France and Reine Adélaïde Sophie Alapini-Gansou of Benin—will need to rule on the matter.

Experts question the legitimacy of the ICC to judge Israel

According to Palestinian Media Watch, Bensouda’s impartiality is questionable as there have been contacts at the highest level between the ICC and the Palestinian Authority in what can be deemed apparent collusion to charge Israel with crimes.

Indeed, a recent study published by the Jerusalem Center for Public Affairs highlights the ICC’s collaboration with and reliance on four radical NGOs: Al-Haq, Al-Dameer, Al-Mezan and the Palestinian Center for Human Rights, some of which are affiliated with terror organizations, to promote complaints against the United States and Israel at the ICC.

Additionally, in a recent article in The Jerusalem Post, PMW head of legal strategies Maurice Hirsch accused the ICC of colluding with the P.A. to hide payments to terrorists to avoid breaking rules on donor funding.

PMW also revealed an important article on the Jordanian Jafra News website suggesting that this entire pre-trial legal process to determine if the court has jurisdiction is actually “a mere charade with the puppeteer pulling the strings of deception” being none other than Bensouda herself.

According to PMW, “this report by Jafra News suggests that the ICC prosecutor is biased, lacks integrity, and therefore is incapable of conducting a fair proceeding concerning Israel.”

According to Hirsch and Gregory Rose in an article written for the Australian Institute of International Affairs, the ICC’s “brand is tarnished: it is a U.N. body political in essence, defective in execution and undermining the very tenets of law it was set up to protect.”

Hirsch and Rose point to a number of glaring issues in the ICC’s intention to investigate Israeli “crimes.”

According to them, ICC judges are “susceptible to self-interest among political considerations”; Bensouda’s personal history “is questionable and casts doubt over her suitability to serve as prosecutor at the ICC,” and that she demonstrates “bias and close ties to Palestinian officials, some of whom should be tried for real war crimes themselves.”

They also note other problems, including the fact that the ICC is “launching investigations of Israeli leaders even before the chamber’s decision as to whether the ICC has jurisdiction to prosecute Israel; the prosecution’s inadequate responses to participants; ample evidence of prosecutorial bias; the citation of anti-Zionist academics while conspicuously omitting authoritative pro-Zionist academic literature; use of politically biased terms; [and] no mention of Arab terrorism or Gaza rocket attacks against Israelis as context for Israeli defense activities.”

Kontorovich asserted “this isn’t international law; it’s politics.”

Avi Bell, a member of the faculty of law at Bar-Ilan University and the University of San Diego School of Law, and a senior fellow at the Kohelet Policy Forum, lamented the fact that Israeli officials from the Ministry of Justice and the Ministry of Foreign Affairs are cooperating and lending legitimacy to the ICC’s probe.

“They are passing along information and treating the ICC like it is a genuine legal operation,” he told JNS.

“They are building up the reputation of an organization that is determined, frankly, to harm Israel, and is not in any way, shape or form treating the law seriously,” he said. “There are no good legal grounds for what the prosecutor wants to do.”

“Israel has been stupid so far and foolish in cooperating,” he said. “This is part of the reason [the investigation] has gotten as far as it has.”

“Once Israel made the correct decision to not be part of the ICC, it really makes no sense to grant it legitimacy and treat it like a genuine court of law,” he added.

The ruling is a foregone conclusion

Israel’s arguments notwithstanding, the ICC prosecutor appears to have already made up her mind.

Bell said that while the pre-trial court has yet to offer its opinion, “the path in which it is going is very clear,” he said. “It will rule that she has jurisdiction.”

He noted that the prosecutor has to file an annual report on the progress of every preliminary investigation.

“From her annual reports since 2015, we know exactly what the prosecutor is looking at, and it is not the many Palestinian crimes,” he said. “She is looking at alleged Israeli crimes related to settlements and crimes in combat, which include every military operation since 2014, including all incidents along the border of Gaza.”

“[Bensouda] will issue a charge sheet and arrest warrants. If any Israelis are stupid enough to go and appear in court, they will be tried. And if they are smart enough to understand it is an idiotic and stupid thing to turn themselves over to a biased court, they won’t.”

Bell noted that it is possible Bensouda may decide to carry the investigation to the point where her successor will need to file the charges, “but it is clear there are going to be charges.”

The court has had lots of time to evaluate the briefs and write their opinion, he said, “which is a foregone conclusion.”