ICC issues harsh warning to Israel of possible war crimes in Gaza

October 17, 2018

By Yonah Jeremy Bob

The Jerusalem Post

<https://www.jpost.com/Israel-News/ICC-issues-harsh-warning-to-Israel-of-possible-war-crimes-in-Gaza-569617>

With Israel-Gaza fighting heating up, the International Criminal Court prosecution gave its sternest warning yet to Israel regarding the [Khan al-Ahmar dispute](https://www.jpost.com/Arab-Israeli-Conflict/Palestinians-take-Khan-al-Ahmar-case-to-ICC-566957)and fighting with Hamas.

In an unprecedented statement that tipped its hand toward considering demolitions of Bedouin and possibly Palestinian housing as war crimes, chief prosecutor Fatou Bensouda said, “I have been following with concern the planned eviction of the Bedouin community of Khan al-Ahmar in the West Bank. Evac- uation by force now appears imminent, and with it the prospects for further escalation and violence.

“It bears recalling, as a general matter, that extensive destruction of property without military necessity and population transfers in an occupied territory constitute war crimes under the Rome Statute,” said the statement.

The Jerusalem Post has confirmed with multiple sources that the statement is viewed on both sides of the divide as a potential turning point of the ICC prosecution toward viewing Israel’s High Court of Justice decisions on settlement issues as invalid.

Moving to the fighting between Israel and Hamas, Bensouda said, “I am similarly alarmed by the continued violence, perpetrated by actors on both sides, at the Gaza border with Israel.”

Continuing, she said, “As prosecutor seized of the situation in Palestine, I therefore feel compelled to remind all parties that the situation remains under preliminary examination by my office. I continue to keep a close eye on the developments on the ground and will not hesitate to take any appropriate action, within the confines of the independent and impartial exercise of my mandate under the Rome Statute, with full respect for the principle of complementarity.”

While the statement had several qualifications to it which could still allow the ICC prosecution to decide to stay out of criminally investigating Israel and Hamas for alleged war crimes relating to the ongoing border conflict, the timing and the threat were unmistakable.

Bensouda was originally brought into the picture by a request from the Palestinian Authority in January 2015 to examine whether she had jurisdiction to criminally investigate Israel for war crimes related to the settlement enter prise and the 2014 Gaza war.

However, once she ruled based on the UN General Assembly that Palestine was a state, she has indicated that her jurisdiction is ongoing – meaning any fighting between Israel and Hamas which could be war crimes by either side could be within her purview.

Israel maintains that the ICC prosecution has no jurisdiction, noting that the UN Security Council has not recognized Palestine as a state (the ICC relies on Palestine being a state for its jurisdiction); that its own legal system for investigating alleged war crimes bars the ICC prosecution from getting involved; and that Israel is not a member of the ICC’s Rome Statute.

Also on Wednesday, British Prime Minister Theresa May continued to press Israel to call off the planned demolition of Khan al-Ahmar. She said it would be a major blow to the two-state solution and to the Palestinians establishing their capital in east Jerusalem.