ICC Prosecutor concerned about possible annexation of Jordan Valley

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International Criminal Court prosecutor Fatou Bensouda said on Thursday that she is concerned about potential Israeli moves to annex the Jordan Valley.

Bensouda made the comment in a key section of her annual report reviewing a range of conflict areas around the world that she is probing.

Her final decision could have a massive impact on Israel legally, diplomatically, and in terms of the country’s international image.

Like her 2018 annual report, Bensouda once again said that she was close to a broader decision on whether to delve deeper into the war crimes debate relating to the Israeli-Palestinian conflict.

Bensouda’s term expires in mid-2021, which means that the fall 2020 report will be her last major chance to issue a decision on the conflict.

Though Bensouda’s 2018 report hinted that a decision might come down by mid-2019, her decision may have been pushed off by analyzing the ongoing Gaza border conflict between Israel and Hamas.

Some have suggested that the ICC slowed its push on the Israel-Palestine file due to threats against it by the Trump administration.

But that would seem to be belied by the ICC Prosecution being adamant this week to pursue a case against the US for alleged torture of detainees in Afghanistan, even after an ICC Pretrial Chamber tried to get Bensouda to drop the case.

In any event, the ICC Prosecution was not willing to reveal more signs about whether the final decision will come out in the coming weeks or around 18 months from now.

The three main issues Bensouda is probing are alleged war crimes related to the 2014 Gaza War, the settlement enterprise, and the March 2018-present Gaza border conflict.

In a new section of the report, Bensouda also probes the Palestinian Authority for torturing its own civilians and for so-called pay-for-slay payments.

Regarding the 2014 Gaza war, Bensouda wrote, “With respect to crimes allegedly committed by members of the IDF, the Office has collected information on and evaluated relevant investigative activities at the national level within the IDF military justice system.

“With respect to crimes allegedly committed” by Palestinian fighters in Gaza, “the Office has been unable to identify any relevant national proceedings,” said the ICC Prosecutor.

She also noted that reviewing whether “any of the identified potential cases meet the gravity” requirement for the ICC, which states that the prosecutor only looks into large scale war crimes.

These statements do not mean that the IDF is off the hook for alleged war crimes relating to 2,100 killed Palestinians (between 50% and 80% civilians) from that war. The ICC could decide the IDF probes were insufficient, or that they did not probe senior commanders and only looked at junior soldiers.

But the statement continues a trend from the 2018 report suggesting the ICC may give Israel a broad pass on the 2014 war by deciding to recognize the IDF probes as precluding an ICC probe.

If so, it would be a stunning turnaround from a 2015 UN Human Rights Council report that condemned the IDF as having systematically perpetrated war crimes.

The report also continued a trend from the 2018 report suggesting that the ICC views Hamas as having failed to probe war crimes committed by its fighters.

Such a criminal investigation against Hamas would be a first.

Regarding the settlement enterprise, the report had fewer statistics and updates than in previous reports, yet it had a key line appearing to threaten Israel, stating that “The Office has also followed with concern proposals advanced during the recent electoral process, to be tabled to the Knesset, for Israel to annex the Jordan Valley in the West Bank.”

This line followed a trend of sending deterrent messages to Israel regarding certain changes on the ground in disputed areas, including a previous statement from the ICC that got Israel to back-off from a change of the status quo in the E-1 area between Jerusalem and the West Bank.

Besides that statement and noting the number of Israeli settlements and outposts in the West Bank and east Jerusalem, Bensouda did not tip her hand, neutrally summarizing the Israeli-Palestinian dispute over certain areas.

Past reports explicitly attacked the settlements as violating international law and seemed to dismiss the Israeli High Court of Justice by saying that it had declined to rule on whether the settlements policy is a judicial issue.

While recognizing that the High Court has ruled on a range of specific settlements, past reports appeared to set up a scenario where the ICC could declare the settlement enterprise a war crime, and then only drop certain settlements from the probe if the High Court happened to deal with them.

Another major issue the report focused on was the Gaza border conflict since March 2018.

Though overall Bensouda adopted the Palestinian narrative that most Palestinians near the border fence have been nonviolent, she acknowledged that some were violent and had used fire kites and balloons to attack Israel.

In addition, the report noted allegations that Gaza fighters “made use of civilians as shields and of child soldiers during the demonstrations.”

One significant new point was that the ICC report mentioned the May 2018 Israeli Supreme Court decision probing and endorsing the IDF’s rules of engagement regarding the demonstrations.

It was unclear if mentioning the Israeli Supreme Court decision – after the 2018 report ignored that decision – meant a greater acknowledgment of the Israeli justice system, or was merely a technical addition.

Bensouda’s report also mentioned IDF probes of the deaths of 11 demonstrators and the October 28, 2019, conviction of an IDF soldier “in relation to the killing of a teenager who took part in the demonstrations.”

For the first time, Bensouda went into detail about her analyzing whether the PA has violated war crimes by torturing its own civilians, and through financial incentives to some of its people to perpetrate violence against Israel.

“The Office has also received allegations that: (i) Palestinian security and intelligence services in the West Bank have committed the crime against humanity of torture and related acts against civilians…and (ii) the PA have encouraged and provided financial incentives for the commission of violence through their provision of payments to the families of Palestinians…involved…in carrying out attacks against Israeli citizens.

“The payment of such stipends may give rise to Rome Statute crimes,” the report said.