Palestinians find the ICC is not the home turf they thought it would be

December 8, 2019

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The Times of Israel

<https://www.timesofisrael.com/palestinians-find-the-icc-is-not-the-home-turf-they-thought-it-would-be/>

The International Criminal Court’s January 2015 decision to open a preliminary examination into “the situation in Palestine” was [widely lauded](https://www.timesofisrael.com/hamas-lauds-icc-probe-of-alleged-israeli-crime) by Palestinian leaders, who hoped it would a first step toward charging Israel with war crimes.

The Palestinians were confident that ICC prosecutor Fatou Bensouda — tasked with probing Israeli construction beyond the Green Line, the 2014 Gaza war and the so-called March of Return Gaza border protests that began in March 2018 — would uncover evidence that would lead to the opening of a full criminal investigation at The Hague.

However, those same leaders in the West Bank and Gaza have grown frustrated as the preliminary investigation led by Bensouda has dragged on for nearly five years.

That frustration may have reached its boiling point on Thursday, when Bensouda published a status update on her investigation that avoided offering a timetable for when the preliminary probe would be finished, despite her declaration a year ago that her office had made [“significant” progress](https://www.timesofisrael.com/icc-prosecutors-report-significant-progress-in-palestinian-probe/) and was preparing to present its findings.

While Bensouda in her latest report made a point of expressing “[concern](https://www.timesofisrael.com/icc-prosecutor-concerned-over-netanyahus-west-bank-annexation-plans/)” over Prime Minister Benjamin Netanyahu’s repeated vows to annex the Jordan Valley, the Palestinians’ dissatisfaction came after she highlighted their faults as well, namely the Palestinian Authority police’s alleged torture of civilian detainees and the PA’s financial compensation of those involved in carrying out attacks against Israelis.

Ramallah says those payments are a national duty to families affected by decades of violence, while Israel argues that they incentivize further attacks.

“These as well as any other alleged crimes that may occur in the future
require further assessment,” Bensouda wrote Thursday, making clear that her investigation was not only looking into Israeli actions and that Ramallah’s efforts to have Jerusalem charged for war crimes could backfire.

In addition to lashing out at the ICC for its failure to complete the preliminary investigation, the PA Foreign Ministry in a statement accused Bensouda’s office of “distort[ing] or complete[ly] omit[ting] relevant information.”

Much of the six-page status update on the preliminary examination focused on allegations of excessive force by the IDF in Gaza, including the firing of live bullets at unarmed demonstrators. But those points were followed by a recognition that not all protesters have been peaceful and that terror groups have been accused of hiding among civilians.

“The report relies on misleading narratives of politicized nature under the cover of false equivalence, rather than on objective and accurate description of relevant facts,” the PA Foreign Ministry asserted.

Speaking to The Times of Israel Sunday, Palestinian Liberation Organization Executive Committee member Wasel Abu Yousef claimed that the ICC had “deviated” from the main issues at hand due to American pressure.

“This is an effort to create so-called ‘balance’ for the sake of America,” he said.

Washington revoked Besouda’s visa earlier this year as the chief prosecutor’s office weighed investigating American soldiers’ actions in Afghanistan, and Secretary of State Mike Pompeo warned in March that any ICC member involved in probing Israel would be barred entry into the US.

Abu Yousef insisted that he had no issue with the ICC looking into Palestinian conduct as well as Israeli, and recognized that that was the risk the PA was taking by asking the top international court to probe its conflict with Israel.

Ghassan Khatib, a political science professor at Birzeit University in the West Bank, said that it was still worth it for Ramallah to push for the probe, despite its unintended consequences. “Since Palestinians leadership and people are relying heavily on the international legality, they have to be consistent with it, and if they have violations, they have to adjust or and accept responsibility,” he argued, while adding that Bensouda’s remarks directed against the PA were “minor compared to the Israeli obvious Israeli violations of international law.”

“However, its been almost five years and we want these main [issues] to be dealt with in a serious matter,” he added, referring to the main focuses of the probe — the Israel-Gaza conflict and West Bank settlements.

Bensouda’s Thursday report wasn’t even the first batch of bad news for those seeking to charge Israel at The Hague. Three days earlier, the ICC chief prosecutor [announced her refusal](https://www.timesofisrael.com/for-third-time-icc-prosecutor-refuses-to-open-probe-into-gaza-flotilla-incident/) for the third time to open an investigation into the 2010 Gaza flotilla incident, saying any crimes allegedly committed during the raid were not severe enough to merit such a probe.

On May 31, 2010, Israeli commandos killed 10 Turkish citizens aboard the Mavi Marmara, one of several vessels that was aiming to break the Gaza blockade, after the soldiers were violently attacked by activists when they boarded the vessel.

It was the third time Bensouda refused a request from Comoros, a small Muslim-majority nation in the Indian ocean, that sought to have criminal charges brought against the IDF soldiers involved in the flotilla incident.

Israel has done much to avoid any dealings with the ICC, with officials long accusing it of demonstrating bias against the Jewish state and asserting that the court [has no jurisdiction](https://www.timesofisrael.com/attorney-general-icc-cant-rule-on-conflict-as-there-is-no-palestinian-state/) over its conflict with the Palestinians.

The PA, meanwhile, has regularly sought assistance from the court in the hope that it would receive a more sympathetic ear. What Ramallah has found, however, is that sympathy has extended to Israel as well, and that Bensouda’s office is unwilling to rely on the Palestinian narrative alone.