ICC threatens new war crimes allegations against Israel, Hamas

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<https://www.jpost.com/arab-israeli-conflict/war-crimes-court-concerned-over-violence-in-west-bank-prosecutor-667917>

International Criminal Court Prosecutor Fatou Bensouda on Wednesday threatened both Israel and Hamas with new possible [war crimes allegations](https://www.jpost.com/israel-news/israeli-response-to-icc-you-have-no-jurisdiction-over-us-664533) relating to the ongoing conflict.

In a series of tweets, Bensouda wrote, “I note with great concern the escalation of violence in the West Bank, including East Jerusalem, as well as in and around Gaza, and the possible commission of crimes under the #RomeStatute.”

Further, she wrote, “I echo the call from the international community for calm, restraint & a stop to the violence.”

Next, she said, “I recall that my Office’s investigations will cover all sides and all the facts and evidence relevant to an assessment of whether there is individual criminal responsibility under the Statute. My Office will continue to monitor developments on the ground and will factor any matter that falls within its jurisdiction.”

In February and March, the ICC Pre-Trial Chamber and Bensouda herself each made decisions pushing forward with a full criminal probe of Israel’s and Hamas’s conduct.

Regarding Israel, Bensouda was already probing the 2014 Gaza war, the 2018 Gaza border conflict and the settlement enterprise.

With regard to Hamas, she was probing the 2014 and 2018 conflicts.

However, once an [ICC probe](https://www.jpost.com/arab-israeli-conflict/uk-notes-opposition-to-icc-probe-into-alleged-israeli-war-crimes-665098) is launched, it is open-ended and can add new events into the investigation as they occur.

Bensouda’s tweets on Wednesday were a reminder to Israel and Hamas that for the first time ever, the current major conflict is taking place in the middle of an already ongoing full ICC criminal probe.

Back in 2014, there was no ICC process in place, and the former prosecutor, Luis Moreno-Ocampo, had rejected jurisdiction over “Palestine” in early 2012.

However, by late 2012, the “State of Palestine” received a heightened nation, nonmember state status from the UN General Assembly.

In early 2015, the Palestinian Authority used this new status to request a probe of Israel, and Bensouda spent the next five years carrying out a preliminary review of the issue.

Between December 2019 and February of this year, the issue was litigated before the ICC Pre-Trial Chamber, which eventually endorsed Bensouda’s moving to the next stage, the full criminal probe.

Previously, Bensouda issued warnings to Israel over the 2018 Gaza border conflict and over a plan to evict the residents of Khan al-Ahmar.

Israel indefinitely postponed the eviction of Khan al-Ahmar residents, and the IDF acknowledged that it altered some of its tactics during the 2018 conflict.

But neither of those situations came anywhere near the magnitude of the current conflict, which could expose Israel on a much greater level.

Israel rejects ICC jurisdiction on a variety of grounds, ranging from rejecting the idea of Palestine being a state, the IDF’s self-investigating mechanisms superseding any ICC probe, the fact that Israel never ratified the Rome Statute, and the idea that building houses in the disputed West Bank cannot be a war crime, and is an issue for peace negotiations.

Bensouda steps down next month and will be replaced by Karim Khan, who Israel hopes may be more sympathetic to its views, but who to date is an unknown variable.