ICC prosecutor to step down tomorrow, new chief to decide Israel’s fate

June 15, 2021

By Yonah Jeremy Bob

The Jerusalem Post

<https://www.jpost.com/israel-news/icc-prosecutor-to-step-down-tomorrow-new-chief-to-decide-israels-fate-671116>

International Criminal Court Chief Prosecutor Fatou Bensouda will [step down](https://www.jpost.com/international/icc-has-new-prosecutor-what-are-his-bensoudas-next-steps-analysis-660074) on Wednesday after a nine-year term. She will be succeeded by British-Muslim international lawyer Karim Khan, who will be left to determine Israel’s fate in the criminal probe that Bensouda opened in March.

Bensouda’s [decision to open](https://www.jpost.com/breaking-news/icc-prosecutor-announces-formal-investigation-into-israeli-war-crimes-660818)a full war-crimes investigation against Israel relating to the 2014 Gaza War, the settlement enterprise and the 2018 Gaza border conflict came after a legal battle dating back to January 2015.

The outgoing chief prosecutor also threatened Israel and Hamas with new war-crimes charges during the May 10-21 conflict.

Still, Bensouda has strongly hinted that her office might close the probe against the IDF as the Israeli military performs its own investigations of alleged war crimes.

However, Israeli lawyers are much more concerned that her office will go after the settlement enterprise.

Views on Karim Khan are mixed. He has been associated with Muslim human-rights groups and Pakistani officials, which would prejudice him  against Israel. But he has also said the ICC is overextended and should only fight battles it can win and for which it has the resources to fight.

Khan has defended alleged war criminals from Kenya and has represented victims of ISIS.

Bensouda herself is a Gambian Muslim who sometimes wears traditional African dress. But she is equally comfortable in a business suit.

During a Jerusalem Post  interview in The Hague in 2016, all indications were that the Israeli-Palestinian conflict was not a major issue for her.

Though she ruled against Israel in March by opening a full war-crimes probe, she appeared to be acting as part of a group of internationalists who focus on getting justice for civilians killed in conflict zones. If Bensouda has been hard on Israel, she has also been hard on the US, the UK, Russia and many African nations.

These internationalists tend to criticize Israel, the US and just about any country that uses force, not from antisemitic or anti-American motives per se, but because they believe the world would be more peaceful if Israel and the US used less force.

This ideological group tends to downplay the role of terrorism and aggressive nondemocratic countries in destabilizing and threatening Israel and other countries, assuming that simple dialogue can resolve conflicts.

In that spirit, Bensouda confessed to the Post in 2016 that her office was less focused on achieving peace or balance between the contending parties than in achieving justice for its victims.

While justice for victims is important, that kind of philosophical focus is often too ready to ignore the potential destabilizing impact of such prosecutions.

However, a recent decision Bensouda issued regarding the Philippines may provide Israel some hope.

Although Bensouda has moved to open a full criminal probe against the Philippines, she also issued her most pragmatic statement to date about potential limits on the probe in light of the ICC’s limited diplomatic support and resources.

Looking into the future, Bensouda wrote: “My term as prosecutor will end shortly. Any authorized investigation in the Philippines will fall to my able successor, Mr Karim Khan, to take forward.”

“In this context, it is clear that how the Office, under his leadership, will set priorities concerning this investigation will need to take into account the operational challenges arising from the continuing pandemic, the severe limitations on the ICC’s available resources, and the Office’s current heavy work commitments,” she said.

“The Court today stands at a crossroads in several concurrent situations, where the basis to proceed is legally and factually clear, but the operational means to do so are severely lacking,” Bensouda wrote. “It is a situation that requires not only prioritization by the office… but also open and frank discussions with the Assembly of States Parties, and other stakeholders of the Rome Statute system, on the real resource needs of the Court.”

“There is a serious mismatch between situations where the Rome Statute demands action by the Prosecutor and the resources made available to the office,” she said.

Bensouda’s term was characterized by slow-moving cases, only about 10 convictions and criticism from all sides.

Some critics said she opened too many cases against African countries.

However, when Bensouda opened a case against the US, the Trump administration sanctioned her and some of her staff, and it slammed the court for going after Israel.

The Biden administration removed the sanctions, but it still criticized the ICC for pursuing both the US and Israel.