Outgoing ICC prosecutor says court ‘not ignoring anything’ from Israel-Hamas war

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The prosecutor of the International Criminal Court said Monday that the global tribunal’s relationship with the United States — plunged into the deep freeze by former president Donald Trump — is undergoing a “reset” under his successor, Joe Biden.

Prosecutor Fatou Bensouda made the comments in an interview with The Associated Press, on the day Biden was meeting NATO allies in Brussels to reaffirm Washington’s commitment to the military alliance — in another break from the Trump era of deep skepticism toward multilateralism.

Bensouda spoke to the AP at the court’s headquarters in The Hague on the eve of leaving office, after her nine-year term as the ICC’s chief prosecutor. Her successor, British lawyer Karim Khan, takes office on Wednesday.

The Trump administration hit Bensouda with sanctions for pressing ahead with investigations into the US and its allies, notably Israel, for alleged war crimes. She was subjected to a travel ban in March 2019, and, 18 months later, a freeze on her US-based assets.

“I do believe that it was wrong. Really, a red line has been crossed,” Bensouda said of the sanctions.

Biden lifted the sanctions in April, but Secretary of State Antony Blinken stressed that Washington still strongly disagreed with some actions by the court.

“We believe, however, that our concerns about these cases would be better addressed” through diplomacy “rather than through the imposition of sanctions,” Blinken wrote.

Bensouda welcomed the change of tone.

“We are at a more helpful place now because the Biden administration has decided to lift those sanctions and both the administration and ourselves, we are working on some kind of a reset that is the relationship between the ICC and the US administration,” she said.

Bensouda announced on March 3 that she was opening an investigation into actions committed by Israel and the Palestinians in the West Bank, Gaza, and East Jerusalem since June 13, 2014. The announcement of the investigation came less than a month after the court ruled it had the jurisdiction to open a probe. A preliminary investigation to settle the justiciable question took more than five years.

The ICC announcement followed a request by the Palestinians, who joined the court in 2015, after being granted non-member observer status in the United Nations General Assembly.

Israel has fiercely condemned the investigation, accusing the ICC of bias, asserting that it is capable of investigating any alleged Israel Defense Forces crimes through its own legal hierarchies, and saying the ICC has no jurisdiction, since the Palestinians do not have a state. Israel is not a member of the ICC, but its citizens could be subject to arrest abroad if warrants are issued.

Bensouda [warned both sides](https://www.timesofisrael.com/icc-may-probe-current-israel-gaza-round-of-violence-in-war-crimes-investigation/) during the recent 11-day Gaza war that she was watching their actions, which could be included in her ongoing investigation if they appeared to amount to possible crimes within the court’s jurisdiction.

During the conflict, Israel destroyed a 12-story building housing media organizations including The Associated Press and Al Jazeera. The Israeli military, which gave AP journalists and other tenants about an hour to evacuate, claimed that Hamas used the building for a military intelligence office and weapons development. The US has said that Israel provided it with information to back up that claim, though it has not commented on whether it accepts the assertion.

Media watchdog Reporters Without Borders asked the International Criminal Court [to investigate the strike](https://www.timesofisrael.com/gaza-media-building-owner-complains-to-icc-says-israeli-strike-a-war-crime/) as a possible war crime. AP has called for an independent investigation of the attack.

Bensouda did not say that her office was specifically looking at the attack, but said of the 11-day conflict: “We are not ignoring anything.”

Asked whether Israel had provided any evidence to the court about the incident, she said: “Definitely we have not had anything come from Israel about this.”

The court is also investigating allegations of possible war crimes and crimes against humanity by US troops and foreign intelligence operatives, as part of a wide-ranging investigation into the Afghanistan conflict that also covers alleged crimes by Afghan government forces and the Taliban.

Afghan authorities have asked the court to take over the probe.

Bensouda met with Afghanistan Foreign Minister Haneef Atmar last month to discuss the case.

Atmar said after the meeting that “we are confident that with full cooperation with the prosecutor, we can jointly advance the cause of justice for all of the victims of the long and devastating conflict.”

Bensouda said Afghan authorities need to show the court that they are investigating the same alleged crimes identified by the ICC probe.

“If they are able to provide us with this information that they are conducting these cases, then of course, we will have to take a step back and look at what they are doing and monitor that,” she said.

Bensouda has signaled that she would attempt to round off a series of preliminary investigations before she leaves office. On Monday, [she announced that she has sought judges’ authorization](https://apnews.com/article/international-criminal-court-philippines-drug-crackdown-5c21405ca63ee2f96ea39144de30212f) to open an investigation into the Philippine government’s so-called “war on drugs.”

Before leaving office, she also urged the court’s member states to adequately fund the institution, and the international community to help it by arresting suspects. The court itself does not have a police force to carry out arrests.

She said funding for her office has not kept up with the soaring demand for investigations around the world.

“If really we’re serious about international criminal justice, if we are serious about bringing justice to the victims, we also need to provide the court with the resources that it needs to do that work,” Bensouda said.