ICC prosecutor went after Israeli settlements, but not Cyprus

June 16, 2021

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The Jerusalem Post

<https://www.jpost.com/international/icc-prosecutor-went-after-israeli-settlements-but-not-cyprus-671165>

Former International Criminal Court Prosecutor Fatou Bensouda broke her commitment to decide the case of the Turkish settlements occupation of Northern Cyprus [before leaving office Wednesday](https://www.jpost.com/israel-news/icc-prosecutor-to-step-down-tomorrow-new-chief-to-decide-israels-fate-671116), despite publicly committing to do so, and going after Israel as early as late 2019.

Amid the all-important ICC debate about whether Israeli settlements are a war crime, the question of the Turkish occupation of Northern Cyprus has been almost completely ignored. As recently as only a few weeks ago, The Jerusalem Post received clear indications that Bensouda still intended to rule on the Turkish settlements issue before her term ended.

Sources have indicated that there were last minute changes. Bensouda said she had hoped that “during 2021 decisions could be reached either to dismiss or proceed, with respect to Mexico, Cyprus (settlements), Yemen (arm exporters), Cambodia (land grabbing) and Syria/Jordan (deportation). Despite progress made on a number of these assessments, I will again be handing these over to the incoming Prosecutor to consider and decide upon, as he deems appropriate.”

All of this came after Bensouda publicly committed on February 18 during a virtual conference hosted by the Institute of International and European Affairs to making the decision before the end of her term.

Her office issued a flood of last minute decisions on Tuesday but nothing more about the Turkish settlements and Northern Cyprus before her term expired at noon on Wednesday.

Israeli officials and Israel’s supporters have accused Bensouda and the ICC of a [double standard on the settlements issue.](https://www.jpost.com/israel-news/turkish-occupation-of-cyprus-ignored-amid-icc-israeli-settlements-storm-617031)

In fact, given that the Northern Cyprus case is another rare file dealing with alleged forced population transfer as a war crime (as opposed to “classic” war crimes like genocide), the ICC’s decision on Cyprus would have had major implications for how it treats Israel’s settlements in the West Bank.

Until recent months, the timeline regarding an ICC decision about Northern Cyprus had been muddled.

Shurat HaDin President Nitsana Darshan-Leitner responded, “We are disappointed but obviously not at all surprised that Chief Prosecutor Bensouda has left office without taking up the issue of Turkey’s illegal occupation of Northern Cyprus.

“Shurat HaDin brought this communication to The Hague years ago and has watched over and over again as Bensouda simply ignored it. It seemed very obvious to us that she was intent upon targeting Israel alone and the matter of so called ‘occupied territories’ and Article 49 of the Geneva Convention did not have real interest to her, independent of the Palestinians’ allegations against Israel.”

Further, the NGO said, “She saw these contentions under international law, not as a search for justice but rather as a sword with which to accuse, investigate, prosecute and convict the Jewish State. We never believed that the ICC had the moral courage nor an actual interest in pursuing justice in conflicts around the world such as Cyprus, Sahara, Tibet or the Ukraine and remained obsessed with the reestablishment of Jewish communities in East Jerusalem and the West Bank which it is trying to paint as a war crime.”

Darshan-Leitner said the ICC has become a political tool which turns “a blind eye to Turkey’s crimes in Northern Cyprus while pursuing the Palestinians’ blood libels. This is the clearest confirmation of why Israel must never join the ICC nor cooperate in any way with investigations by any of the international bodies.”

The Palestinians officially asked for ICC intervention against Israel in January 2015.

Bensouda essentially declared Israeli settlements to be war crimes in December 2019. The ICC Pre-Trial Chamber mostly green-lit a full criminal war crimes probe in February and Bensouda ordered the full probe in March.

In contrast, the first complaint by a Cypriot official, represented by Shurat Hadin, against Turkey’s settlements in Northern Cyprus was filed in July 2014 – half a year earlier than the claims against Israel.

It is unclear why Bensouda moved forward nearly 18 months sooner on the Israeli-Palestinian situation and has declined to decide the Northern Cyprus situation.

In fact, there had been indications that Bensouda would decide about Northern Cyprus by the end of 2020, but this never materialized.

On January 18, Shurat Hadin sent a letter to the ICC’s IOC complaining about a lack of movement on the Northern Cyprus situation as well as other unrelated issues concerning the Palestinian Authority.

Bensouda can however give some reasons for why the Cyprus case might move more slowly.

First, the government of Cyprus itself has never officially referred the case to her. Rather, Shurat Hadin filed a complaint on behalf of a specific member of the EU parliament from Cyprus, Costas Mavrides. From a technical perspective, that meant that if Bensouda did move forward, it would have been based on her rarely used power to initiate a case. An ICC prosecutor does not do this lightly, and when they do, they need permission from the ICC judges.

But there are counter-arguments.

Unlike the Israeli case, where the main country being probed, Israel, is not even a member of the Rome Statute and is against referring the case, Cyprus is a proud participating member of the Rome Statute.

If Cyprus does not refer the case to the ICC, it is likely out of fear of Turkey.

In fact, the entire world views Turkey as an illegal occupier of Northern Cyprus, which it invaded in 1974 to topple a junta of Greek Cypriot generals intending to unite the island with Greece, and then remained on one-third of the island.

The Cypriot-Shurat Hadin complaint alleged “the Turkish occupation is one of the most brazen settlement enterprises in modern times.”

In addition to moving thousands of Turkish citizens into the area, the complaint said that Turkey’s aggressive policies included forced “displacement” of Cypriots from their homes and the “murder or disappearances of thousands of Greek Cypriots.”

The bottom line is that official and coordinated Turkish government policies have led to more than 100,000 Turkish settlers in the area, who now constitute around half of the population.

The Shurat Hadin complaint describes the Turkish government’s systematic policy to encourage ethnic Turkish immigration while acting aggressively to transfer native Cypriots out of the territory.

Some experts have told the Post that Turkey’s invasion, occupation and active alteration of the landscape in Northern Cyprus is the true paradigm of population transfer as war crime.

The experts say that Turkey has thrown out large groups of Greeks without any pretension of concern for their rights, has dispossessed expelled Greek communities and has not adhered to any of the laws of belligerent occupation.

No UN resolution could be interpreted to give Turkey any rights in Cyprus.

In contrast, UN Resolution 242 says that Israel and the Palestinians must resolve their differences through negotiations. While most countries view Israeli settlements as illegal (and, notably, the US during the Trump administration viewed them as legal), it is not because they think Israel must withdraw from all the West Bank, but they do not want Israel changing facts on the ground until the dispute is settled. If there were peace, they would not oppose some settlements – as proposed under the Camp David II Clinton parameters.