**ARE ISRAELIS IN DANGER FROM ICC OR NOT? – ANALYSIS**

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January 3, 2020: "How much more dangerous did the world become for Israelis following International Criminal Court Prosecutor Fatou Bensouda’s December 20 decision to delve deeper into the Israeli-Palestinian conflict?

Are Israelis really in danger of being arrested for war crimes tomorrow while touring London or Paris?

After The Jerusalem Post extensively queried Bensouda this week, the good, bad and surprising news is that her “blockbuster” decision did not change the world nearly as much as reported by most outlets.

There have always been three mega-questions from the Israeli perspective: 1) Would the ICC accept a State of Palestine; 2) Would it go after the IDF for war crimes; and 3) would it go after the settlement enterprise as a war crime.

Regarding Palestine, the battle ended in one week in January 2015. The ICC registrar, prosecutor and its legislative body, the Assembly of State Parties, all accepted it as a state.

For nearly five years, the Palestinians have been elected multiple times to ICC posts and acted like a normal state party.

Fair or not, Bensouda’s December 20 decision and the expected ICC Pretrial Chamber endorsement of her decision sometime between now and March 20 are just ratifying ancient history. So nothing really changed.

While Israel objected to the situation in January 2015, it still decided to cooperate with the ICC then.

The reason was because the only issues that really matter are the IDF and the settlements themselves, and those issues were still in play.

A careful reading of Bensouda’s 120-page legal brief, as opposed to her short press summary, hinted that a lot of those issues were still undecided – something the Post confirmed in its interview with Bensouda.

She has not yet invalidated Israel’s legal system and has not decided to go after IDF soldiers.

If she goes down that road it will be at a much later date and she will have a separate large report to address those issues in detail.

Bensouda also has explicitly recognized that Israel’s legal position – since it does probe alleged war crimes by its soldiers – is superior to Hamas’s, which never probes its intentional firing rockets at civilians.

That this issue is open also means Israel may still be able to influence and dialogue with Bensouda to reduce her level of scrutiny regarding the IDF.

In the end, she may decide to “only” go after, for example, Brig.-Gen. Ofer Winter, the IDF’s commander in the field during the Black Friday incident in which the largest number of Palestinian civilians were killed. Israel would be furious, but it would not be the same as thousands of Israeli soldiers and potential prime minister Benny Gantz having to worry about traveling abroad.

Bensouda may still fulfill Israel’s worst nightmare regarding the IDF at a later date. Yet, in the meantime, she has not made that decision and, as such, can still be influenced.

Though Israel is angry with Bensouda’s December 20 decision on a variety of points, she was already influenced to: 1) take five years – from 2015 to two weeks ago – to issue her initial decision; 2) seek backup from the ICC Pretrial Chamber regarding her views on Palestine, though she believes such backup was not strictly necessary; 3) go after Hamas for firing rockets and using human shields; and 4) go after the PA for torture.

So the grand game over the fate of the IDF is still in play.

The worst news for Israel is regarding the settlement enterprise.

There, Bensouda seems to have disregarded the idea that they are a political-diplomatic issue to be resolved between the parties, which does not fit into the “genocide” and “war crimes” box, and she has mostly disregarded Israeli High Court of Justice decisions evacuating certain settlements.

However, even regarding that, the interview with Bensouda confirmed a potentially significant silver lining.

Although some critics of Israel were hoping that Bensouda would take the broadest-possible interpretation to go after even settlements built before June 2014, she made it clear that June 2014 was her cutoff date.

Essentially, that means that more than 90% of the settlements cannot face ICC scrutiny, and the problem could be limited to a much smaller number of recent outposts.

There is another major possible upside.

Since the settlement blocs are all pre-2014 and not being scrutinized by the ICC, Israel’s ICC settlement problem could potentially all go away if there is a future peace agreement.

If Israel reaches a future peace agreement with the Palestinians in which it has to withdraw some of the recent outposts but keeps the settlements blocs, there would likely be nothing left for the ICC to go after.

In theory, the ICC could go forward with the case on its own no matter what. But in practice, it is likely that a peace deal resolving the borders issue would end the ICC case with respect to settlements.

Obviously, there is no peace deal anywhere near the horizon, but Bensouda’s interview also effectively confirmed it will still be years before the real point of no return regarding the ICC criminal probe of Israel.

Probably the most disturbing issue from an Israeli perspective is how hard the ICC is working to create a sort of relative neutrality between Israel and Hamas.

However, Bensouda basically confirmed to the Post she would likely move forward against Hamas more quickly since it has not probed any of its rocket firing on Israeli civilians, whereas Israel has probed allegations against IDF soldiers.

The Bensouda interview with the Post does not take away that Israel has likely lost some of the large battles before the ICC. However, it did indicate that the most crucial battles are still in play, and dialogue may yet influence Bensouda to reach a more middle-of-the-road position.