**ICC under Biden – a revolutionary shift in policy from Trump – analysis**

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Israeli legal officials expected December 20, 2019 to be a day which would live in infamy from Jerusalem’s perspective, following International Criminal Court Prosecutor Fatou Bensouda’s decision to move toward a criminal probe into Israeli military and settlement activities.

It has not turned out that way.

Almost a year later, nothing real has moved on the issue. Moreover, with Joe Biden ascending to the US presidency in two months, the whole question of how the ICC will treat Israel is back up in the air.

There are many sides to what a Biden administration could mean for the ICC, and as a side point, for Israel.

First, Biden will not treat the ICC with intense enmity like the Trump administration did.

Like the Obama administration and in line with the general ideology of Democrats in the US, Biden will be pro-international criminal justice.

However, most likely, like Obama and the Clinton administration before him, he will oppose any efforts by the ICC to come after US citizens for alleged torturing of detainees in Afghanistan during the 2003-2004 post-9/11 period.

This is different than the Trump administration, which not only opposed ICC actions against the US, but generally was hostile to international treaties, organizations and efforts as potentially undermining US interests.

For one, Biden will likely withdraw visa and financial sanctions, which the Trump administration imposed on ICC officials and will likely suffice with verbally disagreeing with ICC efforts to probe US citizens.

The truth is that putting the US and Israel on the side, most of the ICC’s investigations are legitimate attempts by the world to prosecute genocide in Africa and some other places.

If the ICC did not exist at all or is weakened too much, this new praiseworthy deterrent against genocide, however imperfect, might also be erased.

In that sense, it is hard to argue that general support by Biden for the ICC to continue to prosecute genocide is not a good thing.

But the next big question becomes whether the Biden administration will continue to try to protect Israel from ICC scrutiny and whether it will put any teeth behind that backing as the Trump administration did with sanctions.

In this area, Israelis may fear that the Biden administration could draw a distinction between Israel’s right of self-defense and the settlement enterprise.

It is unlikely that Biden would not voice strong opposition by the ICC to go after IDF officials relating to the 2014 Gaza War.

Biden has supported Israeli security needs for decades and notably refused to use US military aid as a chip to pressure Israel over policy disagreements, even when several other Democratic candidates for president, like senators Bernie Sanders and Elizabeth Warren, committed to this.

Yet, just as Biden has supported the IDF, he has a consistently critical record of the settlements.

When the Obama administration allowed the anti-settlements UN Security Council Resolution 2334 to pass in December 2016, The Jerusalem Post reported from Likud Minister Ze’ev Elkin that Biden was involved in getting Ukraine to vote for the resolution.

Biden’s spokesperson at the time denied the claim, while Elkin stood by the claim, even as he framed Biden’s action as potentially being merely following the orders of then president Barack Obama.

All of this is important because one scenario which top Israeli legal officials fear is where the ICC leaves the IDF out of its crosshairs, but goes after the settlement enterprise, and those public officials who have promoted it, for war crimes.

Might Biden turn a blind eye to such a decision?

SO IT is possible that a Biden shift of position on the ICC could positively impact the fight against genocide in Africa and some other countries, but negatively impact Israel – where the war crimes allegations are far more connected to diplomacy and the complex dynamics of the Israeli-Palestinian conflict.

The next question is when the ICC will decide.

Bensouda wanted her December 2019 decision to have the broadest possible support, so she requested the ICC Pretrial Chamber effectively ratify her views, including recognizing Palestinian statehood.

Originally, she asked for a ruling by March.

When the ICC ignored that request, there was speculation of a ruling over the summer, possibly before July 1 when Israel was considering a West Bank annexation move.

However, The Jerusalem Post correctly predicted that the ICC would wait to see who won the US presidency.

Whether the ICC goes after the US and Israel or not, the ICC judges must have known that they would face less hostility from a Biden administration.

So will they decide imminently, knowing that the Trump administration will no longer trouble them much longer?

Will they wait to give the Biden administration time to get its bearings and enter a dialogue?

Another variable is that a successor for Bensouda is due to be chosen next month, who will then take office in June 2021.

The ICC judges may want to wait for the new ICC prosecutor to weigh in on the US and Israel cases.

But the selection process is in chaos after some big famous names were vetoed by the ICC’s member states as too political and the four lead candidates interviewed this past summer were all viewed as underwhelming and lacking the stature to save the ICC from multiple fronts of criticism.

Either way, sooner or later Israel will find out both where the Biden administration stands and what its future is before the ICC.

The hope in Israel is that the world’s gain in greater support for combating genocide does not come in parallel to efforts to reduce the complex Israeli-Palestinian conflict to a one-sided criminal case.”