**The ICC, settlements and the Orwellian denial of the Jewish presence in Israel**

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Jerusalem Post

December 27, 2019

<https://www.jpost.com/Arab-Israeli-Conflict/The-ICC-settlements-and-the-Orwellian-denial-of-the-Jewish-presence-in-Israel-612225>

In December 5, the Office of the Prosecutor of the International Criminal Court issued its yearly report on preliminary examination activities. In it, the prosecutor confirmed that it was particularly focusing on reported settlement-related activities engaged in by Israeli authorities in the West Bank and east Jerusalem. This means that for the prosecutor of the ICC, what she calls settlement-related activities are considered international crimes under the Rome Statute.

On December 20, the prosecutor filed a motion with a pre-trial chamber requesting a ruling on the scope of the exercise of the court’s territorial jurisdiction. In that motion the prosecutor indicated that she considered that all conditions were met for the opening of a formal investigation in the situation of Palestine, pending the pre-trial chamber’s determination on territorial jurisdiction.

Interestingly, in her motion, the prosecutor relies heavily on the idea that settlement activities are per se illegal, to advocate that Israel would be principally responsible for Palestine’s incapacity to exercise its right to self-determination, and that therefore, despite the fact that all relevant criteria of statehood would not be fulfilled at this point in time, Palestine should still be considered a state under international law.

These statements coming from the ICC prosecutor follow by a few weeks the announcement by US Secretary of State Mike Pompeo that “the establishment of Israeli civilian settlements in the West Bank is not per se inconsistent with international law,” thus reversing the Obama administration’s position adopted in 2016, especially when it supported UNSC 2334 of 23 December 2016, apparently drafted by the UK with the help of the Palestinians, which considered all settlements illegal under international law.

This announcement has sparked considerable reaction and commentary on whether it was legally grounded or not, in other words, on the legality of Israeli activities in Judea and Samaria and east Jerusalem. This is not the place to enter into these discussions. What is interesting here is to explore one specific aspect of them and uncover what is behind the position that the Israeli presence in Judea and Samaria and east Jerusalem is per se illegal.

If one analyzes the arguments put forward in that respect, it becomes apparent that those who support them, willingly or unwillingly, serve the cause of a certain narrative. What is this narrative? That there exists an Arab autochthonous (indigenous) population and that logically this population owns the land by virtue of a right of first occupant.

This forms the basis of the Palestinian narrative advocated since the creation of the PLO in the 1960s. In this context, Jewish Israelis are portrayed exclusively as settlers coming from Europe. As a consequence of this narrative the idea is put forward that the State of Israel is the result of the colonization of the territory by a foreign population. Why? Because colonization – especially in the context of the decolonization process of the 1960s, being as such an illegitimate process – the State of Israel could be denounced as illegitimate.