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By Jean Shaoul
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International Criminal Court to investigate Israeli war crimes

Fatou Bensouda, the International Criminal Court's (ICC) chief prosecutor in The Hague, has announced that there is sufficient evidence to investigate alleged Israeli war crimes in the West Bank, East Jerusalem and the Gaza Strip.

Her announcement constitutes an indictment of Israel's political, military and judicial establishment, which has inflicted war, repression, occupation, dispossession, torture and collective punishment on the Palestinian people.

As the ICC deals with the personal criminal culpability of individuals, such an investigation could open up current and former government officials, top officers in the Israel Defence Forces (IDF) and low-ranking military personnel to international arrest warrants when they travel abroad, including Prime Minister Benjamin Netanyahu and opposition leader and former IDF chief of staff Benny Gantz.

It was Gantz who, under Netanyahu's premiership, led two of Israel's murderous assaults on Gaza, in 2012 and 2014. The latter, according to the UN, killed 2,251 Palestinians, including 1,462 civilians, among them 551 children.

Bensouda stated, after five years of procrastination, that there is "a reasonable basis to believe that war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip."

By this, she meant Israel's West Bank settlement policy, its 2014 war against Gaza and Israel's response to the nearly two-year-long Great March of Return along Gaza's border with Israel. Last year, Bensouda said she was keeping an eye on Israel's planned

demolition of Khan al-Ahmar, a Bedouin hamlet in the West Bank, saying that its razing could be a war crime.

Nevertheless, despite concluding that an investigation is warranted, the office of the ICC Prosecutor is to seek a jurisdictional ruling from ICC judges to confirm that the ICC has the necessary territorial jurisdiction for the case, a process that could drag on for several years. The jurisdiction must be settled before the ICC can proceed with a full investigation.

In June 2015, the ICC accepted Palestinian Authority (PA) President Mahmoud Abbas's application to join the court, following the UN General Assembly's upgrading of the PA's status to that of a "non-member observer state."

Under the United Nations' Rome Statute, the ICC has the power to prosecute individuals accused of genocide, crimes against humanity or war crimes committed since July 2002, when the statute came into force. States cannot be charged. Neither the US nor Israel has signed up to the ICC, as their record of wars of aggression and criminal actions would open their officials to prosecution.

Membership of the ICC enabled the Palestinians to pursue Israel over its actions in the West Bank and Gaza Strip starting from June 13, 2014, when Israel used the kidnapping and murder of three Israeli teenagers to root out Hamas supporters whom it claimed—without evidence—were responsible and to launch a one-sided war on the bourgeois clerical group that controls Gaza.

That war, whose homicidal conduct was deliberate and conceived at the highest level of government, killed 2,251 Palestinians, mostly civilians, compared to 67 Israeli soldiers, 5 Israeli civilians, including one child, and one Thai civilian. Nearly 11,000 Palestinians were injured. More than 10,000 families saw their homes destroyed and another 89,000 saw their homes damaged due to the bombing.

Bensouda has warned Israel that its leaders may face trial for the killing of unarmed demonstrators during the Great March of Return. According to Gaza's Ministry of Health, as of March 2019, the IDF had killed 266 Palestinians taking part in the border protests in pursuit of their demand that Palestinians who fled or were driven out of what is now Israel in 1947-1949 and 1967 and their descendants be allowed to return to their homes.

A staggering number of those killed were children, 50, or nearly one fifth of the total, indicating that the murder of young children has become Israel's new weapon of terror

against the Palestinians. A significant number of journalists, photographers and medical personnel were killed, despite wearing clearly visible identifying kit. Of the more than 30,000 Palestinians injured, 6,000 were hit by live fire.

Human rights groups have told the United Nations Human Rights Council, which has been carrying out an investigation into Israel's use of lethal fire against the protestors, that there is no evidence that a single protester in Gaza killed during the march was armed. This gives the lie to the government's claims that it faced armed terrorists planning to rush the border with Israel.

Foreign Minister Israel Katz said in a radio interview several days ago that Israel had not demolished a West Bank Bedouin village close to several Israeli settlement blocs that had been slated for demolition. He admitted that the decision not to demolish the hamlet was due to Bensouda's statement that the act might constitute a war crime.

Netanyahu had pulled back, Katz said, lest the destruction of the hamlet become the deciding factor in a decision to open an investigation against Israel. The High Court had given the go-ahead for the demolition and Netanyahu had repeatedly promised in the recent election campaigns to raze the village. Gideon Sa'ar, Netanyahu's unsuccessful challenger for the Likud Party leadership, lambasted him for failing to do so.

The prosecutor's announcement is a potential legal barrier to Israel's threats to annex parts of the West Bank and establish settlements in breach of the ban on an occupying power settling civilians in or annexing occupied territory. While Netanyahu had promised to annex the Jordan Valley, more than one quarter of the occupied West Bank, before the March 2 election, he has delayed doing so because Bensouda cited the threat in her decision to move forward with an investigation.

Israeli leaders universally condemned Bensouda's announcement, with Netanyahu calling it "a dark day for truth and justice" and an "absurd" decision showing that the court had become "a weapon in the political war against Israel." He added, "The court has no jurisdiction in this case. The ICC only has jurisdiction over petitions submitted by sovereign states. But there has never been a Palestinian state."

Netanyahu's rival Gantz, one of the main criminals likely to be investigated, also lashed out at Bensouda, declaring the decision was "a political decision, not a legal one." He added that "the Israeli army is one of the most moral militaries in the world," and that "the Israeli army and state of Israel do not commit war crimes."

It is expected that Israel will refuse to cooperate with the ICC, as in 2003, when the UN asked the ICC to give an advisory opinion on the legal implications of Israel's "security wall" between it and the West Bank.

The ICC has come under pressure from the major powers. Bensouda has sought to deflect allegations of anti-Israel bias by likewise accusing the Palestinians of committing war crimes, despite the grossly uneven nature of Israel's seven-week long war against Gaza in 2014 and provisions in the UN Charter recognizing the right of self-defense when attacked.

The US, under Obama and even more so under Trump, has proposed various initiatives threatening US legal action against the ICC should it act against Israel.

Last April, the Trump administration revoked Bensouda's entry visa to the US after she announced her intention to investigate potential war crimes by US soldiers in Afghanistan in 2003 and 2004. Secretary of State Mike Pompeo said the US would impose restrictions on any ICC staff who investigated US or allied personnel, marking an intensification of Washington's policy of non-cooperation with the ICC and a further rejection of international law.

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