Analysis: Does Netanyahu Care About ICC Relations or Not?

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<https://www.jpost.com/Israel-News/Does-Netanyahu-care-about-ICC-relations-or-not-574742>

Only recently Prime Minister Benjamin Netanyahu was lecturing Naftali Bennett and critics from the Right [about taking it slow and careful with building in the West Bank](https://www.jpost.com/Israel-News/Report-After-A-G-move-to-legalize-W-Bank-units-ICC-can-attack-Israel-574490).

He said that he was the grownup who saw the whole playing field, including sensitive negotiations and processes with the International Criminal Court about whether it will delve deeper into the Israeli-Palestinian conflict.

Going too big too fast or without carefully tailoring moves to [avoid setting off the ICC Prosecutor’s Office](https://www.jpost.com/Arab-Israeli-Conflict/UNHRC-chair-sees-Israel-liable-to-ICC-charges-if-bill-expelling-families-of-terrorists-passes-574527) was not in Israel’s broader national interests when it could build carefully over time and avoid a war crimes allegations conflagration. (“We will build and we will have the court’s backing,” Netanyahu said.)

That was until the end of last week.

Following the Palestinian terror attacks on Thursday, which themselves followed attacks earlier in the week, Netanyahu seems to have given the green light to moves likely to cause the ICC to see nothing but red.

First, was Attorney-General Avichai Mandelblit’s legal opinion for potentially retroactively legalizing around 2,000 Jewish West Bank units which the state had been defining as unauthorized.

ICC Prosecutor Fatou Bensouda could view the move as a massive land grab endorsed by the head of Israel’s legal system who is supposed to be applying the brakes.

Next, there is the Settlements Regulations bill 2.0, which so far the government is moving forward with despite Mandelblit saying it violates Israeli law and is liable to set off red lights with the ICC.

Finally, the government might move forward with legislation to deport families of Palestinian terrorists – again over Mandelblit’s legal objections and warnings about the ICC.

It would seem that Netanyahu is no longer concerned about ICC repercussions.

So is Netanyahu concerned about the ICC or not?

There is no easy answer to this question.

Netanyahu has spent his career railing against the UN and other international organizations for bias against Israel – something which some organizations provide regular evidence of.

This was his approach to the ICC Prosecutor when she accepted Palestine as a state in 2015 in order to begin a review of war crimes allegations against Israel and Hamas.

But along the way there have been counter-winds.

Mandelblit, Deputy Attorney-General Roy Schondorf and others convinced Netanyahu that dialogue with Bensouda was worth a shot, and that the ICC might be less biased against Israel than others.

If their work has achieved nothing else, they bought Israel the invaluable asset of time. While the UN Human Rights Council condemned Israel in 2015 for war crimes during the 2014 Gaza War, Bensouda has taken her time to decide her view, waiting years for Israeli investigations of the allegations to be completed.

Bensouda’s annual report on preliminary reviews from earlier in December even suggested that she might give Israel a pass on the 2014 Gaza War – which would be an unprecedented win for Israel and a rejection of the UNHRC’s view.

That said, the same report strongly implied that Bensouda will go after the settlement enterprise for war crimes.

Many Israelis see acceptance of Palestine as a state as an original sin and say that the ICC has favored Palestinian NGOs over Israeli ones. While Bensouda dismissed a case against Israelis regarding the 2010 Mavi Marmara flotilla, the ICC’s Pretrial Chamber has bizarrely and stubbornly tried to keep the case alive.

So many Israelis say that if Bensouda went after Israel regarding the settlements, an issue meant for negotiation under UN Resolution 242, that would permanently brand the ICC as just as anti-Israel as other international organizations.

These contrary approaches: attack and isolate the ICC, as Israel has done with other UN groups, versus continuing to try to dialogue with the ICC, probably explains Netanyahu’s zig-zags.

He probably has not decided his final view and approach and is probably evolving on the issue depending on messaging from the ICC and ever-changing domestic political considerations.

And he also has an ace-in-the-hole: Israel’s High Court of Justice. In fact, when discussing some of the new controversial initiatives which his government may back, he expressly mentioned he knew that the High Court may strike some of them down.

If the High Court strikes a controversial law down before it goes into effect, then the ICC cannot hold it against Israel.

This could be Netanyahu’s strategy in a high stakes poker game.

What if the High Court does not strike down the laws?

In that scenario, Netanyahu will have to take a final decision about the ICC and reveal his true hand.