**Just another way for the Palestinians to avoid peace**

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The announcement by Fatou Bensouda, the chief prosecutor at the International Criminal Court in The Hague, that she is prepared to begin an investigation into Israeli “war crimes” was a significant victory for those who have sought to use the court to help delegitimize the Jewish state. Bensouda has asked the tribunal in The Hague for authorization to probe the conduct of the Israel Defense Forces during the 2014 Gaza War, as well as throughout Hamas’s efforts to breach the border fence as part of its “March of Return” Friday-afternoon campaign during the last two years.

What’s more, Bensouda is also seeking authorization to treat Jews living in the West Bank and parts of Jerusalem as a war crime.

That the prosecutor also said that she was interested in investigating Hamas’s activities is being treated by some critics of Israel as evidence of her impartiality. But the brief that she seeks shows that her goal is to attack Israel, rather than to defend justice.

The focus of anger over Bensouda’s decision, however, should not be limited to the ICC. As outrageous as her stand may be, the reason this is happening is not just because a Gambian lawyer whose résumé includes a stint as the chief legal adviser to a brutal dictator decided to target the Jewish state. Rather, it’s just the latest evidence that the Palestinian Authority, which originated the complaint, would rather seek to wage legal war against Israel than to negotiate with it, and possibly end their century-long war on Zionism and the Jews.

Bensouda’s effort makes a mockery of both international law and justice. It is based on the notion that there is currently a State of Palestine that exercises sovereignty over all of the West Bank, Gaza and the portion of Jerusalem that was illegally occupied by Jordan from 1949 to 1967. Only such a sovereign state can invite the ICC to prosecute war crimes in Gaza or the territories.

As Kohelet Forum director and George Mason University Law School professor Eugene Kontorovich told JNS, Bensouda’s move is absurd because it “ignores international law by inventing a Palestinian state that does not exist and creates a crime that no one in international law has ever been charged with before: the crime of people living in places. To say it is a war crime for a Jew to live in the Jewish Quarter of the Old City is absurd. It is quite clear that the crime of people living somewhere is a crime for which one must be Jewish to be eligible.”

The biased nature of Bensouda’s reasoning is made all the more clear by the fact that the ICC has already pointedly refused to treat Russia’s moving of its citizens into Crimea, which it illegally seized from Ukraine in an act of aggression in 2014, and the presence of Turks in Northern Cyprus—the result of the Turkish invasion of that island in 1974—as worthy of prosecution.

Israel had every right to defend itself against the thousands of rockets indiscriminately fired against its cities, towns and villages by Hamas terrorists in 2014 as part of “Operation Protective Edge.” And given Hamas’s decision to use Palestinians as human shields, coupled with its use of schools and hospitals to facilitate its terrorist activities, treating the civilian casualties incurred during the fighting the Palestinians initiated as war crimes is not rooted in any coherent interpretation of international law.

The effort to treat the presence of Jews in parts of Jerusalem and the administered territories as war crimes is even more outrageous. The attempt to interpret the Geneva Convention as outlawing Israeli settlement flies in the face of the fact that these lands were not the sovereign territory of another country. They were taken by Israel during the course of a defensive war, but were also places that were previously designated as places for “close settlement” of Jews by the documents that authorized the last internationally recognized sovereign power there: the British Mandate for Palestine.

Critics of the ICC aren’t wrong to point out that Bensouda’s background as a legal official in a dictatorship should render her ineligible for her job. The fact that her office refused to meet with Israeli and Jewish legal scholars while openly consulting with the Palestinian Authority also ought to taint her pretensions to be a fair-minded judge when it comes to the Jewish state.

This is just one more example of a hypocritical international community that judges Israel and the Jews by a double standard applied to no other nation in the world. Under the circumstances, Israeli Prime Minister Benjamin Netanyahu’s accusation that Bensouda’s decision is an example of “pure anti-Semitism” is spot on.

But the real fault here is the Palestinians’ desire to go down this path, rather than attempt to make peace with Israel.

No matter how prejudiced the ICC and its chief prosecutor may be, the supposed moderates running the Palestinian Authority made this farce possible; it represents their desperation to avoid negotiations with Israel under any circumstances.

The P.A. has rejected Israeli peace offers that would have given it statehood over nearly all of the West Bank, Gaza and a share of Jerusalem. It refused because doing so would require it to give up the hope of eliminating the State of Israel altogether. That’s the reason why it not only refused to explore the Trump administration’s peace initiative, but also torpedoed President Barack Obama’s diplomatic efforts—in spite of the fact that he was determined to tilt the diplomatic playing field in their direction.

The P.A. wants to delegitimize Israel in the international courts because it is incapable of living in peace with a Jewish state, no matter where its borders are drawn. What this sorry episode at the ICC really exposes is the ongoing and delusional efforts of the Palestinians to avoid making peace at all costs.