Law NGO to Seek ICC Prosecutor’s Disqualification

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Shurat Hadin – Israel Law Center will soon be seeking the disqualification of ICC Chief Prosecutor Fatou Bensouda from dealing with issues related to the Israeli-Palestinian conflict, due to her alleged bias, the NGO is to set to announce on Monday.

Bensouda recognized “Palestine” as a state in January and has opened a preliminary examination of alleged war crimes against the IDF and the Palestinians during the 2014 Gaza war in which more than 2,100 Palestinians were killed, 73 Israelis were killed and thousands of rockets were fired by the Palestinians on Israeli communities, while Israel carried out thousands of air strikes in the Gaza Strip.

The NGO said, “The ICC prosecutor claimed she will be completely impartial and will be assessing possible crimes committed by Israelis and the Palestinians.

However, Ms. Bensouda chose to warn only Israel, in an interview with the Associated Press, that if it does not cooperate with her initial examination it may face the prospect of a full investigation based on information submitted by its critics.”

While knowledgeable sources said that the AP interview was merely Bensouda reiterating a request for Israeli cooperation, on the Israeli side, many perceived it as a hostile threat.

Tying Bensouda into ongoing UN proceedings regarding Israel and last summer’s war, Shurat Hadin said, “Ms. Bensouda is likely to take into account the recent findings of a commission of inquiry set up by UN Secretary- General Ban Ki-moon, blaming Israel’s armed forces for conducting attacks on several UN sites in Gaza.”

The NGO continued, “Ms.

Bensouda appears unmoved that Israel’s military has opened several criminal investigations into its conduct during the Gaza war and that Israel also has an independent judiciary with a demonstrated record of effective, transparent operation.

This is despite the fact that the ICC is not supposed to expend resources on matters that can be handled in the first instance by national courts, under the principle of complementarity.”

Attacking Bensouda’s decision to recognize a State of Palestine as further evidence of bias, Shurat Hadin director Nitsana Darshan-Leitner said not only the decision itself was wrong legally, but that the process for the decision was problematic.

Bensouda had improperly published her view that Palestine was essentially a state already in an op-ed in August 2014, prior to the legal issue being brought before her in January 2015, Darshan-Leitner said.

Further, Bensouda should have solicited the views of all key parties on the issue, including Israel’s, before arriving at a decision, Darshan-Leitner asserted.

Instead, Bensouda summarily accepted “Palestine” as a state in a matter of days, without any debate on the issue, Darshan- Leitner said.

Also, Shurat Hadin was set to early on Monday request that ICC Registrar Herman von Hebel reverse his decision to accept “Palestine” as a state on the basis of Bensouda’s opinion.

The NGO contends that von Hebel should have waited for guidance from the International Criminal Court and should not have delegated any discretion it might have on the issue to what it considered the biased views of the ICC prosecutor.

Bensouda at various times has been under attack from both sides.

At the time that Bensouda wrote her August 2014 op-ed, many Palestinian supporters attacked her for not already then accepting “Palestine” as a state as the Gaza war was raging, to try to get the IDF to stop fighting.

Instead, Bensouda angered Palestinian supporters by waiting to recognize “Palestine” until the Palestinians, with consensus agreement from both Fatah in the West Bank and Hamas in the Gaza Strip, formally ratified the ICC’s governing Rome Stature.

The Israeli government has also raised the stakes in strongly attacking Bensouda since she recognized the “State of Palestine” and opened a preliminary investigation into the 2014 war.

However, Shurat Hadin is the first to begin to more formally raise issues of bias as a legal maneuver in the proceedings within the ICC system