

Why the International Criminal Court is Wrong: Israel Is Not Guilty of 'War Crimes'

by Hugh Fitzgerald



Fatouh Bensouda thinks – thinks! – that Israel’s settlements may be a “war crime.” Where does this notion come from? It comes from her (mis)reading of Article 49 of the Fourth Geneva Convention, that states: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” It also prohibits the “individual or mass forcible transfers, as well as deportations of protected persons from occupied territory.”

This Article was written as a response to the behavior of Nazi Germany, which moved ethnic Germans into several countries it occupied during World War II, to provide more Lebensraum for the Master Race, and expelled non-Germans from occupied lands, both to make room for those Germans and to forcibly transfer many of those non-Germans to slave labor camps.

Israel has not violated Article 49 of the Fourth Geneva Convention, by building its settlements in Judea and Samaria (a/k/a the "West Bank") for the following reasons:

First, Israel is not an "occupying power" in Judea and Samaria (the West Bank). The West Bank is part of the territory assigned to the Jewish National Home by the Mandate for Palestine. While Jordan held that territory from 1949 to 1967, no other countries recognized its sovereignty save for Pakistan and Great Britain; Jordan was the "occupying power" during those 19 years. After the Six-Day War, Israel was able to exercise its preexisting legal right, under the provisions of the Mandate, to settle Jews anywhere from the Golan in the north to the Red Sea in the south, and from the Jordan River in the east to the Mediterranean in the west.

Prior to 1967, there had been no internationally recognized legal sovereign. Successive Israeli governments have noted that all authorized settlements are legal and consistent with international law. Bensouda, however, belongs to that not inconsiderable group who refuse to recognize the continued relevance of the Palestine Mandate and the territories it included, where "close settlement by Jews on the land" was not only legal, but to be positively encouraged.

Second, Israel has consistently argued that the settlements are not in violation of the Fourth Geneva Convention since, in its view, Israeli citizens were neither deported nor transferred to the territories. Those Israelis who now live in settlements in the West Bank or the Golan were not moved en masse according to government fiat, as happened with Germans moved about by the Nazi government. These Israelis made their housing decisions as individuals; the government did not forcibly "deport or transfer" them to settlements.

From "ICC has jurisdiction to probe Israel, Hamas for war crimes, pretrial judges rule," by Jacob Magid, [Jihad Watch](#).