

Top ICC Official Bowing to Israeli, US pressure: Lead Counsel for Victims of Israeli Attack on the Mavi Marmara

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A woman holds an image of Cevdet Kiliçlar, one of the 10 people killed by Israel's attack on the *Mavi Marmara*, Istanbul, 6 November 2012. (Ozan Köse/[Flickr](#))

The chief prosecutor of the [International Criminal Court](#) (ICC) is appealing a ruling ordering her to reconsider her decision not to investigate [Israel's lethal attack](#) on an aid flotilla to Gaza five years ago.

But Geoffrey Nice, lead counsel for victims and families of those killed in the Israeli attack on the [Mavi Marmara](#), told The Electronic Intifada that the arguments Chief Prosecutor Fatou Bensouda has put forward are "complete hogwash."

Nice, who worked for the International Criminal Tribunal for the Former Yugoslavia from 1998 to 2006, [led the prosecution](#) of former Serbian President Slobodan Milošević.

Nice and his law firm Stoke and White also represent the government of Comoros, the Indian Ocean archipelago state where the *Mavi Marmara* is registered.

Instead of doing her job and properly investigating the case, Nice said, Bensouda's appeal is "a last ditch attempt to do what would be expected of her by the US and supporters of Israel."

A professor of law at London's Gresham College who has previously represented victims before the ICC, Nice said he doubted that Bensouda even had a right to go to the appeal judges at this stage. He said his first legal response would be to ask them to throw her appeal out on procedural grounds.

Serious errors

Earlier this month, a panel of ICC judges [found](#) in a [scathing 2-1 ruling](#) that Bensouda had made serious errors of fact and law in her decision not to pursue the case.

They said that the chief prosecutor had underestimated the seriousness and international significance of the crimes and ordered her to review her decision not to proceed with an investigation into the attack.

In the early hours of 31 May 2010, Israeli commandos boarded and seized the flotilla boats in international waters in the eastern Mediterranean.

Israeli forces carried out a particularly violent armed attack on the largest vessel, *Mavi Marmara*, killing nine persons. A tenth victim [died of his injuries in June 2014](#).

The victims were all Turkish citizens. One of them, 18-year-old [Furkan Doğan](#), was also a US citizen.

The initial request for the ICC to investigate the killings was submitted in 2013 by Comoros. Bensouda decided not to proceed with a full investigation in November 2014.

Ignoring evidence

In a [notice of appeal filed Monday](#), Chief Prosecutor Bensouda says that the judges overstepped their mandate and trampled on her prosecutorial discretion by ordering her to review the case.

She also claims that the ruling gives her no clear explanation of how to review her decision.

But Nice said that her claims are “absolute rubbish” and the judges’ ruling is very clear about what matters and evidence should be looked at again.

The judges’ [16 July ruling](#) lists a long litany of errors by the prosecutor.

These include that Bensouda “wilfully ignored” evidence submitted by Comoros that Israeli forces “fired live ammunition from the boats and the helicopters before the [Israeli forces] forces boarded the *Mavi Marmara*.”

This information was supplemented by the UN Human Rights Council fact-finding mission and autopsy reports, which, according to the evidence submitted by Comoros, “indicate that persons were shot from above.”

Intent to kill

“For the purpose of her decision” whether or not to investigate, the judges conclude, “the prosecutor should have accepted that live fire may have been used prior to the boarding of the *Mavi Marmara*, and drawn the appropriate inferences.”

“This fact is extremely serious and particularly relevant to the matter under consideration,” the ruling continues, “as it may reasonably suggest that there was, on the part of the [Israeli] forces who carried out the identified crimes, a prior intention to attack and possibly kill passengers on board the *Mavi Marmara*.”

The judges also fault Bensouda for failing to properly consider the impact of the crimes beyond the immediate victims.

Israel’s violent actions against the *Mavi Marmara* would, the judges write, “have sent a clear and strong message to the people in Gaza (and beyond) that the blockade of Gaza was in full force and that even the delivery of humanitarian aid would be controlled and supervised by the Israeli authorities.”

Rule of law

Nice says the stakes are high – not just for this case but for other Palestine-related matters

that might come before the ICC.

In January, the court began a [preliminary probe](#), at the request of the Palestinian Authority, that will include Israel's attack on Gaza last summer that killed more than 2,200 Palestinians.

Will such cases be handled according to the "rule of law," Nice asks, or will victims witness "officials of the highest rank seeming yet again to bend the knee to the interests of Israel and the US?"

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