ICC continues its “lawfare” against Israel

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By Naomi Levin

Australia/Israel & Jewish Affairs Council

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It was no big surprise, but certainly a disappointment, that the International Criminal Court (ICC) rejected credible legal opinion and recommended Palestine be treated as a state under international law.

This recommendation flies in the face of expert legal advice provided to the court by the Australian Government, and others, that Palestine does not meet the criteria to be considered a state.

Currently, the ICC is considering an investigation into the “situation in Palestine” because of allegations there is a “reasonable basis to believe the war crimes were committed” by the Israel Defence Forces, Hamas and other Palestinian groups.

The ICC chief prosecutor Fatou Bensouda has maintained that the ICC has jurisdiction in the issue and that Palestine acceded to the Rome Statute, which governs the ICC, in 2015 after being accepted as an observer state in the United Nations General Assembly.

Australia, as well as other nations and esteemed international legal experts, contend that Palestine is not a sovereign state according to international law. It is therefore not the role of the ICC to consider this matter. Analysts, including NGO Monitor, observe that this is a further step in the “lawfare” against Israel, particularly prevalent in international institutions.

Noting that Australia is a long-standing supporter of the ICC, the Australian submission nevertheless argued that the ICC does not have jurisdiction to investigate alleged Israeli war crimes in the West Bank, Gaza and east Jerusalem, because “Palestine” is not a sovereign state according to international law. It outlined a range of legal reasons why this was the case in its submission to the court on March 16.

Australia was joined by Austria, Germany, Czech Republic and Hungary, among others in identifying this legal flaw. Israel and the United States, neither of whom are signatories to the ICC, also both reject the court’s jurisdiction in this matter.

In response to the latest recommendation, Yuval Steinitz, the Israeli minister with responsibility over this matter, accused the chief prosecutor of taking a political, rather than legal stance.

“The prosecutor’s disregard for the opinions of many of the world’s leading experts on international law points to her determination to harm the State of Israel and tarnish its name,” he went on. “In the name of this objective she has reformulated the rules of international law, inventing a Palestinian state while the Israeli-Palestinian peace process has yet to be concluded,” Steinitz said.

Chief Prosecutor Bensouda’s recommendation will now be submitted to the ICC’s Pre-Trial Chamber to consider at an unspecified date.