Israel said to expect ICC ruling on jurisdiction in war crimes probe within days

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Israel expects a decision by the International Criminal Court in the next few days on whether it has jurisdiction to launch a war crimes probe against Israel and the Palestinians, an unnamed Israeli diplomatic official told multiple Hebrew-language news outlets Thursday.

The reports said Israel had begun preparing for such an announcement, which could come as early as this weekend. The response was being overseen by a team including officials from the National Security Council, the justice and foreign ministries, and the international department of the IDF military prosecution.

Israel had the option of submitting its position on the matter to the ICC but chose not to, “out of a fundamental view that the court has no authority to carry out the investigation,” the official was quoted as saying.

A pretrial chamber of three judges at the ICC has been considering for several months now whether the court can legally launch a criminal investigation into suspected war crimes committed in the Palestinian territories.

Israel has long argued that the ICC has no jurisdiction over the case, as there is no sovereign Palestinian state that could delegate to the court criminal jurisdiction over its territory and nationals.

The court’s chief prosecutor, Fatou Bensouda, has said she believed the court does have jurisdiction. Israel and several other states have argued otherwise.

On December 20, concluding a five-year preliminary examination of the “situation in Palestine,” Bensouda said she has “reasonable basis to believe that war crimes were committed” in the West Bank, Gaza Strip and East Jerusalem regions by both the Israel Defense Forces and terrorist group Hamas, as well as other “Palestinian armed groups.”

At the time, Bensouda said that she herself believes the court indeed has jurisdiction to investigate possible war crimes in the regions, but, due to the controversial nature of the case, asked for a definitive ruling on the matter from the pre-trial chamber. Member states and independent experts were invited to weigh in on the matter as well.

That same month, Attorney General Avichai Mandelblit published a 34-page-long legal opinion detailing why Israel did not believe the court had the right to intervene.

Mandelblit noted that only sovereign states can delegate criminal jurisdiction to the court, claiming that the Palestinian Authority did not meet the criteria; asserted that Israel too had “valid legal claims” over the territory in question; and added that the sides had agreed in the past “to resolve their dispute over the future status of this territory in the framework of negotiations.” He said that by turning to the ICC, the Palestinians were “seeking to breach the framework agreed to by the parties and to push the Court to determine political issues that should be resolved by negotiations, and not by criminal proceedings.”

In February, the “State of Palestine” and seven other countries, as well as 33 international organizations and independent scholars of international law, submitted so-called amicus curiae (friend of the court) documents, offering their views on whether Palestine is a state that can transfer criminal jurisdiction over its territory to The Hague.

Germany, Australia, Austria, Brazil, the Czech Republic, Hungary and Uganda all posited that Palestine cannot transfer criminal jurisdiction over its territory to The Hague.

Even those countries that have formally recognized the “State of Palestine” along the pre-1967 lines argued that Palestine cannot necessarily be considered to have validly granted the ICC jurisdiction to probe war crimes allegedly committed in its territory.

Prime Minister Benjamin Netanyahu has repeatedly denounced the ICC and declared thwarting a possible war crimes probe one of the new government’s top priorities.

The court’s decision will come as Israel gears up to possibly move forward with Netanyahu’s plan to annex as much as 30 percent of the West Bank under the auspices of the Trump administration’s peace plan, ratcheting up regional tensions; and with Jerusalem facing near-universal warnings from the international community not to carry out the step.