Security concerns among factors keeping ICC delegation out of Gaza

October 9, 2016

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The Jerusalem Post

<http://m.jpost.com/Israel-News/Politics-And-Diplomacy/Security-concerns-keep-International-Criminal-Court-delegation-out-of-Gaza-469757#article=6020RURBNTM0Q0RFNTg5REVEQUZEQTY5RkE4RDU2NDIxNDQ>=

An International Criminal Court Prosecution official told The Jerusalem Post that his team could not go to Gaza during its first visit to Israel and the West Bank due to the short duration of the visit and security concerns.

Hamas and the ICC Prosecution have not had direct contact since the opening of the preliminary examination. During the interview, the Office of the Prosecutor made it clear that it hopes to visit Gaza in the future.

Phakiso Mochochoko, head of the ICC Prosecutor’s office on jurisdictional issues, spoke with the Post on Friday in the only Israeli-media interview granted as part of a five-day visit by the office, which took two years of negotiations to arrange.

Mochochoko may play a key role, as the main issues which will determine whether the office dives deeper into the Israeli-Palestinian conflict and allegations of war crimes during the 2014 Gaza war (Operation Protective Edge) are jurisdictional ones regarding Palestinian statehood and whether Israeli self-investigations of alleged war crimes are sufficient.

Hamas slammed the delegation on Saturday, claiming it “surrendered to the dictates of the Israeli occupation, [allowing] it [Israel] to take control over the agenda of its visit, which did not include the Gaza Strip, the primary theater of the Israeli crimes in 2014.

“Hamas considers the visit of the ICC delegation to be meaningless and useless, causing greater pain for our people and the victims’ families who were expecting the ICC to play an active role in guaranteeing them justice and bringing the murderous Israelis to international courts,” it said.

The stakes are high, with the 124 member countries of the ICC including most Western states.

If the ICC Prosecution orders a full criminal investigation, Israel could face a new level of delegitimization challenges, and many friendly states would have to choose between their relations with Israel and their commitments to the ICC.

If the ICC Prosecution closes its preliminary examination, it would be the most powerful endorsement Israel’s investigative apparatus could get in terms of legitimacy.

In contrast to Hamas’s attack, which framed the ICC officials as being uninterested in Gaza, when asked if he wished to visit Gaza, Mochochoko said, “We are hoping that in the future we would be able to do that.”

He explained that, “though it was not possible this time,” due to the short visit and “security concerns,” this visit was part of an approach to “start small and hopefully build up on this in the future.”

The PLO appeared to support Mochochoko’s positive narrative of the visit in a statement on Sunday.

“The purpose of the mission is to raise awareness about the work of the court, including its ongoing Preliminary Examination into the Situation in Palestine. This visit is built on the foundation of the frequent communications, regular contacts and exchanges between the State of Palestine and the Office of the Prosecutor since the start of the process,” it said.

“This outreach initiative will be of value, above all, to the Palestinian people, who continue to suffer from the culture of impunity and ongoing crimes, and who look to the court for justice. We are also confident that the urgency of the situation in Palestine will become evident through the delegation’s interactions during the visit,” it added.

It called the mission “a crucial and indispensable component for the steadfast progression of the proceedings,” and renewed “its urgent call to the Office of the Prosecutor to conclude its preliminary examination and move to an investigation, in order to serve justice and help create deterrence.”

The PLO said it would honor its commitments to probe its own people as a member of the ICC, but did not explain how.

When Mochochoko was asked if his office has had contact with Hamas in the two years since the 2014 Gaza war, he responded that they have not, and that all communications are with the PA.

Past ICC reports have indicated that no party on the Palestinian side has provided information about probing their own alleged war crimes, compared to the IDF, which has issued five reports on its investigations – although critics say the IDF has not decided any of the worst alleged war crimes cases.

Neither the Foreign Ministry nor the Justice Ministry responded to the visit or the debate over the absence of a visit to Gaza.

The Post has learned, however, that Israeli officials are satisfied, so far, that Mochochoko and his team have stuck to the agreed-upon plan of emphasizing the visits’ educational and outreach components to explain more about what the ICC does and does not do.

In his interview with the Post, Mochochoko repeatedly thanked the Israeli government and the UN for facilitating the visit, and tried to maintain neutrality regarding Israel and the Palestinians.

Moreover, Mochochoko tried to steer clear of discussing his office’s probe of the alleged war crimes, connected with the 2014 Gaza war, and the Israeli settlement enterprise.

Over and over again, he said that his team is not collecting evidence for their probe during this visit and recognizes that Israel still objects to their involvement, arguing they have no jurisdiction to get involved since Palestine is not a state and Israel is performing its own investigations of IDF soldiers.

In November 2012, the UN General Assembly recognized “Palestine” as a state, and in January 2015, the ICC Prosecution did the same, claiming statehood and request for ICC intervention gave it jurisdiction over the war crimes controversies.

Pressed about how the visit could be seen as a public relations visit, since his team is not meeting with any of the Israeli and Palestinian public, aside from “a wider circle” of government officials on both sides, as well as visits to the Hebrew University and Bethlehem University, on Friday and Sunday, respectively, he said he hoped to engage more with the wider public on future visits.

Mochochoko indicated that there is no timeline for a decision, which will be made in due course after assessing the relevant evidence.

At the same time, he seemed to expect the level of engagement between the ICC Prosecution and Israel and the Palestinians to increase with additional visits, assuming this visit is successful.

Mochochoko, a lawyer and diplomat from Lesotho, was one of five people responsible for the creation of the ICC in 2002. The court came into existence faster than expected after 60 countries ratified the Rome Statute to establish it.