International Criminal Court Planning to Send Delegation to Examine Complaints Against Israel

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A delegation from the prosecutor’s office of the International Criminal Court at The Hague is due to arrive in Israel on June 27 as part of the prosecution’s preliminary examination into whether war crimes and crimes against humanity have been committed in the occupied Palestinian territories, according to senior Palestinian sources.

The sources said Palestinian political leaders had been informed of the delegation’s planned arrival by the court recently. The purpose of the preliminary examination is to determine if there is a reasonable basis to the claim that crimes have been committed that are within the court’s authority to investigate. If the prosecution does decide to launch an investigation, it is possible they will not just investigate allegations of Israeli war crimes, but also actions committed by the Palestinians.

An independent attorney who is advising the Palestinian committee told Haaretz the delegation’s visit is a good sign that indicates the court is taking the issue seriously. He also said prosecution investigators are not always sent to the country being examined during preliminary examinations. However, the ICC prosecutor’s office said that field visits to various countries are indeed part of the usual examination process, but that the date of the visit had not yet been set.

A senior Israeli official who is dealing with the matter said such a visit is a routine part of conducting such preliminary examinations. “Nothing about it testifies to the progress of the examination or its pace,” he said.

Israel has yet to respond to the prosecution request and will hold discussions about it over the next few days. “We will examine every request for a visit while taking into account all the relevant considerations, including Israel’s position that Palestine is not a state and therefore the court has no authority to consider the Palestinian complaint.”

On June 25, meanwhile, the Palestinians will give the prosecution two files containing detailed information about Israeli activities in the West Bank settlements, including in East Jerusalem, and about Israeli military attacks in the Gaza Strip over the past year. A Palestinian delegation headed by Palestinian Authority Foreign Minister Riyad al-Malki will be traveling to The Hague to deliver the files to prosecutor Fatou Bensouda.

The decision to submit the material on that date was made by a special Palestinian committee for International Criminal Court matters, headed by Saeb Erekat, a veteran negotiator with Israel and member of the PLO executive committee. Palestinian sources told Haaretz that the proximity of the Palestinians’ trip and the delegation’s visit to the region is coincidental. A Palestinian minister said Malki’s trip to The Hague had been set up at the beginning of this month.

Members of the Palestinian committee do not know how far the ICC’s examination has progressed. The information is being submitted to Bensouda to help her decide to move from the examination stage to a full investigation of criminal suspicions. According to ICC procedure, the prosecution must get permission from the judges in the court’s pretrial department to move from examination to investigation.

The submission of the files and the arrival of the delegation are part of a series of official actions that began on December 31, 2014, the day that Palestinian Authority President Mahmoud Abbas signed the Rome Statute (which regulates the work of the ICC) and issued a declaration that the Palestinians recognize the court’s authority to examine the possibility that crimes were committed on Palestinian soil starting on June 13, 2014 (the date that searches for the three teenagers kidnapped in Gush Etzion the night before were launched).

In a surprise move on January 16, Bensouda announced she was launching a preliminary examination into the situation in Palestine, even though Palestine’s affiliation with the ICC had yet to officially take effect. On February 7, Abbas announced the establishment of the Supreme National Committee for Coordination with the ICC. On April 1, Palestine’s membership in the ICC became official, making it the 123rd member.

A member of the supreme national committee told Haaretz that the submission of the information and documents collected by Palestinian governmental and nongovernmental sources was “a gesture of support for the prosecutor and another sign of our seriousness with regard to the entire process of approaching the International Criminal Court.” A PLO source said that the prosecution at The Hague was working more quickly than the Palestinians had expected.

The prosecutor’s preliminary examination is not an independent investigation by the court, but relies on material that already has been published or that is submitted to it by governmental and nongovernmental agencies. The preliminary examination is meant firstly to examine whether the court has jurisdiction; in 2009, for example, the prosecutor determined it had no authority to investigate suspicions of war crimes committed by Israel since 2002 because Palestine is not a state.

The examination also evaluates whether the seriousness of the allegation warrants an investigation; in 2014 the prosecutor conducted a preliminary examination into Israel’s 2010 raid on the Mavi Marmara, the lead ship in a flotilla trying to break the Gaza blockade, and the killing of 10 of its passengers. The prosecutor decided not to proceed to the investigation stage because the incident wasn’t of sufficient magnitude. The examination also looks into the possibility that an investigation will harm the interests of the damaged party.

Members of the supreme committee are well aware that an investigation in Gaza will not just include a probe of alleged war crimes committed by Israel, but also the allegations of crimes committed by various Palestinian elements. But leaders of all Palestinian organizations, including Hamas and Islamic Jihad, signed a declaration stating they are prepared to accept the consequences that might result from joining the ICC.

A member of the supreme committee told Haaretz that in contrast to the possibility that an investigation of the situation in Gaza might backfire, the file on the settlements is much simpler and clearer, because the Israelis themselves declare that settling the territories is their policy. Therefore, he said, the court will not be able to avoid launching a war crimes investigation into the settlements issue. The Rome Statute, in its section on war crimes, includes “The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.”

The worst that could happen, said the committee member, is that Israel and the United States will exert pressure to slow down the process. Under the Rome Statute, the UN Security Council is permitted to ask the ICC to delay dealing with a certain issue for a year, and can then ask to renew that request for another year. But Palestinian sources told Haaretz that China and Russia have promised the Palestinians that if the United States proposes that the Security Council ask for a delay in the investigation, they will veto that motion.

The Office of the Prosecutor at the International Criminal Court said, “As part of its preliminary examination activities, the Office of the Prosecutor conducts field visits as it has done in the past with other situations under preliminary examinations. From the outset, the prosecutor has consistently made clear that the situation in Palestine will not be treated any differently from the others. Therefore, the office as per normal practice, is considering a visit to the region during the course of its preliminary examination. Contrary to media reports, no date has been confirmed and further planning is required.”