Government classifies its discussions of ICC war crimes probe

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The government on Sunday approved a request by Prime Minister Benjamin Netanyahu to classify its deliberations about the International Criminal Court’s readying of a probe into alleged war crimes in the Palestinian territories, according to Hebrew-language reports.

It also agreed that further discussions on the matter would be held in the high-level security cabinet, Hebrew media said.

The classification was approved using an article from one of Israel’s quasi-constitutional Basic Laws allowing the government to deem certain deliberations and decisions secret and bar them from being publicized.

The security cabinet was set to convene later Sunday at the Foreign Ministry for a special meeting on the ICC move, reports said.

Two unnamed ministers told Channel 12 news that publication of Israeli efforts to thwart the ICC’s launching of an investigation could damage the national interests.

The ICC’s top prosecutor announced over the weekend that there was a “basis” to probe Israel’s settlement policy in the West Bank, the 2014 Gaza war, the Israeli response to violent protests on the Gaza border, and the targeting of civilians by Hamas and other Palestinian terror groups.

The prosecutor has referred the matter of the probe to the Hague-based tribunal to rule on the specific territory over which it has jurisdiction, as Israel is not a member of the court.

At the start of the cabinet meeting in which ministers voted to classify the deliberations, Netanyahu railed against the “absurd” ICC decision, accusing the court of having become “a weapon” against Israel.

He also said the US was “fighting these distortions, this lack of justice and this lie,” without elaborating.

The Trump administration has previously threatened the court with sanctions and visa denial if it investigates Americans or Israelis. In April, it revoked ICC prosecutor Fatou Bensouda’s visa over a possible investigation of American troops’ actions in Afghanistan.

US Secretary of State Mike Pompeo on Friday condemned the court’s announcement, saying it “unfairly targets” Israel, but did not say whether the US would act against the ICC over the move.

Quoting an official in the Prime Minister’s Office, Channel 12 reported Saturday that Israel has still not decided whether to cooperate with the ICC’s pretrial chamber in the coming 120 days.

Meanwhile, diplomatic sources told the network: “There will be no cooperation with the court… certainly not if it will eventually be decided to open an [official] probe.” Private Israeli organizations could potentially defend those prosecuted but the Israeli government would not work with a probe in any formal capacity, they said.

Attorney General Avichai Mandelblit on Saturday evening called ICC top prosecutor Bensouda’s decision to move forward with an investigation “unreasonable” and “rash.”

Anticipating Bensouda’s announcement, Israeli officials had earlier made public a legal opinion by Mandelblit arguing that the court has no jurisdiction for an investigation. He claimed that by turning to the ICC, the Palestinians were seeking “to push the Court to determine political issues that should be resolved by negotiations, and not by criminal proceedings.”

According to the Foreign Ministry’s legal adviser, Tal Becker, “There is a Palestinian effort to criminalize the conflict, where only the Israelis have legal obligations and only the Palestinians have rights. But as history has shown, that will only drive the two sides further apart.”

The preliminary examination by the ICC was launched in 2015 after the PA signed the Rome Statute and formally accepted the court’s jurisdiction over its territory. It probes Israeli construction beyond the Green Line, the 2014 Gaza War and the so-called March of Return Gaza border protests.

Bensouda has in the past indicated that the question of whether the court has jurisdiction was a complicated one, which is why the attorney general last year decided to issue a paper explaining Israel’s point of view, said Roy Schöndorf, the deputy attorney general for international law at the Justice Ministry.