Will ICC keep pushing off Israel-Palestinian war crimes probe? - analysis

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<https://www.jpost.com/arab-israeli-conflict/article-724148>

On Monday, multiple annual reports were filed by the [International Criminal Court](https://www.jpost.com/israel-news/politics-and-diplomacy/article-721703) and its Office of the Prosecutor to its supervising body, the Assembly of State Parties (ASP), which suggested the ICC is nowhere near any movement on the alleged war crimes probe on the Israeli-Palestinian conflict.

The signs are clear for those familiar with these reports and from the angry reactions of Palestinian activists in recent weeks, with Israel quietly taking a sigh (if temporary) of relief.

In both a 24-page report by the ICC and a 54-page report by ICC Prosecutor Karim Khan to the ASP, which is holding its annual conference this week, there are extremely few mentions of Palestine at all.

In the 54-page report, “Palestine” comes up only three times with no substantive discussion of any progress, and with one of the mentions being a caption of a photo of Kahn with Palestinian Authority Foreign Minister Riad Malki – above a text which has nothing to do with “Palestine”.

The other mentions in that report are generic mentions in a list of countries being investigated.

According to the 24-page report, the probe is “ongoing” since March 3, 2021 and the prosecution has “been collecting, preserving and analyzing information, communications, and evidence from various sources.”

Further, “the office has engaged with relevant stakeholders, including civil society representatives, proactively exploring further avenues for cooperation and information-sharing,” and the meeting with Malki this past June is mentioned.

There is also a reference to monitoring “perceptions and reactions on social and online media, using the presence of the various stakeholders at the Court as well as online information sessions and meetings to discuss activities aimed at increasing the knowledge about the Court and providing the correct information about its work, jurisdiction and mandate.”

Finally, the report notes the prosecution sent seven updates to the ICC Pre-Trial Chamber on its activities.

**ICC reports shows nothing is happening**

At a superficial level, this might sound like progress.

But the fact is that in comparison to the detailed discussion of specifics about other probes, meetings with other countries and even, in some cases, cooperation agreements signed with countries being probed, it reads as an admission that not much is happening.

Some of this is because Israel has made it clear that it does not recognize the ICC’s jurisdiction on multiple grounds.

Jerusalem has said that there is no official Palestinian state endorsed by the UN Security Council (the less powerful UNGA has given it the odd non-member state status) which could give the ICC jurisdiction.

It has also noted that the Jewish state’s independent courts and prosecution, which have sentenced Israel’s own soldiers for various incidents against Palestinians from time to time, bars ICC involvement.

Some of it may be because Khan himself is not enamored with the case which was bequeathed to him by his less politically smooth predecessor, Fatou Bensouda.

Bensouda was ready to bang her head against the wall to move any case forward, whether against Israel or the US, as long as she believed the case was warranted by her interpretation of her mandate.

Kahn was elected by the ASP partially as a corrective to Bensouda’s lack of pragmatism and unwillingness to take cues from some of the ASP’s powerful member states.

While plenty of the ASP members are against Israel, key countries, especially some European ones who pay much of the ICC’s budget – not to mention the US – have been opposed to treating the Israeli-Palestinian conflict as a criminal matter from the start.

In their eyes, the issue will only be resolved through diplomatic negotiations between the parties, not by the fiat of an international tribunal, which in any case is powerless not just to force Israeli cooperation, but also powerless to bring to justice Hamas terrorists who fire rockets on Israeli civilians.

And yet, however different Kahn is from Bensouda and regardless of his refraining from taking any public action against Israel during his approximately 18 months in office, Jerusalem should not stay calm for too long.

Underneath the slow and plodding process, the language that the ICC used in an August 2022 update regarding “Palestine” included this phrase, “the Office of the Prosecutor has also been looking further at particular areas and incidents as the possible primary focus of its investigative activities.”

When this phrase was employed in earlier years in the preliminary probe process, usually a year or so later there started to be more definitive phrases about coming closer to conclusions.

Into that mix, the emergence of the provocative Itamar Ben-Gvir as the new public security minister, the latest video of an IDF soldier beating a left-wing activist against IDF rules and the constant drumbeat of the incoming coalition about defanging Israel’s courts and prosecution, could spell serious trouble for Israel.

Any major change in the status of the settlements and currently illegal Jewish outposts (under existing Israeli law) could also set off ICC alarm bells.

Until Russia invaded Ukraine, it had basically been given a free pass by Bensouda for its involvement in alleged war crimes in its former republic of Georgia. Yet, Russia’s invasion of Ukraine showed that Kahn can be pragmatic also in accelerating a probe at unusual speed if supported and desired by the West.

Suddenly, Moscow’s impunity-free pass card shifted into possibly the fastest-ever criminal probe the ICC has carried out in real-time.

Under Israel’s previous government, it would have been unlikely that by next year there would be major developments for Israel from the ICC. It would have seemed like such developments would be at least two years away.

Whether the coming months of the new government will change that will soon become clear.