As Dozens Ask to Join Israel-Palestine Case, Request From Within the ICC Could Be the Deciding One

February 16, 2020

By [Noa Landau](https://www.haaretz.com/misc/writers/WRITER-1.4969059)

Haaretz

<https://www.haaretz.com/israel-news/.premium-as-dozens-ask-to-join-icc-case-request-from-within-court-could-be-the-deciding-one-1.8534698>

In the opening shot of what is expected to be a long and complex battle, on Friday the secretariat of the International Criminal Court was hit with dozens of requests for amicus curiae (“friend of the court”) status in deliberations to determine whether the court in the Hague has jurisdiction to investigate alleged war crimes in the West Bank, Gaza Strip and East Jerusalem.

Numerous states, organizations and world-renowned jurists have applied to participate in the procedure, a hot potato that ICC Prosecutor Fatou Bensouda passed on to the judges before a decision is made on opening an investigation into offenses allegedly carried out by Israel and Hamas.

Most of the countries that have asked to take part in the process support Israel’s position – Australia, Austria, Brazil, Czech Republic, Germany and Hungary – according to which the court has no jurisdiction in these territories. Israel, which is leaning toward not participating in the proceedings in order to avoid conveying legitimacy, needs all the unofficial proxies it can muster.

For that reason, it has put great effort into recruiting friendly states, especially important and relatively liberal countries such as Germany, in addition to the “immediate suspects.” The Palestinians, on the other hand, plan to represent themselves directly and have put less effort into rounding up allies. They have the support of the Organization of Islamic Cooperation, which has 57 member states.

While Israeli and Jewish right-wing groups such as Shurat Hadin have jumped on the bandwagon, Israeli left-wing organizations are conspicuously absent, presumably due to the chilling effects of attacks against them or because they concluded that their participation would serve no purpose.

The Israeli and Palestinian bar associations also filed amicus curiae requests, without even the pretense of independence from their respective governments.

The Israeli team, led by the state prosecution’s international department, sought to recruit respected experts in international law with reputations as relative liberals, and a few have stood up for Israel. Prof. Eyal Benvenisti of the University of Cambridge argues, in his request for amicus curiae status, that the court cannot determine Israel’s territorial borders as long as they are in dispute, and any such attempt would erode its neutrality.

A similar position was put forth by a group of Israeli professors that includes Robbie Sabel of[the Hebrew University of Jerusalem](https://www.haaretz.com/misc/tags/TAG-hebrew-university-1.5598925), who is the former legal adviser of the Foreign Ministry. Additional requests were submitted to the court by Irwin Cotler, a senior jurist and former justice minister of Canada who is considered very pro-Israel, and Prof. Stephen Rapp, a former senior official in the U.S. State Department.

Prof. Emeritus Richard Falk, an expert in international law at Princeton University and a former United Nations special rapporteur on the human rights situation in the Palestinian territories, on the other hand, argues that the court’s jurisdiction includes all the territories considered occupied under international law. Prof. John Quigley, who has researched the Palestinian issue, argued that Palestine is a state.

The former U.S. diplomat Dennis Ross, who was President Bill Clinton’s envoy to the Middle East, says his expertise on the Oslo Accords permits him to weigh in on their contribution to the sovereignty of the Palestinian Authority in the territories – one of the issues in dispute. The United States, which he once represented as a mediator, doesn’t recognize the court’s authority, in keeping with Washington’s increasingly separatist approach.

Two law offices, an Israeli and a Palestinian firm, are also engaged in this battle, having joined the political fray without even putting up an appearance of being independent of their governments.

Of all the requests that were submitted before the Saturday deadline, perhaps the most interesting was that of the court’s own Office of Public Counsel for the Defense, sometimes described as the ICC’s office of the public defender. It believes that the jurisdiction issue should be deferred until a specific case is brought before the court. Rather, that question should be discussed in concert with the charges. Why? In order to protect the rights of future defendants to raise the issues during their trials.

That, because the ICC prosecutes individuals, not states. Experts in international law say that could also turn out to be the surprising position of the judges, who would pass the hot potato to the prosecutor. In that event, no friend would be able to block an investigation.