The Decision at The Hague: What are Israel's Options?

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Yesterday, March 3, 2021, the Prosecutor of the International Criminal Court (ICC) officially announced the opening of an investigation into all activity in the West Bank, East Jerusalem, and the Gaza Strip starting on June 13, 2014. The investigation will also apply to Palestinian actions.

The Prosecutor notes that the priorities in conducting the investigation will be determined subsequently, in accordance with the limited resources of the Court and its heavy workload. The Prosecutor is expected to consult with British lawyer Karim Khan, who has been elected as the new ICC Prosecutor, effective June 2021. Since an investigation is a lengthy and complex process, no action is expected against Israeli elements in the near term, if at all.

The Prosecutor notes that after opening an investigation, the parties may announce that they themselves are investigating the allegations of crimes. In accordance with the principle of complementarity, the Court will not intervene while a state conducts a genuine investigation of the cases. Therefore, Israel will be able to rely on the existence of investigations in Israel regarding allegations of the activities of the IDF and the security forces. As to settlement activity, viewed in the Court’s statute as a war crime, Israel’s claims focus on legal arguments as well as the political nature of the issue, meaning that it is not suitable for criminal proceedings, will lead to politicization of the Court, and will make it more difficult to resolve the conflict through negotiations.