Transparency and ICC outreach in the Situation in Palestine

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<http://9bri.com/transparency-and-icc-outreach-in-the-situation-in-palestine/>

On 20 August, Israeli newspaper Israel Hayom reported that a recent Pre-Trial Chamber I decision to direct Court outreach to “victims” in the Situation in Palestine will not affect Fatou Bensouda’s decision on jurisdiction in the situation. PTC I’s decision has been criticised online both for predetermining jurisdiction as well as singling out Israel or appearing to do so (see [here](https://www.ejiltalk.org/not-appropriate-ptc-i-palestine-and-the-development-of-a-discriminatory-icc-jurisprudence/) by this author with Steven Kay QC, [here](http://michaelgkarnavas.net/blog/2018/08/16/icc-appearance-anti-israel-bias/) by Michael Karnavas, and [here](http://jcpa.org/is-the-international-criminal-court-becoming-a-palestinian-propaganda-engine/) by Alan Baker).

To date it does not appear that the Court has issued a press release, decision, or any other written statement to confirm Israel Hayom’s report. It is hoped that publication will be forthcoming soon. Not only would publication be consistent with the face value objectives of the PTC I Decision (which specifically endorses outreach geared to provide “timely, accurate, concise, accessible and comprehensive information regarding the general mission of the Court as well as each of its organs’ role and activities”), it might also serve as a useful example of practice with respect to how the Court engages at a horizontal level with non-states parties on jurisdictional issues, and may even act as a confidence builder with ICC-sceptics.

This is because Israel Hayom reports that the Public Affairs section has “confirmed in a statement” that PTC I’s decision “does not reflect any prejudgment on the independent decision that will be taken by the ICC prosecutor when she concludes her preliminary examination of the situation in Palestine”. This inevitably suggests that at least one of the Court’s organs or sections has decided to attempt to remedy the shortcomings of PTC I’s decision with respect to its apparent predetermination of jurisdiction, whilst remaining silent on whether the Situation in Palestine has or appears to have been singled out, and making no attempt to clarify the limited scope of Court sanctioned outreach activities which are appropriate at the preliminary examination stage.

So which Court organ (or section) is responsible for the statement? Israel Hayom report that the statement says that the “court, as a judicial institution, cannot comment on the decision of its judges” but it is not clear whether the statement, which was issued by the Public Affairs section, has the imprimatur of the Presidency, the Registry, the OTP or even PTC I. This is regrettable. Publication and disclosure of clarification with respect to how PTC I’s decision is properly to be interpreted would be welcome in the interests of transparency as well as the spirit of the decision itself, and it may ultimately help to avoid the earlier documented pitfalls which risk arising from PTC I’s initial foray into the Situation in Palestine.

The full Israel Hayom article (authored by Ariel Kahana and Yoni Hersch) is available [here](http://www.israelhayom.com/2018/08/20/in-victory-for-israel-icc-says-palestinian-victim-decision-not-binding/).