ICC prosecutors to visit Israel, West Bank as war crimes probe looms

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Representatives of the International Criminal Court Prosecutor’s Office are making an historic visit to Israel and the West Bank which is being touted as outreach and educational in nature but is seen by many as part of the court’s ongoing examination of the settlement enterprise and allegations of war crimes in the 2014 Gaza war. The visit, which began yesterday, is scheduled to end on Monday.

According to a statement released by the ICC Prosecutor's Office, "the purpose of this visit will be to undertake outreach and education activities with a view to raising awareness about the ICC and in particular, about the work of the Office; to address any misconceptions about the ICC."

"In accordance with its usual practice at this stage of its work, the delegation will not engage in evidence collection in relation to any alleged crimes; neither will the delegation undertake site visits, or assess the adequacy of the respective legal systems to deal with crimes that fall within ICC jurisdiction," said the statement.

The delegation is scheduled to travel to Tel Aviv, Jerusalem and Ramallah and will hold meetings with Israeli and Palestinian officials at the working levels, as well as participate in two events at academic institutions.

In early September, multiple senior government sources confirmed to The Jerusalem Post that Prime Minister Benjamin Netanyahu was considering a request by the ICC Prosecutor to send representatives to meet with Israel and the Palestinian Authority in the coming weeks.

In some ways, the visit is be nearly unprecedented since Israel has not cooperated with numerous UN and other international investigations of alleged war crimes in the past, refusing UN officials entry.

Neither officials from the UNHRC’s Goldstone Report on the 2008-9 Gaza war or from the body's McGowan-Davis Report on the 2014 Gaza war were permitted to enter the country.

It was unclear to what extent any visit would include Hamas, who fought the 2014 Gaza war with Israel

The IDF, the UN Human Rights Council, the ICC and others have been investigating war crimes allegations that the IDF killed around 2,100 Palestinians – including between 50-80 percent civilians – during Operation Protective Edge in 2014. Seventy-three Israelis were also killed by Hamas and hundreds of thousands fled their homes due to Hamas rocket fire.

It was unclear what led to the timing of ICC Prosecutor Fatou Bensouda’s request, but Israel has been holding a dialogue with her office since July 2015, which in and of itself has been unusual.

Then in February, the Post was the first outlet in the Israeli media to hold an exclusive in-person interview with Bensouda at her offices in The Hague.

The 54-year-old Gambian Bensouda came out of the gates in her relationship with Israel mostly under attack by Netanyahu for recognizing Palestine as a state for the purposes of her office deciding to open a preliminary examination into whether Israel and the Palestinians have committed war crimes.

Since her recognition on January 16, 2015 and her explanation that she felt compelled, in her own decision, to follow the UN General Assembly’s vote upgrading Palestine's status within the UN, Jerusalem has worried that she would follow the UNGA and what is viewed as a general anti-Israel atmosphere in future decisions as well.

But in her interview with the Post in February, Bensouda put those concerns to rest.

In one of the most intense exchanges of the interview that will be music to Israel’s ears, Bensouda said that “the UN General Assembly do not tell me what to do, that the prosecutor should act in this way or that way, unless of course it is in accordance with the statute.”

Asked if this meant that the UNGA is now out of the picture of her legal conclusions, Bensouda, in one of her rare emotional moments of the interview where she let down her guard, said forcefully, “Completely! I’m not even thinking of why they would tell me why I should take this case and not this case. That would be interfering with my independence.”

The ICC chief prosecutor was clear that Palestine's upgraded status within the UN by the UNGA in 2012 as “a non-member observer State” was relevant to her determination of whether it could accede to the Rome Statue, the Court’s founding treaty. This was for technical reasons, but she emphasized that she will never take directives from them, or any other institution, when deciding the central question of the war crimes debate: whether the IDF’s investigative apparatus for the 2014 Gaza war complies with international standards.

Numerous Israeli officials confirmed to the Post at the time that these were well-received messages, even as they were disappointed with some other messages she sent about not necessarily accepting some of Israel’s unusual legal arguments.

Bensouda in the February interview also would not commit to the Post about whether her decision to move from a preliminary examination to a full criminal investigation or not would be made before the end of her term in 2021.

“I cannot sit here and say that it will take seven years, or it will take ten years or it will take any number of years…all of this depends on the facts and the circumstances. The preliminary examination cannot be given a timeline,” Bensouda said.

There had been no major public developments in her examination of the Israeli-Palestinian conflict since February until Friday’s announcement.

The latest development in Israel’s own investigations of alleged war crimes was on August 24.

In a report by the IDF legal division, the army closed four cases of allegations of killing large numbers of Palestinian civilians during the 2014 Gaza war. The decision was issued in the IDF legal division’s fifth report on war crimes probes since Operation Protective Edge ended two years ago.

The report found that, in four cases of allegations of killing large numbers of civilians – adding up to a total of 49 people – the IDF strikes were legal due to either mistakes, Hamas being responsible or an attack not happening at all.

Out of 360 incidents the IDF has reviewed, 31 have led to full criminal investigations, 13 have been closed and one, a case of theft, has led to an indictment.