Israel Drafts Secret List of Hundreds of Officials Who May Stand Trial at International Court

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Israel is drawing up a secret list of military and intelligence officials who might be subject to arrest abroad if the International Criminal Court in the Hague opens an investigation into alleged Israeli war crimes in the Palestinian territories.

Haaretz has learned that this list now includes between 200 and 300 officials, some of whom have not been informed. The great secrecy surrounding the issue stems from a fear that the mere disclosure of the list’s existence could endanger the people on it. The assessment is that the court is likely to view a list of names as an official Israeli admission of these officials’ involvement in the incidents under investigation.

The [ICC is expected to rule shortly](https://www.haaretz.com/israel-news/.premium-israel-preparing-for-decision-on-icc-s-war-crime-investigation-within-days-1.8948141) on whether to approve the request by ICC Prosecutor Fatou Bensouda to investigate Israel and Hamas over suspicions of war crimes in the territories beginning in 2014, the year of [Operation Protective Edge](https://www.haaretz.com/misc/tags/TAG-gaza-war-1.5598921).

Given the time frame, experts in international law believe that officials and decision-makers involved in incidents beginning with the war in Gaza that summer would be the first to face the court’s scrutiny.

They include Prime Minister Benjamin Netanyahu; former defense ministers [Moshe Ya’alon](https://www.haaretz.com/misc/tags/TAG-moshe-ya%27alon-1.5599227), Avigdor Lieberman and Naftali Bennett; former Israel Defense Forces chiefs of staff Benny Gantz and Gadi Eisenkot, and current Chief of Staff Aviv Kochavi; and the former and current heads of the Shin Bet security service, [Yoram Cohen](https://www.haaretz.com/misc/tags/TAG-yoram-cohen-1.5598981) and Nadav Argaman, respectively.

But the length of the list shows that it includes people in much more junior positions, including lower-ranking military officers and perhaps even officials involved in issuing various types of permits to settlements and settlement outposts, since the issue of Jewish settlement in the territories is also within the scope of the requested investigation.

Judges Peter Kovacs of Hungary, Marc Perrin de Brichambaut of France and Reine Adelaide Sophie Alapini-Gansou of Benin will have to decide if the conclusions announced in December by the prosecutor, who [found a basis for an investigation](https://www.haaretz.com/israel-news/.premium-hague-prosecutor-there-s-basis-to-probe-israel-over-west-bank-war-crimes-1.8293452), are justified – and if so, whether the court has jurisdiction in the areas in which the alleged crimes were committed: East Jerusalem, the West Bank and the Gaza Strip.

Israel argues that the ICC does not have such authority, in part because the Palestinian Authority is not a sovereign state and therefore cannot delegate its judicial authority, and also because the case involves a political dispute. Bensouda, for her part, believes the court does have this authority, but has asked the judges to determine the scope of its jurisdiction due to the absence of permanent, recognized borders for the territories.

For this reason, [Israel refuses to recognize the court’s jurisdiction](https://www.haaretz.com/israel-news/.premium-israel-s-ag-says-hague-has-no-jurisdiction-in-west-bank-or-gaza-1.8293155) in this matter and does not intend to represent officially in any proceedings there. But during the preliminary investigation, there were quiet communications between the prosecutor and Israeli authorities. The state is also considering whether to secretly fund one of the amicus curiae briefs that have been approved to join the proceedings as a kind of proxy defense lawyer.

Israeli officials have said recently the ruling could come at any time, and that an official declaration of annexation of areas in the West Bank could further damage Israel’s position in the proceedings. Bensouda even warned of this explicitly in her preliminary investigation.

The judges in the Hague could close the case entirely or allow it to proceed. In the latter event, they could weigh in on the court’s jurisdiction in the territories. But they could also leave the question to be decided in the course of the proceedings. A number of experts in international law have said that the latter option is more likely.

In December, after a few warnings, the prosecutor announced that a basis exists for investigating Israel and Hamas for war crimes in the territories since 2014. Among the events she mentioned were Operation Protective Edge, the settlement enterprise and the shooting of protesters along the fence between the Gaza Strip and Israel. In a section of her written statement concerning Operation Protective Edge, she wrote, “There is a reasonable basis to believe that members of the Israel Defense Forces (“IDF”) committed the war crimes of: intentionally launching disproportionate attacks in relation to at least three incidents, ... wilful killing and wilfully causing serious injury to body or health [sic].”

In connection to the settlements, Bensouda wrote: “There is a reasonable basis to believe that ... the Israeli authorities ... transfer[ed] Israeli civilians into the West Bank since 13 June 2014.” She added: “Despite the clear and enduring calls that Israel cease activities in the Occupied Palestinian Territory deemed contrary to international law, there is no indication that they will end. To the contrary, there are indications that they may not only continue, but that Israel may seek to annex these territories.” She noted that last year, “Prime Minister Benjamin Netanyahu vowed to annex large parts of the West Bank if reelected.”

Bensouda and her staff also wrote that the investigation could include “crimes allegedly committed in relation to the use by members of the IDF of non-lethal and lethal means against persons participating in demonstrations beginning in March 2018 near the border fence between the Gaza Strip and Israel, which reportedly resulted in the killing of over 200 individuals, including over 40 children, and the wounding of thousands of others.”

In recent months Israel has encouraged the U.S. administration to harshly sanction the ICC in the hope that this would deter the court from the war crimes investigation. And indeed, in June, U.S. President Donald Trump, in coordination with Israel, ordered [sanctions on officials involved in the court’s probe](https://www.haaretz.com/us-news/trump-authorizes-sanctions-on-icc-over-u-s-war-crimes-in-afghanistan-probe-1.8914319) into allegations of war crimes committed by the U.S. Army in Afghanistan.

Senior Trump administration officials have said on a number of occasions that they would view a decision to investigate Israel as a “political” move that could prompt additional actions from the United States. The U.S. decision led dozens of countries to issue statements affirming their support for the International Criminal Court.