Israel said to formally protest ICC’s unusual appeal to ‘Palestinian victims’

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<https://www.timesofisrael.com/israel-said-to-formally-protest-iccs-unusual-appeal-to-palestinian-victims/>

Israel has lodged a formal protest with the International Criminal Court (ICC) for [launching a campaign](https://www.timesofisrael.com/in-rare-step-international-criminal-court-reaches-out-to-palestinian-victims/) last month to reach out to “victims of the situation in Palestine,” an unusual step which Jerusalem officials charge casts doubt on the court’s ability to treat the Jewish state fairly.

In a [press release](https://www.icc-cpi.int/CourtRecords/CR2018_03690.PDF) issued in July, three judges, who are members of the so-called pretrial chamber dealing with Palestinian complaints of alleged Israeli war crimes, ordered the court’s registry “to establish, as soon as practicable, a system of public information and outreach activities for the benefit of the victims and affected communities in the situation in Palestine.”

Furthermore, the judges required the [registry](https://www.icc-cpi.int/about/registry) — a neutral organ of the court providing administrative support — to open an “informative page on the Court’s website” geared exclusively to Palestinians, and to report on the progress of its activities every three months.

This despite the fact that ICC chief prosecutor Fatou Bensouda has not yet decided whether the court has any jurisdiction over matters related to the Israeli-Palestinian conflict, since it has no jurisdiction over Israel (which is not a member state) and because Palestine is not a state and therefore cannot exercise jurisdiction over the West Bank.

Bensouda has also not ruled on whether there is a basis to investigate Palestinian claims of war crimes.

“The court’s judges are completely ignoring the fact that the court lacks jurisdiction to deal with the Israeli-Palestinian conflict, and that the court’s prosecutor hasn’t made any decision in her preliminary examination,” a senior Israeli legal official told Hadashot TV news.

“The judges’ eagerness to initiate such an anomalous decision leaves in serious question the court’s ability to fairly deal with matters relating to Israel,” he added.

A senior diplomatic source told Channel 10 news the Israeli government had been “shocked” by the judges’ July decision.

Many officials in both the Foreign Ministry and the Justice Ministry were angered by the move and viewed it as further evidence of the court’s anti-Israel politicization, the source said.

He said several meetings were held in the last two weeks between Israeli diplomats and senior ICC officials, during which the Israeli protests were conveyed. He also said further steps will follow.

In January 2015 Bensouda opened a preliminary examination into the “situation in Palestine,” after the “State of Palestine” signed the Rome Statute and formally accepted the court’s jurisdiction over its territory.

Two months ago, the “State of Palestine” submitted to the court a so-called state referral, asking the prosecutor to investigate “past, ongoing and future crimes within the court’s jurisdiction, committed in all parts of the territory of the State of Palestine,” which it defined as the West Bank, East Jerusalem, and the Gaza Strip.

In their public call to Palestinians, judges Péter Kovács, Marc Perrin de Brichambaut, and Reine Adélaïde Sophie Alapini-Gansou wrote that “the Registry shall establish, as soon as practicable, a system of public information and outreach activities among the affected communities and particularly the victims of the situation in Palestine.”

The judges’ goal is the creation of a “continuous system of interaction between the Court and victims, residing within or outside of Palestine,” they added.

Victims “play an important role” in the court’s work, the judges noted.

“Victims have therefore the right to be heard and considered, at stages of the proceedings determined to be appropriate, and the Court has the duty to effectively enable them to exercise this right.”

In private conversations in July, officials in Jerusalem deemed the statement “unusual” and “strange,” in that it is almost unprecedented that a pretrial chamber would engage in active outreach to victims in a case that has not yet advanced to the stage of an investigation.

Alan Baker, a former legal adviser to the Foreign Ministry who was involved in negotiating the ICC’s founding statute, last month slammed the statement as “quite crazy,” arguing that the court has allowed itself to become a tool of pro-Palestinian propaganda.

“This seems to me to be quite crazy, and the court is openly turning itself into a Palestinian propaganda engine, similar to the [United Nations] Human Rights Council, with a regular reporting regime on Palestine only and a distinct section of its website devoted to Palestine,” Baker told The Times of Israel.

The three ICC judges were going out of their way to cater to Palestinian victims in preparation of a trial, despite the fact that the prosecutor has not yet decided whether to open an investigation or whether the court even has jurisdiction over the territory in question, Baker noted.

“All this seems to indicate that the ICC is venturing far beyond its role and is being politically manipulated, or is manipulating itself, against its own better interests,” he fumed.

“Does it have so much spare time on its hands that it can dabble in such nonsense?” he added.

The chief prosecutor has yet to decide whether to proceed from the preliminary examination to a full-fledged investigation, which precedes a potential trial.

Whether she will do so [depends on various factors](https://www.timesofisrael.com/palestine-at-the-icc-a-headache-israel-might-be-able-to-live-with/), including whether Palestine is indeed considered a state and has jurisdiction over the territory it claims, and if Israeli crimes allegedly committed there fulfill the court’s gravity requirements.

Furthermore, the Hague-based court will not investigate alleged Israeli violations if it finds the Israeli legal system can be relied upon to investigate any “grave crimes” committed by Israelis.