Analysis: Why is ICC Allegedly in Contact with Hamas Terrorists’ Families?

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By Yonah Jeremy Bob

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<http://m.jpost.com/Arab-Israeli-Conflict/Analysis-Why-is-ICC-allegedly-in-contact-with-Hamas-terrorists-families-473325#article=6017OUVEMkQ0MjJCNzAwOUE0OUJFNDMxNTA5Mjc5QzUyMUU>=

While the full picture still is unclear, indications have begun to suggest the existence of back channel contact between the [International Criminal Court prosecutor](http://www.jpost.com/Arab-Israeli-Conflict/War-crimes-allegations-settlements-bring-ICC-officials-to-Israel-West-Bank-469432) and Hamas.

The first sign came from Hamas itself. On October 10, former Hamas health minister Bassem Naim distributed a picture of himself, allegedly talking with the ICC delegation via video conference, during one of its visits to Israel and the West Bank, a visit in which Gaza was notably skipped.

That is interesting, because the delegation leader, Phakiso Mochochoko, in an October 7 interview with The Jerusalem Post, claimed that the Gaza visit was canceled over safety concerns, and no contact with the armed group was made.

The next sign of a back channels came on November 9, when sources told the Post and an Italian publication, that ICC staff held off-book meetings with families of Hamas terrorists.

When confronted with the two different versions of ICC contact with Hamas, the Foreign Ministry, and sources which normally have something to say, at least off-the-record, were utterly silent.

The ICC also failed to deny or respond to the issue, despite their usual habit of giving nuanced reactions to inquiries.

Sometimes silence speaks volumes.

Why is the ICC likely meeting with Hamas? And why do they – and apparently the Foreign Ministry – want to keep it quiet? As controversial as it is for the ICC to have contacts with a terrorist group, and as much as that feeds concerns about whether the ICC will treat Israel fairly, the fact is: the ICC cannot probe alleged war crimes from 2014’s Operation Protective Edge in Gaza without speaking to Hamas.

First, Hamas controls Gaza, where much of the evidence for or against war crimes is to be found.

Second, Israel is not the only one under the ICC gun. So is Hamas. As a basic foundation of law, the ICC cannot probe Hamas’ firing of rockets, and its other attacks on civilians, without giving it a chance to tell its side of the story – as strange as that sounds.

It can only declare Hamas’ investigations of its own war crimes insufficient (they are currently nonexistent), which gives the ICC the right to step in, if it officially went through the issue of war crimes with Hamas. So, in a bizarre way, ICC talking to Hamas could actually be to Israel’s advantage.

If all of this is true, then why is the ICC and the Foreign Ministry keeping the alleged contacts under wraps? In the best case scenario, the ICC merely did their job, as described here, but doing that job and keeping Hamas at the table may depend on discretion about public sharing.

In the worst case scenario, from Israel’s perspective, the ICC is preparing to eventually pursue its soldiers for war crimes, and wants a low profile for any activities that hint to that end, until it is ready to jump into action.

The Foreign Ministry may be keeping quiet, while getting updates on the side from the ICC, in exchange for discretion. Or it may be worried and unsure over what the ICC is doing and intends to do, but lacks sufficient evidence of ICC having improper interaction with Hamas to take a public stand about it.

All this avoids the elephant in the room, which is: everyone knows that more than two years after the Gaza operation, Hamas has done no investigating, because it would never go after its own for violent “resistance” against Israelis, soldiers or civilians. That violence is its primary mission.

How the ICC can not have already opened a full criminal investigation into Hamas, when evidence of its indiscriminate rocket fire against Israeli civilians is indisputable – even as it patiently waits for Israel to complete its investigations which themselves have been drawn out – is a mystery. The sooner Israel completes its outstanding probes, the sooner pressure will grow on the ICC to decide about Hamas, in order to maintain the neutrality on which it is expected to rest.