Statement of ICC Prosecutor, Fatou Bensouda, on the Situation on registered vessels of the Union of the Comoros et al.

November 30, 2017

International Criminal Court

<https://www.icc-cpi.int/Pages/item.aspx?name=171130_OTP_Comoros>

Following a thorough and considered reassessment of all relevant materials, including new information received by my Office, I have ultimately decided to reaffirm my previous decision of 6 November 2014 in the Situation on registered vessels of the Union of the Comoros, the Hellenic Republic of Greece, and the Kingdom of Cambodia and to close this preliminary examination.

This decision, which was filed yesterday with Pre-Trial Chamber I, is final , and subject only to my ongoing discretion under article 53(4) of the Rome Statute – the Court’s founding treaty – to reconsider a decision not to proceed on the basis of new facts or information. The reasons for this decision have been filed with the judges of the International Criminal Court (“ICC” or the “Court”), under rule 108(3) of the Court’s Rules of Procedure and Evidence. The non-authoritative summary provided below is for informational purposes only.

My final decision was prompted by Pre-Trial Chamber I’s request, which came into effect by decision of the Appeals Chamber dated 6 November 2015.

My decision is based on: a careful analysis of Pre-Trial Chamber I’s reasoning; a thorough reconsideration of all information available at the time of the November 2014 determination; and a de novo examination of all submissions and information made available to my Office in the period between 2015 and 2017 by representatives of the Union of the Comoros and participating victims. In total, my Office has subjected to renewed analysis more than 5,000 pages of documents, including the personal accounts of more than 300 passengers aboard the Mavi Marmara, as well as other materials.

On the basis of this comprehensive analysis, my conclusion remains that there is a reasonable basis to believe that war crimes were committed by some members of the Israel Defence Forces during and after the boarding of the Mavi Marmara on 30 May 2010; however, no potential case arising from this situation can, legally speaking, be considered of “sufficient gravity” under the Rome Statute to be admissible before this Court, therefore barring the opening of an investigation.

First, in my respectful view and following a careful assessment, I have concluded that the Pre-Trial Chamber I’s request did not provide supportable grounds to reverse my previous decision. More specifically, our further assessment and scrutiny following the Pre-Trial Chamber I’s request have led me to reaffirm the Office’s legal reasoning concerning the standard of proof for preliminary examinations under article 53(1); the standard of review to be applied by a Pre-Trial Chamber under article 53(3); and the substantive analysis actually carried out.

Second, the arguments presented by the Union of the Comoros and the legal representatives of victims do not demonstrate that my Office’s assessment of the information made available in 2014 was unreasonable, unfair, or legally incorrect. In particular, on the basis of the information available, there was no reasonable basis to believe that the identified crimes were committed on a large-scale or as part of a plan or policy. Nor did my Office err in assessing the nature or impact of the identified crimes, or in its approach to allegations of other misconduct on Israeli territory, beyond the jurisdiction of this Court.

Furthermore, in the interests of completeness and transparency— even though not strictly required in the context of rule 108(3)—I have considered whether the new materials made available after the November 2014 report (in 2015-2017) require me to depart from my prior conclusions. However, I have found that the submissions by the Union of the Comoros and legal representatives of victims, on the basis of these new materials, were either consistent with my Office’s original findings or not reasonably supported by any of the available information.

For all these reasons, therefore, I have affirmed my previous reasoning and decided to close this preliminary examination. As the Appeals Chamber has confirmed, this “ultimate decision” is for the Prosecutor alone.

In closing, I wish to reiterate that my final decision reflects an independent and impartial legal assessment of the applicable criteria under the Rome Statute. I want to be clear, however, that I fully recognise the impact of the alleged crimes on the victims and their families and my conclusion does not excuse any crimes which may have been perpetrated in connection with the Mavi Marmara incident.