Israel's Bar Association Seeks to Represent Country at War Crimes Hearing in The Hague

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The Israel Bar Association will be asking to join upcoming proceedings at the International Criminal Court in The Hague on Israeli actions in the occupied territories if the Israeli government decides to boycott the proceedings.

On Monday, members of the bar’s executive council approved a proposal by bar association chairman Avi Himi to seek standing to appear before the ICC as an amicus curiae, a friend of the court.

That assumes that ICC prosecutor Fatou Bensouda’s request for a preliminary hearing on the court’s jurisdiction over the occupied territories is granted and that the court decides to allow friends of the court in the case.

In December, Bensouda’s office announced that it had found a basis to investigate Israel for its actions in the West Bank and Gaza, but has asked the court to consider the question of its jurisdiction in the Palestinians territories. The prosecutor also found “a reasonable basis to believe that members of Hamas and Palestinian armed groups committed the war crimes.”

The Israel Bar Association has already set up a working group headed by Nick Kaufman, a former senior official in the Jerusalem district attorney’s office, to draft its submission. Kaufman now works as an adviser to national governments on ICC proceedings.

Israel is leaning against participating officially in the proceedings – despite having requested a hearing on the court’s jurisdiction in the case – because its participation would be viewed as recognizing the legitimacy of the court and its proceedings. In such an event, the bar should present Israel’s position, since otherwise, the Palestinian Authority’s arguments would go unanswered, Himi wrote in a letter to his membership.

Most members of the executive council approved his proposal, although a few, both Arab and Jewish, objected, arguing that the case involves a controversial political and legal issue in which the bar should not be involved, and that it was not the bar’s job to represent the state in international forums.

Joint List Knesset member Yousef Jabareen, who is a lawyer, told Haaretz: “The Netanyahu government is trying to promote a political agenda perpetuating and sanctifying the occupation by recruiting the bar association for political purposes.” The bar association’s bylaws state that it will work to defend the rule of law and human rights, Jabareen said. “If so, it ought to side with applying international law, promoting peace and justice and opposing war crimes.”