Is the UNHRC Trying to Enforce an Arms Embargo Against Israel?

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Should Israel be concerned that the United Nations Human Rights Council has called for its soldiers to stand trial at the International Criminal Court at The Hague?

The United Nation Human Rights Council, of course, doesn’t have the power to disarm Israel or even to enforce an arms boycott against it.

The 47-member council based in Geneva is solely an advisory body. Its overwhelming focus on Israel since its inception in 2006 – seven reports in this month’s 40th session alone – has made anything its says on the Jewish state suspect to charges of bias.

One wonders then if the initial Gaza report by a three-person team of legal experts on potential Israeli war crimes published last week should raise alarm in Israel?

Or should the document, known as the “Report on the Independent Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory” be dismissed as one more irrelevant action by an irrelevant body?

The report charges that the IDF may have committed war crimes in Gaza.

Ten years ago, South African Jurist Richard Goldstone authored a 575-page UNHRC report with the help of two other legal experts. It also concluded that Israel may have committed war crimes during the first Gaza war, known as Operation Cast Lead, which took place between December 2008 and January 2009.

The Palestinians had hoped that the serious charges in the report would cause the International Criminal Court to open an investigation into alleged Israeli war crimes.

But while the report, like much of the UNHRC’s work, is referenced by the larger United Nations, it was never brought to the ICC because to do so, a referral was needed either by the United Nations Security Council or by an individual state that was party to the Rome Statute that governs the court.

ICC action proved to be a pipe dream with the Goldstone report because the United States would have blocked a UNSC referral and the Palestinian Authority was not a state party to the Rome Statute.

The impact of any UNHRC report on potential Israeli war crimes has shifted dramatically, however, because of two significant diplomatic events. In 2012, the United Nations General Assembly upgraded the status of the Palestinian Authority to that of a non-member state, effectively giving it de-facto statehood recognition.

That move allowed the Palestinian Authority in 2015 to sign the Rome Statute, a move that went into effect on April 1.

The PA was then able to ask the ICC prosecutor, Fatou Bensouda, to open an investigation into potential Israeli war crimes, both in Gaza and in the West Bank, including east Jerusalem. But she is only examining information from June 13, 2014, and onward.

This means that any Israeli actions from that date forward can be part of a potential war crimes suit. The report on the 2018 Gaza border protests, when it is fully published, can be part of that potential suit. Similarly, a UNHRC report on the 2014 Gaza war, completed a year later, is already part of the evidence the prosecutor can weigh when making a decision on whether to open a case.

That 2015 UNHRC document, known as the McGowan-Davis report, also found that Israel may have been guilty of war crimes.

In October, Bensouda already warned Israel about its activity on the Gaza border, stating: “I am similarly alarmed by the continued violence, perpetrated by actors on both sides, at the Gaza border with Israel.”

Any determination of war crimes would give weight to two other UNHRC actions which now also appear to be advisory only.

The first is a resolution passed last year that called on member states not to sell any arms to Israel that would be used in the execution of a war crime, such as Israeli military activity in Gaza and along its border.

No resolutions have been posted yet for this year, but it is likely now that it was passed once, that the language will repeat itself in a resolution to be brought forward on March 18, when the UNHRC debates alleged Israeli violations of human rights.

The second UNHRC action is its pending publication of a database of companies doing business with Israeli entities located over the pre-1967 lines, such as the West Bank and east Jerusalem. The UNHRC is warning those companies that such sales could be criminal activity and could make them liable to international criminal legal action. Implicit in this warning are arms sales in connection with war crimes.

Those who think that the idea of companies halting arms sales to Israel out of fear of international criminal action is far-fetched need only look at the decision in January by the global banking house HSBC decision to divest from the Israeli arms company Elbit Systems.

It did so out of concern that Elbit was involved in the production of cluster bombs, even though Elbit has disavowed such activity.

Should the ICC take action against Israel for war crimes, UNHRC activity has already laid the initial framework for the international community to take action against Israel.