Israel has no planned approach, response to ICC, with 9 days to go

March 31, 2021

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The Jerusalem Post

<https://www.jpost.com/israel-news/israel-has-no-planned-approach-response-to-icc-with-9-days-to-go-663698>

Senior ministers have not held a meeting to discuss and decide on Israel’s approach to the pending [International Criminal Court](https://www.jpost.com/Tags/International-Criminal-Court) investigation in the three weeks since receiving the official letter from the Hague announcing the probe, a senior government source said on Wednesday.

Jerusalem’s response to the [ICC](https://www.jpost.com/tags/icc) is due on April 9, a month after ICC Prosecutor Fatou Bensouda sent the letter notifying Israel that she is opening a war crimes investigation. The probe against Israel is expected to include 2014’s Operation Protective Edge, the riots at the Gaza border in 2018, and the settlement enterprise, including east Jerusalem. Among the senior officials who could be vulnerable to war crimes suits are Prime Minister Benjamin Netanyahu, Defense Minister Benny Gantz, who was IDF chief of staff in 2014, and others, as well as hundreds of IDF officers.

Israel is not a party to the Rome Statute establishing the ICC, and has thus far had a policy of not cooperating with it. The Palestinian Authority, which the ICC recognizes as a member state, initiated Bensouda’s preliminary inquiry that led to the official investigation.

Ahead of the investigation’s official start, policy-makers will need to decide whether to continue to ignore the ICC, saying the probe is not legitimate, or to work with the ICC. If the path of cooperation is chosen, there are different options for Israel, including opening its own investigations of war crimes accusations against soldiers. That would run the risk of legitimizing those claims, and it does not address the settlements issue.

The messages put out by Israelis officials thus far have mostly called the investigation illegitimate and focused on jurisdiction, pointing out that Israel has its own strong judiciary capable of trying soldiers who commit war crimes, if need be, and that the Palestinian Authority is not a state and therefore cannot legally be a member of the court. Netanyahu has called the probe antisemitic and said Jews have the right to live in their historic homeland.

While senior officials in the Foreign Ministry, Justice Ministry, Defense Ministry and National Security Council have been working on their recommendations separately and together, they have not yet been called to present them to Netanyahu, Gantz and Foreign Minister Gabi Ashkenazi.

Further complicating matters is the fact that Gantz’s term as interim justice minister expires on Thursday, and Netanyahu, who is legally prohibited from being involved in choosing a new minister due to his pending corruption trial, has blocked the Blue and White leader from appointing a replacement.

In addition, the Justice Ministry is closed this week for Passover.

A Foreign Ministry source said they have yet to formulate a position on the matter and are waiting to hear more from the Justice Ministry.

Earlier this month, the National Security Council recommended that Israel “send a message to the world that there is an opportunity to renew negotiations with the Palestinians” if the ICC investigation is suspended, Channel 12 reported.

Others recommendations were to behave cautiously when it comes to construction in Judea and Samaria, and the third is not to evacuate the illegal Bedouin encampment at Khan al-Ahmar, on West Bank land controlled by Israel.

Meanwhile, the Shin Bet (Israel Security Agency) confiscated PA Foreign Minister Riad Malki’s VIP border crossing pass, upon his return from a visit to The Hague last week. Malki retains his rights as a resident of the PA, but will no longer have any special privileges that had been granted to him as a top official.

“No one has limited his freedom of movement,” a senior Israeli official said at the time, “but he is using the extra privileges he received from Israel to seek to prevent the freedom of movement from Israelis as we travel abroad. Did he really expect us to sit on our hands?”

“The Palestinian leadership has to understand there are consequences for their actions,” the official said.