Israel Presenting Case to ICC Through Mediators After Official Refusal to Cooperate

April 25, 2021

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Haaretz

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Senior officials in the justice system have presented Israel’s position to the International Criminal Court in The Hague through intermediaries, despite Israel's refusal to cooperate with the court's probe into alleged war crimes in the West Bank and the Gaza Strip.

Since the court’s announcement that its jurisdiction extends the Palestinian territories in February, Prime Minister Benjamin Netanyahu and other politicians have insisted that the matter is not under the court's purview.

In meetings with justice and political officials in the international community, senior representatives of the Foreign and Justice Ministries and the Military Advocate General Corps have presented the government's arguments. Israel mainly asserts that the Israel Defense Forces prosecution is capable of investigating actions by the military, thus obviating the need for the international court to intervene.

According to the state’s representatives, the IDF investigates each incident in which there is a reasonable suspicion that procedures were violated and, when necessary, puts those responsible on trial. Representatives of the MAG department of international law presented comprehensive records on investigations made following operational incidents in both the West Bank and Gaza that attracted widespread international coverage.

Along with the public and behind-the-scenes struggle to halt the investigation, the MAG department provides legal representation to military figures who might be personally affected by the investigation. There is a concern that countries that are party to the ICC could issue arrest warrants for hundreds of Israelis, including defense ministers and current and past senior IDF officers.

Alongside its work on the existing investigation, MAG is moving to increase its role in the army’s ongoing operations. Officers from MAG’s international department are increasingly monitoring exercises and preparations for operations, as well as advising commanders in the field. Over the past year, additional legal advisers have undergone training on the international rules of combat. In addition, IDF officers with the rank of lieutenant colonel and above take part in conferences intended to deepen their knowledge of the legal aspects of military operations, the legality of targets attacked and other elements.

Last month, the ICC prosecution announced the launch of an official investigation into alleged war crimes beginning in June of 2014. Israel responded to the court that it utterly rejected the claim that it had committed war crimes and that the court was acting without jurisdiction, but among legal figures there is consensus that the investigation cannot be ignored.

In an opinion issued in late 2019, International Criminal Court Prosecutor Fatou Bensouda discussed three types of possible crimes: actions committed by both Israel and Hamas during their war in summer 2014; actions committed by Israel during mass Palestinian demonstrations along the Gaza-Israel border starting in March 2018; and the settling Israeli of civilians in occupied territory.