ICC prosecutor seeks Bangladesh and Myanmar investigation

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The prosecutor of the International Criminal Court on Wednesday moved closer to opening a full investigation into alleged crimes against the Rohingya people who were driven from Myanmar to Bangladesh.

Prosecutor Fatou Bensouda said in a statement she would ask judges for permission to investigate crimes that had “at least one element” in Bangladesh, which is a member of the ICC.

She added that her investigation would cover crimes that also took place “within the context of two waves of violence in Rakhine State on the territory of” Myanmar.

The war crimes court said in a separate statement it had assigned a three-judge panel to hear Bensouda’s request.

If granted, the ICC would become the first international court to look into alleged atrocities against the Rohingya Muslim minority of Myanmar.

Although Myanmar is not a member of the court, the ICC in September determined it has jurisdiction over some crimes in the region when they had a cross-border nature, given that Bangladesh is a member.

“The Court has jurisdiction over the crime against humanity of deportation allegedly committed against members of the Rohingya people,” it said in a September 2018 ruling. “The reason is that an element of this crime - the crossing of a border - took place on the territory of a State party (Bangladesh).”

The following day, Myanmar’s government said it rejected the court’s jurisdiction.

An independent U.N. fact-finding mission in August concluded that Myanmar’s military carried out mass killings and gang rapes of Muslim Rohingya. Bensouda’s office began a pre-investigation examination in the Bangladesh-Myanmar case last year, and a delegation from the court visited Bangladesh in March.

With 122 members, the U.N.-backed ICC is a court of last resort, only stepping in when member countries are found to be unwilling or unable to prosecute war crimes on their territory — or when a case is referred to it by the U.N. Security Council.

That occurs only rarely as the United States, Russia and China are not ICC members, and can use their veto powers to prevent a referral, as Russia has done with Syria.