Israel braces for imminent ICC decision on war crimes investigations

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Israeli diplomats and legal experts on Thursday were bracing for the International Criminal Court at The Hague to make its final decision on whether or not to investigate the Jewish state on charges of war crimes. Officials expect the ICC to announce its decision over the next 24 hours.

Officials in Israel believe the panel of judges will accept the position of chief ICC prosecutor, Fatou Bensouda, whereby the court has the authority to investigate Israelis and indict them. This, despite the fact that Israel, and the United States, incidentally, are not signatories to the Rome Statute, the treaty upon which the International Criminal Court is predicated, and has openly declared its view that the ICC is not within its jurisdiction to investigate the Israeli-Palestinian conflict. Israel additionally claims that the ICC only has jurisdiction over petitions submitted by sovereign states, but that the Palestinian Authority is not a state.

In their decision, the ICC judges are also expected to take into account requests from numerous Western countries and jurists that have called on the ICC not to interfere in a political conflict.

With that, the assumption in Israel is that the ICC will accept Bensouda's position and authorize investigations, in which case the court will pursue two types of charges: against Israeli soldiers and officers for alleged war crimes in Gaza and Judea and Samaria; and against allegedly illegal construction in Judea and Samaria and Jerusalem.

In Israel, officials are preparing to counter the ICC's ruling with both overt and covert tools. Upon the establishment of the national unity government, Minister Zeev Elkin was put in charge of the ICC issue. Elkin is spearheading an inter-ministerial task force that for years now has been orchestrating Israeli activity to counter the ICC. The task force consists of representatives from the Foreign Ministry and Justice Ministry, the National Security Council, the Strategic Affairs Ministry, the defense establishment and others. In recent months, in light of the expectation that the ICC will seek to investigate Israel, the task force has been laying the groundwork for the new situation. Israeli officials describe these actions as both defensive and offensive in nature, and will be set in motion if and when the ICC decides to launch investigations.

US President Donald Trump's administration has backed Israel in its battle against the ICC.

Jerusalem and Washington have both argued that they have credible judiciaries that can properly investigate and, if need be to prosecute, human rights violations, making the ICC's intervention redundant.

Prime Minister Benjamin Netanyahu has said in the past that Bensouda's decision "has turned the International Criminal Court into a political tool to delegitimize the State of Israel. The prosecutor has completely ignored the legal arguments we presented to her."

He added: "As we're moving forward to new places of hope and peace with our Arab neighbors, the International Criminal Court in The Hague is going backward … It finally became a weapon in the political war against Israel … The ICC was established after the horrors of World War II, in particular the terrible horrors done to our people, and it is meant to deal with problems that states bring up against war criminals, such as genocide or mass deportation," he said.

Addressing the court's scrutiny of construction in Judea and Samaria and Jerusalem, Netanyahu said Bensouda's position went against the "historical truth" of Jewish rights in the historic land of Israel.

"It is acting against the right of Jews to settle in the homeland of the Jews. To turn the fact that Jews are living in their land into a war crime – it is hard for there to be a greater absurdity than this," he said.