Analysis: Will the ICC view Israel’s fires as terrorism?

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As the security services try to unravel how many of the ongoing fires are the result of terrorism, it is worth asking whether acts of arson could be considered environmental war crimes by the International Criminal Court.

The ICC prosecution is examining possible war crimes by Israel and the Palestinian Authority since June 2014. Its Rome Statute includes war crimes for destroying the environment, even if no one is killed.

In mid-September, the ICC prosecution issued a policy directive stating that it would place a special priority on prosecuting war crimes against the environment. To date, the international tribunal has not prosecuted such a crime.

This could be an attractive idea, since many acts of arson cause great environmental damage and terror, but without killing anyone. However, any arson which does kill someone could be considered a homicide, and possibly a war crime.

But there are many barriers to applying the war crime model to the current situation. First, the Fire and Rescue Authority and security forces have said some of the fires were driven by the current dry spell and fierce winds and caused by negligence. None of those would qualify.

Second, some of those suspected of arson are Israeli Arabs and would be tried in Israeli courts if caught. Israel cannot involve the ICC in prosecuting its own citizens.

Third, if there are individual Palestinians who are not connected to Hamas or other terrorist groups and who perpetrate arson, they might just be prosecuted as individuals by Israel in the IDF West Bank Courts. The ICC would not be able to go after them as part of the Palestinian side of an armed conflict with Israel.

But if there are Palestinians linked to Hamas or other groups who are perpetrating arson as part of an armed conflict with Israel, it would seem that the ICC could potentially go after them for war crimes against the environment even if no Israelis are killed.

Israel would prefer the ICC never get involved. But if it dives deeper into the Israeli-Palestinian conflict, in addition to pursuing Palestinians for firing rockets at civilians, this is another card that Israel could play against the Palestinian side.