**Eight things to know about the ICC war crimes suits against Israel**

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Israel’s right to self-defense and to its ancient biblical capital of Jerusalem suffered a blow on Friday when an International Criminal Court (ICC) ruling advanced the possibility of war crimes suits against Israelis.

“If the International Criminal Court is making a list of so-called Israeli [war crimes] suspects, I ask that my name be put a the top of that list,” Yamina party head Naftali Bennett said on Sunday.

It was not just a statement of bravado against the highest international criminal judiciary body.

As a former defense minister, there is a very real possibility that he could one day be targeted by the court.

For the Palestinians, the ICC ruling offered a ray of hope to hold Israel accountable for alleged human rights abuses.

Upon hearing of the ruling, Palestinian Authority Prime Minister Mohammed Shtayyeh responded by stating that perpetrators of crimes will “not go unpunished.”

For many Israelis the idea that the court plans to target them with respect to actions in Gaza and Israeli settlement activity, but has not held human rights abusers in Iran, Syria and or China accountable, speaks to the continued bias of international organizations against the Jewish state.

But how real is the possibility of war crimes suits? Who would be targeted and for what?

How harmful or helpful was the ruling to either Israel or the Palestinian Authority, which first turned to the court in 2015 and asked that it adjudicate war crimes suits?

1. Is the probe only focused on Israel?

No. The ICC will examine actions by both Israeli and Palestinians, including Hamas. But the probe was launched at the request of Palestinians and is expected to overwhelmingly focus on activities by Israelis against Palestinians.

2. Can all Israeli and or Palestinians actions be considered war crimes?

No. The ICC will examine activities that occurred since June 13, 2014. The scope of the probe is also limited to only those incidents which occurred over the pre-1967 lines in east Jerusalem, the West Bank and Gaza. This includes Jerusalem’s Old City, the Western Wall and the Temple Mount, known to Muslims as al-Haram al-Sharif. Israelis are liable for such actions, even though Israel is not a party to the Rome Statute which governs the ICC. The Palestinian Authority, in contrast, signed the statute in 2015.

3. What three mains issue will the ICC likely probe?

The first is the 2014 Gaza war, including the question of disproportionate attacks by the IDF and indiscriminate rocket attacks by armed Palestinian groups in Gaza, including Hamas.

The second is IDF use of lethal force against the Hamas-led “Great March of Return” along the Gaza border, which began in March 2018 and ended in December 2019.

Third, the ICC would also look at the issue of whether settlement activity in the West Bank and Jewish building in east Jerusalem, since that June 2014 date, could be considered a war crime. Israel’s razing of Palestinian structures could be examined tangentially, but not as the main focus.

Other incidents since that date could also be probed in the future, but the main immediate thrust is expected to be these three issues.

4. Is the state and or individual Israelis at risk?

Both. On the policy level, Israel fears that a negative ruling on matters relating to Gaza would ultimately raise questions about Israel’s right to self-defense and make it difficult for the IDF to operate against threats to the state and its citizens, particularly on Israel’s southern border.

A negative ruling on settlements and Jewish building in east Jerusalem, Israel fears, would undercut its legal claims to historical and religious rights to its ancient Biblical territory and its legal claims to be indigenous to that territory.

If the Palestinians are successful at the ICC, then Israeli activity in both its biblical heartland of Judea and Samaria, otherwise known as the West Bank, and in its ancient capital of Jerusalem, would be a war crime.

The security cabinet mentioned the absurdity of both claims when it issued a statement against the ICC ruling on Sunday.

On the individual level, war crimes suits could be leveled against people and not the state. This means that leaders such as Prime Minister Benjamin Netanyahu and former defense ministers Moshe Ya’alon, who held that post during the 2014 Gaza War, and Avigdor Liberman, who was defense minister when the Great March began. Defense Minister Benny Gantz and his predecessor Bennett could also be targeted along with individual soldiers and commanders.

5. What was Friday’s ruling and why did it matter?

The ICC’s Pre-Trial Chamber ruled 2-1 that the court’s Chief Prosecutor Fatou Bensouda had the jurisdiction to open an investigation into potential Israeli and Palestinian war crimes on territory over the pre-1967 lines in the West Bank, Gaza and east Jerusalem. Jurisdiction was one of the earliest and most global grounds on which the threat of an ICC war crimes suit could have been averted both on the issue of Gaza and the settlements, had the three judges ruled against jurisdiction.

Their decision in support of jurisdiction can’t be appealed at this stage. The argument against jurisdiction can only be reopened at a later phase in the process, once individual charges have been filed to the court for approval.

6. Did the court’s jurisdictional ruling include recognition of Palestine as a state?

No. The Pre-Trial Chamber specifically stated that such a move was outside of its purview, but it said that it could be considered as such solely for the purpose of these issues of adjudicating war crimes.

The basis of its ruling strengthened the status of de facto Palestinian statehood and the role of the United Nations in determining that status. The ruling upgraded the significance of the 2012 UN General Assembly Resolution that granted the Palestinians the status of a non-member state by legitimizing the de facto status it granted the PA to have the right of member states to sign UN treaties and statues, including the Rome Statute. It was that signature which opened the possibility of war crimes suits.

The Pre-Trial Chamber also relied on the text of that resolution to set the territory on which it had jurisdiction. It was a move that upgraded the legal status and impact of such resolutions, particularly with respect to the Israeli-Palestinian conflict.

7. How significant was the dissenting opinion?

ICC Judge Péter Kovács disagreed with his two other peers; Reine Adélaïde Sophie Alapini-Gansou and Marc Perrin de Brichambau, as well as with Bensouda herself. He said that Palestine could not be considered a de facto state for the purposes of the tribunal and that the court’s jurisdiction could not be fully extended to Gaza, the West Bank and east Jerusalem.

He took particular issue with the reliance his peers and Bensouda placed on the UNGA’s 2012 resolution, which he said was non-binding and did not carry the legal weight attributed to it.

In a strongly worded 168-page option, that was longer than the original 60-page one issued by the Pre-Trial chamber, he brought into evidence statements by PA officials themselves as well as the UN, to the effect that Palestine is not yet considered to be a state.

Kovács arguments lend legal weight to Israel’s contention that Palestine cannot be considered a state. They reflect a lack of legal unanimity on the issue with the court and can be used later to bolster appeals claims.

8. What are the next steps?

Bensouda would inform the parties and the court that she has opened an investigation, at which time they would have 30 days to respond.

Among the critical aspects of her investigation is the question of whether the Israelis or the Palestinians have adjudicated or would adjudicate issues with regard to Gaza and the settlements, according to Israel Democracy Institute Vice President of Research and legal expert Prof. Yuval Shany. The ICC is called into play often only in situations where the national court system is non-existent or has not addressed the pertinent issues, he explained.

It is at this stage that Israeli probes or potential probes into criminal activity by its soldiers in Gaza could sway Bensouda not to move forward on war crimes allegations with regard to Gaza, Shany said.

Israel has not simultaneously held criminal investigations into settlement activity – which it considers to be legal – and thus Bensouda is likely to move the matter of settlements forward to the phase of individual criminal charges.

Those charges against individuals either with respect to Gaza or the settlements must be confirmed with the court. It is at that phase that individuals charged could appeal, including on jurisdictional grounds, Shany said.

The timing of the matter is likely to be crucial, since Bensouda’s term as chief prosecutor is slated to end in June and a new prosecutor will make decisions on the case.