**Five key points on Israel’s latest ICC war crimes clash - analysis**

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The International Criminal Court is a “politicized kangaroo court,” Prime Minister Benjamin Netanyahu charged on Fox News on Thursday, one day after ICC Chief Prosecutor Fatou Bensouda announced that she would open an investigation into alleged Israeli and Palestinian war crimes.

In doing so, she advances a process that has been six years in the making.

“I am going to fight this,” Netanyahu told Fox.

But what kind of a battle is he looking at, and what can Israel expect in the next round of its battle to stay out of The Hague?

What happens next?

The ICC will notify the relevant governments and states, in this case Israel and the Palestinian Authority, of its intention to open an investigation. Upon receipt of that notice, the governments will have a month to respond to the court and provide a reason why such an investigation should not move forward. At issue for the chief prosecutor would be whether domestic courts are already adjudicating the matter.

Who is at risk in Israel?

Bensouda will only be looking at major decision-makers and not individual soldiers. Netanyahu as well as defense ministers Moshe Ya’alon, Avigdor Liberman, Naftali Bennett and Benny Gantz could all come under ICC scrutiny.

What is Israel’s next step?

Israel has to decide if it wants to participate with the court proceedings or ignore them. While the final phase of the process will involve charges against alleged individual wrongdoers, the next phase will rise and fall in part on information from the state parties. Israel’s input here could carry weight.

In the past, Israel has consistently opted not to engage with international proceedings that it feels are particularly biased against it, such as refusing to participate in the 2004 proceeding before the ICC prior to its issuing an advisory opinion that Israel’s security barrier was illegal.

It has also boycotted United Nations Human Rights Council meetings under Agenda item 7, in which alleged Israeli human rights violations are debated. The UNHRC is mandated to hold this debate at every session, and there is no other country against which there is such a mandate.

Israel also withdrew from the United Nations Educational, Scientific and Cultural Organization (UNESCO) after it ascribed Hebron’s Old City including the Tomb of the Patriarchs to the “State of Palestine.” The vote followed a number of other controversial moves, including resolutions that ignored Jewish ties to its holiest site, the Temple Mount, and its 2011 vote to recognize Palestine as a state.

When it comes to the ICC, Israel has refused to directly engage with the court on the issue of a pending war crimes suit. But it has found creative ways to ensure that the court has the relevant information, including submissions to the ICC by countries supportive of Israel, which made arguments that Israel otherwise would have put forward.

How strong is the case on Gaza?

The possibility of a war crimes suit against Israeli defense ministers and chiefs of staff and/or soldiers for alleged wrongdoings in Gaza sounds dramatic.

Bensouda had already stated her intention to examine war crimes charges against Israel for its action in the 2014 Gaza War, and against rioters along its southern border with Gaza during the Hamas-led “March of Return” that lasted from March 2018 until December 2019.

It is a danger that could pose an existential threat to Israel, because Jerusalem views IDF action in Gaza a matter of self-defense. It worries that any war crimes suits for such military action would undermine the IDF’s ability to defend the state, which is under constant threat along three of its five borders.

But one of the factors the court will weigh is whether Israel has a domestic legal system that would investigate and/or adjudicate such issues. The ICC is considered to be an international tool that operates when no domestic court system exists, or when that system fails to deal with the issue.

But when it comes to Gaza, Israel has already held scores of preliminary investigations and criminal investigations. These would weigh heavily in Israel’s favor, and could be a reason for Bensouda or her successor to reject war crimes suits against Israel with respect to Gaza.

Conversely, the issue of war crimes suits against Palestinians for rocket attacks against civilians are more likely to be advanced, precisely because the Palestinian legal system either in Gaza or the West Bank has no history of dealing with that matter.

How strong is the case on settlements?

The specter of a war crimes suit against Israel for settlement activity in the West Bank and Jewish building in Jerusalem sounds less dramatic. But it is precisely this issue that is most likely to be advanced to the next stage.

The Israeli courts and the government have upheld the legality of settlement activity and Jewish building in east Jerusalem, so there is a strong case for ICC involvement on this issue. The court would only be looking at settlement activity since June 13, 2014. The bulk of Jewish building over the pre-1967 lines occurred prior to that date.