**Israel welcomes ICC prosecutor pick, but no evidence he’ll nix war crimes probe**

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With Israel facing a possible war crimes investigation in the Hague, Jerusalem is watching the appointment of new prosecutor Karim Khan closely, amid signs that he may seek to shift the direction of the International Criminal Court.

While experts say his appointment does not offer any definitive clues on how the court will proceed with its possible probe into alleged misdeeds by Israel and the Hamas terror group, some Israeli analysts are optimistic about the pick and the departure of outgoing prosecutor Fatou Bensouda.

Khan’s “appointment harbors the potential for the ICC to fulfill its important mission — to uphold, promote, and protect the rights of all those needing its representation as a court of last resort,” said MK Michal Cotler-Wunsh, the Knesset’s top legislator dealing with matters related to the ICC.

She noted specifically Khan’s work on behalf of the UN investigating war crimes by the Islamic State in northern Iraq. “Kahn has shown care and concern for victims of human rights, such as in the case of the Yazidis,” she told The Times of Israel.

Khan, 50, boasts a long career involving some of the biggest war crimes prosecutions and other cases, both as a prosecutor and for the defense. The British lawyer served as an adviser to prosecutors at the tribunals for the former Yugoslavia and for Rwanda, but also defended Seif al-Islam Gaddafi, son of late Libyan leader Muammar Gaddafi, and former Liberian president Charles Taylor.

Khan was elected on Friday by the ICC’s 123 member states, beating out Irish lawyer Fergal Gaynor. In June, he will become the third prosecutor in The Hague-based court’s history, taking over for Fatou Bensouda of The Gambia.

Israeli political scientist Emmanuel Navon, a fellow at the Jerusalem Institute for Strategy and Security, said Khan was not a politician, unlike Bensouda, who was Gambia’s attorney general and justice minister.

Observers posit that Bensouda was elected to alleviate concerns of African countries who accused the court of focusing exclusively on the continent, and therefore made a conscious effort to find officials in other regions to investigate.

In 2015, Bensouda released a statement emphasizing that the court was “busy conducting preliminary investigations in Afghanistan, Iraq, Colombia, Palestine and Ukraine,” and not just in Africa. Still, the court was not able to shake criticism from African nations that it unfairly targeted them.

Some have accused Bensouda of entangling the court in politicized proceedings.

“If Khan wants to restore the credibility of the court he has to put an end to this politicization, and try to convince major powers that the court is actually about war crimes,” Navon said.

Earlier this month, a pre-trial chamber of the ICC determined that The Hague has jurisdiction to open a criminal investigation into Israel and the Palestinians for war crimes alleged to have taken place in the West Bank, Gaza Strip and East Jerusalem, paving the way for a full investigation after a five-year preliminary probe opened by Bensouda.

Bensouda indicated in 2019 that a criminal investigation, if approved, would focus on the 2014 Israel-Hamas conflict (Operation Protective Edge), on Israeli settlement policy and on the Israeli response to protests at the Gaza border. The probe will also likely focus on accusations of war crimes by the Hamas terror group against Israeli civilians.

The ICC doesn’t try countries, but rather individuals. Israeli officials said Friday they do not currently anticipate any immediate threats to senior Israeli political or military figures.

Beyond an unlikely scenario in which arrest warrants could be issued for senior Israeli officials under investigation, Jerusalem fears an ICC investigation could still harm the country in a number of ways. This includes smothering any modest progress in Israeli-Palestinian relations by pushing Ramallah to pursue gains via international bodies rather than peace talks. It could also undermine the Oslo Accords, which seemingly prohibit the Palestinians from seeking judicial relief against Israel at the ICC.

International law scholar Eiav Lieblich said there was no reason to think Khan would not proceed with Bensouda’s plans to investigate Israel. “I really fail to see what any excitement is based on,” he told The Times of Israel.

“I don’t see him doing [anything] too different than what has been done until now. If somebody thinks that for some reason these cases or this investigation is going to disappear now, I highly doubt it,” he said.

Eli Bar-On, IDF deputy military advocate general from 2012-2015, pointed to the widespread support Khan received from human rights organizations as a sign that he would stay the course.

“They would not have supported him if they thought he wouldn’t advance this investigation,” he said. “It is not entirely clear to me why everyone here is celebrating his election.”

“I don’t see how he decides not to open up an investigation at all,” said Bar-On, “but reaching the stage of issuing arrest warrants is another story entirely.”

He noted that the court, with its limited resources, might still decide to look into areas less likely to raise a large international ruckus.

“It will be entirely legitimate if he decides to advance less controversial cases, investigations that are more likely to reach convictions, investigations of countries that are state parties without getting into questions of jurisdiction,” he said.

Whichever paths he decides to focus on, Khan — who has been part of the prosecution and the defense teams in major human rights investigations — will likely be a very effective prosecutor, experts said.

“He knows all the playbooks and tricks of the defendants and their lawyers,” Bar-On stressed.

Israel’s allies on the court that oppose the investigation, including Australia, Canada, and Germany, can play an important role in urging Khan to prioritize other cases.

The US, which has kept in place sanctions slapped on Bensouda by the Trump administration, can also work behind the scenes to urge Khan to focus on countries that do not have well-functioning legal systems and are members of the court, rather than the US or Israel.

“Probably the most likely actor to apply pressure would be the United States,” Lieblich argued, pointing at the ongoing tensions between the US and ICC over Afghanistan.

Major world and regional powers like the US, Russia, China, India, and Turkey are not members of the court.

Anne Herzberg, legal adviser at NGO Monitor, said the Khan pick was a repudiation of the direction of the court under Bensouda. “He won’t just accept what the current prosecutor is doing at face value, and I do think he will take the time to evaluate the work she’s done so far as well as the decision of the courts.”

Had Gaynor beaten out Khan in the drawn-out and divisive election process, all indications point to him vigorously pursuing the Israel probe, as well as an investigation into alleged crimes by US troops in Afghanistan.

Gaynor submitted a brief to the ICC on behalf of Palestinian victims urging the court to investigate Israeli war crimes, and also represented Afghan victims before the court, arguing that the ICC had jurisdiction to look into alleged war crimes by parties that include the United States.

“In both of the most controversial cases before the court, he had significant conflicts of interest,” said Herzberg.

The very fact that Khan is not Gaynor might well be the source of much of Israel’s enthusiasm for him. But Khan is actually better positioned to investigate Israel, since he does not have the cloud of partiality hovering over him that his Irish counterpart has.

Despite the demands for reform, Israel has no way of knowing what Khan will decide to do, especially with Palestinian claims against Israel. He has not worked on Israel-related issues in the past.

“With anyone in a position at that type of international institution, you have to be cautious,” Herzberg cautioned. “He could still act in a way that is very detrimental to Israeli interests.”