**Who will ICC try to arrest if war crimes probe advances?**

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Jerusalem Post

March 5, 2021

<https://www.jpost.com/israel-news/who-might-the-icc-try-to-arrest-if-things-get-worse-661000>

A few of Israel’s most senior leaders could face possible arrest warrants by the International Criminal Court at The Hague, according to senior Israeli officials.

The officials, as well as ICC history, indicate that the court would only seek to arrest or indict fewer than 10 officials, perhaps no more than three, because of the court’s scarce resources (investigators, prosecutors and judges) and how many cases the court can handle.

As things stand, the ICC is already spread very thin, split among a couple of dozen preliminary situations. Some cases can take a decade to get anywhere.

The top Israeli officials who might be at risk in a few years – or in the worst-case scenario, in a few months – can be split into three categories: those involved in decisions regarding the 2014 Gaza War, the 2018 Gaza border crisis, and the settlement enterprise since June 2014.

Targeted official include Prime Minister Benjamin Netanyahu in all three categories; then-defense minister Moshe Ya’alon, then IDF chief-of-staff Benny Gantz, and a variety of IDF commanders in the 2014 Gaza War.

It is unclear to what extent the ICC would be able to identify specific field commanders, although there are some exceptions such as Brig.-Gen. Ofer Winter, who spoke frequently to the media about his involvement in the Black Friday battle on August 1, 2014, the bloodiest battle of the war for Palestinian civilians.

Winter was investigated by the IDF and his promotion was even put on hold for an extended period, but he was cleared following a detailed inquiry in 2018 by the military advocate-general, Maj.-Gen. Sharon Afek. A few other officers whose names were revealed in IDF probes or media leaks could also be targeted by the court.

Overall, Israel would claim that its more than 30 detailed criminal investigations and some 500 initial incident reviews should preclude ICC intervention. Moreover, Israel has sent several soldiers to jail in recent years for killing Palestinians, including the Hebron shooter, Elor Azaria.

This argument may win the day in cases involving the 2014 Gaza War.

Regarding the 2018 Gaza border crisis, then-defense minister Avigdor Liberman, then-IDF chief Gadi Eisenkot, and some commanders could also be sought by the court.

The Jerusalem Post reported on January 5 that after 14 criminal investigations and two convictions for the killing of over 200 Palestinians during the 2018 Gaza border crisis, the IDF was close to wrapping up its probes.

It is unclear if that will be sufficient for the ICC. But here again, Israel may be able to prevent any intervention by the court because it undertook probes.

The largest exposure for Israel may involve the settlements enterprise that has been taking place since 2014. The main officials who could be in the hot seat would be ministers in charge of the settlements, which since 2014 and until now would be the housing and construction minister.

This could include Uri Ariel, Yifat Shasha-Biton, Yaakov Litzman, Yitzhak Cohen and Yoav Galant, who was by far the longest-serving minister. The ICC would be unlikely to pursue individuals such as Shasha-Biton, who held the portfolio for less than two years.

Defense ministers during this period might also be on the hook, because they used the IDF to maintain or establish various settlements.

It is also possible that regional councils that approved building in settlements could be exposed.

Here Israel could not attempt to avoid ICC jurisdiction by presenting its own probes of the settlements because the Jewish state, with a few exceptions, does not regard them as illegal and does not prosecute them.

The ICC Prosecution has already dismissed as insufficient the argument that there are High Court of Justice rulings to demolish certain illegal outposts, since those rulings only address specific outposts.

Instead, Israel will try to argue that building settlements is not a war crime.

Here, it will run up against a specific last-minute addition to the Rome Statute in 1998, which ascribed war-crimes status to the settlements. This was a major amendment to the accepted list of war crimes listed in the Geneva Conventions.

If the situation gets more serious, then Israel will likely reactivate its worldwide network of defense lawyers in a few years or even months.

It will also likely maintain regular dialogue with the court’s 123 member countries to see if they would act if presented with an ICC arrest warrant.

Some countries may ignore these warrants for officials from an ally-democracy like Israel, just as there were countries that ignored warrants for war criminals such as former Sudanese president Omar al-Bashir.

Many others may strike a quiet bilateral deal with Israel to inform them on which Israeli officials should avoid traveling to their countries to avoid any conflict and embarrassment.

But there have been instances in the past 20 years where a local national court or prosecutor sought to arrest Israeli officials, and local law firms had to be enlisted to assist them to avoid arrest.