**Why didn’t Israel respond to ICC about Oslo deal? – analysis**

By: Yonah Jeremy Bob

Jerusalem Post

June 24, 2020

<https://www.jpost.com/israel-news/why-didnt-israel-respond-to-icc-about-oslo-deal-analysis-632682>

Why has Israel decided not to fully show up to the fight of its life before the International Criminal Court?

In late May, the ICC requested that the Palestinian Authority, Israel and the ICC Prosecution give their view of whether the Oslo peace accords are still in effect and how they impact the issue of whether the judges approve a full criminal war crimes probe of Israel and Hamas.

Except that the PA and the ICC Prosecution responded, while Israel was a no-show.

What is Israel’s reason for not at least filing a legal brief?

All of this started after PA President Mahmoud Abbas’s mid-May announcement that the PA is no longer bound by Oslo.

The Oslo Accords are relevant to the question of whether a State of Palestine exists which can give rise to ICC jurisdiction over alleged Israeli war crimes from the 2014 Gaza war and the settlement enterprise, since the international tribunal usually only deals with cases referred to it by states.

Until Abbas made that announcement, the legal battle lines regarding Oslo were that Israel argued that the accords prevented the Palestinians from seeking any outside intervention for criminal issues, while the PA and the ICC Prosecution (in different ways) argued that Oslo did not block ICC jurisdiction.

Essentially, the PA and the ICC Prosecution claimed that the Palestinians’ right to self-determination and to having crimes against them addressed could not be constrained even by a bilateral deal like the Oslo Accords.

So whether Oslo applies or not, the Palestinians can ask for ICC intervention and have statehood status on the basis of a UN General Assembly vote in 2012 as well as the ICC Assembly of State Parties acceptance of Palestine in 2015.

Israel would say that either the Oslo Accords are the basis for potential Palestinian statehood, and if they still apply, they limited criminal jurisdiction, or that if there is no Oslo, there is no basis for Palestinian statehood – since the UN Security Council still has not made them a full UN member state.

These are arguments that Israel already made in two extensive briefs in December 2019.

From that legal perspective, Israel had nothing to add.

Whether Oslo is still in effect or not, Jerusalem would argue there is no basis for the ICC to get involved.

In fact, since Israel is not a party to the ICC’s Rome Statute and says that the ICC has no jurisdiction over it, responding could even lend validity to the ICC proceedings that Israel may not want to lend.

But this misses some of the bigger picture.

Israel’s main front with the ICC is no longer on the legal plane, but in the diplomatic arena.

In March, it emerged that Energy Minister Yuval Steinitz was leading Jerusalem’s efforts to combat ICC jurisdiction.

Recently, The Jerusalem Post learned that the ICC portfolio was transferred by Prime Minister Benjamin Netanyahu to Minister of Higher Education and Minister of Water Resources Ze’ev Elkin.

So two ministers with no experience in international law have been managing the issue above the Foreign Ministry, Justice Ministry and IDF lawyers who have been living and breathing the issue for years.

This would seem to make no sense except for the June 11 executive order signed by US President Donald Trump authorizing both financial and travel sanctions against ICC personnel in retaliation for the body’s war crimes probe against the US for actions in Afghanistan in 2003-2004.

The order authorized US Secretary of State Mike Pompeo, in consultation with Treasury Secretary Steven Mnuchin, to block assets in the US of ICC employees involved in the probe.

It also authorized Pompeo to block entry into the US of these individuals.

The US actions against the ICC fill in the missing pieces of the puzzle.

Now that the ICC judges have gone after the US and the ICC Prosecution has gone after Israel and the ICC judges are considering following suit, Israel’s main game is to isolate and delegitimize the ICC.

Already a group of European, South American and African countries filed legal briefs in February and March asking the ICC to stay out of the Israeli-Palestinian conflict and other European countries want it to stay out as well.

Israel is banking on the US threats and the pressure from other countries supporting its cause that will get the ICC judges to think twice.

For managing these efforts, no special international law background is needed, and both Steinitz, and now Elkin, in any event will report to Netanyahu.

But what happens if the ICC approves the probe against Israelis and Trump is out as president in January 2021?

The fact that the ICC judges asked for clarification on the Oslo issue could mean they are seriously considering overruling the ICC Prosecution and closing the probe.

So the diplomatic gambit may or may not work. But Israel may have just missed an opportunity to win in the legal arena without having to rely on the external pressure.