



**The Palestinian Authority is disappointed because the ICC recessed for the summer without deciding about its authority to investigate Israel. The PA is working to accelerate the publication of the decision, anticipating that it will favor the Palestinians**

July 26, 2020

## Overview

On July 17, 2020, the International Criminal Court (ICC) in The Hague began its summer recess of three weeks without issuing a decision as to the ICC's authority to initiate an investigation of Israel's so-called "war crimes." **Senior Palestinian figures were disappointed by the lack of a decision.** The PA foreign minister represented the delay as the ICC's surrender to American and Israeli pressure, adding that the ICC has sufficient proof to initiate an investigation of the settlements and Israel's [alleged] "aggression" in the Gaza Strip.

► According to the PA foreign minister, the decision was not postponed because of the recess, because **the chief prosecutor and the panel of judges may work during recesses.** He said that on June 5, 2020, **the PA sent a request to accelerate the decision,** mainly because of its campaign against Israel's plan to annex territories in Judea and Samaria. The Palestinian foreign minister added that when the decision is eventually published, the Palestinians will have to decide, along with the chief prosecutor's office, **on the investigations' working procedures, because Israel can be expected to prevent Court representatives from entering the country and not to cooperate.**

## Main Developments in the Palestinian Appeal to the ICC (See Appendix for details)

► **In January 2015 Fatou Bensouda, the ICC chief prosecutor, in response to a request from the Palestinians, decided to carry out a pre-investigation of Israel's activities in the PA territories.** Five years later, on December 20, 2019, she said that in her opinion there was a case to investigate the situation in "Palestine" because of the [alleged] "war crimes" Israel carries out in the West Bank, east Jerusalem and the Gaza Strip. She said she was also of the opinion that the ICC had the authority to rule on the issue because, she claimed, a Palestinian state exists in the 1967 territories. Nevertheless, **she asked a panel of ICC judges to hold pre-trial deliberations and announce their conclusions regarding the Court's**

**jurisdictional authority.** She also asked them to define the limits of the investigation that was being requested.

► The ICC Chief Prosecutor's decision was **received by the Palestinians with considerable satisfaction** ("A great day for the Palestinian people," according to Mahmoud Abbas). **They viewed her decision as a political achievement, the fruit of their intensive, long-term political activity targeting the court,** as well as various countries and international organizations. Moreover, **the PA was convinced that the panel of judges would decide in favor of an investigation.**

► Therefore, even before a judgment had been given, the PA, on orders from Mahmoud Abbas, began preparing for the **legal, political and media campaign** they expected to be waged in The Hague, assuming it was about to begin in the very near future. According to reports, preparations included appointing working teams of legal experts, initiating cooperation with civilian society organizations, getting support from international lawyers, appointing a steering committee with representatives from all strata of Palestinian society, compiling lists of Palestinians who had been killed and lodging complaints with the ICC.

► The PA foreign minister's statement may indicate that in PA perception, the importance of the ICC's investigation increased even more with **Israel's intention to extend Israeli law to parts of Judea and Samaria.** The ICC's investigation was regarded as possibly supporting the PA's struggle against the "annexation plan" and the "deal of the century." Therefore, in Palestinian perspective, **the ICC investigation is an important tool in the PA's diplomatic, legal and media campaign against Israel**<sup>1</sup> (however, in the meantime Israel's intentions have not yet been realized, but the Palestinians continue their campaign against Israel, despite the fact that most of its attention is directed towards the struggle against the spread of COVID-19).

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<sup>1</sup> For further information, see the June 2, 2020 bulletin, "Palestinian Authority launches campaign to prevent Israeli application of its sovereignty in Judea and Samaria (updated to June 2, 2020)."



The ICC as a tool of the "resistance" against Israel  
(Facebook page of Iyad al-Buzum, December 20, 2019).

## PA Reactions to ICC Recessing without Issuing a Decision

The ICC's recessing for three weeks without issuing its decision greatly **disappointed the PA**, which **represented it as surrender to American and Israeli pressure**. However, **PA senior figures have emphasized that they are working to accelerate the publication of the Court's decision, which they expect to be in their favor**. **Riyad al-Maliki, Palestinian foreign minister**, said he was prepared to formulate working procedures in coordination with the chief prosecutor's office to enable its teams to enter the Palestinian territories, based on his expectation that **Israel will try to put obstacles in their path**.

► The following are the main points made by senior PA figures regarding the ICC's investigation:

- ◆ **Riyad al-Maliki, Palestinian foreign minister, said his ministry had called on the ICC to determine a date for issuing its decision before it recessed**. He added the fact that the Court had not issued its decision before recessing was proof that the **pressure Israel and the United States exerted on the Court had been successful**. He called on the Court to determine a date for issuing its decision, adding that the Palestinians were working to accelerate the matter. **He claimed the Court had found sufficient proof to begin an investigation into the "settlement project" and [Israel's alleged] "aggression" against the Gaza Strip**. He said he was prepared to sign a document that would make the Court's work in the "occupied territories" easier by opening offices staffed by international employees (Sawa, July 18, 2020).

- ◆ **Riyad al-Maliki** said Israel **had every reason to be concerned about the Court's decision** because if it decides to initiate a formal investigation into the [alleged] "crimes" Israel committed against the Palestinian people, the names of many senior Israeli officials who had made decisions regarding the [alleged] "crimes" would be added to the list of the accused. He said **Israeli Prime Minister Benjamin Netanyahu's** name would head the list. He added that they expected the decision to favor the Palestinians and that the Court would initiate an investigation. The Palestinians expect that Israel might prevent the ICC's representatives from entering the country, and would not cooperate with them. He mentioned instances from the past when Israel did not cooperate with UN resolutions (Palestinian TV, July 19, 2020).
- ◆ According to Riyad al-Maliki According to the PA foreign minister, the decision was not postponed because of the recess, because **the chief prosecutor and the panel of judges may work during recesses**. He said that on **July 5, 2020, the PA had requested the Court accelerate the publication of its decision, especially in view of the Palestinian struggle against Israel's annexation plan**. He said that when the ICC's decision is published the chief prosecutor will begin taking steps of her own. **Such a decision will require the Palestinians to meet with the members of the Prosecutor's office to determine work arrangements for the investigation, because the team from the office will have to enter the territories**. He said he **expects Israel to disrupt the ICC's activities**, should it decide to begin a formal investigation (Wafa, July 20, 2020).
- ◆ **Nabil Sha'ath, advisor to Mahmoud Abbas for foreign affairs and international relations**, said an ICC decision about bringing senior Israeli officials to trial **would help the PA in its struggle against the annexation plan and the "deal of the century."** He said the PA had international support in the ICC.
- ◆ **The PLO's Executive Committee** held a meeting in Ramallah, where it called on the ICC to act more quickly, given Israel's "ongoing disregard" for all international laws (Wafa, July 24, 2020).

## Appendix

### Developments in the ICC's Authority to Investigate Israel

► The decision of whether or not to initiate an investigation of Israel has been before the ICC for a long time. **The following are the main developments in the legal processes of the ICC's judicial authority:**

- ◆ **On January 2015**, Fatou Bensouda, the ICC chief prosecutor, opened, at the request of the Palestinians, a preliminary examination into the situation in Palestine.



**Fatou Bensouda, the ICC chief prosecutor  
(ICC website)**

- ◆ **On December 20, 2019**, Fatou Bensouda announced that after having concluded her preliminary examination, **in her opinion there was a reasonable basis for opening an investigation into the situation in "Palestine" regarding Israel's [alleged] "war crimes" in the West Bank, east Jerusalem and the Gaza Strip. However, she said, given the unique and highly contested legal and factual issues, she requested from Pre-Trial Chamber I a jurisdictional ruling on the scope of the territorial jurisdiction of the ICC** (ICC website, December 20, 2019). She also asked them to determine the limits of the investigation. She said that in addition to the investigation of Israel, **there would also be investigation of Hamas and other "armed groups" accused of using the local population as human shields, and of employing torture. Israel** (which is not a member of the ICC) **completely rejected her decision**. According to Avihai Mandelblit, the Israeli attorney general, Israel is a democratic country of law committed to following international law and upholding

humanitarian values. **That, he said, is ensured by a strong, independent legal system and there is no need for international legal interference.**<sup>2</sup>

◆ **On January 21, 2020**, the Pre-Trial Chamber rejected the request of Fatou Bensouda regarding the examination of the Court's authority to discuss the Palestinian issue. The request was rejected on technical grounds, most of which dealt with the length of the brief she presented (which was longer than 110 pages). The Pre-Trial Chamber said their decision was a matter of procedure, and that she could resubmit the request according to the rules (ICC website, January 21, 2020).

◆ **On April 30, 2020**, in accordance with the request from the Pre-Trial Chamber, **Fatou Bensouda submitted a shortened version** (60 pages) entitled "The Situation in the State of Palestine." She asked the Chamber to determine the jurisdictional boundary of the area to be investigated (ICC website, April 30, 2020).

◆ **On May 26, 2020**, Omar Awadallh, head of the UN department and the special agencies in the PA foreign ministry, received a request for clarification from the ICC about Mahmoud Abbas' statement that the PA had unilaterally terminated all agreements with Israel. The ICC asked the PA to send additional information, including information about the Oslo Accords.<sup>3</sup>

◆ **On June 5, 2020**, the PA foreign ministry answered the ICC. Its response was that Mahmoud Abbas had declared that "the Palestine Liberation Organization and the State of Palestine are absolved...of all the agreements and understandings with the American and Israeli governments and of all the commitments based on these understandings and agreements, including the security ones." He continued, his declaration was "made in response to Israel's declared plan to annex Palestinian territory under Israeli occupation,...then it will have annulled any remnants of the Oslo

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<sup>2</sup> An analysis of the chief prosecutor's decision clearly shows that she is of the opinion that Israel's policy in the territories is illegal and unjust. She gives great weight to the resolutions of UN agencies, including the UN General Assembly and Human Rights Council, which are **well-known for their one-sided anti-Israel bias**. She mentions the positions of other groups, such as the EU, regarding the illegality of the settlements. She gives very little weight to the fact that the issue of the settlements and borders should be agreed on in negotiations between the two sides. She does not relate at all to the complex security situation. She completely ignores the wave of Palestinian terrorism at the beginning of the century (the second intifada), while elaborating on the historical background of the Israeli-Palestinian conflict. (See the article by Col. (Res.) Adv. Pnina Sharvit Baruch, INSS Inside, No. 1239, December 23, 2019).

<sup>3</sup> Mahmoud Abbas gave a speech on May 19, 2020, in which he said that the "state of Palestine" and the PLO had released themselves from all agreements and understandings with Israel and the United States, but he refrained from specifically mentioning the Oslo Accords.

Accords and all other agreements concluded between them," stating in effect absolved the Palestine Liberation Organization ('PLO') and the State of Palestine from any obligation arising from these agreements, including security agreements." The PA does not consider the declaration to have a bearing on the status of Palestine or on the exercise of the Court's jurisdiction in the situation in Palestine (ICC website, June 8, 2020).

◆ **On June 8, 2020**, in her response, the chief prosecutor of the ICC agreed with the PA, saying **it was her legal opinion that Mahmoud Abbas' declaration had no influence on the position of Palestine as a member of the Rome Convention**, or on the judicial authority of the ICC regarding the situation in Palestine. She also reiterated **she was worried by Israel's intention to immediately annex parts of "occupied Palestinian land."** She repeated her statement that any unilateral annexation of territories by an "occupying power" had not legal validity and the law of occupation continues to apply (ICC website, June 8, 2020).<sup>4</sup>

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<sup>4</sup> For further information, see the July 10, 2020 bulletin, Exchange of clarifications between the ICC and the Palestinian Authority following Mahmoud Abbas's statement on the PA considering itself absolved from all agreements and understandings."