

Prosecutor looks at ways to put Israeli officers on trial for Gaza 'war crimes'

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By Catherine Philp in Davos and James Hider in Jerusalem
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The International Criminal Court is exploring ways to prosecute Israeli commanders over alleged war crimes in Gaza.

The alleged crimes include the use of deadly white phosphorus in densely populated civilian areas, as revealed in an investigation by The Times last month. Israel initially denied using the controversial weapon, which causes horrific burns, but was forced later, in the face of mounting evidence, to admit to having deployed it.

When Palestinian groups petitioned the ICC this month, its prosecutor said that it was unable to take the case because it had no jurisdiction over Israel, a nonsignatory to the court. Now, however, Luis Moreno-Ocampo, the ICC prosecutor, has told The Times that he is examining the case for Palestinian jurisdiction over alleged crimes committed in Gaza.

Palestinian groups have submitted arguments asserting that the Palestinian Authority is the de facto state in the territory where the crimes were allegedly committed.

"It is the territorial state that has to make a reference to the court. They are making an argument that the Palestinian Authority is, in reality, that state," Mr Moreno-Ocampo told The Times at the World Economic Forum in Davos.

Part of the Palestinian argument rests on the Israeli insistence that it has no responsibility for Gaza under international law since it withdrew from the territory in 2006. "They are quoting jurisprudence," Mr Moreno-Ocampo said. "It's very complicated. It's a different kind of analysis I am doing. It may take a long time but I will make a decision according to law."

Mr Moreno-Ocampo said that his examination of the case did not necessarily reflect a belief that war crimes had been committed in Gaza. Determining jurisdiction was a first step, he said, and only after it had been decided could he launch an investigation.

The prosecutor's office has already received several files on alleged crimes from Palestinian groups and is awaiting further reports from the Arab League and Amnesty International containing evidence gathered in Gaza.

Under the Rome treaty that founded it, the ICC can investigate and prosecute allegations of the most serious war crimes only if the country responsible is unwilling or unable to do so

through its national courts.

States that are party to the treaty can refer cases of crimes committed by their citizens or on their territory. Cases involving the citizens or territory of a country that has not signed up to the court can be referred by the United Nations Security Council – as in the case of Darfur. Ivory Coast set a precedent as the first nonstate party to accept the ICC’s jurisdiction over alleged war crimes on its territory. It signed the Rome treaty but never ratified it. In 2005 it lodged a declaration with the court accepting the ICC’s jurisdiction over crimes committed there since September 2002.

Palestinian lawyers argue that the Palestinian Authority should be allowed to refer the cases in Gaza on this same ad hoc basis – despite its lack of internationally recognised statehood.

The case has wide-reaching ramifications for the Palestinian case for statehood. If the court rejects the case, it will highlight the legal black hole that Palestinians find themselves in while they remain stateless. However, it also underlines some of Israel’s worst fears about a Palestinian state on its borders. A Palestinian state that ratified the Rome treaty would then be able to refer alleged Israeli war crimes to the court without the current legal wrangling. The case could also lead to snowballing international recognition of a Palestinian state by countries eager to see Israel prosecuted.

One avenue would be for Israel to agree to investigate its commanders and prosecute any crimes discovered. That would remove any case from the orbit of the international court. So far that appears unlikely, given Israel’s repeated denials of war crimes in Gaza.

The Israeli army has, however, launched an internal inquiry into whether white phosphorus was used in some cases in built-up areas, having eventually admitted that it did use the incendiary substance, which is not illegal as a battlefield smokescreen but is banned from being used in civilian areas. Camera footage from one such attack shows what appears to be white phosphorous raining down on a UN school in Beit Lahiya, where Red Crescent ambulances and their crews were stationed.

A coalition of Israeli human rights groups has urged the country’s attorney-general to open an independent investigation into allegations of war crimes by troops, urging that to do so could head off international court cases. The groups, including the anticolonialist organisation B’Tselem, said that there had been reports of Israeli forces firing into civilian areas, denying medical aid to the wounded and preventing Palestinian ambulances from reaching them, and of firing at people carrying white flags.

Meanwhile, the UN is preparing an inquiry into the bombardment of a UN school in Jabaliya, in the northern Gaza Strip. Israeli forces fired artillery shells outside the school, which had been converted into a refugee shelter for Gazans fleeing their homes. At least 43 people were killed. Israel said that Palestinian militants had fired from the compound, which was denied by the UN.

http://www.timesonline.co.uk/tol/news/world/middle_east/article5636069.ece

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