

Treaty of Rome non-signors a stumbling block for prosecution of Israel in the ICC for war crimes

News Code: 335068 GMT: 2/2/2009
3:20:43 PM

ICC exploring ways to prosecute Israel for war crimes

London, Feb 2, IRNA — The International Criminal Court (ICC) in the Hague is exploring ways to prosecute Israeli commanders for alleged war crimes, it was reported Monday.

Luis Moreno-Ocampo, the ICC prosecutor, said he is examining the case for Palestinian jurisdiction over the alleged crimes committed in Gaza after the court declared it was unable to prosecute because it had no jurisdiction over Israel as a non-signatory.

“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,” Moreno-Ocampo was quoted saying by the Times newspaper, referring to where the alleged crimes occurred.



Part of the Palestinian argument rests on Israeli insistence that it has no responsibility for Gaza under international law since it withdrew from the territory in 2006.

“They are quoting jurisprudence,” 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,” he said.



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Tehran:
09:11:24



The alleged crimes include the use of deadly white phosphorus in densely populated civilian areas, which Israel initially denied but was forced later to admit in the face of mounting evidence, including the horrific burns suffered by Palestinian civilians.

The ICC prosecutor said that determining jurisdiction was only a first step that needed to be established before the court could launch an investigation.

Many human rights groups including Amnesty International are understood to have already submitted several files on the extent of Israel’s alleged war crimes in killing over 1,300 Palestinians, including more than 400 children, in Gaza.

Under the Rome treaty, the ICC was set up to investigate and prosecute allegations of the most serious war crimes but 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, while cases involving the citizens or territory of a country that has not signed up to the court can be referred by the UN Security Council — as in the case of Darfur.

Ivory Coast set a precedent in 2005 as the first non-state party to accept the ICC's jurisdiction over alleged war crimes on its territory, having signed the Rome treaty but never ratifying.

Palestinian lawyers in effect are arguing that the Palestinian Authority should be allowed to refer the cases in Gaza on this same ad hoc basis — despite its lack of internationally recognized statehood.

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