Palestine ICC Referral Status

After a long internal debate, Palestine has referred its situation to the International Criminal Court (ICC) in The Hague for an investigation on Israeli crimes in the occupied Palestinian territories of East Jerusalem, the West Bank and Gaza.

On May 22 of this year, Palestinian Authority (PA) Foreign Minister, Ruyad al-Malki, arrived at the ICC to meet with the Court’s chief prosecutor, Fatou Bensouda and submit Palestine’s official referral to the Court. This requested “the Prosecutor to investigate, in accordance with the temporal jurisdiction of the Court, past, ongoing and future crimes within the court's jurisdiction, committed in all parts of the territory of the State of Palestine”.¹ Pursuant to Regulation 45 of the Regulations of the Court, the Office of the Prosecutor (OTP) proceeded to inform the ICC Presidency of the referral, as prosecutor Bensouda noted in her statement on this matter.² Despite the language of its referral, Palestine is aware that under the ICC’s Rome Statute the Prosecutor is required to investigate all alleged crimes in the “situation” by any person on the territory of an ICC member state or by a national of a member state. Palestine is a member state.

This referral is the Palestinian Authority’s latest measure to internationalize the Israeli-Palestinian conflict and redress for Israeli crimes committed against Palestinians. The ICC’s jurisdiction over crimes alleged in the situation will date back to June 2014, as dictated under the terms when the PA accepted ICC jurisdiction.³ Palestine claims that Israel is responsible for crimes against humanity, war crimes and settlements in occupied Palestinian territories. More specifically, the referral details complaints involving the forcible displacement and transfer of Palestinian civilian population, an establishment of a system of apartheid through discriminatory laws, murder, torture and excessive use of force, all of which crimes fall under the Court’s subject matter jurisdiction. These crimes of course include the deaths of several thousand Palestinians over the course of three wars between Israel and Hamas, the militant group in Gaza.⁴

The landmark 2012 vote by the United Nations General Assembly elevating Palestine to a ‘nonmember observer State’ allowed Palestine to lodge a declaration under article 12(3) of the Rome Statute accepting the jurisdiction of the ICC and to accede to the Rome Statute by depositing its instrument of accession with the UN Secretary-General in January 2015.⁵ It is important to note

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¹ Referral by the State of Palestine Pursuant to Articles 13(a) and 14 of the Rome Statute. May 15, 2018. PAL-180515-Ref https://www.icc-cpi.int/itemsDocuments/2018-05-22_ref-palestine.pdf


³ Preliminary Examination Palestine https://www.icc-cpi.int/palestine

⁴ Referral by the State of Palestine Pursuant to Articles 13(a) and 14 of the Rome Statute. May 15, 2018. PAL-180515-Ref

⁵ Preliminary Examination Palestine https://www.icc-cpi.int/palestine
that this sequence of events allowed prosecutor Bensouda to independently open a preliminary examination in January 2015, looking into alleged crimes not only by Israel, but also those committed by Hamas and other Palestinians. (Israel deems Hamas a “terrorist organization” and therefore uses this claim to justify its actions towards Palestinians).

Palestine’s growing impatience with the slowness of the Prosecutor’s preliminary examination boiled over following the latest killing of over 100 unarmed Palestinian protesters by Israeli soldiers, after President Trump relocated the U.S. embassy to Jerusalem. This led Palestinian leadership to submit an official referral of its situation to the ICC in hopes of faster action. The PA thus hopes to pressure the OTP to open a formal investigation into crimes by Israeli government and military officials, although Prosecutor Bensouda has maintained that neither the current referral, nor the article 12(3) declaration, now superseded, would automatically lead to the opening of an investigation.

An opening of a formal investigation will only take place once the OTP has established that there are sufficient grounds to initiate an investigation that may lead to an indictment of those who are most responsible for the commission of crimes under the jurisdiction of the Court. Palestine believes it has a strong case specifically regarding Israeli settlements which have allocated over 600,000 Israelis in the West Bank and East Jerusalem. Settlements, are a defiant and overt Israeli government policy that has been specifically condemned by the international community through, for example, repeated Security Council Resolutions, including, most recently, Resolution 2334.

At the present time, a preliminary investigation into crimes by all parties is still ongoing, and there has yet to be any indication as to whether the OTP will proceed with the opening of an investigation. Meanwhile, Israel continues to implement its settlement policy and Hamas persists in its attacks on Israel.

However, the Pre-trial Chamber has apparently concluded that the ICC has become sufficiently involved with the Palestine-Israel situation that the Court has an obligation to reach out to is victims. Thus, the ICC Pre-Trial Chamber ordered the Court Registry to establish “a system of public information and outreach activities for the benefit of the victims and affected communities in the situation in Palestine.” However, this statement should be clarified by the Court to indicate that it will in fact include both, Palestinian and Israeli victims, as it is mandated to do. It is especially important that the Court makes this clarification, given how politicized this particular case is and Israel’s belief that the Court is biased against it which may make it uncooperative with an ICC investigation.

6 PRE-TRIAL CHAMBER I 13 July 2018. ICC-01/18