

# AGGRESSION IN PALESTINE JURISDICTIONAL LIMITATIONS OF THE INTERNATIONAL CRIMINAL COURT

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## ABSTRACT

*This year, one of the most developing issues within The Hague Court is the initiation by the Office of the Prosecutor of the International Criminal Court of an investigation respecting the Situation in Palestine. The investigation will cover crimes within the jurisdiction of the Court alleged to have been committed in the Situation since 13 June 2014. How the Office will tackle investigation will be determined in due time however daunting and complex, and shall pursue its investigation independently, impartially and objectively.*

*Despite internal weaknesses, judging by continuous harsh political and academic criticism of the ICC, ranging from selection of situations and cases, the situation in Palestine is perhaps the most complicated. Promoting Justice is the job of the International Criminal Court but this shall be tested to the maximum in the situation in Palestine. The limits of stretching its jurisdiction will be at stake.*

*With Israel as non-party to the ICC on the contrary to the situation with Palestine, can be tried by The Hague-based court for crimes committed on Palestinian territory, in the West Bank and Gaza. This paper examines the limitations possible to this jurisdiction over individuals who commit serious crimes, specifically the Crime of Aggression. Most certainly, the crime of aggression amendment has a different jurisdictional regime than what currently exists under the ICC's Rome Statute concerning the crimes of genocide, war crimes and crimes against humanity.*

**Keywords:** Criminal Court, Jurisdiction, Palestine

## INTRODUCTION

Israel continues imposing harsh living standards in the Occupied Palestinian Territories and the West Bank. To state the obvious, this includes demolition thousands of homes, killing of civilians, restricting freedom of movement of Palestinians through checkpoints, using excessive force during law enforcement activities, maintaining its illegal blockade on the Gaza Strip, and subjecting its residents to collective punishment continuously deepening their humanitarian crisis<sup>1</sup>. The Israeli authorities proved to engage in arbitral detention of thousands of Palestinians or holding them in administrative detention without charge or trial. Torturing detainees, children and women, is a day-to-day practice whilst impunity granted to perpetrators<sup>2</sup>. Recently, in August (2020) and May (2021), Israel respectively Launched artillery and airstrikes against Gaza, and, in response, Palestinian armed groups launched indiscriminate rockets into Israel<sup>3</sup>.

A Palestinian Supreme National Committee was established in (2015) to follow up with the International Criminal Court<sup>4</sup>, and made a submission to the Prosecutor of the International Criminal Court (ICC) (commonly known as The Rome Statute)<sup>5</sup> to initiate investigation into the Israeli Settlements on Palestinian territories; aggression against Gaza Strip in (2014); and into the situation of Palestinian prisoners<sup>6</sup>. Several Palestinian human rights institutions have also provided legal statement to the Prosecutor of the International Criminal Court on behalf of the victims of Israeli aggression, in accordance with Article 15 of the Rome Statute<sup>7</sup>.

As is well known, the Office of the Prosecutor (OTP) of the ICC may initiate an investigation in three circumstances. First, the Prosecutor may begin an investigation if the United Nations (UN) Security Council refers a matter to the Prosecutor in accordance with

Chapter VII of the UN Charter permitting it to take actions to address acts of aggression or threats to the international peace<sup>8</sup>. Second, any signatory to the Rome Statute may refer a matter to the Prosecutor<sup>9</sup>. Third, the Prosecutor may seek to open a preliminary investigation on her own initiative (*proprio Moto*)<sup>10</sup>. In this third case, however, the Prosecutor must obtain approval for an investigation from the ICC's Pre-Trial Chamber. In all of these circumstances, an investigation may proceed only if the Prosecutor determines that the conduct qualifies as one of "the most serious crimes of concern to the international community as a whole," which the Rome Statute identifies as (1) genocide; (2) crimes against humanity; (3) war crimes; and (4) the crime of aggression<sup>11</sup>.

Moreover, the Prosecutor must possess a reasonable and factual basis for concluding that ICC will have jurisdiction over the individuals alleged to have committed crimes listed in the Rome Statute. Besides the case when a state ratifies the Rome Statute, the ICC may assert jurisdiction over individuals of a country not party to the Rome Statute in limited circumstances. First, a nonparty country may agree to ICC jurisdiction for a specific inquiry or crime (*i.e.*, on a case-by-case basis). Second, in some cases, the ICC may assert jurisdiction over individuals of a country not a party to the Rome Statute if the conduct occurred in the territory of a country or carried by a national of a country that is a party or has otherwise consented to ICC jurisdiction<sup>12</sup>.

Of course, the prosecutor needs to take into account the jurisdiction, admissibility, and interests of justice when deciding to initiate an investigation According to the Rome Statute. With no specific period to accomplish all this, no one can tell when and whether this achieved. For instance, in the case of Afghanistan, the Initial examination lasted eight years and even more in the case of Colombia<sup>13</sup>, whereas South Africa, Burundi, and Gambia withdrew altogether from the ICC due to its ineffectiveness in trying war criminals<sup>14</sup>.

Undeniably, for 70 years, Palestine has been under Israeli occupation. Basic freedom and rights of Palestinians continuously violated inconsistent with both the rules of international law and international humanitarian law<sup>16</sup>. Applicable International law could well be embedded in International Humanitarian Law (IHL) or the Law of Armed Conflict (LOAC) that are both related to the protection of civilians from the effects of wars or armed conflicts. However, this study aims at clarifying the scope of responsibility and jurisdictional abilities over actions related to the situation in Palestine in accordance with the rules of international law, Geneva Conventions and the Rome Statute of the ICC, and the effectiveness of this court to try the perpetrators of these violations. This effectiveness is valid only if proper jurisdiction flourished within the Middle East in general and within the states of Israel and Palestine.

## Engagement of Middle East States with the ICC

Repeatedly, the Middle East region described as one crying out for justice. Besides the elongated Arab-Israel conflict and embedded abuses witnessed, the Middle East region has lived through increased violence since the Arab Spring. From 2011 onward, difficult and sometimes violent political transitions and protracted conflict in Iraq, Libya, Syria and Yemen witnessed, amongst others, which led to the greatest refugee crisis since the Second World War.

Yet, out of 19 states within the Middle East and North Africa Region only 4 (Jordan, Palestine, Tunisia and Palestine) are members to the International Criminal Court Statute (ICC). This means that out of 123 states parties to the Rome Statute, the number of Middle East countries poorly presented at this most significant Court. This invites for a real pause especially when taking into account that this region is the home of the most troubling international conflict of all, that is, Palestine-Israel ordeal, and the turbulent political context and the widespread violation of international law directly affecting the lives of civilians. Though Israel, following the lead of the United States signed in 2000, both have nonetheless notified the UN secretary-general two years later that they would not ratify it and are therefore not be bound by any obligations ensuing from it. Without such ratification, Israel not deemed as party to the treaty unless accedes to it by depositing their instrument of accession with the UN secretary-general.

No doubt, Jordan was the most active amongst Middle East states to take part in the ICC as a member state. In fact<sup>17</sup>, Prince Zeid al-Hussein of Jordan was the president of the Assembly of States Parties from 2002-2005. Actually, Prince Zeid played a crucial role in the establishment of the Court itself at the time he acted as Jordan's permanent representative to the UN, and was actively involved in the Trust Fund for Victims and assigned to be the Chair in the conferences on the crime of aggression<sup>18</sup>.

In 2011, Tunisia's delivered in note of accession to the Rome Statute. The international community greeted this step as notable and a determinative message on how leadership should be in the fight against impunity in North Africa. In 2015, another great news was Palestine's deposition of their ICC accession instrument following years of civil society advocacy and hope for accountability in the world most protected conflicts<sup>19</sup>.

As to the rest of states, in 2005, the League of Arab States was successful in approving a model Arab Law on Crimes within ICC jurisdiction. Nonetheless, the model is proposed only as guidance where some Arab countries have declared that they will consider implementing legislation prior to ratifying the Rome Statute, and that this shall enable them to prosecute crimes against humanity, genocide, and war crimes nationally in implementation of the complementarity principle<sup>20</sup>.

Because of civil society pressure<sup>21</sup>, the Middle East region has retained some channel of communication with the ICC, attended annual meetings, or at least sent off observers or delegations to consultations with regional organizations under the umbrella of the League of Arab States, African Union, and the Organization of the Islamic Conference. Even The Non-Aligned Movement, of which all Arab States and Iran are members, has constantly called on its members to join the ICC. Indeed, there are over 300 civil society organizations in the Middle East region calling to prohibit impunity and justice for victims of atrocities. As such, A Rome Statute that exemplifies a model of international legal order reflecting standards for prosecuting grave crimes admired. They worked relentlessly towards raising public awareness about the ICC through workshops and trainings, and towards strengthening national and regional coalitions for the ICC across the region<sup>22</sup>.

As justice must be part of the response to the various crises in this region, the ineffectiveness of the international community to protect civilians and deter the most heinous crimes in the regions is apparent. Efforts to ensure criminal justice internationally and regionally, and put an end to impunity, should be of an utmost importance. Yet, since its inception in 2002 the International Criminal Court included only an investigation in Libya ; preliminary examinations into the 2014 Gaza war between Palestine-Israel; the 2010 Israeli-raid of a humanitarian aid convoy for Gaza, and into alleged detainee abuse by United Kingdom troops in Iraq. The reasons are obvious: one on hand, the ICC does not have jurisdiction over most of the states in the Middle East region, on the other, the United Nations Security Council (UNSC) fell short of having a decision of referral to the ICC, and hence, the ICC prosecutor could not conduct investigations or prosecutions. Instead, the ICC prosecutor left with merely urging the Middle East and North Africa States to prosecute the suspects committing crimes in Syria and Iraq, within their own respective national jurisdictions.

As to the situation in Palestine, Palestinians not left alone in maintaining that the ICC possesses the necessary jurisdiction to review and investigate their ongoing conflict with Israel as deciphered below. Their position backed by *amicus curiae* submissions by the League of Arab States, representing twenty-two countries, and the Organization of Islamic Cooperation, representing fifty-seven countries<sup>23</sup>.

### **General Impediments on ICC Jurisdiction in Palestine Case**

The question on the ability of the ICC to proceed with cases against Israeli and/or Palestinian officials hangs on harsh international politics and disrespectful sympathetic governments. Indeed, complexities seem to burden any consideration of international legal arguments that relates to the situation in Palestine and its accession to the Rome

Statute. Connection to the international political context in which these issues put forward remain hanging. It is never coincidental that countries with good Israeli relations tend to uphold Israel's legal claims on such issues, while Palestinian legal arguments are 'championed by countries that share the Palestinians' language and/or majority religion'<sup>24</sup>.

Therefore, despite deploying no less than ten UN investigatory mechanisms in serious violations in Palestine over the past twenty years, investigating into suspects of international crimes seemed utterly difficult in the face of the challenges Israel officials presented lurking behind a pervasive culture of impunity, and their refusal to grant investigators access to the occupied Palestinian territory<sup>25</sup>.

Historically, even attempts *via* the International Court of Justice (ICJ) proved idle too. Approaching the ICJ in respect of the construction of a wall in the occupied Palestinian territory, though made numerous significant determinations on behalf of Palestinians, delivered no substantial practical value<sup>26</sup>. The wall remained; the Israeli settlements within occupied West Bank flourished, and the international trade with settlers continues unharmed.

Moreover, dependence on the 'Universal Jurisdiction' proved unworthy too. Political pressures have not left resort to judicial criminal mechanisms possible or practical<sup>27</sup>. The USA have even attempted to coerce some ICC staff members by blocking their property because of their assertions of jurisdiction over personnel of the United States and certain of its allies (Israel) as being a 'critical national security and foreign policy work of United States Government'<sup>28</sup>.

Noteworthy, each time there is a claim passed on behalf of Palestine, the very definition of 'Palestinian territory' engulfed with confusions due to its fragmentation. Perhaps better called 'land units' than 'territories' confined to Gaza Strip and certain parts of the West Bank, putting aside the issue of displaced persons from most of these land units and disregard to their right of return<sup>29</sup>. Indeed, in respect of crimes against humanity or the Crime of Apartheid, how efficient can the ICC Prosecutor entertain his job in full depends on the ability to pursue justice at an *individual* level, away from tackling the root causes of this long-standing crisis.

In fact, there was a referral made by Palestine to the ICC's Prosecutor Office in respect of the 'Situation in Palestine', requesting it to investigate 'past, ongoing, and future crimes within the court's jurisdiction'<sup>30</sup>. This revealed how difficult it was for the Court to decide on pillars of international law; that is the issue of 'statehood'. Since the ICC's jurisdiction is limited only to crimes allegedly committed either on a territory of a state that is party to the Rome Statute or by its nationals, and since Israel is not a party to the statute, the question being considered was whether the "State of Palestine" can be considered a party was a real issue. Israel persisted that the ICC does not possess territorial jurisdiction since 'Palestine' not considered a state due to its lack of effective control over the territory it claims<sup>31</sup>.

The issue of 'statehood' took the discussion to serious legal paradoxes. Some states took the position pursuant to the Rome Statute and Vienna Convention on the Law of Treaties in that jurisdiction assessed by resort to the traditional criteria of statehood requiring effective control over the territories<sup>32</sup>. As such, Palestine 'statehood' is missing since Palestine Authority is limited to certain portions of the West Bank and none in Gaza. In their views, National jurisdiction is absent altogether, forming a critical shortcoming for the ICC's jurisdiction that is necessarily complimentary in nature.

On December 20, 2019, ICC prosecutor Fatou Bensouda admitted that the situation is a unique one and engulfed with highly contested legal and factual issues. She therefore announced her decision to 'seek an ICC Pre-Trial Chamber I ruling on the scope of the Court's territorial jurisdiction in the situation of Palestine, and to confirm that the 'territory' over which the Court may exercise its jurisdiction under article 12(2)(a) comprises the West Bank, including East Jerusalem, and Gaza'<sup>33</sup>.

As such, early this year, Pre-Trial Chamber I of the International Criminal Court (ICC) passed a majority ruling that the Court's territorial jurisdiction in the 'Situation in Palestine', as a State party to the ICC Rome Statute, extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem<sup>34</sup>. This means that the ICC has weighed questions of its jurisdiction on war crimes and other serious violations allegedly

“committed in all parts of the territory of the State of Palestine.” Of course, both Israeli and Palestinian officials have expressed their views on the matter, as have various other states, organizations, and individuals.

Yet, this propitious conclusion by the Chamber determined that the reference to ‘the State on the territory of which the conduct in question occurred’ in article 12(2)(a) of the Statute must be interpreted as a reference to a State Party to the Rome Statute. The court may have noted the relativity when applying statehood criteria. Taiwan, for instance, granted recognition by just fifteen states, whereas Somalia considered a state long after its central government collapsed. The ICC seems to have also put the purpose its constituting treaty ahead of everything else; the ICC establishment with the goal of not letting allegations of serious crimes go without scrutiny. In addition, accepting Palestine possession of statehood meant ICC’s jurisdiction to investigate alleged crimes in the West Bank, East Jerusalem, and Gaza, regardless of whether the alleged perpetrators are Israeli or Palestinian.

Accordingly, regardless of its position under general international law, Palestine’s accession to the Statute is proper, meant that the Chamber can only honor the outcome of the accession procedure conducted by the Assembly of States Parties. Consequently, Palestine deemed as a ‘State’ for the purposes of this provision, and to be treated as any other State Party for the matters related to the implementation of the Statute. As such, the ICC Prosecutor may initiate investigation in both Israeli and Palestinian citizens at any time, potentially including senior politicians and military officers.

The ICC has even passed few answers to questions on its decision over the issue of ‘territorial jurisdiction’ in the ‘Situation in Palestine’<sup>35</sup>. It concluded that its decision is not of a political nature; ‘based on the strict interpretation of the Rome Statute’, and that it refuses to ‘address the arguments regarding the Oslo Accords in the context of the present proceedings’. The Chamber also affirmed that ‘the decision whether or not to open an investigation in the Situation in Palestine is in the remit of the ICC Prosecutor’<sup>36</sup>. One should also remember that the ICC could only investigate and prosecute individuals not states. States that are not parties to the Rome Statute will still have no obligations towards the ICC under the Treaty. The ICC may have jurisdiction in situations where a citizen (not a state) of a non-party state when the crime scene is in the territory of a State Party to the Rome Statute. This does not mean that the ICC is imposing itself to a non-party state, but that it merely exercises territorial jurisdiction.

Undeniably, the Prosecutor of the ICC has announced the opening of an investigation into the Situation in Palestine<sup>37</sup>. A long awaited decision the disavow some of the concerns above, and asserting the ruling on the Court’s territorial jurisdiction in Palestine, which encompasses the Gaza Strip and West Bank, including East Jerusalem as the ICC’s Pre-Trial Chamber I clarified in its decision. Any future ICC prosecutions regarding the “Situation in Palestine” could initiate trials against current or former political and military figures from both Palestine and Israel, including top leaders such as The Israeli Prime Minister Binyamin Netanyahu as well as members of Hamas and other militant groups.

However important is the decision of the ICC Prosecutor to open an investigation into the situation in Palestine, one must also imagine the immense political pressure and legal impediments, this shall face, and to recall the broader context and limitations within which the ICC operates, as well as importing the past international continues failures to hold Israeli perpetrators to account. Looking into past, and recent, experiences, the Office of the Prosecutor of the ICC requested authorization to investigate alleged war crimes by USA military and intelligence personnel in Afghanistan, Poland, Lithuania, and Romania<sup>38</sup>. Initially, the Pre-Trial Chamber ICC rejected the request given the limited possible cooperation with resources available for a full investigation and prosecution. Although the Appeals Chamber nonetheless reversed this and granted the process of investigation in 2019, in retaliation, President Trump issued Executive Order 13928 permitting relevant USA federal agencies to sanction individuals and entities involved with or assisting the investigation of USA personnel actions during the conflict in Afghanistan. Such sanctions would definitely affect the personal property of such individuals or entities and lead to suspension of USA entry visas. Jurisdictional Limitations over

## the Crime of Aggression

Whereas the above relates to the general impediments to assert ICC jurisdiction, the ‘crime of aggression’ as one of the crimes pointed out in the Rome Statute, pose certain problematic issues to the jurisdictional scope, and hence the true application of international law, as being directly related to the sovereignty of states,. This crime constantly handled with great suspicion. Even agreeing on a definition never easily negotiated. As one author puts it: ‘it seems easier to carry out aggression than it is to define’<sup>39</sup>.

Nonetheless, December 2017 is memorable to human rights activists and international law scholars as the day when state parties to the International Criminal Court Statute (ICC) agreed in New York City to activate the ICC’s jurisdiction over the Crime of Aggression<sup>40</sup>. It is supposed to be an important step for it strengthens the rule of law to hold leaders individually criminally responsible for waging a war. As Jutta F. Bertam-Nothnagel describes, this development is a ‘gift to all mankind’<sup>41</sup>.

Indeed, this very important step is historical since the time of Nuremberg and Tokyo Tribunals in enabling individual criminalization of, and adjudication for, crimes against peace, and towards holding state leaders responsible for initiating aggressive wars. Unlike previous attempt in Kampala<sup>42</sup>, The New York session was successful in taking the final decisive step with regard to ICC jurisdiction over aggression. The ‘narrow view’ that the Court would not have jurisdiction over a crime of aggression committed by nationals of, or on the territory of, a state party to the Rome Statute that had not ratified or accepted the Kampala Amendments<sup>43</sup>, is not entirely valid anymore. Another ‘broad view’ convinced that where e a national of a state party commits the crime of aggression on the territory of a state party that has ratified the Kampala Amendments, that person would be subject to ICC jurisdiction over the crime<sup>44</sup>. Here, jurisdiction only excluded where state of nationality has opted out of ICC jurisdiction over the crime of aggression as provided for in the Kampala Amendments<sup>45</sup>.

One noteworthy occasion related to the ratification process of the ICC’s Crime of Aggression amendment was a 2016 deposition of Palestine its instrument of ratification that was the 30<sup>th</sup> deposition<sup>46</sup>. At that time, this deposition brought us closer to the required number of ratifications for making the Amendment operational. Yet, as for jurisdictional issues, Palestine deposition of its ratification does not necessarily mean winning a jurisdiction stance over Israel vis-à-vis the crime of aggression.

In fact, who will be subject to the ICC’s jurisdiction in respect to this particular crime remains problematic. Negotiations in this regard erupted as to whether the Court would have jurisdiction over nationals committing an act of aggression on a territory of a state that has accepted the court’s jurisdiction are citizens of a state that does not ratify the Kampala Amendments. Some scholars argue that ‘the key to addressing this issue is to understand how the amendment provisions of the Rome Statute work in conjunction with basic principles of the law of treaties’<sup>47</sup> particularly the 1969 Vienna Convention on the Law of Treaties.

If held true, this means that the situation in Palestine shall reflect even a more jurisdictional problem. Is Palestine a ‘state’? Would Israel, as none party, acquitted blamelessly for possible crimes clearly set in the Rome Statute? Truly, the question of who is subject to the ICC’s Jurisdiction with respect to Acts of Aggression remains contentious. To put it simply, the Amendment to this crime clarified different jurisdictional regime than what exists under Rome Statute in relation to the other crimes (genocide, war crimes and crimes against humanity). In difference to the crime of aggression, these crimes instigate jurisdiction even if a national of a non-State Party (as Israel) commits any of those crimes in the territory of a State Party<sup>48</sup>. As such, either Israeli and Palestinian nationals, or crimes committed on their respective territories, will be outside the ICC’s crime of aggression jurisdiction. This means that, in this particular part of the world, unless consensual regime reached, Kampala Amendment seems to encounter significant loopholes; neither aggressor nor victim can resort to the ICC’s Jurisdiction<sup>49</sup>.

Moreover, concerns about the value of Palestine deposition surfaced. Only clear violations of the UN Charter would entail criminalization aspects and activation of this crime<sup>50</sup>.

With this threshold, such crime would lose its way in the back stage of political introductions. In addition, ICC judges may still dismiss Palestine's possible application by virtue of being a non-state and therefore incapable of ratifying either the Rome Statute or its amendments regardless of the UN's acceptance of its instrument of ratification.

Indeed, one may conclude that the Palestinian deposition might have been only a mere political statement, and that with the entire above fundamental impediment, one may conclude the helplessness of Kampala Amendment itself. However, the mere activation of this crime remains constructive in that it brings states closer to the realization of the hassles of raging an illegal war. However modest, a step in the right direction in influencing states' behaviors side to side with article 2(4) and 33 of the UN Charter, and the International Military Tribunal at Nuremberg that prosecuted war of aggression.

## CONCLUSION

Representatives of Palestinian victims and Palestinian human rights organizations have long sought holding Israel accountable for Palestinian victims for ongoing crimes committed against them. The Court's outreach to Palestinian victims is currently witnessing a positive beginning and must continue as a vital avenue of last resort in pursuing justice. The ICC ability to investigate challenges decades of Israeli impunity, and hence provides an important accountability settings.

Whether at the ICC or through universal jurisdiction, the root causes of Palestinian prolonged crisis and oppression must be addressed. Dwelling on side issues provides no treatment. Aggression, if proved a committed crime under the jurisdiction of the ICC, would have thwarting results to states that care less about the ICC's Jurisdiction, and disregard international criminal justice as essential to challenging Israeli impunity. Therefore, besides the ICC jurisdiction, there is a need for supplementing sanctions and other effective coercive measures by third states in an effort to end atrocities suffered by the Palestinian people and to prevent the commission of further crimes in Palestine.

One of international law's biggest challenges were evident in the process the ICC went on in accepting jurisdiction over the situation in Palestine<sup>51</sup>. The fact that some international legal criteria are less clear-cut than concepts developed within domestic legal systems and the fact that international law is developing well in this dimension. In addition, a real problem stays in the lack of law enforcement at a global level if positive conclusions reached. The transfer of jurisdictional power to an authority above states, the ICC, has taken place only partially or not at all, as illustrated by the world's partial adherence to the ICC. The 'Situation in Palestine' magnifies the problem even more. Both sides to the conflict claim that any ruling contrary to their position would indicate that the ICC is politicized. Hence, it is now up to the court to satisfy itself that to on the next step based on the rule of law.

Due to the apparent ineffectiveness of the ICC, one could recommend searching for alternatives to try the Situation in Palestine and the Israeli occupation. Resorting to courts of States signatory to the Geneva Conventions may put some pressure. National courts that take the principle of universal criminal jurisdiction may deal with submissions in this regard may prove helpful. Submitting a request to the Security Council or the General Assembly to establishing special criminal courts may be another. A solid backup from the international community must be attained, especially from nearby such as the Organization of Islamic Cooperation, the Arab League to contribute towards a solution to the Israeli occupation of Palestine, which constitutes a collective punishment for Palestinians.

Undeniably, the Prosecutor of the ICC has announced the opening of an investigation into the Situation in Palestine. A long awaited decision the disavow some of the concerns above, and asserting the ruling on the Court's territorial jurisdiction in Palestine, which encompasses the Gaza Strip and West Bank, including East Jerusalem as the ICC's Pre-Trial Chamber I clarified in a previous decision<sup>52</sup>. The ICC has even passed few answers to questions on its

decision over the issue of ‘territorial jurisdiction’ in the ‘Situation in Palestine’.

As mentioned above, the success of the ICC is dependent on the ability to pursue justice at an individual level in respect of crimes against humanity or the Crime of Apartheid, as well as the ability of the ICC Prosecutor entertain his job by freeing himself from tackling the root causes of this long-standing crisis. However, as to the Crime of Aggression, the Prosecutor might find himself also digging into the complications of the historical, political and legal settings of the crisis such as self-determination, delimitation of boundaries, self-defense, and the limits of any peace treaty concluded between the concerned parties.

## ENDNOTES

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30. Referral by the State of Palestine Pursuant to Articles 13 (a) and 14 of the Rome Statute. 15 May 2018 Ref: PAL-180515-Ref, at: [https://www.icc-cpi.int/itemsDocuments/2018-05-22\\_ref-palestine.pdf](https://www.icc-cpi.int/itemsDocuments/2018-05-22_ref-palestine.pdf), accessed 17 July 2021.
31. STATE OF ISRAEL, Office of The Attorney General, The International Criminal Court's Lack of Jurisdiction over the so-Called 'Situation in Palestine', 20 December 2019, at:
32. Memorandum%20oftheAttorney%20General.pdf, accessed 1 July 2021.
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35. ICC Pre-Trial Chamber I issues its decision on the Prosecutor's request related to territorial jurisdiction over Palestine, Press Release: 5 February 2021, at: <https://www.icc-cpi.int/Pages/item.aspx?name=pr1566>, accessed 10 July 2021
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  42. Kampala Amendments on the Crime of Aggression (Kampala Amendments), Resolution RC/Res. 6, 11 June 2010, reprinted in S. Barriga and C. Kreß (eds), *The Travaux Préparatoires of the Crime of Aggression* (2012), at 101–107, available at: [https://asp.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.6-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf), accessed 11 July 2021.
  43. A view normally presented in accordance of Article 12(5) of the Rome Statute that provides: 'In respect of a State Party which has not accepted [an] ... amendment [to Articles 5, 6, 7 or 8], the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory.'
  44. As in accordance with Article 12(2) of the Rome Statute, which provides for ICC jurisdiction over crimes committed on the territory of a state party irrespective of the nationality of the accused?
  45. Art. 15bis4, Kampala Amendments on the Crime of Aggression (Kampala Amendments), Resolution RC/Res. 6, 11 June 2010, reprinted in S. Barriga and C. Kreß (eds), *The Travaux Préparatoires of the Crime of Aggression* (2012), at 101–107, available at: [https://asp.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.6-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf). For a detailed analysis into this see: Dapo Akande and Antonios Tzanakopoulos, 'Treaty Law and ICC Jurisdiction over the Crime of Aggression', *The European Journal of International Law*, 2018, Vol. 29 no. 3, p. 940.
  46. See the State of Palestine Ratification, UN Depository Notifications Reference: C.N.452.2016.TREATIES-XVIII.10.b, at: <https://treaties.un.org/doc/Publication/CN/2016/CN.452.2016-Eng.pdf>, accessed 11 July 2021.
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  48. 'In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory.' Paragraph 5, *ibid*.
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