

AMNESTY INTERNATIONAL PUBLIC STATEMENT

16 March 2020 Index number: MDE 15/1986/2020

ISRAEL/OPT: CALL TO SUPPORT ICC INVESTIGATION INTO “SITUATION IN PALESTINE” AND SAFEGUARD ICC INDEPENDENCE

Amnesty International calls on governments to offer their full political and practical support to the International Criminal Court (ICC) as it decides on its jurisdiction over the “situation in Palestine” and to urge those states who have sought to challenge that jurisdiction to reconsider their positions.

For over half a century Israel has committed crimes under international law and other serious human rights violations in both Israel and the Occupied Palestinian Territories (OPT), composed of the West Bank, including East Jerusalem, and the Gaza Strip. Palestinian authorities and armed groups have also committed crimes under international law in both the OPT and Israel. In the absence of independent and credible domestic investigations, Amnesty International has, since 2010, called for the opening of an ICC investigation as the only way to end impunity for these crimes. In our view, impunity is at the heart of the continuing human rights crisis in the OPT.

ICC’S CONSIDERATION OF ITS TERRITORIAL JURISDICTION

Given the lack of accountability to date, we welcomed the ICC Prosecutor’s announcement on 20 December 2019 that, “following a thorough, independent and objective assessment of all reliable information”, she had concluded that “all the statutory criteria under the Rome Statute for the opening of an investigation... into the situation in Palestine” had been met.

Despite this conclusion, the Prosecutor requested a ruling from the Pre-Trial Chamber on “the scope of the territorial jurisdiction of the International Criminal Court... under article 12(2)(a) of the Rome Statute in Palestine”. The Prosecutor acknowledged that she was not required to seek the Pre-Trial Chamber’s authorization to open an investigation and did not seek to do so, since the State of Palestine, as a state party to the Rome Statute, had, on 15 May 2018, made a referral of the situation there for immediate investigation, pursuant to Articles 13(a) and 14 of the Statute. The referral had 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”. It defined this territory as the internationally recognized area of the OPT, clarifying: “The State of Palestine comprises the Palestinian Territory occupied in 1967 by Israel, as defined by the 1949 Armistice Line, and includes the West Bank, including East Jerusalem, and the Gaza Strip.”

The Prosecutor justified her request by “the unique and highly contested legal and factual issues attaching to this situation, namely, the territory within which the investigation may be conducted”. She said she was seeking “confirmation that the ‘territory’ over which the Court may exercise its jurisdiction... comprises the West Bank, including East Jerusalem, and Gaza”.

In our view, the Prosecutor did not need to take this step. We were satisfied that all the jurisdictional requirements for an ICC investigation had already been met. We believe that the function of the Rome Statute’s articles related to becoming a state party and the ordinary consequences attaching to the State of Palestine being a state party to the Rome Statute, namely the possibility for the ICC to exercise its jurisdiction in that state’s territory, should therefore be put into effect. The ICC should therefore exercise its jurisdiction with respect to Rome Statute crimes (Article 5) committed on Palestinian territory and/or by Palestinian nationals.

The Rome Statute has the protection of individuals at its heart. If the ICC does not exercise its jurisdiction in the OPT, it is very unlikely that allegations of crimes under international law will ever be investigated and prosecuted and victims able to access justice and reparation. In our view, it would be antithetical to the ICC’s object and purpose – that “the most serious crimes of concern to the international community as a whole must not go unpunished” – if it were unable to hold individuals to account for international crimes in the OPT. As one commentator put it, “Palestine [must not remain] in the blind spot of international justice, a legal black hole... where impunity is granted for the most serious crimes of international concern.”

STATE SUBMISSIONS CHALLENGING THE ICC'S JURISDICTION

Amnesty International is dismayed by submissions made to the Pre-Trial Chamber by a number of states parties – in particular Australia, Austria, Brazil, the Czech Republic, Germany, Hungary and Uganda – which challenge the ICC's jurisdiction over the “situation in Palestine”.

Amnesty International categorically rejects two of the central arguments made in these states' submissions. Several states have asserted that Palestine cannot be considered a state within the scope and purpose of the Rome Statute. The State of Palestine acceded to the Rome Statute in 2015, a development to which only one state party objected. It has also acceded, as a state party, to other international treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Geneva Conventions and their Protocols.

A number of submissions also included the argument that the Israeli-Palestinian situation should be addressed through bilateral political dialogue and negotiations between the parties and not through an international criminal process that could compromise peace. We reject this argument, too. Breaking the cycle of impunity enjoyed by perpetrators of crimes under international law committed by both sides is a critical component of a durable and just peace.

Taken together, these submissions appear to represent a concerted effort to push the Pre-Trial Chamber not to find in favour of the ICC having jurisdiction over the “situation in Palestine”. In our assessment, these submissions are made with a view to cementing a selective system of international justice, which would prioritize the interests of powerful states over the interests of justice for victims of crimes under international law. We are also deeply concerned by news reports that one state party, namely Canada, has “reminded the Court” of its provision of budgetary resources in a letter to the ICC concerning its jurisdiction over the “situation in Palestine”, which appears to be a threat to withdraw financial support.

In our view, discussions regarding the crimes under international law committed in Palestine and the lack of individual accountability for them are conspicuously absent in legal arguments around the ICC's jurisdiction over the “situation in Palestine”, particularly in the submissions of those who challenge it.

Since its occupation of the West Bank and Gaza Strip began in June 1967, Israel's policies of land confiscation, illegal settlement and dispossession, coupled with entrenched discrimination, have inflicted immense suffering on Palestinians there, depriving them of their basic rights. This has been well documented for many years by the UN, Amnesty International and other NGOs.

For Palestinians in the occupied West Bank, including East Jerusalem, Israel's settlement policy drives mass and daily human rights violations. It affects whether, when and how they can travel to work or school, go abroad, visit relatives, earn a living, attend a protest, access their farmland, or even access electricity or a clean water supply. It means daily humiliation, fear and oppression. People's entire lives are effectively held hostage by Israel.

For the 2 million Palestinians in the occupied Gaza Strip, the illegal blockade imposed by Israel, now in its 13th year, has cut off virtually all access to the outside world. The majority of exports and imports, including raw materials, have been banned. This has hampered the reconstruction required in the wake of the devastation wrought by the three armed conflicts that have taken place between Israel and Palestinian armed groups since the blockade was imposed. The blockade, which amounts to collective punishment, has had a dire impact on the living conditions of the residents of the Gaza Strip, causing a perpetual humanitarian crisis that has led to the UN deeming the place “unlivable”. Unemployment rates have skyrocketed and many families have been forced into extreme poverty, leaving approximately 80% of the population dependent on humanitarian aid.

During the latest major Israel/Gaza conflict, that of July-August 2014, Amnesty International revealed evidence of war crimes and crimes against humanity by Israeli forces, as well as Hamas and other Palestinian armed groups. It documented civilian deaths, as well as destruction and displacement, in the Gaza Strip resulting from serious violations of international humanitarian law by Israeli forces, on the one hand, and the civilian death toll in Israel caused by indiscriminate rockets fired by Palestinian armed groups, on the other.

During the Great March of Return protests in Gaza in 2018, Amnesty International found that many killings of Palestinian protesters by Israeli forces appeared to be willful killings, constituting war crimes. These findings were echoed by a UN commission of inquiry report issued on 28 February 2019.

Many of Israel's actions in the OPT, including those carried out as part of the creation and maintenance of settlements, violate a special category of obligations entitled peremptory norms of international law (*jus cogens*), from which no derogation is permitted. Only a limited number of international norms acquire this status, which is a reflection of the seriousness and importance with which the international community views them. Violations of these norms give rise to obligations on all states (*erga omnes*), which include a duty to actively co-operate to bring to an end the illegal situation that results from these violations. Blocking accountability for those suspected of violating peremptory norms is contrary to this duty.

CALLS ON STATES

All states who claim to support universal and non-selective international justice have a shared interest in supporting the ICC to exercise its jurisdiction over the “situation in Palestine”. With this in mind, Amnesty International calls on governments to offer their full political and practical support to the ICC as it decides on its territorial jurisdiction, a seminal decision which will demonstrate whether it is willing to uphold its mandate to pursue accountability against the most responsible individuals in the most challenging situations.

We also call on governments to urge those states who have made submissions to the Pre-Trial Chamber challenging the ICC's jurisdiction over the “situation in Palestine” to reconsider their positions. Further, we urge governments to publicly distance themselves from the positions of states who have sought to undermine the ICC's mandate and from those who have reportedly sought to apply budgetary pressure while the Pre-Trial Chamber decides on the ICC's territorial jurisdiction.

It is imperative that the ICC's independence is safeguarded and that all states parties utterly condemn threats made against it and its staff. Israeli Prime Minister Netanyahu's call for sanctions on ICC officials, made on 21 January 2020, is a flagrant assault on international justice. It was followed by a similar threat by the US Secretary of State following the ICC's authorization on 5 March of an investigation into the situation in Afghanistan, which would include allegations against the US military. It is readily apparent that, as the Prosecutor moves to open investigations into situations involving powerful states, the ICC and its staff will be increasingly attacked and threatened, including potentially at the UN. States parties must not be silent in the face of this. They must defend the ICC's ability to exercise its independent mandate.

For over half a century, those – in Israel and in Palestine – suspected of criminal responsibility for crimes under international law, including war crimes, have been allowed to escape justice. An ICC investigation would be a major, and overdue, step towards non-selective justice for victims.