

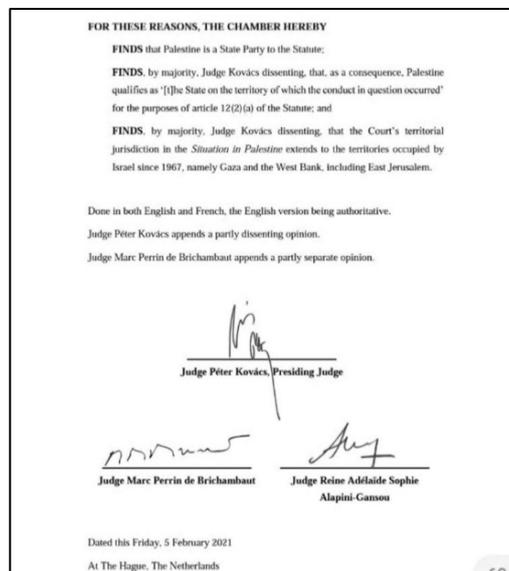


Reaction of the Palestinian Authority to the International Criminal Court (ICC) Decision to Investigate Events in Judea, Samaria, east Jerusalem and the Gaza Strip

February 11, 2021

Overview

► Senior Palestinian Authority (PA) figures expressed satisfaction with the majority ruling handed down by a panel of pre-trial ICC judges on February 5, 2021 regarding opening an investigation into the events in "Palestine." According to the ICC, "Palestine" is considered as a Rome Statute member state, including those territories occupied by Israel in 1967, and therefore the Court can investigate the so-called "crimes" allegedly carried out in the West Bank, east Jerusalem and the Gaza Strip. The Palestinians consider the ruling another achievement, the fruit of their long-term ongoing political, legal and diplomatic activity with the ICC, the international community and various international organizations. Senior Palestinian figures, among them PA Prime Minister Muhammad Shtayyeh and Foreign Minister Riyad al-Maliki, rushed to issued announcements praising the ruling and calling on the chief prosecutor to open an investigation without delay.



The ICC ruling

► The Palestinians plan to raise three main complaints against Israel: one, the "crimes Israel [allegedly] carried out" during its three operations in the Gaza Strip (especially Operation Protective Edge, July-August 2014); two, the issue of the Palestinian prisoners serving terms

in Israeli prisons; and three, the issue of the settlements. During an interview Riyadh al-Maliki elaborated on the preparations the Palestinians are making for the investigation (even before the chief prosecutor announced whether she would open an investigation). He said the Palestinians were aware that the Court's ruling also determined Hamas bore responsibility and were making preparations to deal with the matter.

► According to Palestinian and Arab sources, the process will be lengthy and the demand many years of deliberations in the ICC and legal proceedings against Israel for a variety of reasons, one of which is that Israel will raise obstacles and difficulties, and refuse to permit ICC investigators to enter the Palestinian territories (al-Ghad, February 6, 2021). Muhammad Shtayyeh also said the thought the ICC would not immediately begin work on the Palestinian issues because they had many other cases to consider (Palestinian TV Facebook page, February 7, 2021). The fact that the term of office of Fatou Bensouda as chief prosecutor will end in June 2021 is also liable to delay the proceedings.

► The current chief prosecutor has not yet formally declared if she will open investigation. When she does, Israel will have 30 days to inform the Court it intends to carry out its own investigation of its citizens who are accused of committing the alleged crimes (which is not the case regarding the issue of the settlements).

Palestinian Reactions

► Senior Palestinian figures, as well as Hamas and other organizations, welcomed the ICC decision, which they have been waiting for since June 2020. PA Prime Minister **Muhammad Shtayyeh** called it a victory for "justice, liberty and the Palestinian victims and casualties in the West Bank, Gaza Strip and east Jerusalem." The most example, he said, was on Friday (February 5, 2021) when a Palestinian was "murdered in cold blood by settler gunfire." He also said the ICC ruling sent a message to those who had "carried out the [alleged] crimes" informing them that the statute of limitations had not expired and they would not be able to escape punishment. On another occasion he said the Palestinians would continue documenting "Israel's [alleged] ongoing crimes" against the Palestinian people, especially the crimes of killing, demolishing houses, appropriating lands and expanding the settlements. He called on the Court to accelerate the legal procedures regarding complaints the Palestinians had already lodged, including those regarding the three "wars" Israel had

waged against the Gaza Strip, in addition to the issues of the prisoners and settlements (Wafa, February 6, 2021).

► **Riyad al-Maliki**, Palestinian foreign minister, said the Court's ruling was a reflection of the foreign ministry's successful efforts made since 2014 (the year the PA joined the Rome Statute). He claimed the ruling was a legal victory and realization of Palestinian diplomatic strategy, indicating the Court's independence and its lack of bias regarding the smear campaign waged by Israel against the PA. He also said the ruling made it possible for the chief prosecutor to open a criminal investigation of Israeli without further delay (Wafa, February 5, 2021).

► According to al-Maliki, everything depends on which issue the chief prosecutor will decide to focus on, whether on the settlements, which in his opinion is a clear issue which is easy to investigate, and on which there is general international agreement: Israel is the [in his opinion] aggressor and the Palestinians are the victims. However, if she chooses one of the "difficult issues," such as the "wars" in the Gaza Strip, that will make it possible to investigate Palestinians who launched rockets, endangered civilian life and incited the killing of civilians. He said that while the PA was aware of that aspect of the situation, it had not prevented the Palestinians from lodging their complaints with the Court and cooperating with the investigation (Palestinian TV, February 6, 2021). On another occasion he said that when the Palestinians had begun the process, Muhammad Shtayyeh had had representatives of all the Palestinian organization commit, in writing, to cooperate with the Court and accept the consequences (Palestinian TV, February 7, 2021).



Riyad al-Maliki
(Palestinian TV Facebook page, February 6, 2021).

► **Other practical measures:** Interviewed at length by Palestinian TV, Riyad al-Maliki said they were currently waiting for the chief prosecutor to announce the formal opening of an

investigation and the agreement for a protocol to conduct an investigation in "Palestine." He said the PA had retained the services of a number of international legal experts who were actively at work and that Mahmoud Abbas and Muhammad Shtayyeh had agreed to appoint more legal experts to support the PA. He added that the Palestinians would examine their reaction if Israel tried to avoid cooperating with the investigation and find out, together with the chief prosecutor and the foreign ministry teams, what options were open to the Palestinians. On another occasion al-Maliki claimed the Court's ruling made it possible to open an immediate criminal investigation into senior Israeli figures on charges of "[alleged] war crimes." He added that as soon as the ruling had been handed down they directly contacted the chief prosecutor and later the members of her staff to formulate work methods and coordinate the first issue to be investigated (Palestinian TV Facebook page, February 6, 2021).

► **Muhammad al-Shalaldeh**, PA minister of justice, said in an interview the Court ruling was valuable not only for the Palestinians but for all humanity. That was because it gave the PA the status of a state "occupied by Israel" and sent Israel the message that no one was immune to charges of "[alleged] war crimes." Asked about the fact that Israel was not a member of the Rome Statute and did not recognize the ICC, he answered that senior Israeli figures could be tried by the Court because Israel had signed other international treaties. He also claimed wanted senior Israeli figures could be extradited by the Court as soon as they entered countries which were ICC members. He thought the Court would not begin working on the Palestinian complaints immediately because it was already working on many other cases (Palestinian TV Facebook page, February 7, 2021).



Mohammed al-Shalaldeh interviewed by Palestinian TV after the ICC ruling (Palestinian TV Facebook page, February 7, 2021).

- The day after the ruling was made public Hamas said in a statement that it was an important step on the way to obtaining justice in general and for the victims of the "Zionist occupation" in particular. That was important because it would bring the "Zionist war crimes" to the ICC, find [Israel] guilty for the crimes it had [allegedly] committed and force Israel to deal with all the pressure the Court would exert on it (Hamas website, February 6, 2021).
- The Palestinian media published cartoons representing the ICC ruling as a Palestinian victory and encouraging the Palestinians as to the outcome of the many complaints the PA will lodge against Israel (al-Quds, al-Hayat al-Jadeeda, February 7 and 8 2021).



**Right: Cartoon in al-Quds. The Arabic reads "The ICC's decision" (al-Quds, February 7, 2021).
Left: Gazan cartoonist Isma'il al-Bazam adds a smile with teeth to the ICC logo (Isma'il al-Bazam's Facebook page, February 6 2021).**



The PA complaints against Israel fill a file larger than ICC headquarters in The Hague (al-Hayat al-Jadeeda, February 8, 2021).

Appendix

How the deliberations on the Palestinian issue unfolded in the ICC

► The following are the main developments in the legal processes of the ICC's judicial authority:

- ◆ **On January 2015**, Fatou Bensouda, the ICC chief prosecutor, opened, at the request of the Palestinians, a preliminary examination into the situation in Palestine.



Fatou Bensouda, the ICC chief prosecutor (ICC website)

- ◆ **On December 20, 2019**, Fatou Bensouda announced that after having concluded a preliminary examination, in her opinion there was a reasonable basis for opening an investigation into the situation in "Palestine" regarding Israel's [alleged] "war crimes" in the West Bank, east Jerusalem and the Gaza Strip. She claimed she had the legal authority to decide because in her opinion a Palestinian state existed in the 1967 territories. However, she requested a pre-trial panel of judges to issue a jurisdictional ruling within 120 days on the limits of the investigation. She said that in addition to the investigation of Israel, there would also be investigation of Hamas and other "armed groups" accused of using the local population as human shields, and of employing torture (ICC website, December 20, 2019). Israel (which is not a member of the ICC) completely rejected her decision. According to Avihai Mandelblit, the Israeli attorney general, Israel is a democratic country of law committed to following international law and upholding humanitarian values. That commitment, he said, is ensured by a strong, independent legal system and there is no need for international legal interference.¹

¹ An analysis of the chief prosecutor's decision clearly shows that she is of the opinion that Israel's policy in the territories is illegal and unjust. She gives great weight to the resolutions of UN agencies, including the UN General Assembly and Human Rights Council, which are well-known for their one-sided anti-Israel bias. She mentions the positions of other groups, such as the EU, regarding the illegality of the settlements. She gives very little weight to the fact that the issue of the settlements

- ◆ **On January 21, 2020**, the pre-trial panel of judges rejected the chief prosecutor's request for an examination of the Court's authority to discuss the Palestinian issue. The request was rejected on technical grounds, most of which dealt with the length of the brief she presented (which was longer than 110 pages). The Pre-Trial Chamber said their decision was a matter of procedure, and that she could resubmit the request according to the rules (ICC website, January 21, 2020).
- ◆ **On April 30, 2020**, in accordance with the request from the Pre-Trial Chamber, Fatou Bensouda submitted a shortened version (60 pages) entitled "The Situation in the State of Palestine." She asked the Chamber to determine the jurisdictional boundary of the area to be investigated (ICC website, April 30, 2020).
- ◆ **On May 26, 2020**, Omar Awadallah, head of the UN department and the special agencies in the PA foreign ministry, received a request for clarification from the ICC about Mahmoud Abbas' statement that the PA had unilaterally terminated all agreements with Israel. The ICC asked the PA to send additional information, including information about the Oslo Accords.²
- ◆ **On June 5, 2020**, in clarification, the PA responded that while the PA regarded itself as absolved of all the agreements and understandings with the American and Israeli governments, the PA did not consider the declaration to have influence on any legal issue and was not intended to have any influence. The PA noted the declaration has not been made as part of the formal Court procedures. The emphasis of Mahmoud Abbas' speech [of May 19, 2020] had not bearing on the status of the "occupied Palestinian territories" and that Israel was responsible for them in accordance with the Geneva Conventions and international law.
- ◆ **On June 8, 2020**, in her response, the chief prosecutor of the ICC agreed with the PA, saying it was her legal opinion that Mahmoud Abbas' declaration had no influence on the position of Palestine as a member of the Rome Convention, or on the judicial authority of the ICC regarding the situation in Palestine. She also reiterated she was

and borders should be agreed on in negotiations between the two sides. She does not relate at all to the complex security situation. She completely ignores the wave of Palestinian terrorism at the beginning of the century (the second intifada), while elaborating on the historical background of the Israeli-Palestinian conflict. (See the article by Col. (Res.) Adv. Pnina Sharvit Baruch, INSS Inside, No. 1239, December 23, 2019).

² Mahmoud Abbas gave a speech on May 19, 2020, in which he said that the "state of Palestine" and the PLO had absolved themselves from all agreements and understandings with Israel and the United States, but he refrained from specifically mentioning the Oslo Accords.

worried by Israel's intention to immediately annex parts of "occupied Palestinian land." She repeated her statement that any unilateral annexation of territories by an "occupying power" had no legal validity and the law of occupation continues to apply (ICC website, June 8, 2020).³

◆ **July 17, 2020:** The ICC began its three-week summer recess without a ruling as to whether or not it had the authority to open an investigation against Israel for alleged "war crimes."

◆ **February 5, 2021:** A panel of judges ruled that the ICC did in fact have jurisdictional authority over the territories occupation in 1967, saying that as far as the Rome Statute was concerned, "Palestine" should be considered a state whose territories including the West Bank, east Jerusalem and the Gaza Strip. Therefore an investigation into alleged "crimes" committed there could be opened. The majority ruling confirmed the findings of the pretrial examination of December 2019, according to which it was possible to open an investigation of Israel and Hamas on suspicion of war crimes.

³ For further information, see the July 10, 2020 bulletin, Exchange of clarifications between the ICC and the Palestinian Authority following Mahmoud Abbas's statement on the PA considering itself absolved from all agreements and understandings."