



In brief: accession of Palestine to the International Criminal Court (ICC)

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The West Bank and Gaza have been under Israeli occupation since 1967. They have enjoyed a limited degree of self-government since the 1990s, but they continue to be known as the Occupied Palestinian Territories (OPTs). However, 'Palestine' was accepted as a non-member observer state in the United Nations in 2012, and has now acceded to the Rome Statute – the founding treaty of the International Criminal Court. This is a controversial move, not least because of strong opposition from Israel. There has been some suggestion that the ICC might open an investigation into alleged war crimes committed by Israel in Gaza during 2014.

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1 Introduction

The West Bank and Gaza have been under Israeli occupation since 1967. They have enjoyed a limited degree of self-government since the 1990s, but they continue to be known as the Occupied Palestinian Territories (OPTs). However, 'Palestine' was accepted as a non-member observer state in the United Nations in 2012, and has now acceded to the Rome Statute – the founding treaty of the International Criminal Court. This is a controversial move, not least because of strong opposition from Israel. There has been some suggestion that the ICC might open an investigation into alleged war crimes committed by Israel in Gaza during 2014.

2 The ICC: its role and accession processes

Under the terms of its founding treaty, the Rome Statute, the ICC's remit is to prosecute individuals (not states) for any of the following:

- Genocide;
- War crimes;
- Crimes against humanity.

Generally speaking, the ICC has jurisdiction only in the case of crimes committed on the territory of a State Party to the Rome Statute, or by a national of a State Party.

The ICC's Prosecutor is able to launch investigations of her own accord, but cases may also be referred to the ICC by the UN Security Council and/or by States Parties to the Rome Statute.¹

3 Palestinian accession: chronology

The prospect of Palestinian accession was the subject of much discussion long before the recent announcement. Accession first emerged as a real prospect in 2012, when Palestine was admitted as a non-member observer state in the United Nations. (States wishing to accede to the ICC must be either full Members of the United Nations or non-member observer states: an earlier Palestinian attempt to accede to the Rome Statute had failed on this basis.)²

Palestine initially refrained from acceding to the Statute, for fear of jeopardising its relations with the international community. Israel and its allies have historically been opposed to Palestinian accession, arguing that it is inappropriate for Palestine to join the ICC until Israel and the Palestinians reach agreement on a "two-state solution" to end the occupation (i.e. the creation of a Palestinian state in the West Bank and Gaza). The UK has generally followed the same line. In 2012 the then Foreign Secretary, William Hague, stated that the UK would only consider supporting the (ultimately successful) Palestinian application for UN non-member observer state if the Palestinian Authority refrained from joining the ICC.³ (The Palestinian Authority did indeed refrain from doing so at that time, but the UK still chose to abstain in the vote.⁴)

¹ [Rome Statute of the International Criminal Court](#) [accessed 18 February 2015]

² ["Palestine: Ratification and Implementation Status"](#), International Criminal Court [accessed 24 February 2015]

³ [HC Deb 28 November 2012 c228](#)

⁴ [HC Deb 18 Dec 2012 cc768-9W](#)

However, relations between the Palestinians and Israel deteriorated markedly during 2014. Direct talks between the parties broke down in April 2014. Thereafter, following rocket attacks by Palestinian militants, the Israeli military launched a large-scale military operation in Gaza during the summer. The eventual decision to accede to the Rome Statute was taken following the rejection of a Jordanian-sponsored UN Security Council Resolution on the Israeli-Palestinian conflict. The key provisions of the resolution called for:

- Agreement to be reached on a two-state solution within a year of the resolution's adoption;
- Thereafter, a full Israeli withdrawal from the OPTs, and the coming-into-being of a Palestinian state, by the end of 2017.⁵

The resolution was rejected by the Security Council on 30 December 2014, and – sensing that it no longer had anything to lose – Palestine acceded to the Rome Statute three days later.⁶ It will not formally become a State Party to the Statute until 1 April 2015, but – as of 1 January 2015 – it has accepted the Court's jurisdiction over its territory. This means that the ICC's Prosecutor is free to open an investigation into the situation in Palestine.

No investigation has been opened as yet, but the Prosecutor opened a “preliminary examination” on 16 January 2015.⁷ There has been some suggestion that she might subsequently open an investigation into alleged war crimes committed by Israel in Gaza during 2014.⁸

4 Reaction

The Government of Israel has reacted forcefully to the developments. Following the announcement of the Palestinian plan to accede, the Prime Minister of Israel, Binyamin Netanyahu, said: “It is the Palestinian Authority – which is in a unity government with Hamas, an avowed terrorist organisation that, like Isis, perpetrates war crimes – that needs to be concerned about the international criminal court in The Hague.”⁹ The Government of Israel subsequently announced that it would withhold tax revenues from the Palestinian Authority (Israel ordinarily collects taxes on the Palestinian Authority's behalf).¹⁰

Following the Prosecutor's decision to open a preliminary examination, Israel's Foreign Minister, Avigdor Lieberman, said:

This same court, which after more than 200,000 deaths didn't see fit to intervene in what was taking place in Syria or in Libya or in other places, now finds it worthwhile to 'examine' the most moral army in the world. This decision entirely stems from anti-Israel political considerations.¹¹

Writing in the *Guardian*, Julian Borger has argued that Palestinian militant group Hamas – as well as the Israeli military – may find itself under investigation for war crimes:

⁵ UN Security Council, draft resolution [S/2014/916](#), 30 December 2014

⁶ ["Palestinian president signs up to join international criminal court"](#), *Guardian*, 31 December 2014; ["Palestine: Ratification and Implementation Status"](#), International Criminal Court [accessed 24 February 2015]

⁷ ["Palestine: Ratification and Implementation Status"](#), International Criminal Court [accessed 24 February 2015]

⁸ ["ICC may investigate possible war crimes in Palestinian territories"](#), *Guardian*, 16 January 2015

⁹ ["Palestinian president signs up to join international criminal court"](#), *Guardian*, 31 December 2014

¹⁰ ["Israel threatens more retaliation against Palestinian court move after tax freeze"](#), *Telegraph*, 4 January 2015

¹¹ ["ICC may investigate possible war crimes in Palestinian territories"](#), *Guardian*, 16 January 2015

ICC membership is a powerful weapon but it is also double-edged. It defines the geographical area in which such crimes can be investigated, and the Palestinian leadership could also define a time period for the prosecutors to examine, but it cannot dictate the target of such an investigation. For example, if Abbas now seeks a retroactive investigation of the last bloody bout of violence in Gaza last summer, as he has the right to do, both the Israel Defence Forces and Hamas would be scrutinised for their actions.¹²

UK officials have offered little comment on the developments, but the US Government has echoed the Israeli line. On 8 January, a State Department spokesperson said:

As we have said previously, we have made clear our opposition to Palestinian action in seeking to join the Rome Statute of the International Criminal Court. This step is counter-productive, will damage the atmosphere with the very people with whom Palestinians ultimately need to make peace, and will do nothing to further the aspiration of the Palestinian people for a sovereign and independent state.

The view of the United States is that the Palestinians have not yet established a state. Neither the steps that the Palestinians have taken, nor the actions the UN Secretariat has taken in performing the Secretary-General's functions as depositary for the Rome Statute, warrant the conclusion that the Palestinians have established a "state," or have the legal competences necessary to fulfill the requirements of the Rome Statute. The United States does not believe that the Palestinians are eligible to become a party to the Rome Statute or any of the other treaties at issue, or that the United States is in treaty relations with the Palestinians under any of the treaties that they are seeking to join.

As the UN spokesperson said last April, and as the United Nations specifically confirmed yesterday, the treatment of such documents by the depositary is "an administrative function performed by the Secretariat as part of the Secretary-General's responsibility as depositary," and it is for states to resolve "any legal issues raised by instruments circulated by the Secretary-General."

Ultimately, the parties can only realize their aspirations, including the desire of Palestinians for statehood, through direct negotiations with each other. The United States will continue to work to advance the interest we share in bringing about a lasting peace between the Israelis and Palestinians.¹³

Further to the Prosecutor's decision to open a preliminary examination, State Department representative Jeff Rathke said:

We strongly disagree with the ICC Prosecutor's action today. As we have said repeatedly, we do not believe that Palestine is a state and therefore we do not believe that it is eligible to join the ICC. It is a tragic irony that Israel, which has withstood thousands of terrorist rockets fired at its civilians and its neighborhoods, is now being scrutinized by the ICC. The place to resolve the differences between the parties is through direct negotiations, not unilateral actions by either side. We will continue to oppose actions against Israel at the ICC as counterproductive to the cause of peace.¹⁴

¹² "ICC membership could be a double-edged sword for Palestine", *Guardian*, 31 December 2014

¹³ US Department of State, question taken at the 7 January 2015 Daily Press Briefing, *Regarding Palestinian Efforts to Accede to the Rome Statute of the International Criminal Court*

¹⁴ US Department of State press release, *Statement on ICC Prosecutor's Decision*, 16 January 2015