



The Ability of ICC to Achieve the Aim of Statute and Put an Ending for Crimes Committed in Palestine

Fatima Ezzohra el Hajraoui*

School of Law, Hunan University, China

Email: Fati_zahra25@hotmail.fr

Abstract

Palestinian membership in the ICC is an important step for achieving accountability for Israeli human rights violations against Palestinians, since it could lead to a trial; the war crimes, Crime against Humanity, genocide crimes and aggression of Israeli leaders. However, many practical and legal obstacles had stands in the way of such an outcome, particularly the political opposition of Israel and its Western allies to a prosecution of Israeli crimes. This was evident in the intense efforts that Israel and the West made to prevent the PA from joining the ICC on November 2012, when a UN resolution recognizing the Palestine's statehood the ICC accepted the membership of Palestine on January 2015. On this paper we will know how can ICC have the jurisdiction over crimes committed in Palestine? Are these crimes under the jurisdiction of ICC? What are the constraints to prosecute the perpetrators crimes in Palestine?

Keywords: ICC; Jurisdiction; Crimes against Humanity; War Crimes; Genocide Crimes; Constraints.

* Corresponding author.

1. Introduction

On July 17, 1998, 120 states voted in favor of establishing a permanent International Criminal Court. The decision to establish a permanent court has been considered a great leap forward for International Criminal Justice and the culmination of a lengthy process that can be traced back to the conventions of the conduct of warfare in the nineteenth century, the main principle of establishing ICC was to prosecute international crimes perpetrators and end impunity for the most serious crimes. It's was created as a court with the authority to try individuals – as opposed to states – who commit international crimes , according to article 5 from Rome Statute , the crimes had divided to 4 category crimes ; the crime of aggression, genocide, crimes against humanity, and war crimes.

The Preamble of the Rome Statute stipulate to end impunity for the most serious crimes, considering that interests of the international community as a whole.

Palestine is one of the most countries has suffered from that and Israel committed all kinds of crimes, including to crimes enter to the jurisdiction of the International Criminal Court.

To know how long that ICC going in Palestine, we need to ask some questions and from the answers, we will know if the ICC succeeded to combat impunity in Palestine.

2. What is the Mechanism of ICC to have jurisdiction over Palestine?

There are certain procedural preconditions for the exercise of ICC jurisdiction. The ICC has been empowered to order investigations on its own initiative regarding matters falling within its jurisdiction. This power is enshrined in Article 15 of the Rome Statute, which describes a four-part procedure [1]. First, the Prosecutor is entitled to proceed proprio motu (on his own initiative) with a preliminary examination of alleged crimes on the basis of information received, and he or she may seek additional information from a vast array of entities, including NGOs [2].

Second, if the Prosecutor finds that there is a reasonable basis to proceed, he or she submits to the Pre-Trial Chamber a request to authorize an investigation (without prejudice to any subsequent determinations by the ICC pertaining to issues of jurisdiction and the admissibility of a case) [3]. Third, if the Pre-Trial Chamber rejects the request, the Prosecutor may present an amended request based on new facts or evidence. Lastly, if the request is granted, the Prosecutor commences the proper investigation, which need not lead to specific accusations' [4].

According to the Article 15 any individual or legal entity may petition the OTP and can verify if the received information serious and true, and its falls under the jurisdiction of the ICC. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court .But even if this easier procedure the Prosecutor is subject to an important restriction, namely that the alleged crimes have a nexus with a specific state or states, be they parties or non-parties to the Rome Statute. This is what the court claimed.

This, in my opinion from the mistakes of the Rome statute, so that the goal was to protect the persons and peoples as mentioned in Preamble "Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures". "Mindful that during this century millions of children, women and men has been victims of unimaginable atrocities". These two sentences mean that the most serious crimes, when happened, need to prosecute the perpetrator even if we assume that Palestine is not a state.

In other hands, according to article 15 (b) of Rome Statute"... the information received....seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court". This means that not just the state or government can contact the court, also persons and non-governmental can be.

The second way is a Security Council referral, as we explained it in the ICC challenges; the UNSC can refer matters to the ICC anyway if the states are part of the Rome Statute or not like Sudan and Libya. The question here why UNSC didn't referral Palestine even if it's the most complicated case from more than 68 years. The other option is to referral by State Party to the International Criminal Court; here I mean that the State Party has the right to refer any situation to the Prosecutor in which one or more of such crimes appears to have been committed on board a vessel or aircraft [5]. But indeed what happened is On May 14th, 2013, the ICC Prosecutor received a referral from the Union of the Comoros, "with respect to the 31 May 2010 Israeli raid on the humanitarian aid flotilla bound for Gaza Strip" [6]. The flotilla was a humanitarian aid convoy, composed of eight vessels whose 700 passengers were mainly activists from several international organizations and 36 different countries. The flotilla was intended to reach the inhabitants of the Gaza Strip by challenging an Israeli-imposed blockade. Six of the vessels were allegedly attacked by Israel Defense Forces (IDF) on May 31st, 2010. The referral specifically emphasizes their interception of the MV Mavi Marmara, a vessel registered in the Union of the Comoros, but owned by the Turkish organization Charity Foundation for Human Rights and Freedoms and Humanitarian Relief (IHH). Most of the crimes allegedly took place onboard this vessel: nine Turkish citizens died, more than dozens were seriously injured and a hundred from different nationalities detained. The referral also mentions the incidents that allegedly occurred onboard the M.V. Eleftheri Mesogios (or Sofia) registered in Greece and the MV Rachel Corrie registered in Cambodia. Comoros, Greece, and Cambodia are all State Parties to the Rome Statute. The Rome Statute allows the ICC to exercise its jurisdiction over crimes committed on board a vessel registered to a State Party to the ICC [7].

The incident triggered an international outcry and a severe diplomatic crisis between Turkey and Israel. It led the UN to set up two committees to examine the incident: the Judge Hudson Philips Fact Finding Mission of the UN Human Rights Council [8] and the United Nations Secretary General's Panel of Inquiry, also known as the Palmer Committee [9]. Two main issues were raised: the legality of the blockade of Gaza and the use of force by the IDF during the Gaza Flotilla incident. The Judge Hudson Philips Fact Finding Mission report considered the blockade illegal whereas the Palmer Committee report found it legal. However, both of them concluded that excessive and unreasonable force was used by the IDF in their interception of the Mavi Marmara, resulting in unacceptable casualties. The Hudson Philips Fact Finding Mission stated: "It is impossible to legitimize or

defend such a conduct out of security reasons or other reasons. These actions seriously violated the international law and human rights law”.

In a rapprochement brokered by US President Barack Obama, Israeli Prime Minister Netanyahu apologized to his Turkish counterpart Erdogan on March 22nd, 2013, calling the incident an “operational mistake” and promised compensation and an easing of the blockade [10], the referral by the Union of the Comoros came just days after it was reported that Israel and Turkey were reaching an agreement on the compensation for the Turkish victims of the incident in exchange of the dropping of the lawsuits against IDF officers [11].

The third way is to prosecute perpetrators according to Rome Statute is article 12 provides that the ICC may exercise its jurisdiction with respect to crimes allegedly committed on the territory or by nationals of states that have either ratified the Statute or accepted ICC jurisdiction [12].

The States which are not a party to the Rome Statute may accept the Court’s jurisdiction on an ad hoc basis by lodging a declaration to that effect with the Registrar in accordance with article 12, paragraph 3 of the Statute. According to this article, On 22 January 2009, the Palestinian National Authority lodged a declaration by hand recognizing the jurisdiction of the Court with respect to acts committed on the territory of Palestine since 1 July 2002. Due to the uncertainties within the international community as to the existence or non-existence of a State of Palestine, the Registrar, Ms. Silvana Arbia, acknowledged receipt of the declaration on 23 January 2009 "without prejudice to a judicial determination on the applicability of Article 12 paragraph 3" to the declaration[13]. According to the OTP, the first step in the determination of jurisdiction is to establish “whether the declaration lodged by the PNA meets statutory requirements.” The OTP, in interpreting and applying article 12, held that it did not have the competence to legally determine whether Palestine qualifies as a state under the Rome Statute.

Despite declaring that the ICC Prosecutor does not have jurisdiction to determine whether Palestine is a state under the Rome Statute, the OTP adds that it: could in the future consider allegations of crimes committed in Palestine, should competent organs of the United Nations or eventually the Assembly of States Parties resolve the legal issue relevant to an assessment of article 12 or should the Security Council, in accordance with article 13(b), make a referral providing jurisdiction [14].

Amnesty International criticized the statement and called “for an independent judicial determination of the issue by the ICC judges, rather than a political determination by external bodies where the matter will likely remain unresolved indefinitely while victims continue to be denied justice.” The international human rights organization also felt that “delegating this decision to a political body undermines the vital independence of the Court and exposes the ICC to political influence over justice issues”[15].

The Office of the Prosecutor has been informed that Palestine has been recognised as a State in bilateral relations by more than 130 governments and by certain international organizations, including United Nation bodies.

However, the current status granted to Palestine by the United Nations General Assembly is that of “observer”,

not as a “Non-member State” [16]. The Office understands that on 23 September 2011, Palestine submitted an application for admission to the United Nations as a Member State in accordance with article 4(2) of the United Nations Charter, but the Security Council has not yet made a recommendation in this regard. While this process has no direct link with the declaration lodged by Palestine, it informs the current legal status of Palestine for the interpretation and application of article 12 [17].

After the United Nations General Assembly decide that Palestine is an observer not as non-member state ,on 1 January 2015, the Government of Palestine lodged a declaration under article 12(3) of the Rome Statute accepting the jurisdiction of the International Criminal Court (ICC) over alleged crimes committed "in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014". On 2 January 2015, the Government of Palestine acceded to the Rome Statute by depositing its instrument of accession with the UN Secretary-General. On 16 January 2015, the Prosecutor announced the opening of a preliminary examination into the situation in Palestine in order to establish whether the Rome Statute criteria for opening an investigation are met.

3. How Can ICC have the Jurisdiction over Crimes Committed in Palestine?

3.1. Palestine before recognizing the jurisdiction of ICC

The territory of Palestine has experienced so many crimes, which are in the jurisdiction of ICC but the court does not do anything even if it has the right to exercise the jurisdiction by the prosecutor or UN Security Council (Referral the case) as happened in other states. The International Criminal Court refuses to investigate crimes committed by Israeli against Palestine civil population. Now after Palestine has become a full state and internationally recognized sovereign state, how ICC exercises its temporal jurisdiction?

In the case of Palestine, there are two ways for the temporal jurisdiction, namely the ratification of the Statute of the Court and join direct impact or retroactive determined by the Palestinian leadership.

3.1.1. Direct Impact

In this position we assume that Palestine state wants to join the Rome Statute of the International Criminal Court by direct impact, without the deposit of a declaration with the Registrar of the Court retroactively to its jurisdiction, as the Court, and under Article 11/2 of its statute, they may not exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, what were not having made a declaration under Article 12/3, any retrospective of the jurisdiction of the Court, so the lack of deposit of this announcement means, in this case, accept the competence of the International Criminal Court by direct effect.

Deposit of application to join the International Criminal Court, need to deposit declaration lodged with the Registrar, and thus begins the statute into force on the State of Palestine on the first day of the month following the sixtieth day from the date of such deposit, in the sense that if the filed application to join the 27 October, for example, the Court system becomes effective as of the first of January 2015.

This option can be used effectively as a tool facing settlements and apartheid crimes and deportation and forcible transfer as a "continuous crimes" in the jurisdiction of the Court, settlements constitutes a war crime under the Rome Statute. And we can take advantage here of the report of the independent international fact-finding mission to investigate the effects of the construction of Israeli colonies issued on February 7, 2013, also argued in the case of similar Democratic Republic of Congo, which has already been examined by the court and considered within the ongoing crimes that take place in the court jurisdiction, here we mean that the focus is on the settlement project as the core of the occupation structure, and on the crimes of apartheid as crimes against humanity practiced in multiple formats leaders of the occupation and his officials, and linked to the settlement project, as well as the case concerning the deportation and forcible transfer as war crimes, and possibly up to crimes against humanity.

This can be used as an instrument effective option in the face of the settlements and apartheid crimes and deportation and forcible transfer as a "continuous crimes" and the court had jurisdiction on it, an according to the Statute of Rome the settlements is crime of war. And it can take advantage here of the report of the independent international fact-finding mission to investigate the effects of the colonies construction of Israeli issued on February 7, 2013, also argued in the case of similar Democratic Republic of Congo, which has already been examined by the court and considered within the ongoing crimes that take place in the court jurisdiction, here we mean that the focus is on the settlement project as the core of the occupation structure, and on the crimes of apartheid as crimes against humanity practiced in multiple formats leaders of the occupation and his officials, and linked to the settlement project, as well as the case concerning the deportation and forcible transfer as war crimes, and possibly up to crimes against humanity.

3.1.2. Retroactive impact

This option assumes that the State of Palestine wants to join the Rome Statute of the International Criminal Court and deposits a declaration and, at the same time, accepts the jurisdiction retroactively. The extent of time you choose for this retroactivity must be after the date the statute entered into force July 1, 2002, which means the exchange of the declaration filed by the Minister of Justice in 2009, and the establishment of new procedures to join.

If the retroactivity of the jurisdiction of the court means the prosecution of leaders of the occupation and officials, and achieving justice for victims of grave violations and to ensure that there is no impunity ,and to benefit from the findings of each of the fact-finding mission known as the Goldstone report, and the independent mission set up by the Arab League, and the report issued by the UN Commission of Inquiry investigation headed by Jan Martin on the military offensive on the Gaza Strip in operation "Cast Lead", which concluded that Israel committed war crimes and crimes against humanity on the scope of risk in the Gaza Strip, therefore the members of the resistance leaders Palestinian, especially those who had command and control sites and planned to carry out rocket attacks, may also be vulnerable to investigation and prosecution by the court.

3.2. Palestine after recognizing the ICC jurisdiction

Canada and the USA have the main role after Israel to obstructing the progress of procedure of Palestine accession to the International Criminal Court. In the other hand on 2012 Israel halted such transfers after the UN General Assembly passed a resolution acknowledging Palestine as a non-member state. These customs revenues account for nearly two-thirds of the PA's budget, while the US Congress is said to be reconsidering \$ 400 million in annual US aid to the PA [18]. And in April last year US Ambassador to the UN Samantha Power called possible Palestinian membership of the ICC a “profound threat to Israel” which the US would oppose using a variety of measures, and in January this year key members of the Senate issued a warning to the PA that its “deplorable” and “counterproductive” decision to join the ICC would be met with “a strong response”, including putting an end to all economic assistance. Although the White House maintains its position that Palestine cannot join the ICC since it is not a “sovereign State”, Washington is now reported to consider supporting a UNSC resolution which would back a two-state solution as an “alternative” to the Palestinian effort to hold Israel accountable at the ICC [19].

Even if all of this challenge, the PA has accession to Rome Statute but it will have Rights and Obligations, in my opinion, their obligations are more than rights a considering that it is an inferior party in a system dominated by the political nature rather than a legal.

- ❖ The Palestinian law must be appropriate with international law and the Statute of the Court, for example by amending the penal code to include crimes within the jurisdiction of the court and punish or embed Palestinian law some provisions or articles in this regard.
- ❖ Can prosecute Israelian but because that the ICC jurisdiction is complementary jurisdiction; the Israeli Government will initiation the investigation immediately after the submission of the request to the Prosecutor General. Indeed, the investigation needs two conditions are Unwillingness” and “inability”. as we explained it in the case of Libya (Saif Gaddafi), its benefits the developed countries more than developing countries let alone in an occupied state .

4. Are the crimes committed in Palestine falling into the ICC jurisdiction?

To know if the court has the jurisdiction we need to answer this question: Are the crimes committed in Palestine falling into the jurisdiction of the Court?

There is growing evidence that Israeli leaders and commanders have committed the following war crimes, genocide and crimes against humanity as defined in the Rome Statute for the ICC.

During Operation Protective Edge, Israeli forces again used the Dahiye Doctrine, which, according to the UN Human Rights Council [Goldstone] Report , involves "the application of disproportionate force and causing great damage and destruction to civilian property and infrastructure, and suffering to civilian populations." here we will find the crimes as follow of the statute.

4.1. War Crimes

- (1) Willful killing: Israeli forces have killed nearly 2,000 Palestinians (more than 400 children and over

80% civilians). Israel used 155-millimeter artillery, which, according to Human Rights Watch, is "utterly inappropriate in a densely populated area, because this kind of artillery is considered accurate if it lands anywhere within a 50-meter radius."

- (2) Willfully causing great suffering or serious injury to body or health and directing attacks against the civilian population, civilian objects. Nearly 10,000 people, 2,500 of them children, have been wounded. UNICEF said the Israeli offensive has had a "catastrophic and tragic impact" on children in Gaza; about 373,000 children have had traumatic experiences and need psychological help. The UN Relief and Works Agency for Palestine Refugees (UNRWA) said: "There's a public health catastrophe going on. You know, most of the medical facilities in Gaza are non-operational."
- (3) Unlawful and wanton, extensive destruction and appropriation of property not justified by military necessity: Tens of thousands of Palestinians have lost their homes. More than 1,300 buildings were destroyed and 752 were severely damaged. Damage to sewer and water infrastructure has affected two-thirds of Gazans. Israel shrunk Gaza's habitable land mass by 44 percent, establishing a 3 km "no-go" zone for Palestinians. Oxfam described the level of destruction as "outrageous ... much worse than anything we have seen in previous [Israeli] military operations."
- (4) Willfully depriving a prisoner of war or a civilian the rights of fair and regular trial: Nearly 2,000 Palestinians were arrested by Israeli forces during July 2014. There are prisoners are being held without any charge or trial under administrative detention [20].

4.2. Genocide

(a) With the intent to destroy, in whole or in part, a national, ethnical, racial or religious group: Palestinians, including primarily civilians, and Palestinian infrastructure necessary to sustain life were deliberately targeted by Israeli forces.

(b) The commission of any of the following acts:

- (i) Killing members of the group: Israeli forces killed nearly 2,000 Palestinians.
- (ii) Causing serious bodily or mental harm to members of the group: Israeli forces wounded 10,000 Palestinian.
- (iii) deliberately inflicting on the group conditions of life calculated to bring about its destruction in whole or in part: Israeli forces devastated Gaza's infrastructure, knocking out Gaza's only power plant, and destroying homes, schools, buildings, mosques and hospitals [21].

4.3. Crimes against humanity

(A) The commission of murder as part of a widespread or systematic attack against any civilian population:

Israeli forces relentlessly bombed Gaza for one month, killing nearly 2,000 Palestinians, more than 80 percent of whom were civilians. Israeli forces intentionally destroyed Gaza's infrastructure, knocking out Gaza's only power plant, and destroying homes, schools, buildings, mosques and hospitals.

(B) Persecution against a group or collectivity based on its political, racial, national, ethnic or religious character, as part of a widespread or systematic attack against any civilian population: Israeli forces killed, wounded, summarily executed, and administratively detained Palestinians, Hamas forces and civilians alike. Israel forces intentionally destroyed the infrastructure of Gaza, populated by Palestinians. UN Secretary General Ban Ki-moon said: "the massive death and destruction in Gaza have shocked and shamed the world." He added the repeated bombing of UN shelters facilities in Gaza was "outrageous, unacceptable and unjustifiable.

(C) The crime of apartheid (inhumane acts committed in the context of an institutional regime of systematic oppression and domination by one racial group over another racial group, with the intent to maintain that regime): Ali Hayek, head of Gaza's federation of industries representing 3,900 businesses that employ 35,000 people, said: "After 30 days of war, the economic situation has become, like, dead. It seems the occupation intentionally destroyed these vital factories that constitute the backbone of the society." Israel maintains an illegal barrier wall that encroaches on Palestinian territory and builds illegal Jewish settlements on Palestinian lands. Israel keeps Gazans caged in what many call "the world's largest open air prison." Israel controls all ingress and egress to Gaza, limits Gazans' access to medicine, subjects Palestinians to arbitrary arrest, expropriates their property, maintains separate areas and roads, segregated housing, different legal and educational systems for Palestinians and Jews and prevents mixed marriages. Only Jews, not Palestinians, have the right to return to Israel-Palestine [22].

5. The ICC Constraints to prosecute the perpetrators crimes in Palestine

Here I will analysis the Challenges that have faced by ICC jurisdiction in this case, according to Article 125 (3) stipulates that 'this Statute shall be open to accession by all States.' Schabas expresses that 'article 125 governs the mechanisms by which States become parties to the Rome Statute'[23]. Therefore, it seems to be a requirement that the entity that wants to accede to the Statute has attained statehood. The focus on 'State' throughout the Statute [24] implies that statehood should be understood as a condition for accession to the Statute.

The Palestinian National Authority ('PNA') was established pursuant to the Oslo Accords[25] and it functions as a governmental body for the Palestinian people. In this regard, Yuval Shany, a professor in public international law at the Hebrew University of Jerusalem, argues that since the Oslo Accords 'limits the powers of the PNA to conduct foreign relations (...), its attempt to authorize the ICC to exercise jurisdiction appears to run contrary to its obligations under this agreement [26].

In response to these assertions, it seems necessary to recall that the Oslo Accords were supposed to be temporary, applicable for a period of 5 years during which the parties would negotiate a final peace agreement[27]. The intentions of the Oslo Accords were that the Israeli occupation would end and that the

Palestinians would have their own State within those 5 years [28]. The Oslo Accords cannot limit the ICC's jurisdiction, does not affect the internationally-recognized rights to self-determination, sovereignty and independence of the Palestinian people' [29].

The Palestinians have indeed ratified many treaties in the years after the adoption of the Oslo Accords [30]. As treaties are generally regarded as an instrument for agreements between States, the Palestinian treaty ratifications entail that it has acceded to agreements with States, which further implies that the Palestinians have the capacity to enter into relations with other States. Due to the considerable development in the status of the Palestinian territory since 1993, it seems unreasonable that the Oslo Accords should preclude the Palestinian effort to become a State Party to various treaties, such as the Rome Statute.

Moreover, 135 Member States of the United Nations have recognized the 'State of Palestine' [31] and these States already have, or are ready to commence, diplomatic relations with this new State. This supports the notion that the Palestinians have the capacity to enter into relations with other States.

If the international community was of the opinion that the Palestinians were hindered by the Oslo Accords, it is unlikely that it would upgrade their UN status to that of a 'State' because States, as persons under international law, are entitled to accede to treaties. Thus, it should be concluded that the Palestinians fulfill this criterion too [32].

An ordinary meaning of 'State', in accordance with article 31(1) of the Vienna Convention, implies an entity, which has acquired statehood under international law, by fulfilling the conditions in article 1 of the Montevideo Convention and/or by sufficient recognition from the international community. As a first step, it is therefore reasonable to assert that 'State' in the Rome Statute is to be understood as statehood.

According to article 31(4) of the Vienna Convention '[a] special meaning shall be given to a term if it is established that the parties so intended.' There is no provision in the Statute, which expresses that the term 'State' is to be understood differently from its ordinary meaning.

However, in relation to Palestine, Alain Pellet, a professor in international law and Yuval Shany argue that non-state entities should be included in 'State' by the means of a teleological and functional interpretation [33]. Their main argument is that in the absence of such an interpretation, perpetrators of heinous crimes will go free because the ICC would only have jurisdiction if the situation concerns a State. They assert that their suggested approach will promote the object and purpose of the Statute, which is to end impunity for international crimes [34].

As practice shows that a 'State' can be more than those fulfilling the Montevideo criteria. The Holy See, which is the jurisdiction of the Catholic Church in Rome [35], is an example in this regard. The Vatican City is the sovereign territory of the Holy See [36], but other than that it probably does not fulfill the Montevideo criteria. Yet, the Holy See is regarded as a 'State' by the UN and possesses non-member observer State status in the General Assembly [37].

This is mainly based on the Holy See's capacity to enter into relations with other States, which it has shown by acceding to an extensive amount of international treaties [38]. Due to this capacity, the Holy See is also seen as being entitled to join the ICC [39].

Palestine possesses the same UN status as the Holy See and one could therefore argue that the latter should not be in any better position than the former. If the Holy See can join the ICC, Palestine should also be able to. The upgraded status of Palestine in the General Assembly has the consequence that Palestine can ratify treaties because it is now a 'State' within the international community. It is reasonable that this right to accede to treaties also includes the Rome Statute [40].

Palestine joined the United Nations Educational, Scientific, and Cultural Organization ('UNESCO') in 2011 and is regarded as a 'State' for the purpose of this UN specialised agency [41]. The UN Secretary-General is the depositary of the Rome Statute [42] and in this regard I've wondered, such as William A. Schabas 'how could the Secretary General refuse the accession [to the Rome Statute] by 'a state' that has already been recognized as 'a state' pursuant to the Constitution of UNESCO'[43]?

As Schabas points out, it seems rational that the understanding of 'State' in the Rome Statute should go hand in hand with the understanding in the Constitution of UNESCO. It would make up an unfavorable practice if the Secretary-General applies different interpretations of 'State' depending on the particular treaty. After all, the UN and the ICC are closely related as the Preamble of the Rome Statute expresses that an International Criminal Court would be established 'in relationship with the United Nations system'.

Moreover, Palestine has ratified a fair amount of treaties over the last years and thereby shown its capacity to accede to international treaties [44]. The Rome Statute is no different in this regard: the Statute is a treaty, an agreement between States, and as Palestine has ratified other treaties it is reasonable that Palestine should also be entitled to accede to the Statute.

The ICC's jurisdiction covers the most serious crimes of concern to the international community [45] and the object and purpose of the Rome Statute is to end impunity, prevent crimes from being committed, guarantee lasting respect for and the enforcement of international justice [46].

The Rome Statute is not different in this regard: the Statute is a treaty, an agreement between States, and as Palestine has ratified other treaties it is reasonable that Palestine should also be entitled to accede to the Statute as we explained before.

6. Conclusion

In this case, I choose to discuss the ways which the court can exercise its jurisdiction through clarifying the possibilities of the International Criminal Court to exercise its competence on Palestine case, and I gave some live examples such as; attempts of the International Organizations to referral the Palestinian situation to the prosecutor with clear full evidences to prove the Israeli international Crimes, also the attempts to Referral of a situation by a State Party, especially the Marmara ship case which owned by Comoros, the ICC refused the Case

under the justification that the numbers victims are few and not enough to make the Israeli Crimes an international Crimes subject to ICC jurisdiction. In this situation, all the jurisdiction ways are existing to practice the ICC jurisdiction but front of some political reasons and duality of standards the Court could not practice its jurisdiction over these Crimes.

In the second point, I analyzed the Jurisdiction Ratione Temporis of ICC, and discriminate between the two situations, whether the state accepted the jurisdiction by Direct or Retroactive impact, and explain the effects which resulted from both of them.

I discussed the crimes which committed in Palestine and whether these crimes are enter under the ICC jurisdiction or not? I also spoke about obstacles which faced the court to prosecute the Israeli criminals before Palestinian ratification on the Rome statute.

In my opinion, Palestine's accession to the Rome Statute will impose more obligations against Palestine while its benefits will be less a considering that Palestine is an inferior party in a statute which dominated by the political nature more than the legal nature.

References

- [1]. Konstantinos D. Magliveras, The Position of the ICC Prosecutor in the Recent Hostilities in the Gaza Strip, 25 INT'L ENFORCEMENT L. REP. 209, 211 (2009)
- [2]. International Criminal Court Statute, article 15, Paragraph (2).
- [3]. International Criminal Court Statute, article 15 Paragraphs (3)-(4).
- [4]. International Criminal Court Statute, article 15 Paragraph (5).
- [5]. International Criminal Court Statute, article 12 paragraph (2(a), and article 13 (a).
- [6]. OTP, Referral under Articles 14 and 12 (2) (a) of the Rome Statute arising from the 31 May 2010, Gaza Freedom Flotilla situation, May 2013, available at: <http://www.icc-cpi.int/iccdocs/otp/Referral-from-Comoros.pdf>
- [7]. AMICC, The ICC and the Israel-Palestine Conflict: Current Developments, Implications and Future Scenarios. Available at: http://www.amicc.org/docs/the_icc_and_the_israel-palestine_conflict.pdf [6 May, 2016].
- [8]. A/HRC/15/21, Human Rights Council, Fifteenth session, Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance, September 27th, 2010, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf
- [9]. Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, September 2011 available at: http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf [6 May, 2016].
- [10]. CNN, "Israel to Turkey: We apologize for deadly raid on Gaza-bound flotilla", March 24th , 2013, available at: <http://www.cnn.com/2013/03/22/world/meast/israel-turkey-apology> [6 May, 2016].

- [11]. Haaretz, "Israel and Turkey near final deal on compensation for Gaza flotilla victims", May 6th, 2013, available at <http://www.haaretz.com/news/diplomacy-defense/israel-and-turkey-near-final-deal-on-compensation-for-gaza-flotilla-victims-1.519575> [6 May, 2016]
- [12]. International Criminal Court Statute, article 12 paragraphs (1)-(2).
- [13]. https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/registry/pages/declarations.aspx [6 May, 2016].
- [14]. ICC, situation in Palestine, <https://www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf> [6 May 2016].
- [15]. Amnesty International's Response to the ICC Office of the Prosecutor's Statement that It cannot Investigate Crimes Committed During the Gaza Conflict, (Apr. 4, 2012).
- [16]. The United Nations General Assembly passed resolution 67/19, On 29 November 2012, in a 138–9 vote (with 41 abstentions and 5 absences).
- [17]. ICC, situation in Palestine, <https://www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf> [6 May 2016].
- [18]. Jurist, Academic Commentary, Palestine and the ICC: what's next?, Christina Alam, Wednesday 14 January 2015, available at: <http://jurist.org/forum/2015/01/victor-kattan-palestine-icc.php#> [6 May, 2016]
- [19]. E-International Relations, What Are the Consequences of Palestine Joining the International Criminal Court? THOMAS OBEL HANSEN, APR 6, 2015.
- [20]. Jurist, Academic Commentary US Leaders Aid and Abet Israeli War Crimes, Genocide & Crimes against Humanity. available at :<http://jurist.org/forum/2014/08/marjorie-cohn-israel-crimes.php> [6 May 2016].
- [21]. <http://jurist.org/forum/2014/08/marjorie-cohn-israel-crimes.php>
- [22]. <http://jurist.org/forum/2014/08/marjorie-cohn-israel-crimes.php>
- [23]. William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, Oxford University Press 2010, p. p. 1196
- [24]. Reference can inter alia be made to the provisions on jurisdiction in articles 11 to 13.
- [25]. 'Situation in Palestine Summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements', para. 47, available at: <http://www.icccpi.int/NR/rdonlyres/553F5F08-2A84-43E9-81976211B5636FEA/282852/PALESTINEFINAL201010272.pdf> (accessed 8 December 2014).
- [26]. Yuval Shany, 'In Defence of Functional Interpretation of Article 12(3) of the Rome Statute', *Journal of International Criminal Justice*, 8 (2010), 329-343, p. 341.
- [27]. Declaration of Principles on Interim Self-Government Arrangements between Israel and the PLO, article 1(1), <http://www.jewishvirtuallibrary.org/jsource/Peace/dop.html> (accessed 8 December 2014).
- [28]. Ibid.
- [29]. Valentina Azarov and Chantal Meloni, 'Disentangling the Knots: A Comment on Ambos' 'Palestine, 'Non-Member Observer' Status and ICC Jurisdiction' (2014) EJIL, <http://www.ejiltalk.org/disentangling-the-knots-a-comment-on-ambos-palestine-non-member-observerstatus-and-icc-jurisdiction/> (accessed 8 December 2014).

- [30]. In April 2014, Palestine acceded to 20 international treaties and conventions. See <http://www.hrw.org/news/2014/05/08/palestine-go-international-criminal-court> (accessed 8 December 2014).
- [31]. The Washington Post, <http://www.washingtonpost.com/blogs/worldviews/wp/2014/11/07/map-the-countries-that-recognize-palestine-as-a-state/> (accessed 8 December 2014).
- [32]. <https://bora.uib.no/bitstream/handle/1956/9364/129435177.pdf?sequence=1> [6 May 2016]
- [33]. Alain Pellet, 'The Palestinian Declaration and the Jurisdiction of the International Criminal Court', *Journal of International Criminal Justice*, 8 (2010), 981-999; Yuval Shany, 'In Defence of Functional Interpretation of Article 12(3) of the Rome Statute', *Journal of International Criminal Justice*, 8 (2010), 329-343
- [34]. Shany, Yuval, 'In Defence of Functional Interpretation of Article 12(3) of the Rome Statute', *Journal of International Criminal Justice*, 8 (2010), p336.
- [35]. <http://www.gotquestions.org/Holy-See.html> (accessed 8 December 2014).
- [36]. Article 3(1) of the Lateran Treaty between the Holy See and Italy, available at: <http://www.vaticanstate.va/content/dam/vaticanstate/documenti/leggi-e-decreti/Normative-Penali-e-Amministrative/LateranTreaty.pdf> (accessed: 20/03/2014)
- [37]. UN Permanent Observers, <http://www.un.org/en/members/nonmembers.shtml> (accessed 8 December 2014).
- [38]. The Permanent Observer Mission of the Holy See to the United Nations, <http://www.holyseemission.org/about/treaties-and-conventions.aspx> (accessed 8 December 2014)
- [39]. Parliamentarians for Global Action, <http://www.pgaction.org/campaigns/icc/europe/vatican-city.html> (accessed 8 December 2014).
- [40]. <https://bora.uib.no/bitstream/handle/1956/9364/129435177.pdf?sequence=1>
- [41]. UNESCO, <http://whc.unesco.org/en/statesparties/> (accessed 8 December 2014).
- [42]. Article 125(2) of Rome Statute.
- [43]. William A. Schabas, 'Palestine Should Accede to the Rome Statute' (2011), PhD studies in human rights, <http://humanrightsdoctorate.blogspot.no/2011/11/palestine-should-accede-to-rome-statute.html> (accessed 7 December 2014).
- [44]. United Nations High Commissioner for Human Rights, available at: <http://unispal.un.org/UNISPAL.NSF/0/262AC5B8C25B364585257CCF006C010D>; Al Jazeera
- [45]. Article 1 of International Criminal Court Statute.
- [46]. Preamble of International Criminal Court Statute.