

Statement : 3 March 2021

Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine



Today, I confirm the initiation by the Office of the Prosecutor ("Office") of the International Criminal Court ("ICC" or the "Court") of an investigation respecting the Situation in Palestine. The investigation will cover crimes within the jurisdiction of the Court that are alleged to have been committed in the Situation since 13 June 2014, the date to which reference is made in the Referral of the Situation to my Office.

How the Office will set priorities concerning the investigation will be determined in due time, in light of the operational challenges we confront from the pandemic, the limited resources we have available to us, and our current heavy workload. Such challenges, however, as daunting and complex as they are, cannot divert us from ultimately discharging the responsibilities that the Rome Statute places upon the Office.

Under the Rome Statute, where a State Party has referred a situation to the Office of the Prosecutor and it is determined that a reasonable basis exists to commence an investigation, the Office is obliged to act. As a first step, the Office is required to notify all States Parties and those States which would normally exercise jurisdiction over the crimes concerned about its investigation. This permits any such State to request the Office to defer to the State's relevant investigation of its own nationals or others within its jurisdiction in relation to Rome Statute crimes referred to in the notification (subject to possible Pre-Trial Chamber review).

Any investigation undertaken by the Office will be conducted independently, impartially and objectively, without fear or favour. The Rome Statute obliges the Office, in order to establish the truth, to extend its investigation to cover all facts and evidence relevant to an assessment of whether there is individual criminal responsibility under the Statute and, in doing so, to investigate incriminating and exonerating circumstances equally.

The decision to open an investigation followed a painstaking preliminary examination undertaken by my Office that lasted close to five years. During that period, and in accordance with our normal practice, the Office engaged with a wide array of stakeholders, including in regular and productive meetings with representatives of the Governments of Palestine and Israel, respectively.

On the basis of our deliberations, we knew that one issue we would need to have resolved related to the territorial scope of the Court's jurisdiction in the Situation in Palestine. For this reason, we took, as a responsible prosecuting Office, the preliminary step of seeking a ruling on the question, because it was important for us to obtain clarity on it at the outset, so as to chart the course of any future investigation on a sound and judicially tested foundation.

On 20 December 2019, therefore, aware of the complex and novel issues arising in this Situation, I [announced](#) that I would be making a [request](#) to the Judges of Pre-Trial Chamber I ("Chamber") for a ruling to clarify the territorial scope of the Court's jurisdiction in the Situation in Palestine. In our request, [dated 22 January 2020](#), the Office set out its legal position, but encouraged the Chamber to hear views and arguments from all stakeholders before deciding the specific jurisdictional question before it. The Chamber did so, hearing all points of view.

On 5 February 2021, the Chamber [decided](#), by a majority, that the Court may exercise its criminal jurisdiction in the Situation in Palestine, and that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem. In its majority ruling, the Chamber stressed that it was not determining whether Palestine fulfilled the requirements of statehood under public international law, or adjudicating a border dispute, or prejudging the question of any future borders; it was solely determining the scope of the Court's territorial jurisdiction for the purposes of the Rome Statute, as requested. Such matters, which the Chamber did not decide, and on which my Office took no position, remain to be determined in bilateral discussions between Israeli and Palestinian authorities in the context of a negotiated agreement.

Having assessed submissions from states, international organisations and other stakeholders, the Chamber was otherwise unanimous in its view that Palestine is a State Party to the Rome Statute. The majority also ruled that Palestine's referral of the Situation obliged the Office to open an investigation, the Office having determined that there existed a reasonable basis to do so in accordance with the Rome Statute criteria.

Given the reaction, both positive and negative, which has greeted the Chamber's ruling, some measure of reason and balance should be restored to the discussion. In their ruling, the judges entered no findings on the alleged crimes the Office identified, they only held that we have competence to investigate them. Even on some questions of jurisdiction, the majority of the

Chamber chose to defer to later proceedings its consideration of any further arguments that might be raised.

Investigations take time and they must be grounded objectively in facts and law. In discharging its responsibilities, my Office will take the same principled, non-partisan, approach that it has adopted in all situations over which its jurisdiction is seized. We have no agenda other than to meet our statutory duties under the Rome Statute with professional integrity. I recall here, by way of an example, the allegations made about the conduct of the Israeli Defence Forces in the case of the *Mavi Marmara*, where, as Prosecutor, [I declined to commence an investigation](#) on the basis that there was not a reasonable basis to proceed following our clinical assessment of the Rome Statute criteria.

In the current Situation, however, there is a reasonable basis to proceed and there are admissible potential cases. Our assessment will remain ongoing in the context of the investigation to allow for a continuing assessment of actions being taken at the domestic level in accordance with the principle of complementarity.

To both Palestinian and Israeli victims and affected communities, we urge patience. The ICC is not a panacea, but only seeks to discharge the responsibility that the international community has entrusted to it, which is to promote accountability for Rome Statute crimes, regardless of the perpetrator, in an effort to deter such crimes. In meeting this responsibility, the Office focuses its attention on the most notorious alleged offenders or those alleged to be the most responsible for the commission of the crimes.

In the end, our central concern must be for the victims of crimes, both Palestinian and Israeli, arising from the long cycle of violence and insecurity that has caused deep suffering and despair on all sides. The Office is aware of the wider concern, respecting this Situation, for international peace and security. Through the creation of the ICC, States Parties recognised that atrocity crimes are "a threat to peace, security and wellbeing of the world", and resolved "to guarantee lasting respect for and the enforcement of international justice." The pursuit of peace and justice should be seen as mutually reinforcing imperatives.

In carrying out our work, we count on the support and cooperation of the parties, as well as all States Parties to the Rome Statute. My Office welcomes the opportunity to engage with both the Government of Palestine and the Government of Israel, to determine how justice may best be served within a framework of complementary domestic and international action. In this way, we can hope to achieve some measure of accountability and justice for the benefit of Palestinian and Israeli victims of Rome Statute crimes.

- [Situation in Palestine |Summary of Preliminary Examination findings](#)

The Office of the Prosecutor of the ICC conducts independent and impartial preliminary examinations, investigations and prosecutions of the crime of genocide, crimes against humanity, war crimes and the crime of aggression. Since 2003, the Office has been conducting investigations in multiple situations within the ICC's jurisdiction, namely in Uganda; the Democratic Republic of the Congo; Darfur, Sudan; the Central African Republic (two distinct

situations); Kenya; Libya; Côte d'Ivoire; Mali; Georgia, Burundi; Bangladesh/Myanmar and Afghanistan (subject to a pending article 18 deferral request). The Office is also currently conducting preliminary examinations relating to the situations in Bolivia; Colombia; Guinea; the Philippines; and Venezuela (I and II); and has recently completed its preliminary examinations of the situations in Ukraine and Nigeria, which are pending requests to seek authorisation to proceed to investigation.

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