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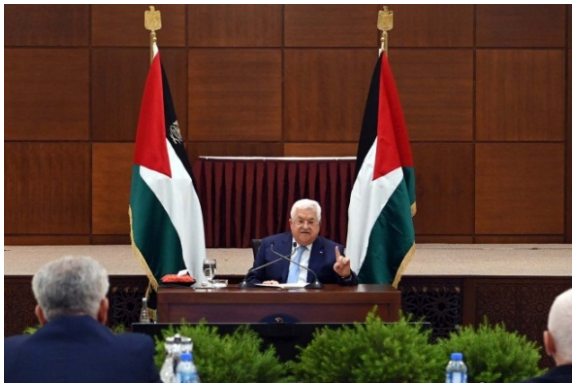
Exchange of clarifications between the ICC and the Palestinian Authority following Mahmoud Abbas's statement on the PA considering itself absolved from all agreements and understandings

June 10, 2020

Overview

On June 5, 2020, the Palestinian Authority provided its observations on the International Criminal Court's request with respect to Mahmoud Abbas's statement that the PA is absolved from any agreements or understandings with the American and Israeli governments. The Palestinian Authority's position is that the statement **does not have any bearing whatsoever on the judicial issue awaiting the decision of the Pre-Trial Chamber** nor did it have any intention to do so. The PA also notes that Mahmoud Abbas's statement was not made as part of the formal procedures of the court. In her response (June 8, 2020), the prosecutor agrees with the PA's position and notes that **"the Prosecution does not consider that the Statement has a bearing on the status of Palestine as a State Party to the Rome Statute and on the exercise of the Court's jurisdiction in the situation in Palestine."** The prosecutor reiterates her position that **"the Oslo Accords do not bar the exercise of the Court's jurisdiction in Palestine"** and thus **her position on this issue remains the same**. The prosecutor also expresses concern about Israel's declared intention to imminently annex parts of the "Occupied Palestinian Territory." The prosecutor recalls that "any unilateral annexation by the Occupying Power of an occupied territory—in whole or in part—has no legal validity and the law of occupation continues to apply" (the ICC website, June 8, 2020).



Right: Mahmoud Abbas delivering his speech in front of the Palestinian leadership. In his speech, he declared that the "State of Palestine is absolved from all the agreements and understandings with the American and Israeli governments" (WAFA, May 19, 2020). Left: Fatou Bensouda, the ICC's prosecutor: Mahmoud Abbas's statement has no bearing on the question of the ICC's jurisdiction (photo: the ICC website).

The ICC's request

- **Dr. Omar Awadallah, head of the Department of United Nations and [the United Nations'] Specialized Agencies at the Palestinian Ministry of Foreign Affairs, said that on May 26, 2020, the ministry had received a request for clarification from the ICC regarding Mahmoud Abbas's statement that the PA was absolved from all the agreements with Israel.** The court asked the PA to provide further information on the matter, **including information regarding the Oslo Accords**.
- Awadallah said that **the PA would respond to the ICC by June 10, 2020, and that its response would be based on Mahmoud Abbas's announcement** [**Note:** in his May 19, 2020 speech, Mahmoud Abbas stated that "the State of Palestine and the PLO are absolved from all agreements and understandings" with Israel and the United States, but refrained from explicitly mentioning the Oslo Accords].
- Dr. Omar Awadallah added that **the legal jurisdiction that [according to the PA] the ICC has in Palestine would not change after Mahmoud Abbas's speech.** He added that Mahmoud Abbas's speech **would not affect the status of Palestine as a state within the 1967 borders, whose capital is East Jerusalem**. It would also not change its status as a UN observer state since 2002 (Wafa, May 27, 2020).

The Palestinian Authority's response

- **Palestinian Foreign Minister Riyad al-Maliki** announced that on June 5, 2020, Palestine had submitted its response to the ICC's request. He noted that Palestine's response was delivered **as part of the judicial procedures related to the ICC's jurisdiction, regardless of the Palestinians' political status and the Oslo Accords** (WAFA, June 5, 2020).
- Al-Maliki pointed out that **Mahmoud Abbas's speech** [from May 19, 2020] **does not have a bearing on the status of the "occupied Palestinian territory" and that Israel bears responsibility for it** under the Geneva Convention and international law. According to Al-Maliki, the reason for the declaration of the Palestinian leadership that Palestine is absolved from the agreements with Israel is **the Israeli government's plans to annex Palestinian territory in violation of international law**. According to the Palestinian response, the Israeli plans constitute a crime according to the Rome Statute[1] **since they compromise the Palestinians' inalienable right to self-determination** and violate many UN decisions.

[1] The Rome Statute is an international treaty constituting the source of authority for the actions of the ICC in The Hague.

According to Al-Maliki, the Palestinian response pointed out that **the Palestinian people has a historic right to sovereignty** and that this right is backed by the decisions of the legitimate international institutions **and the ICJ's legal opinion[2].**

- Al-Maliki added that based on the fourth Geneva Convention, **the legal validity of the protection provided to the Palestinian people**, which is now under occupation, **is not affected by any agreement made with the "occupying entity."** The Palestinian response is based on Palestine's unequivocal position that **Palestinian territory is occupied territory and the ICC has jurisdiction over it, which applies to the West Bank, including East Jerusalem, and the Gaza Strip.**
- Al-Maliki concluded his statement by saying that **Palestine would continue to work in cooperation with the ICC until justice is done and the Israeli war criminals are held accountable.**

[2] "The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946."
"The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies" (ICJ website, June 8, 2020).