



Palestinian responses to the International Criminal Court's opening an investigation of Israel

March 7, 2021

Overview

►The Palestinians were very pleased by **International Criminal Court (ICC) Chief Prosecutor Fatou Bensouda's** decision that the Court would investigate Israel on suspicion of having carried out war crimes. In Palestinian perspective, the decision was of historic proportions and a significant achievement in their struggle against Israel. The Palestinians credit the decision to the policies of Palestinian Authority (PA) chairman Mahmoud Abbas. Jibril Rajoub said Israel's era of being defended by Trump had ended. Senior PA figures called on the ICC to conduct the investigation swiftly. Palestinians also noted that the PA was committed to providing all the aid demanded as a signatory of the Rome Statute. The Islamist terrorist organizations in the Gaza Strip (Hamas and the Palestinian Islamic Jihad among them) expressed satisfaction despite the Court's decision to conduct an investigation of Hamas and the "armed groups" accused of using the civilian population as human shields and of torturing opponents (ICC website, December 20, 2019). A coalition of NGOs close to the Popular Front for the Liberation of Palestine (PFLP), which participated in referring the complaint to the ICC, joined the general approval and stressed that members of the Israeli security forces have not been investigated independently by Israel.

The ICC chief prosecutor's decision

►On March 3, 2021, **Fatou Bensouda, the ICC chief prosecutor**, announced an investigation would be initiated by the Court into the 'Palestinian situation' regarding the suspicion that Israel had committed war crimes. The investigation, she said, would relate to crimes allegedly committed by Israel in the Judea, Samaria and east Jerusalem, and in the Gaza Strip beginning on June 13, 2014 [the day after the abduction of the three Israeli boys], in accordance with the request made by "Palestine," which is a signatory to the Rome Statute. She noted that the investigation's order of priorities would be determined at a future date, in light of the challenges facing the Court due to its limited resources and heavy workload. She made it clear that the decision did not in any way determine whether or not a "state of

Palestine" existed and was not an attempt to influence the determination of its future borders, both of which were political issues the sides had to determine between themselves (ICC website, March 3, 2021).

- ▶The Court's first step is to officially inform the involved parties that an investigation will be initiated. Once they have been informed they will be given the opportunity to carry out an independent investigation and/or have one carried out by any other entity subordinate to the Rome Statute. Bensouda stressed that the investigation would focus on only the most severe crimes, that it would be a long, drawn-out process and that all parties had to have patience (ICC website, March 3, 2021).
- ▶The announcement was issued only one month after a majority of the Pre-Trial Chamber of judges determined (February 5, 2021) the Court did in fact have the authority to investigate the territories of Judea, Samaria, east Jerusalem and the Gaza Strip and confirmed the results of the pre-trial examination carried out by the chief prosecutor. Bensouda issued her ruling three months before the end of her term as chief prosecutor. In June she will be replaced by **Karim Khan**, a British jurist, who was chosen as her successor.



Fatou Bensouda, the ICC chief prosecutor (ICC website)



The ICC decision seen as a Palestinian victory (al-Quds, March 4, 2021).

Palestinian Reactions to the Chief Prosecutor's Decision

The PA

- ▶ The first reaction came from the **PA's foreign ministry**, which reported the decision. It was then given front page headlines by Wafa, the PA's official news agency. According to the foreign ministry, the PA welcomed the ICC's decision, which was what they had hoped for, as it served the "unflagging efforts of Palestine" to achieve "justice and an accounting," the foundation of the peace the Palestinian people are asking for. The announcement also said that the "state of Palestine" reminded the chief prosecutor and the other Rome Statute signatories that the [alleged] "crimes" carried out by the "Zionist occupation" against the Palestinian people were ongoing, systematic and extensive, which made it necessary to complete the investigation as quickly as possible to prevent the [alleged Israeli] criminals from evading punishment and to deter them [from future "crimes"]. The foreign ministry also welcomed the "courage" of the announcement in view of what the Palestinians called the "unprecedented threats and pathetic attempts to politicize the ICC's work" (Wafa, March 3, 2021).
- ▶ Somewhat later the PA foreign ministry issued an announcement condemning Israel's response to the Court's decision, saying they rejected Israel's attempts to politicize it. The foreign ministry said it would fully cooperate with the Court and provide it with all the necessary materials. The ministry appealed to all the ICC's members to defend the chief prosecutor and the judges who were working, according to the ministry, in accordance with the articles of the Rome Statute (Facebook page of the PA foreign ministry, March 4, 2021).
- ▶ **Riyad al-Maliki, Palestinian foreign minister**, held a press conference on the sidelines of the conference held by the foreign ministers of the Arab League. He congratulated the Palestinian people on the achievement which, he said, meant the initiation of an era in which Israel would no longer be above the law. He said they had been waiting for the decision since 2014, which he called "brave," given the threats made against the ICC. He repeated his general call to protect the Court from external intervention, and to protect the chief prosecutor, the judges and their families from threats and sanctions. He added that

they were waiting for the Biden administration to overturn the decisions made by the Trump administration¹ (Facebook page of the PA foreign ministry, March 4, 2021).



Riyad al-Maliki, Palestinian foreign minister, holds a press conference in Cairo (Facebook page of the PA foreign ministry, March 4, 2021).

- ▶ **Mahmoud Abbas' office** issued an official statement the day after the announcement. It expressed great esteem for the "independence and courage" of the chief prosecutor, who had invested a great deal of effort. He also thanked the Palestinian foreign ministry and the diplomatic teams which had carried out his instructions over the years (Wafa, March 4, 2021).
- ▶ **The Palestinian National Council (PNC)** said the announcement of Chief Prosecutor Fatou Bensouda was the beginning of attaining "justice" for the Palestinian people, its shaheeds and prisoners. According to the announcement, it was the important phase of the international trial of Israel and a clear diplomatic victory for the Palestinians. The PNC said it hoped the process would deter Israel from carrying out further "crimes." The announcement also noted that the time had come to bring to trial and punish "the Israeli war criminals, politicians and military personnel" (al-Hayat al-Jadeeda, March 4, 2021).
- ▶ **Ahmed al-Majdalani, a member of the PLO's Executive Committee**, called on the Court to start taking practical steps (al-Hayat al-Jadeeda, March 4, 2021). **Ahmed al-Tamimi, a member of the PLO's Executive Committee** and chairman of its human rights committee, stressed that before it was a Palestinian victory it was a "victory for all humanity" and an important step towards trying the leaders of the "occupation" for their ongoing crimes against the Palestinian people (al-Hayat al-Jadeeda, March 4, 2021).

Fatah

- ▶ **The Fatah movement** issued a formal announcement thanking the Court, the chief prosecutor and all the states that supported the rights of the Palestinians. **Fatah**

¹ For further information about the sanctions, see the September 10, 2020 bulletin, "Palestinian Authority reactions to sanctions imposed by US on senior ICC officials."

spokesman Jamal Nizal welcomed the decision, calling it a "historic day" for the Palestinian people. He also congratulated the Palestinians for arriving at the day when they would be able to realize their rights in the ICC. He said it emphasized the Palestinians' independence of decision, since it had taken the step [of appealing to the ICC] despite the political and economic threats targeting the Palestinians over the years. He noted that the achievement could be credited to Mahmoud Abbas, who had begun by joining the Rome Statute, and he dedicated it to the memory of Saeb Erekat, who had not lived to see it. He also thanked all the states that had helped the Palestinians reach the achievement (Facebook page of the Fatah media department and al-Hayat al-Jadeeda, March 3 and 4, 2021).



Notice issued by Fatah's media department after the publication of the ICC's decision. It was declared a historic day and credited to Mahmoud Abbas (Facebook page of Fatah's media department, March 3, 2021).

- Interviewed by Palestinian TV, **Jibril Rajoub, secretary of Fatah's Central Committee**, credited the achievement to the ongoing efforts of the Palestinian leadership. He said the ICC's decision sent the message to Israel that it would no longer receive support from Trump. Rajoub said the PA would cooperate with the Court on three issues: Operation Protective Edge in the Gaza Strip (2014), the Palestinians in Israeli prisons and the settlements. He also said they were aware that because of the investigation they would be exposed to pressure and threats, but nevertheless they were adhering to their rights (Jibril Rajoub's Facebook page, March 3, 2021).



**Jibril Rajoub interviewed by Palestinian TV
(Jibril Rajoub's Facebook page, March 3, 2018).**

Palestinian civilian organizations

► **The Palestinian civilian organizations** involved in complaining to the Court, all of which were affiliated with the PFLP (al-Haqq, al-Mezan, al-Dameer and the PCHR issued a joint statement welcoming the chief prosecutor's decision. According to the statement, it was a "historic day" in the Palestinians' ongoing struggle for justice and for Israel to be made responsible for crimes [allegedly] carried out in the Palestinian territories. The organizations called for a full, thorough, comprehensive investigation to begin immediately into those who were responsible for "international crimes," including war crimes and crimes against humanity. The organizations also stressed that Israel security personnel and other accomplices would not undergo independent legal investigations in Israel and that Israel had consistently failed in all its attempts to blame individuals for responsibility for war crimes or crimes against humanity, and that as a Rome Statute signatory "Palestine" agreed to the judicial authority of the ICC over all crimes carried out in the PA territories, including the West Bank, east Jerusalem and the Gaza Strip (al-Haqq website, March 4, 2021).

Terrorist organizations in the Gaza Strip

► **Hamas spokesman Hazem Qassem** welcomed the decision, calling it a brave, important step in achieving justice for the Palestinian people. He said the law recognized legitimate resistance² and called for senior Israeli officials to be tried for their [alleged] "crimes" (Shehab, March 3, 2021). **Ahmed al-Mudallal, senior Palestinian Islamic Jihad (PIJ) figure,** said the decision was a positive step but insufficient. He said the Court had to impose its

² **Note:** The ICC's investigation includes the crimes carried out during Operation Protective Edge, including those committed by Hamas and the other terrorist organizations operating in the Gaza Strip.

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15 وفاة و2017 إصابة جديدة بفيروس «كورونا»

الاحتلال يهدم منزلا ومنشآت في مخيم شغاف ورأس خميس شمال القدس

al-Hayat al-Jadeeda