



THE ISRAELI-PALESTINIAN CONFLICT AND THE ICC FACT SHEET

Much misinformation has been circulated about the International Criminal Court (ICC) and the Israeli-Palestinian conflict. But the ICC is not a threat to Israel. That is why Israel itself signed the treaty creating the Court; why the American Jewish Committee and the Religious Action Center of Reform Judaism joined with the WICC to work for the ICC; and why proposed anti-ICC legislation has been denounced by Elie Wiesel, among others. Here are the facts.

In short, the ICC cannot try anyone involved in the current Israel-Palestine conflict as it is, and it is very unlikely that the ICC will be able to do so in the future without Israel's consent.

- The International Criminal Court will be unable to try *any* crimes committed before July 1, 2002, when the Rome Statute creating the Court comes into force.
- After that date, and until Israel ratifies the Rome statute, *the ICC will not have jurisdiction over Israeli territory or Israeli citizens unless the Security Council refers a case* (which would require US consent) or Israel consents.
- The ICC will *always* be barred from proceeding with a case against any Israeli once Israel conducts its own bona fide investigation of the charges – even if Israel declines to prosecute.
- If Israel ratifies the treaty it would have the right to “opt out” of the Court’s jurisdiction over war crimes for seven years.

Other Countries: The Court can investigate charges against Israeli citizens if the acts take place on the territory of a party to the Rome Statute and Israel refuses to conduct its own investigation of the charges. Jordan is a party to the Court, but it relinquished all claim to sovereignty over the West Bank and Gaza on July 31, 1988 so the Court has no jurisdiction over those areas. Other states in the region, like Syria and Iraq, are highly unlikely to ratify the treaty because it would expose their own leaders and armed forces to the jurisdiction of the Court.

A Palestinian State: Only an internationally-recognized Palestinian state would be able to sign and ratify the Rome Statute for the ICC. If such a state were created and ratified the Statute, the Court could then assert jurisdiction over crimes committed on Palestinian territory or by Palestinian citizens – but even then it would be prohibited from proceeding against any Israeli citizen if Israel investigates or tries the case first. However, if the new Palestinian state fails to investigate and prosecute serious crimes committed against by its citizens, the Court will also have jurisdiction over those crimes – no matter where they are committed.

Relevant Statute Provisions

Complementarity: The Court is “complementary to national criminal jurisdictions” (Article 1) and cannot act if the matter is already being “investigated or prosecuted” in a bona fide manner by a State with jurisdiction over the matter. (Article 17) This is true even if “the State has decided not to prosecute the person concerned” unless the investigation was conducted “for the purpose of shielding the person concerned from criminal responsibility....” (Article 17)

Non-Retroactivity: The Court has jurisdiction only over crimes committed after its treaty enters into force, which will occur July 1, 2002. (Article 11)

Security Council deferral: The Security Council may defer an investigation or prosecution by the Court for periods of one year, renewable annually, if the Council decides that this is in the interest of international peace and security. (Article 16)

Decision-making in the ICC: Decision-making by the ICC is fundamentally different from that of the United Nations. First, the ICC is a judicial body, and not part of the UN system (Article 2, Article 4(1)). Second, the “price of admission” of joining the ICC and its governing Assembly of States Parties is accepting the Court’s jurisdiction over crimes committed within that state’s own territory (Article 12). Accordingly, none of the world’s rogue nations have ratified and few are likely to do so. The countries joining the Court are overwhelmingly the world’s democracies: 70% of the countries that have ratified so far are accorded the highest ranking of “totally free” by the nonpartisan nonprofit *Freedom House*.

Oversight of Judges and Prosecutors: Judges and prosecutors can be removed by this body for misconduct and must be elected by two-thirds of the Assembly of States Parties. Judges must be nationals of States Parties – this means that there will be no judges from Egypt, Iraq, Iran, Lebanon, Syria, Turkey or any other non-ratifying country unless these countries accept the Court’s jurisdiction over their own territories by ratifying. The ICC treaty requires that Judges be of the highest qualifications and moral character, be independent of outside influence in the performance of his or her functions, and be subject to sanction or removal by the Assembly of States Parties if found to have committed serious misconduct or a breach of duties. (Article 36, Article 41) If the Prosecutor wishes to pursue a case that has not been referred by the Security Council or by a State Party, he or she must first present the case to a three-judge panel, which must agree to allow the case to move forward (Article 18).

“Population Transfer”: A previous controversy over whether the language of the treaty implied that creating Israeli settlements in the occupied territories might be a war crime has been resolved to Israel’s satisfaction. Israel had objected to a clause in the Statute defining “the transfer, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies” (Article 8 (2) (b) (viii)) as a war crime, arguing that it went beyond existing international humanitarian law. However, in June 2000, Israel supported the adoption of a draft proposal on the Elements of Crimes subject to ICC jurisdiction. This document describes the conduct, consequences, and circumstances associated with each crime. The document contains a rule on to Article 8 (2) (b) (viii) with a footnote (number 44) to the word “transfer,” stating that, “The term ‘transfer’ needs to be interpreted in accordance with the relevant provisions of international humanitarian law.” The Israeli government expressly stated its satisfaction with this outcome and subsequently signed the treaty.

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