



A little legal restraint on Israel at last? Palestine defies the US/EU and joins the ICC

For many years, the EU (and Ireland) has regarded Israel's colonisation of Palestinian territory in the West Bank, including East Jerusalem, as illegal under international law and as an ever increasing obstacle to bringing about a "two-state solution", which the EU has repeatedly stated to be its policy objective.

But over many years, Israel has simply ignored the repeated urging of the EU (and many other bodies) that it cease all settlement building.

Israel has not even been prepared to cease settlement building temporarily during negotiations with Palestinians, despite the fact that, under the internationally recognised Roadmap for negotiations which it accepted in April 2003, it was supposed to "freeze all settlement activity, including natural growth" before the start of negotiations [\[1\]](#).

It has been clear for many years that Israel is not going to "freeze all settlement activity" without serious and sustained pressure being applied to it – and without a halt to this colonisation project the stated objective of EU (and Irish) policy, a two-state solution, is a dead letter.

UN enables Palestine to join the ICC

In November 2012, the UN General Assembly voted by an overwhelming majority – 138 in favour to 9 against – to grant Palestine observer rights at the UN as a "non-member state", despite fierce opposition from Israel and the US [\[2\]](#).

From then on, Palestine was in a position to become a party to the Rome Statute of the ICC and accept the Court's jurisdiction in Palestinian territories, that is, in the West Bank, including East Jerusalem, and Gaza. In that event there would have been a peaceful legal means of applying pressure on Israel to cease its colonisation of Palestinian territory.

This is because under Article 8.2(b)(viii) of the Rome Statute:

"the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies"

is defined to be a war crime [\[3\]](#). The Rome Statute defines the offences – war crimes, crimes against humanity and genocide – for which individuals can be prosecuted by the ICC if it has jurisdiction.

Since Israel has transferred nearly 600,000 Israeli civilians into territory it occupies, there is little doubt that war crimes have been committed by agents of the Israeli state over many years, and are still being committed.

There is a prima facie case therefore that the Israelis responsible, including the present Prime Minister, are guilty of war crimes, and it may be that Americans and others who contribute funds for settlement building are guilty of aiding and abetting war crimes.

The EU state opposes Palestine joining ICC

The Palestinian leadership wanted to join the ICC as soon as possible after November 2012 in the hope of having Israelis prosecuted for settlement building and other illegal activity in Palestinian territories.

But they were under great pressure not to do so from Israel and its American protector, as you might expect, but also from the EU, which warned Palestine “to use constructively its UN status and not to undertake steps which would lead further away from a negotiated solution” [4].

One would never guess that making the ICC universal, that is, extending its jurisdiction to every state on earth, is an EU foreign policy objective. This was formally established in EU Council decision 2011/168/CFSP of 21 March 2011 [5]. This states that “the Union is convinced that universal accession to the Rome Statute is essential for the full effectiveness of the ICC” and in it the EU and its member states agreed to

“make every effort to further this process by raising the issue of the widest possible ratification, acceptance, approval or accession to the Rome Statute and the implementation of the Rome Statute in negotiations”.

In putting pressure on Palestine not to join the ICC, the EU was in violation of its established policy on the ICC.

In addition, leading EU member states, including France [6] and the UK [7] have publicly opposed Palestine seeking access to the ICC. In doing so, they were in breach of the EU decision 2011/168/CFSP of 21 March 2011, the EU Action Plan of 12 July 2011 on the ICC [8] and their commitment as ICC members to support access to the ICC [9].

The UK opposes Palestine joining ICC

The UK is a strong advocate of ICC universality. In a speech in The Hague on 9 July 2012 entitled *International law and justice in a networked world*, Foreign Minister William Hague declared:

“Our challenge ... is to strive to universalise the Rome Statute ... and to make irreversible the progress that has been made in ending the culture of impunity for the worst crimes.” [10]

Striving to universalise the Rome Statute and end the culture of impunity was not in evidence a few months later on 28 November 2012 when the UN General Assembly was about to vote on Palestinian statehood. Then, William Hague offered UK support for the UN General Assembly resolution granting statehood to Palestine, providing Palestinian leaders promised (amongst other things) that Palestine would NOT become a party to the Rome Statute if it acquired statehood [11].

Yes, believe it or believe it not, it was UK policy to extend the jurisdiction of the ICC to every corner of the earth, except the Palestinian territories occupied by Israel since 1967, where illegal actions contrary to the Rome Statute were occurring regularly. There, it is apparently inappropriate for Britain to seek to end the culture of impunity.

The justification given by William Hague for this extraordinary exception was that if the Palestinians were to pursue “ICC jurisdiction over the occupied territories at this stage, it could make a return to negotiations impossible”, as if twenty years of sporadic negotiations had curtailed Israeli colonisation one whit or brought the creation of a Palestinian state any closer.

Two days later, when in retaliation for the UN granting statehood to Palestine, Israel announced plans for yet more building in settlements, William Hague reacted as follows:

“I am extremely concerned by reports that the Israeli Cabinet plans to approve the building of 3000 new housing units in illegal settlements in the West Bank and East Jerusalem. Israeli settlements are illegal under international law and undermine trust between the parties.” [\[12\]](#)

What sense does it make to decry illegal actions by Israel, while pressurising Palestine into not giving jurisdiction to a court that might convict those responsible and by so doing restrain future illegality?

Palestine defies US/EU

On 2 January 2015, Palestine defied the US/EU, when its UN ambassador, Riyad Mansour, deposited with the UN Secretary General Ban Ki-moon the documents required to join the ICC. And on 6 January, Ban Ki-moon announced that it will take effect on 1 April 2015.

The Palestinian leadership is to be congratulated for having the courage to take this step in defiance of the US/EU, on whom they rely for financial support, and in the sure and certain knowledge that Israel would punish them for doing so. For the first time since 1967, when Israel’s military occupation began, there is a possibility of some legal restraint on Israel’s actions in the territories it occupies.

It is no thanks to the EU that this has come about. As an entity that purports to believe in the rule of law and ICC universality, the EU should have encouraged Palestine to join the ICC from the moment that the option was available in November 2012. But it did the opposite.

Thanks to the EU, two years have been wasted since Palestine was recognised as a state by the UN, two years during which Israel has continued its colonisation of Palestinian territory – and continued to ignore pleas from the EU (and many other bodies) to cease – and in which the possibility of a viable Palestinian state being established has been further diminished.

A final point: if Palestine had joined the ICC two years ago, as the Palestinian leadership wished, the ICC would have had jurisdiction over Gaza since then. That might very well have been sufficient to deter Israel from mounting a military assault on Gaza last summer, lest its military personnel be indicted by the ICC, and might have saved well over two thousand lives.

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March 2015

References:

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- [12] www.gov.uk/government/news/foreign-secretary-extremely-concerned-at-proposed-new-housing-settlements-in-the-west-bank-and-east-jerusalem

Sadaka supports a peaceful settlement in Palestine / Israel based on the principles of democracy and justice, be that in two states or in one state. We maintain an independent position on internal politics within Palestine, favouring neither Fatah, Hamas nor any other Palestinian political organisation.