

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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PRE-TRIAL CHAMBER I

**Before: Judge Péter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Adélaïde Sophie Alapini-Gansou**

SITUATION IN THE STATE OF PALESTINE

**Public Document
The regional jurisdiction of the International Criminal Court on
Palestine**

Source: Judge Fouad Baker

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**Victims Participation and Reparations
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Other

Preface:

We are examining the jurisdiction of the Criminal Court according to the article 28 of the Rome Statute, to try Israeli officials for having committed illegal settlements construction in the occupied land and the eviction of the Palestinians or some of them inside or outside this land, and it has been proven in the Israeli officials who committed this crime were aware of the factual circumstances that prove the existence of armed conflict.

This war crime falls within the international criminal, regional, jurisdiction to try Israeli officials for this crime.

• A - International criminal jurisdiction in the settlement process

1. The International Criminal Court has the power to exercise its jurisdiction over persons who have committed the most serious crimes which are of international concern as Article 1 of the Rome Statute stipulates, and Article 22/1 of the same system stipulated that criminal person is not asked unless his relevant behaviour constitutes at that time is considered a crime that falls within the jurisdiction of the court, and therefore no crime without text. With reference to Article 5 of the Rome Statute, we find that the court is competent in war crimes, crimes against humanity, the crime of genocide, and the crime of aggression, based on the international sanctions regime against states and individuals.

2. The Israeli settlements on the occupied Palestinian territories are one of the crimes committed as a war crime, as the Rome regime guarantees serious violations of international laws and norms as stated in Article (8/2 / b / 8) in criminalizing the occupation, directly or indirectly, by transferring parts of its Civilian population to the lands it occupies or the removal or transfer of all its civilian population to the land it occupies or parts of its population to the land it occupies and the transfer of the indigenous population in the place on which the settlements are located, and therefore Israel opposed that the Rome statute include any text based on the Fourth Geneva Convention.

3. The existence of an international armed conflict and the association of behavior with the international armed conflict is one of the general pillars of the war crime, as the armed conflict refers to the use of military force between states or between states and armed groups or between armed groups in the same state as contained in the Court of First Instance of the KATANGA case in paragraph 1177 and the issue BEMBA, in Paragraph 223 of the Court of First Instance, the non-international armed conflict was organized into Article 3 common to the Fourth Geneva Convention, which provided the minimum protection to persons protected under this convention and the organization of war crimes related to international armed conflict in both paragraphs “a” and “b” From Article 8/2 From the Rome Statute and that paragraphs “c” and “d” of the same article organized war crimes related to non-international armed conflicts.

4. The second article of the Joint Geneva Convention, which constitutes an international custom adopted by the International Court of Justice in the advisory opinion on the legality of the threat or use of nuclear weapons on June 8, 1998 in paragraph 79, provided that the international armed conflict includes all cases of partial or total occupation of one region. The Contracting Parties, even if the occupation does not face armed resistance, is also affirmed by the document Elements of Crimes Attached to the Rome Statute in Margin 34 by entering the military occupation within the scope of the international armed conflict for the purposes of war crimes stipulated in Article 8 of the Rome Statute.

5. The occupation was defined in accordance with Article 42 of the Hague Agreement, which also constitutes an international custom when it appeared in the advisory opinion regarding the construction of the wall, which states that the land is occupied when the actual authority of the enemy's army does not include occupation except the lands in which this authority can be exercised after its implementation, as stipulated in the special agreement to respect the laws and customs of land war on October 18, 1907 in The Hague in Article 42, and this is what the International Criminal Court relied on in the KTANGA case in paragraphs 1179 and 1182 in the primary stage.

6. According to the United Nations International Resolutions 242 in 1976, 338 of 1973, 1515 in 2003, Resolution 2334 of 2016 issued by the Security Council in addition to the advisory opinion of the International Court of Justice regarding the wall in paragraphs 73-74 and the agreement of states in the Geneva Convention and other decisions that confirm Israeli occupation of the Palestinian territories.

7. The Court of Nuremberg in its ruling in the case of THE HOSTAGES CASE went on to say that the land remains occupied despite the de facto absence of the enemy's army on its soil, and confirmed in that ruling that a temporary regional authority be given to the real inhabitants of that land does not alter the nature of the occupation there. At the Nuremberg Military Court on February 19, 1948, in Paragraphs 1243 and 1230, the International Criminal Court also decided in the Court of First Instance KTANGA stage in Paragraph 1180 that the occupation authority's ability to dispatch its military forces within a relatively short period to impose its effective control is a real indication of the existence of the occupation.

8. As for the general element of the conjugation of criminal behaviour with international armed conflict, the jurisprudence of the International Criminal Court has proven that it is sufficient for the perpetrator of this act to be a person of the state to prove his verification, as mentioned in the Rutenga case on May 26, 2003 in paragraph 569. This is what was provided in the case According to Article 28 of the Rome Statute, which stipulates international criminal responsibility for leaders and other presidents, those who, and one of their subordinates, have committed any crime that falls within the jurisdiction of the International Criminal Court. The Crime Commitment Document clarified in Article 8/2 / B / 8 the conditions that must be met for settlements to

constitute a war crime according to the Rome Statute, and stipulated that the perpetrator:

- a - by direct or indirect transfer of its inhabitants to the land it occupies.
- b- Deportation or transfer of all or some of the inhabitants of the occupied territory inside or outside this land.
- Issuance of behaviour in the context of and associated with international armed conflict.
- The perpetrator was aware of the factual circumstances that established the existence of the armed conflict.

9. Margin 44 of the Crime Elements Document states that the interpretation of the term transfer takes place in accordance with international humanitarian law, and some jurists claim that the intended transfer is for the purposes of international humanitarian law, which is forcible transfer only, and this is confirmed by the International Court of Justice denial when it confirmed the transfer ban contained in international Human law., specifically in Article 49 of the Fourth Geneva Convention, came to protect the occupied population and not to prejudice their demographic distribution, and therefore there is no lesson for transportation as long as the result is achieved.

10. The term transfer should be interpreted in Article 8/2 / B / 8 of the Rome Statute that it has ever come as a general rule, because the absolute is taking place on its release, all of which makes the settlements by their illegal methods contrary to what the other party claims or by selling the Palestinian lands to The Israelis in this article, and since the government of Israel has carried out direct and indirect transfer through legal and material facilities and the privileges granted to its residents who live in Israeli settlements located on the occupied Palestinian territories, which proves its criminal responsibility starting with the Law of Jewish Nationalism and the Law regulating settlement in "Judea" and Samaria "meaning Palestinian Bank No. 5777, which was approved by the Israeli Knesset in 2016.

• **B- Regional jurisdiction of the International Criminal Court**

11. The International Criminal Court can only exercise its role in the countries acceding to the Rome Statute. Article 2/4 of the Rome Statute stipulates that the Court can exercise its functions and power as stipulated in the statute in the territory of any state party, and it has it under a Special agreement with any other country to exercise in the territory of that country.

12. As for Article 12/2 / a, it has been stipulated that the court may exercise its jurisdiction if one or more of the following countries is a party to this statute or has accepted the jurisdiction of the court in accordance with paragraph (3 / a) thereof, the state that signed In its region the conduct in question or the state of registration of the ship or plane if the crime was committed on board. Here the court's jurisdiction must be convened for all crimes committed on Palestinian land, regardless of the nationality of

the perpetrator, as the text of the article (12) From the system of Rome came as a matter of choice between regional and personal jurisdiction, and it was taken for granted Palestine extends territorial jurisdiction according to the declaration issued in accordance with Article 12/3 of the Rome Statute, in the Occupied Palestinian Territory, including East Jerusalem.

13. Israel is trying to change the legal status of "C" areas as divided by the Oslo agreement, as it granted it jurisdiction and authority over other areas as well, a part of the jurisprudence claims that the Palestinian borders are not specified, and that "C" areas are disputed land, and thus out of scope of The regional jurisdiction of the court, but this claim did not receive wide support among the jurists in international law because there is an agreement in the international community and the International Court of Justice that the occupied Palestinian territories are the lands located on the borders of the "Green Line", that is, the borders of the armistice agreed upon between Jordan and Israel after The 1948 war And that is according to Security Council Resolution No. (62) Regarding the establishment of a truce throughout Palestine on November 16, 1948, and accordingly, the Rhodes Agreement was signed in 1949, according to which the two countries set these lines in green, and stipulated that it is not permissible to violate or exceed force. Military for either party and for any purpose was mentioned in the Rhodes Agreement of April 3, 1948 in Articles 1 and (3/2).

And in Article 6/8 of the Rhodes Agreement, which stipulated that these lines do not in any way constitute permanent political borders between the two states, but rather only temporary borders. Most of international law jurists consider then borders after More than half a century of this agreement without any new agreement on the borders of either country, especially after the 1967 war between Israel or its neighbouring Arab countries.

14. The Security Council issued Resolution (242), which confirmed the illegitimacy of the acquisition of lands by force and demanded that the Israeli forces exit the borders of the Green Line and consider them occupied Palestinian land, and this is what the International Court of Justice relied on in its advisory opinion regarding the wall (74-73) And considering General Assembly Resolution No. 19/67 related to the status of Palestine at the United Nations and granting it the status of a non-observer state, in its first paragraph it stated that it reaffirms the right of the Palestinian people to self-determination and independence in the state of Palestine on the Palestinian land occupied since 1967 , And in the fourth paragraph, he mentioned the contribution to achieving the inalienable rights of the Palestinian people and reaching a peaceful settlement in the Middle East that would end the occupation that started in 1967, and realize the vision of the two states, which is the independent and sovereign state of Palestine on the basis of borders prior to 1967 and has confirmed and renewed his commitment to implement the two-state solution based on the pre-1967 borders.

15. Someone might say that all this did not define the borders of the state of Palestine but rather stipulated for a subsequent settlement between the two states, and that the previous two texts came to protect the rights of the Palestinian people, especially his

right to self-determination and not to define the borders of his state, and that they only constitute the hopes of the two parties to reach two states. And that the use of the term "two-state vision" and "solution" confirms this view. In any case, the Rhodes Agreement stipulated that the boundaries of the Green Line are those agreed upon temporarily until permanent borders are agreed upon. It may imply that these borders are still in effect under international law until otherwise is agreed upon, or until permanent borders are set for either country in any other way. Area C has a special character in international law, especially since the Oslo II agreement stipulated that the Palestinian and Israeli parties agree that this land is subject to the jurisdiction of Israel, on September 28, 1995 in Article 17.

16. There are Israeli implications that these areas are disputed areas and therefore the International Criminal Court is not entitled to decide that this land is Palestinian and exercise its territorial jurisdiction over it as Palestinian lands, in particular, because Israel is not affiliated with the Rome Statute. Here the Oslo agreements must be interpreted peacefully and legally, and this requires Article 31 of the Vienna Treaty as an international norm in the interpretation of treaties. The first paragraph of it stipulates that the treaty should be interpreted in good faith, and according to the meaning given to its terms, within the context of its object and purpose. Accordingly, the goodwill and meaning in this agreement and the purpose for which it was stipulated is for it to be a phased agreement until a final solution is reached between the two parties.

17. The transfer of actual authority and judicial, legal and administrative powers to the Israeli side does not mean in any way that these areas are outside the Palestinian region and can be referred to in Article 11/1 of the Oslo Agreement, as it stipulates that the two parties view the West Bank and Gaza Strip as unity. As for one soil, its unity and status are preserved during the transitional period. As for not giving the Palestinians the Palestinian Authority over Area C, which excludes it from the Palestinian Territory for the purposes of the Rome Statute, given that the interpretation of the term in the Rome Statute is in accordance with Article 31 of the Vienna Treaty, it means in the ordinary sense that this region be subject to the sovereignty of the state that joined the Rome regime.

18. In Article (11/2 / c) of the Oslo Agreement, it was stipulated that civil powers be transferred gradually to the Palestinians, and in the same context Article (11/3 / c) stated that Area "C" means the West Bank areas that are outside my areas "A" and "B" which will be transferred except for the issues that will be negotiated for the final status. The Israeli settlements, which are among the issues that will be negotiated, are located in Area C, which was considered at the beginning of the article West Bank areas, and this text should be interpreted according to the article (3/31 / c) of the Vienna Treaty, which stipulates that any appropriate rule of international law is considered Applicable to the parties. Therefore, reference is made to Article 47 of the Fourth Geneva Convention, provided that protected persons who are in occupied territory are not in any way prohibited, or in any way, from benefiting from this agreement, whether due to any change that occurs as a result of the occupation of lands on the institutions of the said

region or its government, or because of any agreement concluded between The authorities of the occupied territory and the occupying Power, or because these countries annex all or part of the occupied territories.

19. Accordingly, Article 11/3 / C of the Interim Agreement cannot be explained by the fact that it exits the “C” area on which the Israeli settlements are located in the Palestinian territories and transfers them to Israel. In particular, international law prohibits the occupying state from transferring its residents to the territory of the state in order to protect the interests of the residents of the occupied state. As an affirmation of this, it is possible to rely on Article 6/31 of the Oslo 2 agreement, according to which it stipulates that nothing of this agreement will affect or precede the outcome of negotiations on the final status that will be carried out pursuant to the declaration of principles and neither party will be considered abandoning or conceding upon entering this agreement from His claim, positions, or current rights And Article 7/31 of Oslo 2 states that neither of the two parties will initiate or take any step that would change the situation of the West Bank and Gaza Strip, pending the outcome of the negotiations in the final status. The Sharm el-Sheikh agreement in Article 1 / b that the two parties agree to understand that discussions on a full settlement will lead to the implementation of Security Council resolutions 242 and 338, so they understand the two decisions that recognize that the lands located within the Green Line are occupied Palestinian lands.

20. The International Criminal court does not have the right to set the borders of states out of its jurisdiction, and accordingly, a part of the jurisprudence sees that the establishment of the International Criminal Court determining the borders of the two countries to prove its regional jurisdiction over them, especially with regard to area “C” is an illegal violation by the court and carries many problems because the Palestinian-Israeli conflict began more than half a century ago, and the conflict still exists in international law, but this claim is rejected, as the International Criminal Court will not need to define the borders of the two countries, but rather, based on what the United Nations and the declaration issued by Palestine being a country has accepted the goals of the Rome Statute As the Prosecutor of the International Criminal Court did in the case of Georgia, the Prosecutor relied on the decisions of the United Nations General Assembly that determined that the region of Ossetia is subject to the territory of Georgia for the purposes of the court and its procedures, and based on all of this, the Palestinian case can be based on the United Nations resolutions condemning the existing Israeli settlement On the occupied Palestinian territories, including Security Council Resolution 2334, and accordingly, it shall be subject to the territory of Palestine for the purposes of territorial jurisdiction.

21. Regardless of all this, the International Criminal Court is linked to and related to the United Nations under Article 2 of the Rome Statute, and it makes sense for the International Criminal Court to take decisions of the United Nations and the advisory opinion of the International Court of Justice regarding the wall in considering the extent of its territorial jurisdiction over area C. " The Israeli settlements are illegal under international law, but are considered part of the occupied Palestinian territories and is

the likely opinion, since the International Criminal Court accepted the declaration submitted by the State of Palestine regarding the territorial jurisdiction of all the occupied Palestinian territories without distinction between Areas A and B And C.

22. In any case, Article 8/2 / B / 8 of the Rome Statute stipulated the criminalization of the behaviour of the occupying state transferring its population to the lands it occupies, and accordingly, considering area “C” outside the territory of the occupied Palestinian territories and that they fall outside the jurisdiction of the criminal court Regional internationalism is inconsistent with the purposes of this article and makes its existence useless.

23. Based on the foregoing, the International Criminal Court is competent to try Israeli officials responsible for building settlements located in the occupied Palestinian territories from an objective standpoint, and it enters into the regional jurisdiction of the International Criminal Court.



Judge fouad baker

Dated this 14/03/2020

At The Hague, the Netherlands