

The ICC doesn't need jurisdiction over Palestine to proceed against Israel

Op / Ed

By Edward Campbell

Missoula, Feb. 14 (Al-Masakin)—The Palestinian authority does not need to be a sovereign state for Israel to be tried in the ICC because the ICC will not be asserting jurisdiction over Palestine. The ICC will be asserting jurisdiction over Israel, not Palestine. Israel is a sovereign state therefore the jurisdiction of the ICC applies.

The assertion that a sovereign state must advance the cause in the ICC is also incorrect for it is not a person at law that advances a criminal proceeding; it is the prosecutor on behalf of the court who advances a case in court. Criminal proceedings are advanced by public prosecutors vested with the authority to proceed in court. The crime victim, in this case Palestine, is a witness in this court not the prosecutor of the cause before the court.

The fact that Israel is a non-signor to the Rome Statute of the ICC is equally irrelevant because the jurisdiction of the court is over sovereign states not over signors to the Rome Statute. The questions before the ICC at this time then are: Is Israel a sovereign nation? Is there prima facie evidence that Israel committed any of the following crimes: genocide, war crimes, or crimes against humanity?

None of these alleged crimes need to be carried out against a sovereign nation in order to be considered crimes at law in the ICC. For instance the Nazi crimes against



the Jewish people were tried in an international court though the Jewish people were not a sovereign nation. Germany however was a sovereign nation. The jurisdiction of the court applied to Germany not because the Jewish people were a sovereign nation, but because Germany was.

Slobodan Milosovic was tried in the ICTY though neither Serbia nor Yugoslavia were signors to the Rome Statute. Likewise Ahmad Harun and Ali Kushayb of Sudan are both under indictment by the prosecutor of the ICC though Sudan is a non-signor to the Rome Statute. Israel, moreover, first recognized the ICC then “un-signed” the statute in 2002.

Israel's Ministry of Foreign Affairs currently explains its reversal on the issue of the ICC: “the head of Israel's delegation, Judge Eli Nathan, pointed to the inclusion of the crime of transferring population as an example of politicization that Israel could not accept.”

This would suggest that Israel feared the jurisdiction of the court on account of its deportations of Palestinian civilians. The charges being advanced in the present case, however, are not charges of a lingering injury, but are in fact new injuries of recent memory which stem from different causes. The present case has nothing to do with the foundation of Israel, or its legitimacy.

The matter in hand is however whether or not Israel used banned weapons on civilian populations a war crime. The question of genocide as it may be applied in the ICC is not whether act were committed against a sovereign nations, but whether or not acts were committed against ‘a national, ethnical, racial or religious group.’ Clearly Palestine does not need to be a sovereign nation in order to articulate its claims, but indeed it isn’t Palestine who articulates the claim but the Prosecutor of the ICC. Palestine merely stands as evidence of the crimes, not the prosecution for them.

If Israel believes it is innocent of these charges, then it should rest assured that its leadership who will be brought to the dock there will be vindicated at trial. Israel’s leadership should have little to worry about if they are indeed innocent.

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