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# Withholding Hope: Comparative Perspectives of the International Criminal Court's Palestinian Investigation

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## ABSTRACT

Entering its 20th year, the International Criminal Court (ICC) continues to face a crisis of legitimacy. One of the ICC's main controversies is its history of prosecuting defendants from countries primarily in the Global South, raising concerns that the ICC may not adequately bring to justice all perpetrators of mass atrocities and war crimes. The opening of an ICC investigation into Israel and Palestine raises new questions about how the ICC is situated to help achieve peace in the Global South during an ongoing armed conflict, nonetheless. Given critiques of the ICC's alleged bias in the Global South, this study aims to understand whether the ICC is truly representative of its victims' interests. To this end, it investigated the Palestinian and international communities' responses to the ICC Prosecutor's opening of an investigation in Israel and Palestine, drawing from a social media analysis of three prominent organizations in each group. Although both groups welcomed the move by the ICC prosecutor, Palestinians, still tainted by the ongoing armed conflict and previous instances of justice stalled or withheld, are not as optimistic about the ICC investigation as the international community is. This study offers a first look at the Israel/Palestine conflict in understanding how perspectives of justice can differ between the international community and the local victims.

## INTRODUCTION

Amidst the COVID-19 pandemic, the International Criminal Court (ICC) has had a momentous year in 2021. In February, ICC judges made history when they recognized Palestine as a state under international law for the purposes of the ICC's preliminary examination of whether war crimes and crimes against humanity may have occurred during armed conflicts in the Gaza Strip and in Israel's occupation of the West Bank (International Criminal Court, 2021a). A month later and against the warnings of Israel and its Western allies, the ICC announced that, after years of debate, there was indeed a reasonable basis to believe that members of the Israel Defense Forces (IDF), the Israeli government, and Hamas—a Palestinian militant and nationalist group—committed these crimes (International Criminal Court, 2021c). In addition to the fact that the ICC's investigation means the Office of the Prosecutor (OTP) acknowledges Palestine to be an independent state, the opening of this investigation raises interesting questions about how the ICC is situated to help achieve peace in the Global South—let alone during an ongoing armed conflict.

In the two decades since its inception, the ICC

has garnered significant amounts of controversy regarding its role as an independent arbitrator of justice. In particular, African states have accused the ICC of having an African bias because the majority of the ICC's cases have been within the African continent's borders. Notably, the ICC has strayed away from cases where great powers are involved, such as the United States. In the same fashion, groundbreaking scholarship on the ICC has questioned whether the ICC can deter crime at all and whether its interests are in line with that of the victims they represent.

Given its historical record of selectively prosecuting those on the African continent, a key question facing the young ICC today is whether the cosmopolitan court can truly achieve justice for those in the Global South. Thus, with the opening of this investigation in the State of Palestine, this paper aims to address the inquiry question, "How has the ICC's decision to investigate the situation in the State of Palestine impacted Palestinian understanding of the ICC?" I argue that the opening of an investigation does not incite as much hope and excitement for Palestinians as it does for the international community. While the international

community has welcomed the ICC prosecutor's move as an unprecedented milestone in holding perpetrators of crimes against humanity to account, Palestinians perspectives of the Court are still tainted by ongoing armed conflict and previous instances of justice stalled or withheld.

However, the commencement of the investigation in the State of Palestine earlier this year posits a unique opportunity to study the issue of justice from a bottom-up perspective—that is, to understand what justice means to local victims who were directly affected by the ICC crimes in question and what justice means to the international community, namely the ICC. Both states under review, Israel and Palestine, are located in the Global South; however, compared to previous ICC cases where the victims and the defendants were solely associated with the Global South, Israel is an outlier here because it has the political support of powerful Western countries like the United States.

The rationale behind a liberal cosmopolitan project such as the ICC is that it would represent all parties—regardless of its politics, geographic location, democratic status, and other factors—in the fight against impunity for egregious crimes in the international community such as genocide and war crimes. It is necessary, then, to comprehend and appreciate Palestinian perspectives and understandings of the ICC. The controversies surrounding the ICC today warrant a reevaluation of whether the Court is truly representative of all the interests in its mandate. The aim of this project is not to support a particular side of the investigation, but—insofar that Palestinian victims are involved—to illuminate the role the ICC plays in the Palestinian imagination and the extent to which the fledgling institution is seen as a practical means of obtaining justice.

## LITERATURE REVIEW

### What is the ICC?

The ICC began its operations in 2002 with a mandate to investigate and prosecute individuals accused of the gravest crimes in the international community, which are understood here as the crime of genocide, crimes against humanity, war crimes, and the crime of aggression (About the Court, n.d.). The Court is the product of over a century of recommendations by state parties to establish an international tribunal for various international crimes (International Law Commission, 1949, p. 7). To name a few, the 1919 Paris Peace Conference initially proposed the idea of an international court to try political leaders accused of global crimes following the First World War. During the post-World War II era, two ad hoc military tribunals were established in Nuremberg, Germany and Tokyo, Japan to try military leaders in an international court (International Law Commission, 1949, p. 21).

The ICC is the first and only permanent international

court with similar jurisdiction to these international military tribunals. The ICC's authority derives from the Rome Statute, a multilateral treaty signed by 123 member states to date, of which the U.S. is not a signatory party. The Rome Statute grants the Court jurisdiction over crimes that are committed either (a) by a state party (i.e., states that have ratified the Rome Statute), (b) in the territory of a state party, or (c) referred to the ICC prosecutor by resolution of the United Nations Security Council (UNSC) (International Criminal Court, 2003). The principle of complementarity, which governs how the Court exercises its jurisdiction, distinguishes the Court from other international tribunals.

Put simply, the ICC is intended to complement national criminal jurisdictions, not replace them, and it should only try cases when states lack the capacity or will to do so “genuinely” (Rome Statute, 2002). Since 2002, the ICC has tried 30 cases and issued 35 arrest warrants. After a state party or the UNSC refers an alleged crime to the OTP, the prosecutor conducts a preliminary examination to determine if there is sufficient evidence that a crime has occurred. If that threshold is satisfied, the OTP then launches an official investigation into the situation, as is the current case with Israel and Palestine, after which the prosecutor may decide whether or not to press charges and continue to trial.

### Can the ICC Actually Deter Atrocities?

Recent ICC literature has taken a closer look at the assumption that the ICC is effective in its mandate to end impunity where mass atrocities are concerned. Given that the ICC is tasked with investigating and prosecuting individuals accused of the gravest crimes in the international community, the ICC has a determining role in how international law can prevent mass crimes from being committed around the world, ideally including territories such as Palestine in the Global South (About the Court, n.d.). Thus, in 2016, Hyeran Jo and Beth A. Simmons conducted the first systematic assessment of the ICC's ability to deter crime following its involvement (Jo & Simmons, 2016). Their article examined whether the court has, to date, contributed to the attainment of peace and security through its envisioned global justice system. By analyzing crime statistics of rebel groups in over 100 countries between 1989—before the court's inception—and 2011—almost a decade since its inception—Jo and Simmons (2016) come to the conclusion that rebel groups which sought legitimacy and recognition in the international community were more likely to be influenced by the ICC. They rely on two formal theories: prosecutorial deterrence theory and social deterrence theory. The former suggests that prosecutorial actions, such as investigations and indictments, trigger a reassessment of the likelihood of punishment and can thus reinforce deterrence. The latter suggests that some

groups are more deterrable than others depending on their need to cultivate local, regional, or international legitimacy.

### The African Bias

Since its inception, however, the ICC has faced and still faces a legitimacy crisis on two separate fronts. As a new international body, the ICC has generally stayed away from situations where influential players were involved. However, its hesitation and failure to investigate reported crimes involving great powers led it to inadvertently target the continent of Africa; in fact, nine out of the ten ICC investigations in 2016 had African defendants and African victims (Situations and Cases, n.d.). One scholar, Oumar Ba, rightfully underscores that the ICC has a race problem: although the ICC has indeed fought for African victims, the fact that the ICC has only had African defendants for the majority of its history points to a glaring “gap in accountability for white/westerners who are perpetrators of atrocity crimes in international justice” (Ba, 2021, p. 385).

Notably, in 2009, the African Union (AU) spoke out against the ICC for its targeting of the African continent after the ICC attempted to arrest the sitting president of Sudan for war crimes in Darfur. Rationalising that prosecuting sitting presidents would cause more instability and violence within the region than it would prevent, then-AU President Muammar al-Gaddafi equated the ICC’s arrest warrant to “first world terrorism,” citing concerns that the ICC was acting as a tool for imperial powers (Black, 2009). Shortly after, the AU adopted a resolution that directed its members to stop cooperating with the Court, to not act on the arrest warrant, and to not transmit information to the Court on the matter (African Union, 2009, p. 2).

### Holding the United States to Account

As evident in al-Gaddafi’s remarks, the ICC’s inability to investigate and prosecute Western states does it no favors in counteracting its alleged African bias. Out of fear that ICC proceedings would violate their sovereignty, the United States has continuously rejected the ICC’s jurisdiction over non-state parties to the Rome Statute absent referrals by the United Nations Security Council. Most notably, the U.S. passed the American Service-Members’ Protection Act of 2002 long before the ICC made public its intentions of investigating the U.S. (United States Congress, 2001). The legislation, colloquially known as the Hague Invasion Act, barred U.S. cooperation with the ICC and authorized the president to use “all means necessary and appropriate” should the ICC ever detain allied personnel.

Thus, when the ICC announced in 2019 that it was going to investigate the U.S. for alleged crimes committed

in Afghanistan, the U.S. revoked the visa of the chief prosecutor, Fatou Bensouda, and imposed economic sanctions on members of the Court’s staff (Simons & Specia, 2019). More recently, the Biden Administration revoked Executive Order 13928, which authorized the imposition of those sanctions, but continued to assert that the ICC bears no jurisdiction over non-state parties “absent their consent or referral by the United Nations Security Council” (Biden, 2021, par. 4). In other words, seeing as how the U.S. holds a permanent veto seat on the UNSC, an ICC probe of the U.S. or its allies is impossible without the U.S.’s approval. After the recent change in government in Afghanistan, the ICC relented and stated that it is no longer pursuing the U.S. for alleged crimes in the region (Deutsch & van den Berg, 2021). Put simply, both these crises—(a) the ICC’s perceived African bias and (b) its inability or unwillingness to hold world powers to account—have called into question whether the ICC is an effective mechanism to bring perpetrators of war crimes and crimes against humanity to justice.

### The ICC in the State of Palestine

In response to the OTP’s decision to investigate the situation, political leaders from Israel and Palestine had radically differing responses. Palestinian Authority (PA) President Mahmoud Abbas stated that “[the ICC] is one of the few avenues he has to peacefully confront Israel” (Magid, 2021). Likewise, PA Civil Affairs Minister Hussein al-Sheikh said, “The International Criminal Court’s decision...is a victory for rights, justice, freedom and moral values in the world” (Abbas, 2021). Meanwhile, the United States and other Israeli allies have urged Abbas to renounce the investigation, “arguing that it exacerbates efforts to keep dimming prospects for a two-state solution alive and antagonizes Israel” (Abbas, 2021).

By and large, contemporary scholarship on the ICC’s decision to involve itself in the Israel/Palestine conflict has focused on its finding that Palestine is indeed a state under international law (Zimmermann, 2013; see also Lee, 2016). More generally and with few exceptions, recent literature on the ICC has mostly taken for granted the ICC’s ability to prosecute war criminals and deter atrocities (Jo & Simmons, 2016). However, new research has recently emerged around theories of peace versus justice in Palestine. A recent historical survey unveiled that truth and reconciliation commissions which investigated political violence and human rights violations in Palestine have systematically suppressed their findings or failed to implement significant reform (Allen, 2020).

This, then, begs the question, “Can an international court effect the reform that international commissions could not?” One the one hand, the ICC’s role as an independent third-party may incentivize and open up greater opportunities for peace processes to take place in the region, contrary to the objections to the investigation

by Israel and its allies (Kersten, 2020). On the other hand, legal scholars have long criticized the ICC for interfering with the sovereignty of states that have not ratified the Rome Statute, another key argument Israel makes before the court (Goldsmith, 2003).

This research does not attempt to answer whether the ICC can resolve the conflict in Palestine. Instead, amidst all the controversy about whether there should be an investigation at all, it points to the need to bring victims' voices and opinions to the table—i.e., the Palestinians' perspectives. As previously mentioned, the peace versus justice debate is largely ignored in ICC literature. For instance, the ICC's prosecution and conviction of Ahmad Al Faqi Al Mahdi for directing attacks against Timbuktu religious and cultural heritage sites was celebrated in the international community for moving the needle in protecting UNESCO World Heritage sites (Drumbl, 2019). However, further research revealed that local victims were frustrated that the ICC's sole focus in those cases was the destruction of cultural heritage rather than those killed or harmed in the process of those attacks (Ba, 2020). A retired Malian judge aptly summarizes the Malian perspective on the ICC prosecution: "Maliens are not very attached to these cultural artefacts [sic]...They ask, what about the soldiers who were killed in Aguelhok? Instead, the ICC goes after this little breaker of shrines [Al Mahdi]" (Ba, 2020, p. 8). Said otherwise, this study of the ICC's involvement in Mali demonstrated that justice has different meanings for the ICC and the local populace in the Global South.

The situation in Palestine makes for another case in point: in a recent submission to the court arguing for its jurisdiction over crimes committed in the territory, the ICC prosecutor blatantly failed to cite Palestinian sources. In fact, out of 648 footnotes, only one mentioned in passing a Palestinian lawyer (International Criminal Court, 2020). One scholar, Victor Kattan, argues that Palestinians are radically underrepresented in the court's proceedings because of the politics of citation, in that scholars and practitioners will avoid citing sources associated with "emotional" causes—in this case, Palestine—to be seen as more "objective" in their stances (Kattan, 2020).

Regardless of the reasons why academics and practitioners may cite one side more frequently than another, the lack of representation of either group is problematic for a court meant to resolve justice in the international community. A greater understanding of Palestinian perspectives in the ICC's recent decision to investigate the situation in Palestine would further illuminate the strengths and weaknesses of the ICC in resolving international conflicts and not simply prosecuting individuals.

## METHODOLOGY AND RESULTS

This essay aims to examine potential discrepancies between the international and Palestinian communities' responses to the announcement of the ICC that it will be investigating possible war crimes committed in the Israel/Palestine conflict. My methodology focused on first gauging and then comparing the responses of both communities by collecting qualitative, rather than quantitative, data from various organizations representative of both groups. More specifically, my research primarily used document and social media analysis of six organizations (three from each group) to identify the language and underlying tones used in responding to the ICC announcement.

Firstly, I gauged the Palestinian community's consensus on the decision by looking at three different civil society organizations that are either based in the occupied territories of Palestine or focused primarily on Palestinian issues: Al-Haq Organization, Addameer Prisoner Support and Human Rights Association, and the Al-Mezan Center for Human Rights. These three organizations were chosen primarily because they are reputable human rights organizations based in the State of Palestine and have an active web presence. In particular, Al-Haq and Al-Mezan were recommended to me by human rights scholars and researchers.

More specifically, the gathered data consisted of keywords found on statements published on these organizations' websites and derived from their social media platforms. To reinforce the Palestinian community's response, this research analyzed these organizations' relevant Twitter posts because Twitter is often the main social media platform for many civil society organizations. In particular, I surveyed all Twitter posts and statements posted by these organizations that contained the keywords "International Criminal Court," "global court," "international court," "prosecutor," or "investigation," since the announcement of the ICC decision.

Secondly, this research attempted to gauge the international community's response. For this, I turned to the public announcements of global institutions whose mandates are relevant to the Israeli/Palestinian conflict: namely, the ICC, the United Nations (UN), and the Council of Europe (COE). Similar to how the Palestinian community's consensus was established, this research looked at keywords and topics in these international institutions' public announcements regarding the ICC's decision to investigate potential war crimes in the region. Moreover, I analyzed the most relevant posts from these institutions' Twitter posts, which are often the main social media platform for these global institutions as well. To this end, I surveyed all Twitter posts and statements posted by these organizations since the announcement of the ICC decision that contained the keywords

“International Criminal Court” and “Palestine” or “Israel.” The key terms here differed from the key terms above because these international institutions’ scopes reach far beyond the ICC and the Israel/Palestine conflict, whereas the Palestinian human rights NGOs primarily report on developments on the conflict. As such, the key terms here require greater specificity.

While the data analyzed comprised primarily of the ICC’s language—as it is the most relevant institution to the investigation—the UN and COE were also pertinent to gauging how the international community perceived the ICC investigation, as both bodies are involved in significant activities in the Israel/Palestine conflict and represent a consensus of the states of which they are comprised. Still, the language coming from the ICC and the OTP takes precedence here because the Court’s mandate and the reason of origin was to represent the international community as a court of last resort. Therefore, how they speak about this decision and their rationale for why they are pursuing such an investigation was the most telling of how the international community may understand the decision.

After collecting data from both the Palestinian and international communities vis-à-vis these six organizations, this qualitative data was analyzed in two steps: (1) by determining if the response is generally positive or negative, and (2) by deriving from those responses various keywords, phrases, or themes. The former established a baseline of where the Palestinian and international community stands as it relates to the ICC’s decision. It also allowed for the most rudimentary comparison between the two groups. The latter, however, allowed for a more in-depth analysis that gets to the reasoning for the overall positivity or negativity. Even if both communities’ responses were both positive or negative, looking at key phrases and themes would help explain each respective group’s rationale or skepticism for their outlook on the decision.

In order to determine the response of the Palestinian community most affected by the ICC’s decision, this research opted for a document and social media analysis rather than a survey or questionnaire due to three obstacles: (a) language barriers, (b) COVID-19 limitations, and (c) ethical concerns. At the time this research was conducted, it was not possible to hold interviews or distribute questionnaires to the local Palestinian population without funding for an Arabic-English interpreter. Moreover, ongoing COVID-19 restrictions did not allow for travel to the regions affected, further prohibiting access to local Palestinian victims. Lastly, if not most importantly, there are significant ethical concerns attached to interviewing and interacting victims of armed conflicts—let alone during an ongoing conflict. For these reasons, an analysis of human rights organizations in the region was the most practical approach because English is one of their main working languages, their materials

are accessible online, and the same ethical considerations do not apply to these organizations, especially since their data is available in the public domain.

There is also one final consideration that should be noted: the ICC’s decision to investigate the situation in the State of Palestine is still relatively recent at the time this research was conducted; less than a year has passed since the ICC made this announcement. Therefore, the data collected will be representative only of the initial reactions of these six organizations—in the Palestinian and international spheres. In a few years, the ICC may withdraw from the conflict for political or “pragmatic” reasons as it did with the U.S. in the situation in Afghanistan (Deutsch & van den Berg, 2021). Nonetheless, any similarities or differences in the reactions and perspectives of the local victims and the international community pose interesting and significant implications for the ICC as a mechanism of justice in the world going forward.

## DISCUSSION

By (1) determining whether or not an organization is generally positive or negative about the ICC’s decision to investigate and (2) deriving key topics and ideas discussed in an organization’s statements or Twitter posts, three main themes come to light. In particular, I looked at and compared how these organizations reacted to the ICC’s announcement, how they perceived the impact of this decision, and how relevant the ICC is to the Israel/Palestinian conflict. In the first theme, I discuss more generally how these organizations responded to the news that the ICC was finally, after years of debate, opening an investigation in the State of Palestine. In the next theme, I reflect on key tones and ideas underlying the responses of all six organizations and what they are hoping or expecting to get out of the decision. In the final theme, I consider how their responses are indicative of how they perceive the decision to have an impact on the overarching and ongoing armed conflict in the Gaza Strip and West Bank.

### Reactions to the ICC’s Investigation

First and foremost, in the Palestinian community’s case, I found that all three organizations were more-or-less unanimous in their outlook on the ICC’s decision. Namely, Al-Haq, Al-Mezan, and Addameer were all generally positive of the news when it was announced. In fact, all three organizations signed a statement welcoming the ICC decision to recognize Palestine as a state, thus allowing it to become a legitimate party to the ICC’s investigation (Al-Mezan Center for Human Rights, 2021a). Thus, it is safe to say that the ICC investigation is widely welcomed among Palestinian human rights defenders, and by extension, the Palestinian victims they represent.

In the international community's case, however, I found that the response has been variable across the three institutions examined. Moreover, where the reaction is positive, it is often overpoweringly so. Namely, the ICC and the OTP have been hesitant in speaking out about their decision to investigate the Palestinian situation. Outside of official submissions to the Court, the OTP has been strategic in its response and careful not to offend either side by coming out strongly in protection of certain categories of victims—e.g., declaring the decision to be a great step for justice for Palestinians would greatly provoke the Israelis, and vice versa. To that end, the OTP made sure to include both Israeli and Palestinian governments' statements in each of her comments and emphasized "the pursuit of peace and justice" more than anything else (International Criminal Court, 2021b).

As will be discussed in the case of Al-Bashir below, the ICC prosecutors are generally more outspoken in advocating for their cases. Moreover, given the fact that the OTP is pushing through with the investigation despite the backlash by Israel and its allies, the prosecutor's relative quietness in this situation suggests that the OTP is still optimistic about the decision but are not at liberty to comment further than needed. For instance, the condemnation of the decision by the U.S. means the investigation and any subsequent prosecution will be highly political and contested within the UNSC, of which the U.S. is a key member. The new prosecutor, sworn in on 16 June 2021, has yet to comment or update on the investigation.

The UN, one degree separate from the ICC, was much more positive about the decision. When the ICC first announced it was just considering an investigation, UN human rights experts called it a "momentous step forward in the quest for accountability" (United Nations News, 2019). Interestingly, the COE, on the other hand, has been silent on the ICC's decision to investigate Palestine even though the ICC has been widely discussed between COE ministers, member states, and its committee members. In the following theme below, I discuss in more nuance the implications of these responses from the Palestinian and international communities on how they perceive the ICC itself.

### Perceived Impact of the Decision

Although the Palestinian community was largely positive and welcoming of the investigation, the tones underlying their responses do differ. For instance, the Al-Mezan Center for Human Rights was the most enthusiastic and optimistic about the decision. On 3 March 2021, Al-Mezan said it was "a momentous day for Palestinian victims of Israel's apparent atrocity crimes" and the decision was "a long-awaited and important step toward justice for Palestinian victims" (Al-Mezan Center for Human Rights, 2021d). Notably, it is the only

organization that specifically talks about justice for Palestinian victims when congratulating the ICC for making such a stride. To this end, Al-Mezan's activity suggests that their perception of justice is most closely aligned with the ICC out of these three organizations.

Al-Haq Organization's response is better characterized as warm but cautious. In congratulating the incoming prosecutor for continuing the procedure, it stressed that the ICC must "move expeditiously" to prosecute those responsible for war crimes in the Gaza Strip (Al-Haq Organization, 2021c). Addameer, on the other hand, did not react to the decision when it was first announced outside of the joint statement. While the statement itself is positive, this may suggest that Addameer did not consider the decision to be that impactful; or perhaps it was an administrative oversight. Nonetheless, the Palestinian community's response has been similar in that it was positive and receiving.

Moreover, in the Palestinian community's discourse about the ICC, they either (a) stressed the urgency and necessity of the ICC's intervention, or (b) referenced the ICC as a source of authority or legitimacy in appealing to the international community. As discussed below, the Palestinian response to the decision suggests that the ICC has yet to deliver on its promise of pursuing accountability in the situation and they are still skeptical that the ICC will be able to effectively resolve the alleged war crimes on its own.

Firstly, the pattern of urgency and necessity in each of these organizations' statements and social media posts comes from the fact that they have been calling for ICC intervention for years. For instance, Addameer requested an ICC investigation as early as 2010, claiming that, "despite significant evidence indicating the widespread perpetration of international crimes, not once has a senior military or government official been investigated and prosecuted in accordance with the obligations of international law" (Addameer Prisoner Support and Human Rights Association, 2010) [emphasis added].

In 2020, the Al-Mezan Center for Human Rights questioned on more than one occasion why the ICC has yet to claim its jurisdiction over the Palestinian territories using the hashtags, #OpenInvestigation and #EndImpunity (Al-Mezan Center for Human Rights, 2020). It is not surprising, then, that these organizations would describe the decision as "long-awaited" (Al-Mezan Center for Human Rights, 2021e). Of the three organizations, Al-Haq emphasized the urgency of the move the most. On multiple occasions, it stressed that the ICC "must move expeditiously," even calling for it to expedite its investigation several months after the announcement (Al-Haq Organization, 2021c). Put simply, despite welcoming the investigation, the Palestinian community's response primarily emphasizes the need for urgency in this case.

Secondly, the Palestinian response carries the most

positive and reinforcing tones when it is addressing other members of the international community and is referencing the ICC's decision as a source of authority or legitimacy. After the Israeli state designated six of Palestine's most prominent civil society organizations (CSOs) as "terrorists," Al-Haq and Addameer rebuked the designation, citing the opening of the ICC's investigation as the reason why Israel is retaliating against Palestinian CSOs (Al-Haq Organization, 2021a). Said differently, Al-Haq and other organizations were implying that Israel felt threatened by the ICC working to expose alleged crimes committed by its defense forces. Thus, Al-Haq's reference to the ICC here was more supportive and optimistic of the investigation and its potential outcomes than in its previous messaging.

The Palestinian community also cited the ICC when describing alleged Israeli crimes against humanity. In 2021, the Al-Mezan Center for Human Rights wrote that "Israel's institutionalized and systemic racial domination and oppression of the Palestinian people...constitutes a crime against humanity as defined by the Rome Statute of the International Criminal Court" (Al-Mezan Center for Human Rights, 2021c). Previously, Al-Mezan also described the Israeli bombing of the Gaza Strip as "what manifestly amounts to war crimes under the Rome Statute of the International Criminal Court" (Al-Mezan Center for Human Rights, 2021b). In doing so, Al-Mezan is relying on the ICC's authority and legitimacy to claim that Israel's actions in the Palestinian territories are indeed war crimes or crimes against humanity. Such discourse again reflects a more optimistic perspective of the ICC in that these organizations are confident in the ICC's definitions of crimes in violation of international humanitarian law.

As discussed more in depth above, the ICC prosecutor's strategic hesitancy to remark more than needed on the investigation is not necessarily indicative of a pessimistic outlook on the potential impacts of the case. Indeed, the OTP has been particularly vocal about the relevance and importance that war criminals like al-Bashir should be brought before the seat of the court in the Hague, but al-Bashir's case in Sudan did not have the backing of large Western powers such as the U.S. Thus, the relative quietness of the Court on this decision more appropriately reflects a calculated move on the part of the prosecutor. More than anything, the fact that the OTP is moving forward with the case, despite international pressure otherwise, is telling of the prosecutor's hope to achieve justice for the local Palestinian victims in this situation.

While the ICC prosecutor is more reserved in what they can and cannot say, the UN has been more ambitious in its advocacy. In 2021, two UN Special Rapporteurs came out optimistically and strongly in favor of the investigation, saying that the ICC decision is a "momentous step" that "opens the door" for justice in occupied Palestine (United Nations News, 2019; see also United Nations News 2021a). In this way, the international community is more hopeful

and forward-looking than the Palestinian community on the potential for the ICC to achieve justice in Palestine.

However, the two communities share the sense of urgency behind their response to the ICC announcement. As the armed conflict continues to escalate after the announcement, the UN has pressed (alongside the Palestinians) for the ICC to intervene in the conflict (United Nations News, 2021b). To this end, both the Palestinian and international communities recognize that not only does the ICC have a significant crime-detering role or capacity in the Gaza Strip and West Bank, but that in the context of the ongoing armed conflict, there is a real need for the ICC to act hastily.

As for the COE, it is surprising that they have not taken a stance on the issue given that they are the European continent's "leading human rights organization" (Who We Are, n.d.). It is not that COE's jurisdiction does not include the ICC either; a public search of the keyword "International Criminal Court" reveals that the Court has been the topic of discussion or at least mentioned in over 2,300 COE documents. Why exactly this is the case is beyond the scope of this research, but it is telling that each international institution has had a different response to the ICC investigation. In the COE's case, perhaps because the issue is too controversial or not in its member states' interests, their silence hints at a tone of uncertainty in the ICC investigation's ability to promote and protect human rights in the Gaza Strip and the West Bank.

## Relevancy of the ICC to the Armed Conflict

To better understand how the Palestinian and international communities view the ICC decision to investigate the situation in Palestine through the lens of the overarching armed conflict that is still ongoing, one must look at how the ICC is discussed as a means to an end in the Palestinians' struggle for justice.

In some cases, the three Palestinian organizations surveyed have asserted that the international community at large—that is, including the ICC—has failed the Palestinian community by failing to act on war crimes committed in the region. In May 2021, notably after the ICC decision, Al-Haq Organization penned a letter signed by over 250 legal scholars and advocates calling for the ICC to take action. The letter began by asserting, "The world is watching as a war crime unfolds in front of our very eyes, and as those who are entrusted with the upkeep of international law take no meaningful action" (Al-Haq Organization, 2021b) [emphasis added]. For the Palestinians, concrete acts—e.g., the prosecution of specific war criminals responsible for crimes against humanity in the region—must be taken in order to truly protect human rights in the region. Said differently, it may be that these Palestinian organizations were not as optimistic about the announcement as their international counterparts were because of the long history of failed

pursuits of justice in the Palestinian case (Allen, 2020).

It follows, then, that the positivity behind the Palestinian response is overshadowed by its calls for urgency and expedition as more war crimes are allegedly being perpetrated in the region. This call for the ICC to act more hastily is seen among each of these three organizations. In November 2021, Addameer wrote an op-ed in the Los Angeles Times, saying that while they are calling for the ICC to investigate Israeli war crimes, thousands of human rights defenders are arbitrarily arrested each year (Rana & Milena, 2021). Similarly, in May 2021, Al-Haq Organization wrote to the ICC, asking the prosecutor to take action against the forced displacement of hundreds of Palestinians in Sheikh Jarrah (Al-Haq Organization, 2021b).

What is more telling is that the Palestinians are not alone in these calls for help. The UN has also called for urgency on the part of the ICC after witnessing further human rights violations in the region. Also in May 2021, UN human rights experts urged an expedition of the ICC investigation after over a week of rocket fire and bombardments killed more than 250 civilians and injured several thousand others. The fact that these requests came after the announcement took place suggests that, although their initial response was positive, the Palestinian and international communities are not assured that the ICC in its current state of progression alone can adequately prevent further human rights violations from taking place.

## CONCLUSION

All-in-all, it has been an interesting year for the ICC. Although its findings on the situation in the State of Palestine are indeed historic, the OTP should not completely celebrate just yet. As discussed above, the Palestinian community's response was positive overall but strikingly hesitant to put all their faith in the ICC. Their calls for the ICC to act sooner and citation of the Court in appeals to the international community at large strongly implies that they do not believe the ICC alone will help bring the perpetrators of war crimes in the Gaza Strip to account. Rather, their references to the ICC's decision to open an investigation in their appeals to other international organization suggests that at least in part, the ICC is a means to an end for the Israeli/Palestinian conflict, rather than an end in-and-of-itself. Meanwhile, the international community's response was less positive than anticipated, but when it was optimistic, it was strongly so. Although the ICC has more at stake due to the contentious politics of this particular investigation, both the ICC and COE are surprisingly quiet on the announcement. Nevertheless, the UN and the Palestinian communities both recognize the necessity of the ICC to act with urgency but diverge where the UN sees the ICC decision as a turning point in the conflict.

These findings suggest that without proper follow through and resolution, the ICC decision is not as much of a victory for the Palestinian community as the international community might find it to be. More importantly, this conclusion is in line with some of the more recent ICC literature in that the international community's interests and perspectives of justice in pursuing solutions to conflicts around the world may not always be in line with that of the local victims. Thus, this research has significant implications for understanding how justice can and should be achieved for local victims in the international arena. To this end, if the ICC wishes to become truly representative of the victims it claims to advocate for, the prosecutor and the rest of the OTP must incorporate more local perspectives in its judicial processes—starting with the State of Palestine.



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