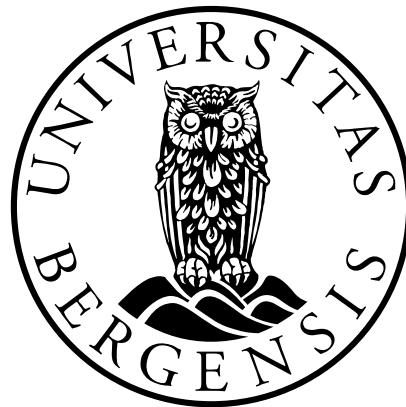


How Can the International Criminal Court Exercise Jurisdiction in the Occupied Palestinian Territory?

Kandidatnummer: 178595

Antall ord: 13 958



JUS399 Masteroppgave
Det juridiske fakultet

UNIVERSITETET I BERGEN

10.12.2014

Table of Content

Table of Content	2
List of Abbreviations	3
1. Introduction	4
1.1. <i>Topic and Research Question</i>	4
1.2. <i>The International Criminal Court</i>	6
1.3. <i>Factual Background</i>	7
1.4. <i>The Palestinian Path to the ICC</i>	9
1.5. <i>Methodology and Sources</i>	10
1.6. <i>Content</i>	11
2. Jurisdiction in the Rome Statute	12
2.1. <i>The Different Types of Jurisdiction</i>	12
2.2. <i>The Organs of the Court</i>	14
2.3. <i>Initiation of the Jurisdiction of the Court</i>	14
3. How Can the International Criminal Court Exercise Jurisdiction in the Occupied Palestinian Territory?	16
3.1. <i>Accession to the Rome Statute</i>	16
3.1.1. <i>Who Can Accede to the Rome Statute?</i>	16
3.1.2. <i>Is the Occupied Palestinian Territory a ‘State’ under International Law?</i> ... 16	
3.1.3. <i>Potential Scenarios Arising From a Palestinian Accession to the Rome Statute</i> 21	
3.1.4. <i>Can Non-State Entities Accede to the Rome Statute?</i>	24
3.2. <i>Declaration Pursuant to Article 12(3)</i>	28
3.2.1. <i>Presentation of Article 12(3)</i>	29
3.2.2. <i>Declaration and Concurrent Accession</i>	29
3.2.3. <i>Does the ICC Have Jurisdiction Pursuant to the Palestinian Declaration?</i> ... 36	
3.2.3.1. <i>Is the Palestinian Declaration Valid?</i>	36
3.2.3.2. <i>Was the Palestinian Declaration Submitted by a Non-State Entity?</i>	38
3.2.3.3. <i>Would the Palestinian Declaration Be Invalid Due to Its Wording?</i>	38
3.2.4. <i>New Palestinian Declaration and <i>Proprio Motu</i> Investigation by the Prosecutor</i>	42
3.3. <i>Referral by the Security Council</i>	43
4. Conclusion	44
Bibliography	47

List of Abbreviations

ICC	International Criminal Court
ICJ	International Court of Justice
OTP	Office of the Prosecutor
PLO	Palestine Liberation Organization
PNA	Palestinian National Authority
PTC	Pre-Trial Chamber
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNSC	United Nations Security Council

1. Introduction

1.1. Topic and Research Question

The research question of this thesis is ‘How Can the International Criminal Court Exercise Jurisdiction in the Occupied Palestinian Territory?’

The thesis examines how the International Criminal Court (‘Court’ or ‘ICC’) can obtain jurisdiction over the occupied Palestinian territory (‘Palestinian territory’) and how this jurisdiction may be initiated. The basis for the Court’s conduct is the Rome Statute (‘Statute’).¹

As the Palestinian territory is not a Party to the Rome Statute, the thesis inquires whether it could indeed accede to this treaty and examines possible scenarios arising from such accession. The status of this territory under international law may be essential in this regard. If this territory does not constitute a ‘State’, it must be examined whether the Palestinian territory, as a non-state entity, can accede to the Statute. As grave crimes may have been committed in situations that concern non-state entities, it is important to clarify the Court’s authority to initiate judicial proceedings in situations like these.

Moreover, article 12(3) of the Rome Statute will be considered. This provision allows States which are not Party to the Statute, (‘non-party State’) to accept the jurisdiction of the Court on an *ad hoc* basis. In 2009, Ali Khashan, acting on behalf of the ‘Government of Palestine’, lodged a declaration with the Court pursuant to this article.² The declaration purported to accept the ICC’s jurisdiction over crimes ‘committed on the territory of Palestine.’ The legal implications, if any, of this declaration will be analysed, especially in light of the 2012 Resolution by United

¹ Rome Statute of the International Criminal Court.

² Declaration recognizing the Jurisdiction of the International Criminal Court, Government of Palestine, 21 January 2009, <http://www.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4-C8071087102C/279777/20090122PalestinianDeclaration2.pdf> (accessed 7 December 2014).

Nations General Assembly ('General Assembly' or 'Assembly') granting 'Palestine' 'non-member observer State' status in the General Assembly.³

As this thesis will scrutinise Palestinian statehood under international law, the term 'Palestinian territory' will be used for now. If such statehood is found to be established, 'Palestine' will be used.

The Palestinian territory is referred to as 'occupied', a qualification which is based on the determination of the International Court of Justice ('ICJ') that this territory has been, and still is, occupied by Israel since 1967.⁴ The conclusion of the ICJ was *inter alia* based on the Security Council resolutions 242, 298 and 478, which all emphasize the occupied nature of this territory.⁵

Even though the occupied Palestinian territory includes two distinct areas, namely the West Bank and the Gaza Strip, the United Nations ('UN') refers to these areas as one territory.⁶ Thus, for the purpose of this thesis the term 'territory' will be used instead of 'territories'.

According to article 125(3) of the Statute, this treaty is 'open to accession by all States.' William A. Schabas, a leading scholar in international criminal law, explains that 'Palestine would accede to the Statute rather than ratify it, because ratification is available to States that have previously signed the Statute. The deadline for signature was 31 December 2000.'⁷ Thus, for the purpose of the issue of Palestinian territory and the Rome Statute the term 'accession' will be used rather than 'ratification'.

³ United Nations General Assembly resolution 67/19, *Status of Palestine in the United Nations*, A/RES/67/19 (29 November 2012), available from undocs.org/A/RES/67/19.

⁴ 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory' (Advisory Opinion) [2004] ICJ Rep 136, paras. 73-78.

⁵ United Nations Security Council ('UNSC') resolution 242, S/RES/242, (22 November 1967); UNSC resolution 298, S/RES/298, (25 September 1971); UNSC resolution 478, S/RES/478, (20 August 1980).

⁶ The United Nations Office for the Coordination of Humanitarian Affairs, http://www.ochaopt.org/documents/ochaopt_atlas_opt_general_december2011.pdf (accessed 7 December 2014).

⁷ William A. Schabas, 'Palestine Should Accede to the Rome Statute' (2011), *PhD studies in human rights*, <http://humanrightsdoctorate.blogspot.no/2011/11/palestine-should-accede-to-rome-statute.html> (accessed 7 December 2014).

1.2. The International Criminal Court

The ICC is a permanent court established by the international community for the purpose of investigating and prosecuting perpetrators of mass atrocities. The Court is empowered to deal with the following crimes: genocide, crimes against humanity, war crimes, and the crime of aggression.⁸

The Rome Statute, the founding treaty of the ICC, is a major development in international criminal law.⁹ The evolution of this legal field started with the military tribunals of Nuremberg and Tokyo¹⁰ and the need for a permanent criminal court was further substantiated by the atrocities that were committed in the former Yugoslavia and Rwanda in the 1990s. At the Rome Conference in 1998, 120 States voted in favour of the adoption of the Rome Statute.¹¹ The Statute entered into force on 1 July 2002 and as of September 2014, 122 States are Parties to the Statute.¹²

Article 34 b) and c) of the Statute lists the legal organs of the Court as an Appeals Division, a Trial Division, a Pre-Trial Division and the Office of the Prosecutor.

In order for the Court to take action concerning a specific crime or situation, the Rome Statute requires that the offence has to be encompassed by the crimes included in its articles 5 to 8.¹³ Further, the preconditions for the exercise of jurisdiction in article 12 must be met and the case must be initiated in accordance with article 13.¹⁴ The provisions on jurisdiction are important because they constitute the rules, which govern the competence of the Court. The ICC is not entitled to exercise jurisdiction outside of these rules.

⁸ Article 5 Rome Statute.

⁹ Antonio Cassese, From Nuremberg to Rome: International Military Tribunals to the International Criminal Court. In Cassese, Gaeta and Jones (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, Oxford University Press 2002, p. 3.

¹⁰ *Ibid.*

¹¹ William A. Schabas, *An Introduction to the International Criminal Court*, Cambridge University Press 2011, Fourth edition, p. ix.

¹² United Nations Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en (accessed 7 December 2014).

¹³ Sharon A. Williams, Article 12 Preconditions to the exercise of jurisdiction. In Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court*, Nomos Verlagsgesellschaft, Baden-Baden 1999, p. 330.

¹⁴ *Ibid.*

The competence of the Court is mainly based on the consent of the States concerned.¹⁵ This emphasises respect for the sovereignty of States. The Court has to honour the States' exclusive authority over their territories and nationals.

Moreover, the ICC is built on the principle of complementarity,¹⁶ which entails that the crimes under the jurisdiction of the Court, first and foremost, should be dealt with within the domestic legal systems of the Member States. If a State, which has jurisdiction over the particular crimes, investigates or prosecutes these alleged crimes, the Court cannot exercise its jurisdiction.¹⁷ This is understandable since the Member States' proximity to the atrocities will presumably make the collection of evidence easier, which should lead to shorter proceedings. Moreover, reconciliation after the conflict may be more achievable when the States concerned deal with the crimes themselves, as the criminal proceedings are conducted closer to the victims and the general public.

1.3. Factual Background

The question on potential ICC action in the occupied Palestinian territory has been triggered by the wars between Israel and Palestinians in the Gaza Strip ('Gaza') in the recent years.

Since 2008, Israel and Palestinians in Gaza have been involved in three instances of armed conflict. At the end of December 2008, Israel launched a military campaign, codenamed 'Operation Cast Lead', following rocket fire from Gaza.¹⁸ This war, which resulted in 13 Israelis and almost 1400 Palestinians being killed,¹⁹ led to the submission of the Palestinian declaration to the Court pursuant to article 12(3) of the Statute.

¹⁵ Article 12(2) Rome Statute.

¹⁶ Preamble, paragraph 10 and Article 1 Rome Statute.

¹⁷ Article 17 Rome Statute.

¹⁸ Ynetnews, <http://www.ynetnews.com/articles/0,7340,L-3646673,00.html> (accessed 8 December 2014).

¹⁹ B'Tselem, http://www.btselem.org/press_releases/20090909 (accessed 8 December 2014).

In late October 2012, violence broke out again. Israel launched its ‘Operation Pillar of Defense’ and by the end of the hostilities 167 Palestinians and 6 Israelis were killed.²⁰

The latest hostilities took place in the summer of 2014. Israel launched its ‘Operation Protective Edge’, which included Israeli airstrikes and a ground invasion into Gaza while rockets were fired from Gaza into Israel. After seven weeks of fighting, 70 Israelis and more than 2100 Palestinians had been killed.²¹

In addition to these casualties, it is estimated that more than 8000 Palestinians have been injured, some maimed for life, and that more than 19,000 homes and buildings have been destroyed or severely damaged in Gaza during the course of these wars.²²

Numerous credible sources, including the Goldstone Report, allege that both sides have committed war crimes and crimes against humanity during the aforementioned period.²³ Even though Gaza has been the main focus in the discussion of whether the ICC can take action in the Palestinian territory, Israel’s ‘security barrier’ and the Israeli settlements in the West Bank also constitute violations of international law according to the ICJ.²⁴ Thus, it seems highly relevant to clarify the authority of the ICC and whether the Court can play a part in holding the perpetrators accountable and serving justice for the victims. After all, the Court was established precisely for that purpose: to handle the legal aftermath of the most heinous crimes in the world.

²⁰ B’Tselem, http://www.btselem.org/press_releases/20130509_pillar_of_defense_report (accessed 8 December 2014).

²¹ The Jerusalem Post, <http://www.jpost.com/Operation-Protective-Edge/50-days-of-Israelis-Gaza-operation-Protective-Edge-by-the-numbers-372574> (accessed 8 December 2014).

²² Al-Haq, <http://www.alhaq.org/documentation/weekly-focuses/757-voices-from-the-gaza-strip-a-year-after-operation-pillar-of-defense>; Mondoweiss, <http://mondoweiss.net/2014/08/operation-protective-palestinians>; Amnesty International, ‘Israel/Gaza Operation ‘Cast Lead’: 22 Days of Death and Destruction’, *amnesty.org*,

<http://www.amnesty.org/ar/library/asset/MDE15/015/2009/en/8f299083-9a74-4853-860f-0563725e633a/mde150152009en.pdf> (all accessed on 1 December 2014).

²³ Following ‘Operation Cast Lead’, the United Nations Human Rights Council created the ‘United Nations Fact Finding Mission on the Gaza Conflict’, which was led by Richard Goldstone. The work of the mission ended in the Goldstone Report. See ‘Report of the United Nations Fact Finding Mission on the Gaza Conflict – Human Rights in Palestine and Other Arab Territories’, paras. 75, 108, 1335, 1691, 1950, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>; Amnesty International, ‘Families Under the Rubble – Israeli Attacks on Inhabited Homes’, p. 41, *amnesty.org*, <http://www.amnesty.org/en/library/asset/MDE15/032/2014/en/613926df-68c4-47bb-b587-00975f014e4b/mde150322014en.pdf> (both accessed 8 December 2014).

²⁴ *Supra* 4, pp. 137, 138.

1.4. The Palestinian Path to the ICC

On 22 January 2009, the ‘Government of Palestine’ lodged a declaration pursuant to article 12(3) of the Statute, thereby accepting the Court’s jurisdiction.²⁵ The Prosecutor of the ICC initiated a preliminary examination on whether the preconditions for the ICC’s exercise of jurisdiction under article 12 were met.²⁶

The crucial issue was whether the Palestinian territory constituted a ‘State’ for the purpose of the Rome Statute article 12(3) and the Prosecutor concluded that ‘it is for the relevant bodies of the United Nations or the Assembly of States Parties [of the ICC] to make the legal determination whether Palestine qualifies as a State.’²⁷

In 2011, the ‘State of Palestine’ applied for membership in the United Nations.²⁸ Due to opposing positions within the United Nations Security Council (‘Security Council’, ‘Council’ or ‘UNSC’) the Palestinian application is still pending before the Council awaiting a determination.²⁹ On 29 November 2012, the General Assembly granted ‘Palestine’ ‘non-member observer State’ status in the General Assembly.³⁰

In this regard, the ICC Prosecutor expressed that ‘while [the upgraded UN status of Palestine] did not retroactively validate the previously invalid 2009 declaration, Palestine could now join the Rome Statute.’³¹ Thus, the Prosecutor seemed to view the issue of Palestinian statehood as resolved for the purpose of the Rome Statute. Several scholars are of the same opinion and John Dugard, a leading scholar in international law, has stated that ‘[i]n effect [the upgraded UN status] means that the

²⁵ *Supra* 2.

²⁶ Office of the Prosecutor, ‘Situation in Palestine’ para. 2, <http://www.icc-cpi.int/NR/rdonlyres/9B651B80-EC43-4945-BF5A-FAFF5F334B92/284387/SituationinPalestine030412ENG.pdf> (accessed on 8 December 2014).

²⁷ *Ibid*, para. 6.

²⁸ Permanent Observer Mission of the State of Palestine to the United Nations, <http://palestineun.org/membership-application/> (accessed 8 December 2014).

²⁹ Permanent Observer Mission of the State of Palestine to the United Nations, <http://palestineun.org/status-of-palestine-at-the-united-nations/> (accessed 8 December 2014).

³⁰ *Supra* 3.

³¹ Fatou Bensouda, ‘the truth about the ICC and Gaza’, *The Guardian*, 29 August 2014, <http://www.theguardian.com/commentisfree/2014/aug/29/icc-gaza-hague-court-investigate-war-crimes-palestine> (accessed 8 December 2014).

determination that Palestine is a state for the purposes of Article 12(3) has been made.³²

However, the issue of Palestinian statehood seems to deserve further scrutiny (section 3.1.2). As the status of the Palestinian territory under international law will have consequences for the ICC's jurisdiction, it seems imperative to establish its particular status.

1.5. Methodology and Sources

The Rome Statute is a treaty and it will be interpreted in accordance with the principles in articles 31 to 33 of the Vienna Convention on the Law of Treaties ('Vienna Convention').³³

The methodology recognised in international criminal law will be applied. This thesis will present an analysis *de lege lata*. The discussion will therefore take form as a scrutiny of the applicable legal sources. In the conclusion, some remarks *de lege ferenda* will be made.

The following presentation of relevant sources is based on article 21 of the Rome Statute, which lists the law that the Court shall apply, and the principles of interpretation codified in the Vienna Convention. Article 38 of the Statute of the ICJ, which is the most authoritative statement of the sources of public international law,³⁴ lists some additional sources.

The Rome Statute contains *inter alia* procedural rules on admissibility (article 17) and the Court's jurisdiction (articles 11 to 13), as well as substantive rules on the crimes

³² John Dugard, 'Palestine and the International Criminal Court – Institutional Failure or Bias?', *Journal of International Criminal Justice*, 11 (2013), 563-570, p. 568. See also Bar Human Rights Committee of England and Wales, 'Request for the initiation of an investigation', 3 August 2014, http://barhumanrights.org.uk/sites/default/files/documents/biblio/submission_to_icc_prosecutor_-_3_august.pdf (accessed 8 December 2014).

³³ William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, Oxford University Press 2010, p. 387.

³⁴ Margaret McAuliffe deGuzman, Article 21 Applicable law, In Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court*, Nomos Verlagsgesellschaft, Baden-Baden 1999, p. 436.

under its jurisdiction (articles 5 to 8). Unless otherwise stated, a reference to e.g. ‘article 12(3)’ refers to the Rome Statute.

The Rules of Procedure and Evidence of the International Criminal Court ‘are an instrument for the application of the Rome Statute.’³⁵ Unless otherwise stated, a reference to e.g. ‘rule 44’ refers to the Rules of Procedure and Evidence.

The Vienna Convention on the Law of Treaties is generally considered as the starting point for treaty interpretations.³⁶

The jurisprudence on the research topic of this thesis is limited, as only three article 12(3) declarations have been submitted to the Court thus far.³⁷ However, some ICC decisions concerning the question of declarations’ retroactive effect will be examined in section 3.2.2.

The Convention on the Rights and Duties of States (‘Montevideo Convention’) provides criteria for the determination of statehood under international law.

As there is a limited amount of authoritative sources on this particular topic, except for the Rome Statute itself, legal theory and opinions by scholars will be consulted more extensively. This is authorised by article 38 of the Statute of the ICJ.

1.6. Content

Section 2 of this thesis elaborates on the different types of jurisdiction that the Court may be provided with and how this jurisdiction may be initiated.

³⁵ Explanatory note of the Rules of Procedure and Evidence, <http://www.icc-cpi.int/iccdocs/PIDS/legal-texts/RulesProcedureEvidenceEng.pdf> (accessed 8 December 2014).

³⁶ *Supra* 33.

³⁷ Declarations submitted by Ivory Coast, Ukraine and the Palestinian National Authority, http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/registry/Pages/declarations.aspx (accessed 8 December 2014).

Section 3 examines whether the Palestinian territory can accede to the Rome Statute, either as a ‘State’ or as a non-state entity, and analyses the possible consequences of a Palestinian accession to the Statute.

Lastly, section 3 considers the possibilities of a Palestinian article 12(3) declaration, submitted concurrently with an accession. It is especially relevant to analyse whether such a declaration can provide the Court with jurisdiction retroactively to 1 July 2002 as the 2009 Palestinian declaration purports. Section 3 will also consider whether this former declaration possesses any legal effects so as to provide the Court with the required jurisdiction.

2. Jurisdiction in the Rome Statute

Jurisdiction is understood as the authority to exercise legal power. In our context, jurisdiction refers to the ICC’s right to exercise its power, which consists of investigating and prosecuting perpetrators of the crimes enlisted in article 5 of the Statute.

2.1. The Different Types of Jurisdiction

For the purpose of the Rome Statute, jurisdiction may be described as follows:

The jurisdiction *ratione materiae* of the Court, the so-called subject-matter jurisdiction, is enshrined in articles 5 to 8 of the Statute. The ICC’s authority is limited to ‘the most serious crimes of concern to the international community as a whole’,³⁸ namely genocide, crimes against humanity, war crimes and the crime of aggression.

Article 12(2)a) discusses the jurisdiction *ratione loci*, the territorial jurisdiction of the Court. The Court has jurisdiction over the crime in question if it was committed on the territory of, or on board a vessel or aircraft, which is registered in, a State Party or

³⁸ Article 5 Rome Statute.

a non-party State that has accepted the jurisdiction of the Court by a declaration pursuant to article 12(3).

The Court's jurisdiction *ratione personae* is based on the active personality principle, which refers to the nationality of the accused ('nationality jurisdiction').³⁹ According to article 12(2) the Court may exercise jurisdiction if the 'State of which the person accused of the crime is a national' is a State Party to the Statute or has accepted the jurisdiction of the Court through an article 12(3) declaration.

Article 11 regulates the temporal scope, the *ratione temporis*, of the Court's jurisdiction and the provision expresses that the Court only has jurisdiction 'with respect to crimes committed after the entry into force of this Statute.' The Rome Statute entered into force 1 July 2002.⁴⁰ Under no circumstance can the Court act upon crimes committed prior to this date.

For States that accede to the Rome Statute at a later stage, article 11(2) stipulates that the Court has jurisdiction 'only with respect to crimes committed after the entry into force of this Statute for that State.' However, the last section of article 11(2) may constitute an exception in this regard and this will be examined in section 3.2.2.

According to article 12(2), the Court may exercise jurisdiction if 'one or more' of the States concerned has consented to its jurisdiction. Thus, it is sufficient that either the territorial State or the nationality State consents. The Court is therefore empowered to exercise jurisdiction over a crime committed on the territory of a State that has not consented to the Court's jurisdiction if the nationality State provides the Court with the required jurisdiction and vice versa.

Since the Court is dependent on the consent by either the territorial State or the nationality State,⁴¹ the Court is not entitled to exercise so-called universal jurisdiction unless the Security Council refers a specific situation to it pursuant to article 13b). Universal jurisdiction is understood as the power 'to bring criminal proceedings in

³⁹ *Supra* 13, p. 340.

⁴⁰ *Supra* 12.

⁴¹ Article 12(2) Rome Statute.

respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim.’⁴²

2.2. The Organs of the Court

The Trial Division of the Court conducts the first round of legal proceedings in the Court while the Appeals Division conducts the proceedings if a trial judgment is appealed. According to article 57(3)a) of the Statute, one of the tasks of the Pre-Trial Chambers (‘PTC’) is to ‘issue such orders and warrants as may be required for the purposes of an investigation’ at the request of the Prosecutor.

Article 42(1) states that the Office of the Prosecutor shall act independently as a separate organ of the Court and that the office shall be responsible for receiving referrals and examining any substantiated information on crimes within the Court’s jurisdiction. The Office of the Prosecutor shall also conduct investigations and prosecutions before the Court. The office is headed by the Prosecutor.⁴³ The relation between the Prosecutor and the PTC will be examined further in section 3.

2.3. Initiation of the Jurisdiction of the Court

In addition to establishing that the Court has jurisdiction over the crimes in question, the jurisdiction must be triggered by one of the mechanisms in article 13.⁴⁴ These mechanisms are State referrals, referrals by the Security Council and the initiation of an investigation by the Prosecutor.

A State Party may refer any situation to the Court, as such referrals are not restricted to States with a direct interest or involvement in the concrete situation.⁴⁵ Referrals by a State Party and by the Security Council trigger the jurisdiction of the Court, in the

⁴² Kenneth C. Randall, 'Universal jurisdiction under international law', *Texas Law Review*, No. 66 (1988), pp. 785-788.

⁴³ Article 42(2) of the Statute.

⁴⁴ *Supra* 33, p. 293.

⁴⁵ Sharon A. Williams, Article 13 Exercise of jurisdiction. In Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court*, Nomos Verlagsgesellschaft, Baden-Baden 1999, p. 350.

sense of obligating the Prosecutor to proceed with a preliminary examination in accordance with article 53.⁴⁶

It follows from article 12(2) that the Court's exercise of jurisdiction based on a State referral or on the initiation of investigation by the Prosecutor is dependent on the consent by the territorial State or the nationality State. This condition does not apply to referrals by the Security Council.⁴⁷ The Council has the authority to refer any situation to the Court irrespective of whether the State concerned has consented to the exercise of jurisdiction or not.⁴⁸ Accordingly, the involvement of the Security Council may entail that the Court exercises its jurisdiction contrary to the principle of State sovereignty.⁴⁹

Article 13c) stipulates that the ICC's exercise of jurisdiction will be triggered if the Prosecutor initiates a *proprio motu* investigation pursuant to article 15. The term *proprio motu* is understood as the Prosecutor opening an investigation on his or her own initiative and not on the basis of a referral by a State Party or the Security Council.⁵⁰ Article 15(1) expresses that the Prosecutor 'may' initiate investigations, which entails that the decision, on whether or not to initiate an investigation, is subject to the Prosecutor's discretion.⁵¹ The Prosecutor is entitled to do a preliminary examination of the crimes in question, but a full investigation can only commence if the PTC authorises it.⁵²

These trigger mechanisms contained in article 13 will be analysed further in section 3.

⁴⁶ *Supra* 33, p. 289.

⁴⁷ Article 12(2) Rome Statute.

⁴⁸ Stéphane Bourgon, Jurisdiction *Ratione Loci*. In Cassese, Gaeta and Jones (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, Oxford University Press 2002, p. 566.

⁴⁹ *Ibid.*

⁵⁰ *Supra* 33, p. 315.

⁵¹ Morten Bergsmo and Jelena Pejić, Article 15 Prosecutor, In Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court*, Nomos Verlagsgesellschaft, Baden-Baden 1999, p. 364.

⁵² Article 15(3) Rome Statute.

3. How Can the International Criminal Court Exercise Jurisdiction in the Occupied Palestinian Territory?

3.1. Accession to the Rome Statute

3.1.1. Who Can Accede to the Rome Statute?

The Rome Statute is a treaty. Treaties are generally defined as formal agreements between two or more States. Thus, one may assume that only States can accede to the Statute.

Article 125(3) stipulates that ‘[t]his Statute shall be open to accession by all States.’ Schabas expresses that ‘[a]rticle 125 governs the mechanisms by which States become parties to the *Rome Statute*.’⁵³ It therefore seems to be a requirement that the entity that wants to accede to the Statute has attained statehood. The focus on ‘State’ throughout the Statute⁵⁴ implies that statehood should be understood as a condition for accession to the Statute.

3.1.2. Is the Occupied Palestinian Territory a ‘State’ under International Law?

The starting point of a statehood analysis is article 1 of the Montevideo Convention, which stipulates that ‘[t]he state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.’

As the population in the West Bank and Gaza has been living in these areas for centuries and is fairly stable in size, it is clear that the ‘permanent population’ criterion is fulfilled.

⁵³ *Supra* 33, p. 1196.

⁵⁴ Reference can *inter alia* be made to the provisions on jurisdiction in articles 11 to 13.

Even though the territorial dispute regarding the West Bank between Israel and the Palestinians could make the ‘defined territory’ condition hard to fulfil, there is no doubt that Israel is a ‘State’ under international law⁵⁵ despite this ongoing dispute. Furthermore, the international community regards the West Bank and Gaza as occupied ‘Palestinian’ territory,⁵⁶ which strongly indicates that distinct areas, which are to be considered Palestinian, exist. Thus, the ‘defined territory’ requirement is fulfilled.

As to the criterion ‘capacity to enter into relations with the other states’, some have argued that the *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip* (‘Oslo Accords’ or ‘Accords’) limits the Palestinians in this regard. This agreement was concluded in 1993 between Israel and the Palestine Liberation Organization (‘PLO’), as the representative of the Palestinian people.⁵⁷ Eugene Kontorovich, a professor in international law, expresses that

[u]nder the Oslo Accords Israel exercises full territorial control of a section of the West Bank known as Area C. (...) All Jewish settlements in the West Bank lie in Area C. Territorial delegated jurisdiction [to the ICC] depends on the nation actually having legal jurisdiction over the territory. It would be difficult to conclude that Palestine can delegate jurisdiction over the settlements when all criminal jurisdiction in this areas has already been assigned to Israel in the Oslo Accords.⁵⁸

The Palestinian National Authority (‘PNA’) was established pursuant to the Oslo Accords⁵⁹ and it functions as a governmental body for the Palestinian people. In this regard, Yuval Shany, a professor in public international law at the Hebrew University of Jerusalem, argues that since the Oslo Accords ‘limits the powers of the PNA to

⁵⁵ Israel is a UN Member State, <http://www.un.org/en/members/index.shtml#i> (accessed 8 December 2014).

⁵⁶ *Supra* 4,5,6.

⁵⁷ Jewish Virtual Library, <https://www.jewishvirtuallibrary.org/jsourc/Peace/interim.html> (accessed 8 December 2014).

⁵⁸ Eugene Kontorovich, ‘Israel/Palestine – The ICC’s Uncharted Territory’, *Journal of International Criminal Justice*, 11 (2013), 979-999, p. 990.

⁵⁹ ‘Situation in Palestine Summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements’, para. 47, <http://www.icc-cpi.int/NR/rdonlyres/553F5F08-2A84-43E9-8197-6211B5636FEA/282852/PALESTINEFINAL201010272.pdf> (accessed 8 December 2014).

conduct foreign relations (...), its attempt to authorize the ICC to exercise jurisdiction appears to run contrary to its obligations under [this agreement].⁶⁰

In response to these assertions, it seems necessary to recall that the Oslo Accords were supposed to be temporary, applicable for a period of 5 years during which the parties would negotiate a final peace agreement.⁶¹ The intentions of the Oslo Accords were that the Israeli occupation would end and that the Palestinians would have their own State within those 5 years.⁶² As these intentions have not been fulfilled, one may question the nature of the Accords today. Valentina Azarov and Chantal Meloni, lecturer in human rights and international law at the Al-Quds University and Adjunct Professor of international criminal law respectively, argue that ‘the Oslo Accords cannot limit the ICC’s jurisdiction. (...) [This agreement] does not affect the internationally-recognised rights to self-determination, sovereignty and independence of the Palestinian people.’⁶³ The Palestinian human rights organization, Al-Haq has stated that

the capacity and ability of the PLO and [PNA], to engage in foreign relations has consistently been recognised and interpreted broadly *in practice* [and that] state practice over the past decade has demonstrated that the limits placed on the [PNA] in this regard by Oslo are no longer recognised or considered legitimate by the international community.⁶⁴

The Palestinians have indeed ratified many treaties in the years after the adoption of the Oslo Accords.⁶⁵ As treaties are generally regarded as an instrument for agreements between States, the Palestinian treaty ratifications entail that it has acceded to

⁶⁰ Yuval Shany, ‘In Defence of Functional Interpretation of Article 12(3) of the Rome Statute’, *Journal of International Criminal Justice*, 8 (2010), 329-343, p. 341.

⁶¹ Declaration of Principles on Interim Self-Government Arrangements between Israel and the PLO, article 1(1), <http://www.jewishvirtuallibrary.org/jsource/Peace/dop.html> (accessed 8 December 2014).

⁶² *Ibid.*

⁶³ Valentina Azarov and Chantal Meloni, ‘Disentangling the Knots: A Comment on Ambos’ ‘Palestine, ‘Non-Member Observer’ Status and ICC Jurisdiction’ (2014) *EJIL*, <http://www.ejiltalk.org/disentangling-the-knots-a-comment-on-ambos-palestine-non-member-observer-status-and-icc-jurisdiction/> (accessed 8 December 2014).

⁶⁴ Al-Haq, ‘Position Paper on Issues Arising from the Palestinian Authority’s Submission of a Declaration to the Prosecutor of the International Criminal Court under Article 12(3) of the Rome Statute’, paras. 27, 28, [http://www.alhaq.org/attachments/article/273/position-paper-icc-\(14December2009\).pdf](http://www.alhaq.org/attachments/article/273/position-paper-icc-(14December2009).pdf) (accessed 8 December 2014).

⁶⁵ In April 2014, Palestine acceded to 20 international treaties and conventions. *See* <http://www.hrw.org/news/2014/05/08/palestine-go-international-criminal-court> (accessed 8 December 2014).

agreements with States, which further implies that the Palestinians have the capacity to enter into relations with other States. Due to the considerable development in the status of the Palestinian territory since 1993, it seems unreasonable that the Oslo Accords should preclude the Palestinian effort to become a State Party to various treaties, such as the Rome Statute.

Moreover, 135 Member States of the United Nations have recognised the ‘State of Palestine’⁶⁶ and these States already have, or are ready to commence, diplomatic relations with this new State. This supports the notion that the Palestinians have the capacity to enter into relations with other States.

If the international community was of the opinion that the Palestinians were hindered by the Oslo Accords, it is unlikely that it would upgrade their UN status to that of a ‘State’ because States, as persons under international law, are entitled to accede to treaties. Thus, it should be concluded that the Palestinians fulfil this criterion too.

An interpretation of the last criterion ‘government’, in accordance with the ordinary meaning to be given to the term,⁶⁷ implies the executive body of a state, nation or community. The territory in question should have an effective government, which exercises control over the permanent population.⁶⁸ The PNA functions as a government in the Palestinian territory, but due to the Israeli occupation more than 60 % of the West Bank is under almost complete Israeli civil and security control.⁶⁹ Moreover, all of Gaza’s borders (land, air and sea) are controlled by Israel or Egypt.⁷⁰ Thus, many governmental areas, which are usually attributed to the State, are not in the hands of the Palestinian government.

⁶⁶ The Washington Post, <http://www.washingtonpost.com/blogs/worldviews/wp/2014/11/07/map-the-countries-that-recognize-palestine-as-a-state/> (accessed 8 December 2014).

⁶⁷ Article 31(1) Vienna Convention.

⁶⁸ Martin Dixon, *Textbook on International Law*, Oxford University Press, Seventh Edition 2013, p. 120.

⁶⁹ The United Nations Office for the Coordination of Humanitarian Affairs, http://www.ochaopt.org/documents/ocha_opt_area_c_factsheet_january_2013_english.pdf (accessed 8 December 2014).

⁷⁰ Al Jazeera, <http://america.aljazeera.com/opinions/2014/8/gaza-seaport-israelegyptpalestineinternationaltrade.html>; the Guardian, <http://www.theguardian.com/world/2014/feb/21/gaza-ceasefire-threatened-border-clashes-hamas-weak-palestinian> (both accessed 8 December 2014).

It is therefore difficult to conclude that Palestinians have a ‘government’, which exercises control over the permanent population.

Under customary international law, subsequent recognition of an aspirant State by members of the international community may however cure a defect in an otherwise imperfect claim to statehood.⁷¹

The General Assembly resolution granting ‘Palestine’ ‘non-member observer State’ status⁷² can arguably be interpreted as an implied recognition of Palestinian statehood. Even though the resolution does not constitute a formal recognition of a Palestinian State by the States present at the Assembly, it still speaks volume and stipulates that the Palestinian territory should be considered a ‘State’ for the purpose of the UN. The consequence of granting the Palestinians this status is that they will be entitled to accede to multilateral treaties, especially within the UN system, and thereby function as a State at the international level.

It can therefore be argued that the General Assembly resolution could cure the defect in Palestinian statehood under the Montevideo Convention.

Moreover, as 135 of the 193 UN Member States have formally recognised the ‘State of Palestine’,⁷³ a significant portion of the international community believes that the Palestinians have attained statehood. One is therefore inclined to conclude that the defect in the Palestinian statehood is cured by this broad international recognition.

Thus, the conclusion is that the Palestinian territory constitutes a ‘State’ under international law and Palestine, which is the name of this State, is therefore entitled to accede to the Rome Statute of the ICC.

Palestine is not a Member State to the UN, but this does not preclude Palestinian accession to the Rome Statute. There is no provision in the Statute, which requires the

⁷¹ *Supra* 68, p. 123.

⁷² *Supra* 3.

⁷³ *Supra* 66.

State to be a UN Member. The ICC Prosecutor has confirmed this by stating that Palestine can now join the Rome Statute.⁷⁴

3.1.3. Potential Scenarios Arising From a Palestinian Accession to the Rome Statute

If Palestine accedes to the Rome Statute, and thereby joins the ICC, Palestine would be entitled to refer the situation in its territory to the Court pursuant to articles 13a) and 14. If Palestine were to do this, article 53 stipulates that the Prosecutor would be obligated to initiate an investigation unless she determines that there is no ‘reasonable basis’ to proceed.

The ‘reasonable basis’ test encompasses a range of different assessments, which are all enshrined in article 53. First, the Prosecutor must examine whether there is a reasonable basis to believe that a crime ‘within the jurisdiction’ of the Court has been or is being committed.

The Goldstone Report contains serious allegations of war crimes and crimes against humanity being committed by both sides during the 2008/2009 war between Israel and Palestinians in Gaza.⁷⁵ Additionally, in its ‘The Wall’ advisory opinion, the ICJ stated that Israel is violating international law in several regards, *inter alia* by building the ‘security barrier’ and by transferring its own civilian population into the settlements in the West Bank.⁷⁶ The latter may constitute a war crime as article 49(6) of the Fourth Geneva Convention forbids the occupying power to ‘transfer parts of its own civilian population into the territory it occupies.’ As war crimes and crimes against humanity fall within article 5 of the Rome Statute, it is reasonable to infer that the alleged crimes committed in Palestine the recent are covered by the Court’s jurisdiction *ratione materiae*.

⁷⁴ *Supra* 31.

⁷⁵ ‘Report of the United Nations Fact Finding Mission on the Gaza Conflict – Human Rights in Palestine and Other Arab Territories’, paras. 75, 108, 1335, 1691, 1950, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf> (accessed 8 December 2014).

⁷⁶ *Supra* 4, pp. 137, 138.

Pursuant to article 12(2), Palestine's accession to the Statute would provide the Court with territorial jurisdiction over the Palestinian territory, namely the West Bank and the Gaza Strip.⁷⁷

Some of the perpetrators of the alleged crimes committed in the Israel/Palestine conflict the recent years, are likely to be Israeli nationals serving in its army. Israel has not accepted the jurisdiction of the Court, neither by accession to the Statute nor by an article 12(3) declaration. However, as long as the Court is provided with jurisdiction over the Palestinian territory, Israel's consent is not needed. Article 12(2) clearly states that the Court only needs acceptance from either the territorial State or the nationality State. As Palestine provides territorial jurisdiction, the Court can investigate Israelis who allegedly have committed crimes in the West Bank and in Gaza.

Article 12(2) also entails that a Palestinian accession to the Rome Statute will provide the Court with jurisdiction *ratione personae* thus the Court will have competence to investigate crimes committed by Palestinian nationals outside the territory of Palestine. The ICC can therefore investigate the alleged international crime of firing rockets from Gaza into Israeli territory.

As for jurisdiction *ratione temporis*, article 11(2) stipulates that the Court will be competent to act upon 'crimes committed after the entry into force of the Statute for' Palestine. Whether Palestine can additionally provide the Court with jurisdiction retroactively, so as to cover crimes committed prior to this, will be considered in section 3.2.2.

According to article 53, in her preliminary examination of whether there is a 'reasonable basis' to proceed with an investigation, the Prosecutor must further examine whether the case is admissible under article 17, which encompasses the complementarity principle. The Prosecutor could find that some of the alleged crimes, referred by Palestine, have been or are being dealt with within the domestic legal

⁷⁷ Hamas, which governs the Gaza Strip, supports Abbas' accession to the Rome Statute. Thus, ICC would also have jurisdiction over Gaza were Palestine to accede to the Statute. *See* <http://www.theguardian.com/world/2014/aug/23/hamas-back-palestinian-bid-international-criminal-court> (accessed 4 November 2014).

orders of Israel and/or Palestine. If this is the case, the Court would not be entitled to exercise jurisdiction over these same crimes.

The Prosecutor may further decide not to initiate an investigation into alleged crimes committed in Palestine because ‘an investigation would not serve the interests of justice’, cf. article 53(1). The ‘interests of justice’ test was first proposed by the United Kingdom, which envisioned that a case should not be subject to the ICC’s jurisdiction if ‘there were good reasons to conclude that a prosecution would be counter-productive.’⁷⁸ The Prosecutor may, for instance, decide that a deferral of prosecution would be useful in promoting an end to a specific conflict.⁷⁹

As for Palestine, the Prosecutor could find that, in the ‘interests of justice’, ICC prosecutions should be halted due to the potential detrimental effect such prosecutions may have on the peace process in the Middle East.

If the Prosecutor decides not to initiate an investigation, for any of the aforementioned reasons, Palestine may challenge this decision before a PTC pursuant to article 53(3)a). If the PTC believes that the prosecutorial decision is unfounded, it may request the Prosecutor to reconsider the decision.⁸⁰ Thus, the PTC has the authority to instruct the Prosecutor to review the case.

If the ICC were to indict an Israeli for alleged crimes committed in Palestine, the accused may challenge the jurisdiction of the Court pursuant to article 19(2)a). The accused could argue that Palestine is not a State and that Palestine should therefore not have been accepted as a State Party to the Statute. If the Court sustains this challenge, it will not be entitled to exercise jurisdiction.

Irrespective of whether Palestine accedes to the Rome Statute or not, it is important to point out that certain Israelis may already fall under the Court’s jurisdiction. Should some perpetrators hold dual citizenship, Israeli and another nationality, the latter

⁷⁸ *Supra* 33, p. 663 referring to ‘UK Discussion Paper, International Criminal Court, Complementarity’, 29 March 1996, para. 30.

⁷⁹ *Supra* 33, p. 666.

⁸⁰ Article 53(3)a Rome Statute.

country could initiate the ICC's jurisdiction under article 13a), provided that this State is a Party to the Rome Statute.

As previously explained (section 2.3), any State Party to the Rome Statute may refer a situation to the Court irrespective of whether this State has a direct interest in the particular situation or not. Thus, a State referral of the situation in Palestine does not depend on a Palestinian accession to the Statute. Any of the States Parties could refer the Palestine situation and thereby trigger the jurisdiction of the Court. However, article 12(2) makes clear that a declaration, by either Palestine or Israel, pursuant to article 12(3), would be required in order for the Court to act on such a State referral.

As is evident from this analysis, a State referral of the Palestine situation from Palestine itself does not entail an automatic ICC investigation. Action by the Court is conditioned on a range of requirements.

3.1.4. Can Non-State Entities Accede to the Rome Statute?

For the purpose of this section, it is presupposed that Palestine is not a 'State' under international law. It will now be examined whether Palestine, as a non-state entity, could accede to the Rome Statute. Keeping in mind the brief analysis in section 3.1.1 on who is entitled to accede to the Rome Statute, this issue needs further scrutiny.

The question is whether the condition 'State' in the Rome Statute also encompasses non-state entities when they have the capacity to ratify treaties.

An ordinary meaning of 'State', in accordance with article 31(1) of the Vienna Convention, implies an entity, which has acquired statehood under international law, by fulfilling the conditions in article 1 of the Montevideo Convention and/or by sufficient recognition from the international community (section 3.1.2). As a first step, it is therefore reasonable to assert that 'State' in the Rome Statute is to be understood as statehood.

According to article 31(4) of the Vienna Convention ‘[a] special meaning shall be given to a term if it is established that the parties so intended.’ There is no provision in the Statute, which expresses that the term ‘State’ is to be understood differently from its ordinary meaning.

However, in relation to Palestine, Alain Pellet, a professor in international law, and Yuval Shany argue that non-state entities should be included in ‘State’ by the means of a teleological and functional interpretation.⁸¹ Their main argument is that, in the absence of such an interpretation, perpetrators of heinous crimes will go free because the ICC would only have jurisdiction if the situation concerns a State. They assert that their suggested approach will promote the object and purpose of the Statute, which is to end impunity for international crimes.⁸²

It is not accurate that an ordinary meaning of ‘State’ would entail that the ICC only has jurisdiction if the situation concerns a State. The Security Council has the authority to refer any situation to the Court, including those concerning non-state entities (section 2.3). The fact that the Council is not doing so in regard to Palestine does not mean that the possibility does not exist.

Malcolm Shaw, a British scholar in international law, argues that the term ‘State’ has a clear meaning in international law and that ‘[i]t is, of course, necessary that the Statute be interpreted in a way that fulfils its objectives, but such objectives do not include re-interpretation of clear terms.’⁸³ However, it seems legitimate to question how clear the meaning of ‘State’ under international law is. Yuval Shany expresses that

international practice has on numerous occasions treated quasi-state entities – political entities with strong state-like features – as if they were (...) states *for certain purposes*. Hence, non-state actors such as Taiwan, Puerto Rico and

⁸¹ Alain Pellet, ‘The Palestinian Declaration and the Jurisdiction of the International Criminal Court’, *Journal of International Criminal Justice*, 8 (2010), 981-999; Yuval Shany, ‘In Defence of Functional Interpretation of Article 12(3) of the Rome Statute’, *Journal of International Criminal Justice*, 8 (2010), 329-343.

⁸² *Ibid.* See especially Yuval Shany, p. 336.

⁸³ Malcolm N. Shaw, ‘The Article 12(3) Declaration of the Palestinian Authority, the International Criminal Court and International Law’, *Journal of International Criminal Justice*, 9 (2011), 301-324, p. 313.

PLO/Palestine, have been allowed to participate in the work of a fair number of international organizations, and/or sign a number of international treaties.⁸⁴

This seems accurate, as practice shows that a ‘State’ can be more than those fulfilling the Montevideo criteria. The Holy See, which is the jurisdiction of the Catholic Church in Rome,⁸⁵ is an example in this regard. The Vatican City is the sovereign territory of the Holy See,⁸⁶ but other than that it probably does not fulfil the Montevideo criteria. Yet, the Holy See is regarded as a ‘State’ by the UN and possesses non-member observer State status in the General Assembly.⁸⁷ This is mainly based on the Holy See’s capacity to enter into relations with other States, which it has shown by acceding to an extensive amount of international treaties.⁸⁸ Due to this capacity, the Holy See is also seen as being entitled to join the ICC.⁸⁹

Palestine possesses the same UN status as the Holy See and one could therefore argue that the latter should not be in any better position than the former. If the Holy See can join the ICC, Palestine should also be able to. The upgraded status of Palestine in the General Assembly has the consequence that Palestine can ratify treaties because it is now a ‘State’ within the international community. It is reasonable that this right to accede to treaties also includes the Rome Statute.

Palestine joined the United Nations Educational, Scientific and Cultural Organization (‘UNESCO’) in 2011 and is regarded as a ‘State’ for the purpose of this UN specialised agency.⁹⁰ The UN Secretary-General is the depository of the Rome Statute⁹¹ and in this regard, William A. Schabas asks ‘how could the Secretary-

⁸⁴ *Supra* 60, p. 334.

⁸⁵ *Gotquestions.org*, <http://www.gotquestions.org/Holy-See.html> (accessed 8 December 2014).

⁸⁶ Article 3(1) of the Lateran Treaty between the Holy See and Italy, <http://www.vaticanstate.va/content/dam/vaticanstate/documenti/leggi-e-decreti/Normative-Penali-e-Amministrative/LateranTreaty.pdf> (accessed 8 December 2014).

⁸⁷ UN Permanent Observers, <http://www.un.org/en/members/nonmembers.shtml> (accessed 8 December 2014).

⁸⁸ The Permanent Observer Mission of the Holy See to the United Nations, <http://www.holyseemission.org/about/treaties-and-conventions.aspx> (accessed 8 December 2014).

⁸⁹ Parliamentarians for Global Action, <http://www.pgaction.org/campaigns/icc/europe/vatican-city.html> (accessed 8 December 2014).

⁹⁰ UNESCO, <http://whc.unesco.org/en/statesparties/> (accessed 8 December 2014).

⁹¹ Article 125(2) Rome Statute.

General refuse the accession [to the Rome Statute] by ‘a state’ that has already been recognized as ‘a state’ pursuant to the Constitution of UNESCO?’⁹²

As Schabas points out, it seems rational that the understanding of ‘State’ in the Rome Statute should go hand in hand with the understanding in the Constitution of UNESCO. It would make up an unfavourable practice if the Secretary-General applies different interpretations of ‘State’ depending on the particular treaty. After all, the UN and the ICC are closely related as the Preamble of the Rome Statute expresses that an International Criminal Court would be established ‘in relationship with the United Nations system.’

Moreover, Palestine has ratified a fair amount of treaties over the last years and thereby shown its capacity to accede to international treaties.⁹³ The Rome Statute is no different in this regard: the Statute is a treaty, an agreement between States, and as Palestine has ratified other treaties it is reasonable that Palestine should also be entitled to accede to the Statute.

The ICC’s jurisdiction covers the most serious crimes of concern to the international community⁹⁴ and the object and purpose of the Rome Statute is to end impunity, prevent crimes from being committed, guarantee lasting respect for and the enforcement of international justice.⁹⁵

The lack of referral of the Palestine situation by the Security Council to the Court is mainly based on political considerations and, in particular, the United States’ authority to veto any resolution, which concerns Israel.⁹⁶ This prevents the Court from achieving its objectives. Thus, it seems necessary to take other steps in order to promote these objectives. Were Palestine to be regarded as a ‘State’ under the Statute,

⁹² *Supra* 7.

⁹³ United Nations High Commissioner for Human Rights, <http://unispal.un.org/UNISPAL.NSF/0/262AC5B8C25B364585257CCF006C010D>; Al Jazeera, <http://www.aljazeera.com/news/middleeast/2014/04/un-accepts-palestinian-treaty-applications-201441022522866731.html> (both accessed 8 December 2014).

⁹⁴ Article 1 Rome Statute.

⁹⁵ Preamble Rome Statute.

⁹⁶ The Guardian, <http://www.theguardian.com/commentisfree/2014/aug/01/gaza-international-law-war-crimes-security-council> (accessed 8 December 2014).

this would enable the Court to exercise its jurisdiction over the alleged crimes committed.

As more crimes would be covered by the ICC's jurisdiction, the object of ending impunity would be promoted. According to the Goldstone Report, the alleged crimes committed during the 2008/2009 hostilities may constitute war crimes and crimes against humanity,⁹⁷ which are some of the 'most serious crimes of international concern.'⁹⁸ These are exactly the crimes that the ICC was established for. Bringing the alleged crimes under the jurisdiction of the Court would undoubtedly ensure accountability for these crimes, as the perpetrators would be investigated and tried before the Court. In this way, the Court would be able to promote its objectives of ending impunity for the most serious crimes and guaranteeing the enforcement of international justice. Moreover, if one adopts an objective-focused interpretation of 'State', future crimes may be deteriorated, as potential perpetrators would become aware that their acts will not go unpunished and that accountability will prevail. This may be especially important in the Middle East where impunity has been dominant for decades.⁹⁹

UN practice shows that 'State' does not possess a clear meaning in international law. As the inclusion of non-state entities, such as Palestine, would promote the Rome Statute's various objectives, it is reasonable to conclude that the term 'State' may include non-state entities, which have the capacity to ratify treaties.

3.2. Declaration Pursuant to Article 12(3)

This section discusses the option of accepting the Court's jurisdiction by a declaration under article 12(3). As recalled (section 3.1.2), Palestine constitutes a State under international law. The focus on Palestine as a non-state entity was solely for the purpose of the previous section (3.1.4).

⁹⁷ *Supra* 75.

⁹⁸ Articles 1 and 5 Rome Statute.

⁹⁹ Amnesty International, 'Families Under the Rubble – Israeli Attacks on Inhabited Homes', p. 42, *amnesty.org*, <http://www.amnesty.org/en/library/asset/MDE15/032/2014/en/613926df-68c4-47bb-b587-00975f014e4b/mde150322014en.pdf>, (accessed 8 December 2014).

3.2.1. Presentation of Article 12(3)

Article 12(3) stipulates that '[i]f the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question.' The 'acceptance is required' if the particular situation is referred to the Court by a State Party or initiated through a *proprio motu* investigation by the Prosecutor *and* concerns the territory or a national of a non-party State, cf. article 12(2). Due to this acceptance requirement, the Statute does not infringe the sovereignty of non-party States.¹⁰⁰ They are only bound by the Rome Statute if they consent to this. By lodging a declaration, the non-party State will provide the Court with jurisdiction without the need of acceding to the Statute.

It is important to note that such declarations only relate to the scope of the Court's jurisdiction and do not trigger the jurisdiction, in the sense of obligating the Prosecutor to proceed with an investigation.¹⁰¹ Investigations can only be triggered by the mechanisms in article 13 (section 2.3). The privilege of initiating the Court's jurisdiction remains with the States Parties, which is reasonable as these States have 'taken the risk' of being subjected to the ICC's jurisdiction at all times.

3.2.2. Declaration and Concurrent Accession

It has been established that Palestine can accede to the Rome Statute. The question now is whether Palestine can lodge a declaration concurrently with its accession.

The Court will have jurisdiction over crimes committed after the Statute entered into force for Palestine 'unless [Palestine] has made a declaration under article 12, paragraph 3', cf. article 11(2). The wording 'has made' indicates that the declaration has to be submitted prior to the accession and that these actions cannot happen simultaneously. If so, States that are already States Parties to the Statute will be precluded from lodging declarations.

¹⁰⁰ Sharon A. Williams, Article 12 Preconditions to the exercise of jurisdiction. In Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court*, Nomos Verlagsgesellschaft, Baden-Baden 1999, p. 341.

¹⁰¹ *Supra* 33, p. 289.

However, rule 44(1) stipulates that '[t]he Registrar (...) may inquire of a State (...) that has become a Party to the Statute after its entry into force, on a confidential basis, whether it intends to make the declaration provided for in article 12, paragraph 3.' This rule clearly envisions that a State Party may lodge a declaration after it accedes to the Statute. This notion is supported by jurisprudence of the ICC. In the Uganda case, the PTC accepted a Ugandan declaration even though it was submitted after Uganda acceded to the Statute.¹⁰²

One must therefore conclude that Palestine could accede to the Rome Statute and lodge an article 12(3) declaration concurrently.

The next question is whether such declarations may be endorsed with retroactive effect. If answered in the affirmative, the Court will have jurisdiction over alleged crimes committed before the declaration was submitted.

The last section of article 11(2), 'unless that State has made a declaration under article 12, paragraph 3', is reasonable to understand as an exception from the main rule that the Court only has jurisdiction over crimes committed after the entry into force of the Statute for that particular State. This implies that the Court may exercise jurisdiction over crimes committed prior to the Statute's entry into force for that State. If not, this last section of article 11(2) would be without meaning as accession to the Statute already provides the Court with jurisdiction over future crimes.¹⁰³ Thus, for a declaration to have purpose for a State Party, it seems legitimate to endorse them with retroactive effect. This notion is supported by Kai Ambos, a professor in international criminal law, who expresses that article 12(3) 'implies that it is the sovereign right of the State delegating its territorial jurisdiction to do so within the temporal parameters

¹⁰² 'Warrant of Arrest for Joseph Kony Issued on 8 July 2006 as Amended on 27 September 2005', Pre-Trial Chamber II, para. 32, <http://www.icc-cpi.int/iccdocs/doc/doc97185.pdf> (accessed 8 December 2014).

¹⁰³ Alexander Wills, 'The ICC's Retroactive Jurisdiction, Revisited', (2013), *Opinio Juris*, <http://opiniojuris.org/2013/01/29/the-iccs-retroactive-jurisdiction-revisited/> (accessed 8 December 2014).

of the ICC Statute, i.e., going back, in principle, to the Statute's entry into force [1 July 2002].¹⁰⁴

Moreover, Antonio Cassese, a distinguished jurist and the first President of the International Criminal Tribunal for the former Yugoslavia, articulates that new States Parties to the Statute may 'accept the jurisdiction of the Court for crimes committed before their ratification but after the entry into force of the Statute.'¹⁰⁵

Andreas Zimmermann, a professor in international law, does not agree that retroactivity follows from the Statute and he argues that endorsing declarations with such effect would put non-party States in a better position than States Parties.¹⁰⁶ However, Zimmermann's arguments are based on the erroneous understanding that States Parties are not entitled to lodge article 12(3) declarations. As previous analysis shows, declarations may be submitted by both States Parties and non-party States.

Moreover, article 31(1) of the Vienna Convention states that a treaty shall be interpreted in accordance with its context. The context of article 12(3) includes rule 44. Rule 44(2) stipulates that what the State accepts, by a declaration, is the 'jurisdiction with respect to the crimes referred to in article 5 of relevance to the situation.' The term 'situation' implies specific acts and circumstances. The most logic inference is that the situation must have occurred prior to the lodging of the declaration. It is difficult to envision how article 12(3) and rule 44 would have any practical meaning if they were seen as only relating to future crimes. If no 'situation' has occurred yet, the State in question would see no need to call upon the ICC. Thus, the terms of article 12(3), interpreted in accordance with rule 44, indicate that declarations have retroactive effect.

¹⁰⁴ Kai Ambos, 'Palestine, UN Non-Member Observer Status and ICC Jurisdiction', (2014), *EJIL*, <http://www.ejiltalk.org/palestine-un-non-member-observer-status-and-icc-jurisdiction/> (accessed 8 December 2014).

¹⁰⁵ Stéphane Bourgon, Jurisdiction *Ratione Temporis*. In Cassese, Gaeta and Jones (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, Oxford University Press 2002, p. 551.

¹⁰⁶ Andreas Zimmermann, 'Palestine and the International Criminal Court *Quo Vadis?*', *Journal of International Criminal Justice*, 11 (2013), 303-329, p. 317.

The intention behind rule 44 was to prevent one-sided declarations.¹⁰⁷ As the State accepts the jurisdiction over the ‘situation’, all crimes come under the scrutiny of the Court; not merely those committed by one of the belligerent parties. It is difficult to envision a one-sided declaration, which only relates to future crimes. It is unlikely that a State would submit a declaration in regard to crimes that the other belligerent party may commit sometime in the future. Thus, the whole discussion leading up to the adoption of rule 44 implies that retroactive effect is the subject of article 12(3).

Some jurisprudence from the PTC has touched upon this issue. In his request for an arrest warrant for Joseph Kony, the Prosecutor referred to acts committed prior to the Statute’s entry into force for Uganda.¹⁰⁸ In a letter to the Presidency of the Court, the Prosecutor stated that ‘the government of Uganda has made a declaration (...) accepting the jurisdiction of the Court as of the entry into force of the Rome Statute, and hence temporal jurisdiction extends back to 1 July 2002.’¹⁰⁹ The PTC issued the arrest warrant by taking note of the Ugandan declaration.¹¹⁰ However, the PTC did not discuss the fact that it thereby accepted the declaration with retroactive effect.¹¹¹

As for Ivory Coast, the PTC found that the Court had jurisdiction over crimes allegedly committed since 19 September 2002, on the basis of an article 12(3) declaration dated 18 April 2003.¹¹² Its position was not substantiated. In the same case, the Appeals Chamber stated that ‘the Statute also serves the purpose of deterring the commission of crimes in the future, and not only of addressing crimes committed in the past.’¹¹³ As expressed by Zimmermann, the Appeals Chamber ‘seems to have taken it for granted that declarations under Article 12(3) may be endowed with retroactive effect.’¹¹⁴

¹⁰⁷ *Supra* 33, p. 288.

¹⁰⁸ *Supra* 106, p. 310.

¹⁰⁹ ‘Decision Assigning the Situation in Uganda to the Pre-Trial Chamber II’, Presidency with attached letter from the Prosecutor, <http://www.icc-cpi.int/iccdocs/doc/doc271808.PDF> (accessed 8 December 2014).

¹¹⁰ *Supra* 102.

¹¹¹ *Supra* 106, p. 310.

¹¹² ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire’, Pre-Trial Chamber III, para. 15, <http://www.icc-cpi.int/iccdocs/doc/doc1240553.pdf> (accessed 8 December 2014).

¹¹³ ‘Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I on jurisdiction and stay of the proceedings’, Appeals Chamber, para. 83, <http://www.icc-cpi.int/iccdocs/doc/doc1526463.pdf> (accessed 8 December 2014).

¹¹⁴ *Supra* 106, p. 311.

The Statute's objective of ending impunity will be promoted if declarations are endorsed with retroactive effect, as perpetrators of crimes committed in the past would also be held accountable for their actions. Moreover, if the territorial or nationality State accepts the Court's jurisdiction over the relevant time period, it is difficult to find any persuasive argument why the ICC should not exercise its jurisdiction, as this would not infringe the principle of State sovereignty.

Based on these sources and an interpretation of article 12(3), in light of the Statute's object and purpose, one should conclude that declarations pursuant to this article may be endowed with retroactive effect.

However, previous analysis has found that Palestine did not constitute a 'State' prior to 29 November 2012. It must therefore be examined whether the Rome Statute authorises the Court to exercise jurisdiction over time periods when Palestine was not yet a State.

It follows from article 12(3), interpreted in accordance with rule 44, that all States Parties to the Statute may lodge a declaration with retroactive effect. If Palestine is precluded from doing the same when it accedes to the treaty, that would be an unsatisfactory outcome. The Rome Statute should be understood as granting the same rights to all States Parties, including Palestine.

However, the Statute does not express whether States are entitled to provide jurisdiction over time periods when they were not yet States. On the one hand it could be argued that as long as the entity in question is a State when it provides jurisdiction, it is irrelevant whether it constituted a State at the time of the commission of the alleged crimes. This would allow Palestine to provide the Court with jurisdiction retroactively even for time periods when Palestinian statehood was not established.

Yet, the argument can be made that only the Security Council is empowered to refer situations, which concern non-state entities to the Court. If the Security Council does not act, the ICC can only base its jurisdiction on State consent if the entity in question constituted a 'State' when the alleged crimes were committed.

Under customary international law a new State may prosecute persons who committed international crimes on its territory before it became a 'State'.¹¹⁵ Thus, Palestine is entitled to prosecute international crimes committed on Palestinian territory before 29 November 2012. Victor Kattan, a postdoctoral fellow at the National University of Singapore, articulates that

[i]t might be possible to argue in submissions before the court (...) that since a new state can have individuals prosecuted for genocide, war crimes, and crimes against humanity under customary international law even before it became a state (...) the ICC should also be able to prosecute crimes that occurred on the territory of a state party before it became a state, if a state lodges a declaration to this effect.¹¹⁶

Kattan's reasoning seems rational. As Palestine possesses the right to prosecute these former crimes, one may argue that Palestine also should be entitled to delegate this competence to the ICC.

If the ICC were to take action in regard to crimes committed prior to the establishment of the Palestinian State, its objective of ending impunity would be promoted as more crimes would fall under the Court's jurisdiction and the perpetrators of these crimes would most likely be held accountable.

William A. Schabas has asserted that unless one accepts that Palestine can provide the Court with jurisdiction dating back to 1 July 2002, Palestine would be left as a 'black hole (...) immune to the jurisdiction of the Court.'¹¹⁷ This is not entirely true, as the Security Council could refer the Palestine situation to the Court. However, for all practical matters, such a referral is highly unlikely due to political considerations

¹¹⁵ Victor Kattan, 'Palestine and the International Criminal Court', (2014), *European Council on Foreign Relations*, http://www.ecfr.eu/article/commentary_palestine_and_the_international_criminal_court303 (accessed 8 December 2014).

¹¹⁶ *Ibid.*

¹¹⁷ William A. Schabas, 'Out of Africa. Israel is Referred to the International Criminal Court' (2013), *PhD studies in human rights*, <http://humanrightsdoctorate.blogspot.no/2013/05/out-of-africa-israel-is-referred-to.html> (accessed on 8 December 2014).

within the Council.¹¹⁸ One could therefore argue that the Court should be allowed to adopt an interpretation, which does not contravene the territorial integrity of Palestine and which, at the same time, enables the Court to bring perpetrators to justice.

Yet, the *nullum crimen sine lege* principle may constitute a bar in this regard. This principle expresses that no individual may be prosecuted for a crime, which at the time of commission, was not illegal.¹¹⁹ The principle is codified in article 7(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in article 15(2) of the International Covenant on Civil and Political Rights.

The Goldstone Report alleges that war crimes and crimes against humanity have been committed in the course of the 2008/2009 war.¹²⁰ These crimes are prohibited under customary international law, which is binding upon all nations.¹²¹ Thus, these acts would be subject to prosecution in any event. The perpetrators of the crimes committed in Palestine should therefore know that their actions could be subject to criminal proceedings. In relation to the alleged crimes committed in Palestine, the only difference would be that the ICC exercises jurisdiction instead of a State. That the perpetrators did not expect the ICC to handle their case does not seem as a sufficient reason to deny the ICC authority. Thus, Palestine should be entitled to delegate its competence, to prosecute international crimes committed on its territory before it became a State, to the Court.

In any event, the ICC is complementary to domestic jurisdiction. If Israel and Palestine investigate and prosecute the crimes in question, the ICC will not exercise its jurisdiction.

Moreover, it is likely that Palestine, if and when it accedes to the Rome Statute, will not lodge an article 12(3) declaration at the same time. Political pressure from Israel

¹¹⁸ *Supra* 96.

¹¹⁹ *Supra* 33, p. 403.

¹²⁰ *Supra* 75.

¹²¹ The International Justice Project, <http://www.internationaljusticeproject.org/juvJusCogens.cfm> (accessed 8 December 2014).

and the United States may lead Palestine to merely accede to the Statute and thereby only accept the Court's jurisdiction over future crimes.¹²²

3.2.3. Does the ICC Have Jurisdiction Pursuant to the Palestinian Declaration?

On 21 January 2009, Minister of Justice, Ali Khashan, submitted a declaration to the Court on behalf of the 'Government of Palestine.'¹²³ The declaration states as follows:

[i]n conformity with Article 12, paragraph 3 of the Statute of the International Criminal Court, the Government of Palestine hereby recognizes the jurisdiction of the Court for the purpose of identifying, prosecuting and judging the authors and accomplices of acts committed on the territory of Palestine since 1 July 2002. (...) This declaration, made for an indeterminate duration, will enter into force upon its signature.¹²⁴

3.2.3.1. Is the Palestinian Declaration Valid?

John Dugard and the Bar Human Rights Committee of England and Wales have argued that the Palestinian declaration provides the Court with the required jurisdiction because the issue of Palestinian statehood was settled by the General Assembly resolution in 2012.¹²⁵ They seem to think that this resolution automatically validates the Palestinian declaration. However, the issue of the declaration's validity does not seem as straightforward as Dugard and the Human Rights Committee portray it to be. The 2012 decision of the ICC Prosecutor¹²⁶ needs to be considered in this regard.

The prosecutorial decision is not crystal clear as to whether the Palestinian declaration was rejected or merely suspended pending Palestine's status determination.¹²⁷ The Prosecutor stated that his office could in the future consider the situation in Palestine

¹²² *Supra* 115.

¹²³ *Supra* 2.

¹²⁴ *Ibid.*

¹²⁵ *Supra* 32.

¹²⁶ *Supra* 26.

¹²⁷ Matthew Solomon, 'Palestine's ICC Option and the Politics of Peace' (2013), *Open Society Foundations*, <http://www.opensocietyfoundations.org/voices/palestines-icc-option-and-politics-peace-0> (accessed on 8 December 2014).

‘should competent organs of the United Nations or eventually the Assembly of States Parties resolve the legal issue relevant to an assessment of article 12.’¹²⁸ The Prosecutor did not say that, in order for the Court to exercise jurisdiction, a new Palestinian declaration would be required. It may therefore be argued that the 2009 declaration was not rejected, but rather suspended, pending a determination on Palestinian statehood by the competent organs.

However, Kevin Jon Heller, a professor of criminal law at the University of London, argues that

[t]he Declaration formally requested the [office of the Prosecutor (‘OTP’)] accept jurisdiction and investigate the situation in Palestine. The OTP opened a preliminary examination, as required by the Rome Statute, but then ended that examination at the first step, concluding that it did not have jurisdiction over the events in question because Palestine could not establish that it was a State. That’s a rejection, even if the OTP — to use a common-law phrase — dismissed the Declaration without prejudice.¹²⁹

As Heller points out, the Prosecutor did conclude that the Palestinian declaration did not meet the requirements in article 12(3).¹³⁰ Thus, the most reasonable notion is that the Prosecutor rejected the declaration.

As a declaration is not enlisted as one of the mechanisms in article 13, which initiates the Court’s jurisdiction, a declaration does not impose obligations upon the Prosecutor to commence a preliminary examination pursuant to article 53. A review of the prosecutorial decision by the PTC is therefore not an option. Thus, it is evident, as Chantal Meloni states, that there is no judicial remedy available in order to challenge this decision.¹³¹ That the Palestinian declaration is invalid is also the position taken by the new ICC Prosecutor.¹³²

¹²⁸ *Supra* 26, para. 8.

¹²⁹ Kevin Jon Heller, ‘Final Thoughts on the Bar HR Committee’s Letter’ (2014), *Opinio Juris*, <http://opiniojuris.org/2014/08/09/two-final-thoughts-bar-human-rights-committees-letter/> (accessed 8 December 2014).

¹³⁰ *Supra* 26, para. 8.

¹³¹ Chantal Meloni, ‘Palestine and the ICC: Some Notes on Why It Is Not a Closed Chapter’ (2012), *Opinio Juris*, <http://opiniojuris.org/2012/09/25/palestine-and-the-icc-some-notes-on-why-it-is-not-a-closed-chapter/> (accessed 8 December 2014).

¹³² *Supra* 31.

It must be concluded that the 2009 Palestinian declaration does not provide the Court with jurisdiction over Palestine.

3.2.3.2. Was the Palestinian Declaration Submitted by a Non-State Entity?

Pursuant to article 53(4), the Prosecutor could reconsider the 2012 prosecutorial decision and find that the Court could nevertheless act upon the Palestinian declaration.

When Palestine submitted the declaration in 2009, it did not possess the ‘non-member observer State’ status in the General Assembly. This implied recognition and the formal recognition by many UN States were needed for Palestine to attain statehood (section 3.1.2). Thus, the declaration was submitted at the time when Palestine was not a ‘State’.

Article 12(3) allows ‘States’ to submit declarations to the Court. Palestine did not constitute a State when it lodged the declaration and thus the requirement in article 12(3) is not fulfilled. Even if one adopts the interpretation that non-state entities, with the capacity to ratify treaties, are to be included in the term ‘State’ (section 3.1.4), this does not include Palestine, as Palestine did not possess this required capacity in 2009. It was not until 2011/2012 that Palestine fully attained this capacity as a consequence of the UNESCO membership and its upgraded status in the General Assembly.

Thus, the 2009 declaration was submitted by a non-state entity and therefore it did not fulfil the condition in article 12(3).

3.2.3.3. Would the Palestinian Declaration Be Invalid Due to Its Wording?

In order to consider this particular issue, it is necessary to establish the subject of article 12(3) declarations.

According to article 12(3) the State accepts the Court's exercise of jurisdiction with respect to 'the crime in question.' The ordinary meaning¹³³ of 'the crime in question' implies one specific crime. The drafting history of the Statute indicates that the term 'crime' is to be understood as a reference to the jurisdiction *ratione materiae* (article 5) and not to specific acts or situations.¹³⁴ However, according to Mahmoud Cherif Bassiouni, who chaired the Drafting Committee at the Rome Conference, the meaning of article 12(3) is 'that the Court could exercise its jurisdiction with respect to any crime referred to in Article 5 arising out of a 'situation', which is referred to it.'¹³⁵

Article 12(3) is to be interpreted in accordance with its context, which includes rule 44. Rule 44(2) uses the following expression: 'the crimes (...) of relevance to the situation.' This implies a series of crimes that are linked together in context and in time. William A. Schabas expresses that

[t]o the extent that article 12(3) is analogous to a conferral of jurisdiction by ratification or accession, but only with respect to a specific situation, it seems reasonable to consider that the declaration gives jurisdiction to the Court over both the territory of the accepting State and over its nationals with respect to the given situation.¹³⁶

This can be inferred from article 12(2), which expresses that the Court may exercise jurisdiction if either the territorial State or the nationality State has accepted the jurisdiction of the Court. Such consent is provided if the particular State is a Party to the Statute or if it has lodged a declaration under article 12(3). It is plausible to understand article 12(2) as granting the Court both territorial and nationality jurisdiction over the particular situation, if consent is provided by one of the States concerned.

Thus, one has to infer that the situation as a whole is the subject of article 12(3) declarations. As explained in section 3.2.2, this will prevent non-party States from submitting one-sided declarations, which attempt to only accept jurisdiction over

¹³³ Article 31(1) Vienna Convention.

¹³⁴ *Supra* 33, pp. 288, 289.

¹³⁵ M. Cherif Bassiouni, *The Legislative History of the International Criminal Court: Introduction, Analysis and Integrated Text*, Vol. I, Ardsley, NY: Transnational, 2005, pp. 84, 85.

¹³⁶ *Supra* 33, p. 290.

crimes committed by the other party to the conflict.¹³⁷ Focus on the ‘situation’ will promote the Statute’s objective of ending impunity, as all crimes relevant to the situation will come under the Court’s scrutiny and not merely crimes committed by one of the belligerent parties.

In 2004, Uganda submitted a letter of referral to the Court, which made reference to the ‘situation concerning the Lord's Resistance Army.’¹³⁸ This army is in opposition to the Ugandan authorities¹³⁹ and thus, the Ugandan referral seemed to only cover crimes committed by one of the parties to the conflict. In this regard the Prosecutor stated that

[m]y Office has informed the Ugandan authorities that we must interpret the scope of the referral consistently with the principles of the Rome Statute, and hence we are analysing crimes within the situation of northern Uganda by whomever committed.¹⁴⁰

The subsequent arrest warrants issued by the PTC, regarding persons responsible for the activities of the Lord’s Resistance Army, did not address this obvious one-sidedness of the Ugandan referral, but the PTC did act upon the referral¹⁴¹ and thereby accept it.

In light of the aforementioned statement by the Prosecutor, it is reasonable to interpret a one-sided declaration as providing jurisdiction over crimes committed by both of the belligerent parties.

¹³⁷ *Supra 11*, p. 85.

¹³⁸ ‘President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC’, Press Release, http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/2004/Pages/president%20of%20uganda%20refers%20situation%20concerning%20the%20lord_s%20resistance%20army%20_lra_%20to%20the%20icc.aspx (accessed 8 December 2014).

¹³⁹ War Child, <http://www.warchild.org.uk/issues/the-lords-resistance-army> (accessed 8 December 2014).

¹⁴⁰ *Supra 109*.

¹⁴¹ *Supra 102*, paras. 30, 31.

The Palestinian declaration refers to ‘acts committed on the territory of Palestine’¹⁴² and it thereby purports to only provide the Court with territorial jurisdiction. In this regard, Andreas Zimmermann articulates that

[o]ne cannot help noting that the declaration, by solely referring to the situation in Palestine, did not, by the same token, also accept the ICC’s jurisdiction with regard to crimes committed by nationals of Palestine in areas beyond the borders of Palestine, and in particular in Israel.¹⁴³

As Zimmermann points out, it is difficult to see how the declaration entails an acceptance of jurisdiction over Palestinian nationals when they commit crimes outside Palestinian territory. Thus, the declaration seems to only cover crimes committed by one of the parties to the conflict. Palestine’s intention was probably to preclude the Court from acting upon alleged crimes committed by Palestinians on Israeli territory.

However, as the Prosecutor clearly stated, the wording of the declaration is not of importance and it does not limit the scope of the Court’s jurisdiction. Palestine has lodged a declaration pursuant to article 12(3) and the consequence is that Palestine accepts the jurisdiction of the Court with respect to the ‘crimes relevant to the situation’ as rule 44 prescribes.

If the 2009 declaration had not been rendered invalid due to other circumstances (sections 3.2.3.1 and 3.2.3.2), it would have provided the Court with jurisdiction over the Palestinian territory and Palestinian nationals who have committed crimes on Israeli territory. A declaration by Israel, accepting the Court’s jurisdiction, would not be required as the ICC would have jurisdiction over Israeli nationals due to Palestine’s acceptance of jurisdiction over its territory, and it would have jurisdiction over Israeli territory due to Palestine’s acceptance of jurisdiction over Palestinian nationals.

Even though a State cannot frame a declaration as to only cover specific crimes, it may limit the geographical scope of the Court’s jurisdiction. Thus, Palestine may only

¹⁴² *Supra* 2.

¹⁴³ *Supra* 106, p. 325.

refer the Gaza situation and thereby preclude the Court from acting upon crimes committed in the West Bank. Similar situations have previously been accepted by the Office of the Prosecutor, e.g. Northern Uganda, Ituri and Darfur.¹⁴⁴

3.2.4. New Palestinian Declaration and *Proprio Motu* Investigation by the Prosecutor

If Palestine chooses not to accede to the Rome Statute, it may still provide the ICC with jurisdiction by virtue of a new declaration pursuant to article 12(3). The declaration would enable, but not oblige, the Prosecutor to initiate an investigation *proprio motu* in accordance with article 15.¹⁴⁵ The PTC functions as a control mechanism for the sake of the investigation initiated by the Prosecutor.

During the Rome Conference, when the Statute was negotiated, many States were sceptical towards this *proprio motu* power of the Prosecutor, as they feared it would lead to politicised action by the ICC.¹⁴⁶ To calm the sceptics, the Rome Statute provides for a range of safeguards, including the PTC regime, to preclude politics from interfering with the work of the Court.¹⁴⁷

An article 15 initiation presupposes that the Court has the required jurisdiction pursuant to article 12, cf. article 12(2). This entails that the territorial or nationality State, which the situation concerns, either has to be a State Party to the Rome Statute or has to accept the ICC's jurisdiction by an article 12(3) declaration. When considering the situation at hand and whether to exercise her *proprio motu* authority, the Prosecutor shall take the following factors into account: the seriousness of the information, issues of jurisdiction and admissibility, and the interests of justice.¹⁴⁸

¹⁴⁴ Kevin Jon Heller, 'Three Thoughts on the OTP's Rejection of Jurisdiction over the Situation in Palestine' (2014), *Opinio Juris*, <http://opiniojuris.org/2014/08/05/breaking-otp-rejects-jurisdiction-situation-palestine/> (accessed 8 December 2014).

¹⁴⁵ *Supra* 33, p. 289.

¹⁴⁶ Philippe Kirsch, QC and Darryl Robinson, Initiation of Proceedings by the Prosecutor. In Cassese, Gaeta and Jones (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, Oxford University Press 2002, p. 657.

¹⁴⁷ *Ibid.*, p. 663.

¹⁴⁸ *Supra* 11, p. 180.

If Palestine submits a new declaration and the Prosecutor concludes that there is a reasonable basis to proceed with an investigation into the Palestine situation, she shall submit to the PTC a request for authorisation of such an investigation, cf. article 15(3). The PTC shall *inter alia* consider whether the case appears to fall ‘within the jurisdiction of the Court’, cf. article 15(4). In regard to the Palestine situation, the PTC may question the Prosecutor’s determination that Palestine is as a State under international law. The PTC could take the position that the Prosecutor should have examined Palestinian statehood more thoroughly and that Palestine’s competence to ratify treaties and the resolution of the General Assembly are not sufficient factors to confirm that Palestine is a State. The PTC may determine that the Court does not have jurisdiction over the particular situation because Palestine did not fulfil the requirements for lodging declarations pursuant to article 12(3).

Moreover, the PTC could view the issue of Palestinian territory differently than the Prosecutor and find that the borders of Palestine are undefined and thus, the Court would be prevented from exercising jurisdiction over this territory. The PTC may take the position that defining borders is not a task for the Court, but rather an issue that must be settled through a final agreement between Israel and Palestine.

3.3. Referral by the Security Council

Pursuant to article 13b) the Court’s jurisdiction may be initiated if a ‘situation in which one or more of [article 5] crimes appears to have been committed is referred to the Prosecutor by the Security Council.’ As recalled (section 2.3), the Council may refer any situation to the Court, also those that concern non-state entities. Thus, irrespective of how one regards the issue of Palestinian statehood, there is no doubt that the Council has the power to refer the situation in Palestine to the ICC. So far, this has not been done.

In addition to the Council’s competence elaborated upon in section 2.3, the Council has the power to defer an ICC investigation or prosecution, cf. article 16. A deferral entails that the Council postpones the particular ICC case. If the Council decides so, the Court will not be empowered to commence or proceed with its legal activities for

a period of 12 months. This rule was adopted because the ‘pursuit of justice must sometimes give way for sensitive political negotiations.’¹⁴⁹ Victor Kattan states that

[i]t could be argued before the Security Council that the demands for peace in the Middle East outweigh the demands of justice and that involving the ICC at a critical juncture of the Israel-Palestine dispute will diminish the prospects of peace.¹⁵⁰

Similar to the ‘interests of justice’ assessment under article 53, it could here be considered that peace in the Middle East stands a better chance if an ICC investigation and potential prosecutions are not initiated at this point. Israel and the United States would probably argue along these lines. Thus, as expressed by William A. Schabas, it is not difficult to envision such deferrals being used for political purposes and the provision has therefore been subject to discussion.¹⁵¹

The five permanent Members of the Security Council would have to agree on deferring the Palestine situation. One of these five could potentially veto such a resolution and thereby block the deferral. This would enable the Court to proceed with its investigation into alleged crimes committed in Palestine.

4. Conclusion

This thesis presented the following research question: ‘How Can the International Criminal Court Exercise Jurisdiction in the Occupied Palestinian Territory?’

Indeed, there are several options for ICC proceedings with regard to the Palestinian territory. First, and probably most important, Palestine can accede to the Rome Statute because it does indeed constitute a ‘State’ under international law. This thesis has found that even some entities, which do not fulfil the international law criteria on statehood, could join the Statute as well, provided that these entities possess the

¹⁴⁹ *Supra* 115.

¹⁵⁰ *Ibid.*

¹⁵¹ *Supra* 11, pp. 182-186.

capacity to ratify treaties and that they are accorded 'State' status in the UN system, such as the Holy See. Coherent international practice is desirable and thus the understanding of statehood in the UN system should be equivalent to the understanding under the Rome Statute.

This thesis concludes that the 2009 Palestinian declaration does not possess any legal effects as the 2012 decision of the Prosecutor is seen as a formal rejection of the declaration. The 2009 declaration appears to have been premature due to the lack of clarification on Palestinian statehood at that time. However, as the issue of Palestinian statehood has been clarified over the last couple of years, Palestine could lodge a new article 12(3) declaration, even after it accedes to the Statute. As the Statute is interpreted as endorsing such declarations with retroactive effect, Palestine can provide the Court with jurisdiction, at least from 29 November 2012 onwards.

The question of whether Palestine can provide the Court with jurisdiction dating back to the Statute's entry into force, 1 July 2002, does not have an absolute answer, but the Statute's objective of ending impunity is best served if one adopts the approach that a new State may also provide jurisdiction over crimes committed before it attained statehood. For Palestine this would entail that the Court could exercise jurisdiction over the episodes of hostilities between Israel and Palestinians in Gaza and also over the violations of international law¹⁵² in the West Bank dating back to 1 July 2002.

Accession to the Rome Statute would undoubtedly be the easiest way for Palestine to engage the Court. As a State referral of the Palestine situation by Palestine itself would not be subject to authorisation by the PTC, another hurdle on Palestine's path to the ICC would be removed. Instead, if Palestine refers the situation, it may use the PTC as a tool for judicial review of the Prosecutor's decision if she decides not to initiate an investigation. Palestine should carefully assess this advantage when it considers the next step towards engaging the ICC.

¹⁵² Assuming that these violations fall within the Court's jurisdiction *ratione materiae*, cf. article 5.

John Dugard, amongst others, has criticised the Court for taking action in relation to several African countries while, at the same time, not investigate alleged crimes committed during the wars between Israel and Palestinians in Gaza.¹⁵³ Dugard is of the opinion that the ICC has jurisdiction over Palestine as the situation stands today. This thesis has however concluded that the 2009 Palestinian declaration does not provide the Court with jurisdiction over Palestine and thus an ICC investigation depends on Palestine either acceding to the Statute or lodging a new article 12(3) declaration. As much as we all want to see accountability for the alleged crimes committed in Palestine, accountability must have a legal basis. The legislation of the ICC does allow for such proceedings, but only if Palestine provides the required jurisdiction.

That the ICC does not have jurisdiction without further action by the Palestinians, seems to be the correct conclusion, also in a *de lege ferenda* perspective. Providing the Court with universal jurisdiction could be desirable, but a more pragmatic approach to this issue is necessary. The international community is governed by more than law alone and politics often speak louder. An international criminal court provided with universal jurisdiction would meet a lot of opposition¹⁵⁴ and the Court is dependent upon support by the international community in order to be a functioning and successful institution. The best way to reach its objective of ending impunity for international crimes seems to be to apply the Rome Statute as it stands today. Should the Court be subject to large-scale criticism and opposition, the institution itself would be at risk. No one would benefit from this, especially not the victims of the most heinous crimes.

¹⁵³ John Dugard, 'Palestine and the International Criminal Court – Institutional Failure or Bias?', *Journal of International Criminal Justice*, 11 (2013), 563-570, p. 569.

¹⁵⁴ Such opposition was the reason why universal jurisdiction was not adopted at the Rome Conference. See *supra* 33, pp. 279-283.

Bibliography

Treaties

Charter of the United Nations and Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 892 UNTS 119

Constitution of the United Nations Educational, Scientific and Cultural Organization (Constitution of UNESCO) (entered into force 4 November 1946) 4 UNTS 52

Declaration of Principles on Interim Self-Government Arrangements (Israel and the Palestine Liberation Organization) (signed 13 September 1993)

European Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force 3 September 1953) ETS No. 5

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 973

Interim Agreement on the West Bank and the Gaza Strip ('Oslo II') (Israel and the Palestine Liberation Organization) (signed 28 September 1995)

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

Lateran Treaty (Holy See and Italy) (signed 11 February 1929)

Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 3 LNTS 881

Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 38544

Vienna Convention on the Law of Treaties (adopted 22 May 1969, entered into force 27 January 1980) 1155 UNTS 18232

Rules of Procedure and Evidence

Rules of Procedure and Evidence of the International Criminal Court, Second edition (2013)

Resolutions by the UN Security Council

U.N. Security Council. (S/1967/242). 22 November 1967.

U.N. Security Council. (S/1971/298). 25 September 1971.

U.N. Security Council. (S/1980/478). 20 August 1980.

Resolutions by the UN General Assembly

U.N. General Assembly, 67th Session. *Status of Palestine in the United Nations*, (A/67/19). 29 November 2012.

Jurisprudence

International Criminal Court

Appeals Chamber

Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I on jurisdiction and stay of the proceedings [2012] ICC No: ICC-02/11-01/11 OA 2

Pre-Trial Chamber

Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire, Pre-Trial Chamber III [2011] No.: ICC-02/11

Warrant of Arrest for Joseph Kony Issued on 8 July 2006 as Amended on 27 September 2005, Pre-Trial Chamber II [2005] No.: ICC-02/04-01/05

International Court of Justice

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136

Other Documents of the International Criminal Court

Presidency

Decision Assigning the Situation in Uganda to the Pre-Trial Chamber II, Presidency with attached letter from the Prosecutor [2004] ICC-02/04

Office of the Prosecutor

Situation in Palestine [2012]

Situation in Palestine Summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements [2010]

Press Releases

President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC [2004] ICC-20040129-44

Documents Submitted to the Court

Request for the initiation of an investigation, submitted by Bar Human Rights Committee of England and Wales [2014]

Declaration recognizing the Jurisdiction of the International Criminal Court, submitted by Government of Palestine [2009]

Position Paper on Issues Arising from the Palestinian Authority's Submission of a Declaration to the Prosecutor of the International Criminal Court under Article 12(3) of the Rome Statute, submitted by Al-Haq [2009]

Literature

Textbooks

Bassiouni, M. Cherif, *The Legislative History of the International Criminal Court: Introduction, Analysis and Integrated Text*, Vol. I, (Ardsley, NY: Transnational, 2005).

Cassese, Antonio, Paola Gaeta and John R.W.D. Jones, *The Rome Statute of the International Criminal Court: A Commentary*, (Oxford University Press 2002).

Dixon, Martin, *Textbook on International Law*, Seventh edition (Oxford University Press 2013).

Schabas, William A., *An Introduction to the International Criminal Court*, Fourth edition (Cambridge University Press 2011).

Schabas, William A., *The International Criminal Court: A Commentary on the Rome Statute*, (Oxford University Press 2010).

Triffterer, Otto, *Commentary on the Rome Statute of the International Criminal Court* (Nomos Verlagsgesellschaft, Baden-Baden 1999).

Journal Articles

Dugard, John, 'Palestine and the International Criminal Court – Institutional Failure or Bias?', *Journal of International Criminal Justice*, 11 (2013), 563-570.

Kontorovich, Eugene, 'Israel/Palestine – The ICC's Uncharted Territory', *Journal of International Criminal Justice*, 11 (2013), 979-999.

Pellet, Alain, 'The Palestinian Declaration and the Jurisdiction of the International Criminal Court', *Journal of International Criminal Justice*, 8 (2010), 981-999.

Randall, Kenneth C., 'Universal jurisdiction under international law', *Texas Law Review*, No. 66 (1988), 785-788.

Shany, Yuval, 'In Defence of Functional Interpretation of Article 12(3) of the Rome Statute', *Journal of International Criminal Justice*, 8 (2010), 329-343.

Shaw, Malcolm N., 'The Article 12(3) Declaration of the Palestinian Authority, the International Criminal Court and International Law', *Journal of International Criminal Justice*, 9 (2011), 301-324.

Zimmermann, Andreas, 'Palestine and the International Criminal Court *Quo Vadis?*', *Journal of International Criminal Justice*, 11 (2013), 303-329.

Blogs, Think Tanks

EJIL: Talk!

(<http://www.ejiltalk.org>)

Ambos, Kai, 'Palestine, UN Non-Member Observer Status and ICC Jurisdiction' (2014).

Azarov, Valentina and Chantal Meloni, 'Disentangling the Knots: A Comment on Ambos' 'Palestine, 'Non-Member Observer' Status and ICC Jurisdiction'' (2014).

European Council on Foreign Relations

(<http://www.ecfr.eu>)

Kattan, Victor, 'Palestine and the International Criminal Court' (2014).

Open Society Foundations

(<http://www.opensocietyfoundations.org>)

Solomon, Matthew, 'Palestine's ICC Option and the Politics of Peace' (2013).

Opinio Juris

(<http://opiniojuris.org>)

Heller, Kevin Jon, 'Final Thoughts on the Bar HR Committee's Letter' (2014).

Heller, Kevin Jon, 'Three Thoughts on the OTP's Rejection of Jurisdiction over the Situation in Palestine' (2014).

Meloni, Chantal, 'Palestine and the ICC: Some Notes on Why It Is Not a Closed Chapter' (2012).

Wills, Alexander, 'The ICC's Retroactive Jurisdiction, Revisited' (2013).

PhD Studies in Human Rights

(<http://humanrightsdoctorate.blogspot.no>)

Schabas, William A., 'Out of Africa. Israel is Referred to the International Criminal Court' (2013).

Schabas, William A., 'Palestine Should Accede to the Rome Statute' (2011).

Reports

Families Under the Rubble – Israeli Attacks on Inhabited Homes, Amnesty International (2014).

Israel/Gaza Operation 'Cast Lead': 22 Days of Death and Destruction, Amnesty International (2009).

Report of the United Nations Fact Finding Mission on the Gaza Conflict – Human Rights in Palestine and Other Arab Territories (2009) A/HRC/12/48.

Newspaper Articles and Press Releases

all accessed 9 December 2014

Al-Haq, 'Voices From the Gaza Strip: A Year After Operation "Pillar of Defense"' *Al-HAQ* (21 November 2013) <<http://www.alhaq.org/documentation/weekly-focuses/757-voices-from-the-gaza-strip-a-year-after-operation-pillar-of-defense>>

Al Jazeera, 'UN accepts Palestinian treaty applications' *Al Jazeera* (11 April 2014) <<http://www.aljazeera.com/news/middleeast/2014/04/un-accepts-palestinian-treaty-applications-2014410225222866731.html>>

Aronson G, 'Prospects for a Gaza seaport grow' *Al Jazeera America* (15 August 2014) <<http://america.aljazeera.com/opinions/2014/8/gaza-seaport-israelegyptpalestineinternationaltrade.html>>

Bensouda F, 'the truth about the ICC and Gaza' *The Guardian* (29 August 2014) <<http://www.theguardian.com/commentisfree/2014/aug/29/icc-gaza-hague-court-investigate-war-crimes-palestine>>

Black I, 'Gaza's fragile ceasefire threatened by border clashes as Hamas weakens' *The Guardian* (Gaza City, 21 February 2014) <<http://www.theguardian.com/world/2014/feb/21/gaza-ceasefire-threatened-border-clashes-hamas-weak-palestinian>>

B'Tselem, 'B'Tselem's findings: Harm to civilians significantly higher in second half of Operation Pillar of Defense' *B'Tselem* (8 May 2013) <http://www.btselem.org/press_releases/20130509_pillar_of_defense_report>

B'Tselem, 'B'Tselem publishes complete fatality figures from Operation Cast Lead' *B'Tselem* (9 September 2009) <http://www.btselem.org/press_releases/20090909>

Hartman B, '50 days of Israel's Gaza operation, Protective Edge – by the numbers' *The Jerusalem Post* (28 August 2014) <<http://www.jpost.com/Operation-Protective-Edge/50-days-of-Israel's-Gaza-operation-Protective-Edge-by-the-numbers-372574>>

Kate, 'Since the beginning of 'Operation Protective Edge' in Gaza, Israeli forces have also injured at least 2,139 Palestinians in the West Bank' *Mondoweiss* (25 August 2014) <<http://mondoweiss.net/2014/08/operation-protective-palestinians>>

Robertson G, 'Gaza: how international law could work to punish war crimes' *The Guardian* (1 August 2014) <<http://www.theguardian.com/commentisfree/2014/aug/01/gaza-international-law-war-crimes-security-council>>

Tharoor I, 'Map: The countries that recognize Palestine as a state' *The Washington Post* (7 November 2014) <<http://www.washingtonpost.com/blogs/worldviews/wp/2014/11/07/map-the-countries-that-recognize-palestine-as-a-state/>>

The Guardian, ' Hamas declares support for Palestinian bid to join international criminal court' *The Guardian* (23 August 2014) <<http://www.theguardian.com/world/2014/aug/23/hamas-back-palestinian-bid-international-criminal-court>>

Ynetnews, 'Operation Cast Lead (2008)' *Ynetnews* (29 December 2008) <<http://www.ynetnews.com/articles/0,7340,L-3646673,00.html>>

United Nations Resources

all accessed 8 December 2014

United Nations: <http://www.un.org/en/members/index.shtml#i> and
<http://www.un.org/en/members/nonmembers.shtml>

UNESCO: <http://whc.unesco.org/en/statesparties/>

United Nations High Commissioner for Human Rights:
<http://unispal.un.org/UNISPAL.NSF/0/262AC5B8C25B364585257CCF006C010D>

United Nations Office for the Coordination of Humanitarian Affairs:
http://www.ochaopt.org/documents/ochaopt_atlas_opt_general_december2011.pdf
and
http://www.ochaopt.org/documents/ocha_opt_area_c_factsheet_january_2013_english.pdf

The Permanent Observer Mission of the Holy See to the United Nations:
<http://www.holyseemission.org/about/treaties-and-conventions.aspx>

The Permanent Observer Mission of the State of Palestine to the United Nations:
<http://palestineun.org/membership-application/> and
<http://palestineun.org/status-of-palestine-at-the-united-nations/>

Other Resources

all accessed 8 December 2014

Dictionary: <http://dictionary.reference.com/browse/treaty>

Gotquestions: <http://www.gotquestions.org/Holy-See.html>

Human Rights Watch: <http://www.hrw.org/news/2014/05/08/palestine-go-international-criminal-court>

ICC, http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/registry/Pages/declarations.aspx

Jewish Virtual Library:
<https://www.jewishvirtuallibrary.org/jsource/Peace/interim.html>

Parliamentarians for Global Action:
<http://www.pgaction.org/campaigns/icc/europe/vatican-city.html>

The International Justice Project:
<http://www.internationaljusticeproject.org/juvJusCogens.cfm>

War Child: <http://www.warchild.org.uk/issues/the-lords-resistance-army>