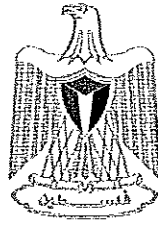


*Permanent Observer Mission
of the State of Palestine
to the United Nations*



البعثة المراقبة الدائمة
لدولة فلسطين
لدى الأمم المتحدة

Statement by Mr. Majed Banya, Director of the International Law and Treaties Department at the Ministry of Foreign Affairs of the State of Palestine, at the 16th session of the Assembly of States Parties, 6 December 2017

Mr. Vice-President,
Members of the Assembly,
Representatives of civil society,

Allow me at the outset to thank President Sidiki Kaba for his outstanding leadership and to wish all success to his successor and assure President O-Gon Kwon of Palestine's full support and cooperation. We also express our appreciation to the Court and its officials for their work and congratulate newly elected judges.

Mr Vice-President,

International Criminal Law was born in reaction to the unspeakable horrors humanity endured during the Second World War, including the Holocaust. The ICC is the embodiment of a pledge taken then and never fully honoured: "Never again".

The ICC is a manifestation of our shared belief that there are crimes for which there can be no immunity and a common responsibility of all humanity to hold those who commit them accountable if their States are unwilling or unable to do so. We are States Parties to the ICC because we believe that impunity can only foster criminality.

These beliefs cannot tolerate nor suffer double standards, selectivity or exceptions. Values are slogans until they are put to the test. And the Assembly and the Court may have found in the situation in Palestine the most important test of all, a test they cannot afford to fail.

Palestine has the utmost respect for the independence of the Court. It is however clear that all Courts have an obligation to ensure justice is neither delayed nor denied. The ICC has a heightened responsibility in situations where crimes are ongoing so as to prevent their recurrence.

In the last three years where the preliminary examination in the situation in Palestine has been underway, Israel has intensified the pace of its crimes notably in relation to settlement activities. The fact that settlements and their associated regime constitute crimes falling under the jurisdiction of the Court is beyond any reasonable doubt. The gravity of these crimes is well established. The perpetrators of these crimes have confessed to their commission openly and publicly, and have done so repeatedly, in blatant contempt for the international community and the Court. Israeli courts have considered State-initiated settlements non-justiciable thus demonstrating their unwillingness to prosecute crimes related to these settlement activities. These crimes are among the most documented in recent history with an acute detrimental impact on international peace and security, and are linked to both colonialism and

Apartheid, two of the most condemned phenomena under international law, including international criminal law.

It is therefore impossible not to ask how come three years of preliminary examination have not suffice to determine that such crimes, committed in a widespread and systematic manner, indeed warrant the opening of investigations.

The State of Palestine will remain undeterred in pursuing legal and peaceful means to end impunity and further the rule of international law, despite threats and punitive measures against the Palestine Liberation Organization and civil society organizations. We appeal to all States Parties to show solidarity and support for a fellow State Party confronted with such attempts to intimidate it. Palestine has an international obligation as a State Party to cooperate with the Court, and will continue cooperating with the Prosecutor and her office, and has a national obligation to explore all avenues under international law to uphold the rights of the Palestinian people and achieve justice and redress for victims.

Palestine joined the ICC seeking justice not vengeance. This decision is a reflection of its belief, consistent with the Rome Statute, that ending impunity is necessary to end crimes but also to achieve just and lasting peace. It is appalling and absurd that some may claim that the problem is not the commission of crimes but rather trying to hold perpetrators of such crimes accountable.

Mr Vice-President,

Preserving and empowering the Court is of the utmost importance to ensure protection for future generations. We all have a responsibility to address the discrepancy between the vital mandate of the ICC and its too limited resources. We should also, while defending the Court, not be deaf to criticism in relation to the shortcomings of the Court. Addressing them will only enhance the Court's ability to perform its mandate, its credibility and its authority. This is vital to advance its universality.

Mr Vice-President,

The State of Palestine had the honour to be the 30th State to ratify the amendments on the crime of aggression, thus helping fulfill one of the two criteria for the activation of the Court's jurisdiction over the crime. 20 years after the adoption of the Rome Statute and 7 years after the adoption of the Kampala compromise, States Parties will have the opportunity and the responsibility to activate the Court's jurisdiction over the crime of aggression. The State of Palestine's view was that the crime of aggression was as important as the other categories of crimes that appeared in the Rome Statute at its adoption, and therefore was in favor of applying the same jurisdictional regime as for the other three categories of crimes and which allows the Court to exercise jurisdiction over crimes committed over the territory of a State Party regardless of the nationality of the perpetrators.

The State of Palestine was not part of the Kampala compromise and yet accepts to be bound by it, while regretting that this compromise gave immunity to nationals of non-States Parties committing the crime of aggression, and allowed States Parties, by a simple declaration, to extend the same immunity to their own nationals, severely restricting the jurisdiction of the Court over this most serious crime. Now some States plead that even such a declaration is not necessary and their nationals would have immunity from prosecution in front of the ICC even if they commit the crime of aggression on the territory of a State that has ratified the Kampala amendments, and explain that the declaration can be used by States which

have ratified the amendments to provide immunity to their own nationals. This would be the most restrictive regime ever designed for any crime falling under the jurisdiction of the Court.

This interpretation contradicts the clear formulation of article 15 bis paragraph 4 of the Rome Statute which states that "The Court may, in accordance with article 12 (not article 121 paragraph 5), exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a State Party, unless that State Party has previously declared that it does not accept such jurisdiction". The Court will have to rely on this paragraph when exercising its jurisdiction over a crime of aggression committed on the territory of a ratifying State, and not rely on resolutions of the Assembly of States Parties. Many States here have been victim of crimes of aggression, and they know the horrific impact of such a crime. States here are also members of the United Nations and must uphold its Charter and their commitment, in order to maintain international peace and security, to take effective collective measures for the suppression of acts of aggression, as stipulated in article 1 of the Charter. The jurisdictional regime should reflect not contradict this commitment.

The State Parties of the ICC have a duty not to delay any further granting jurisdiction to the Court over the worst form of illegal use of force, the crime of aggression. Such activation of the Court's jurisdiction can not be conditioned by formulating a jurisdictional regime that would in fact prevent holding anyone accountable for the commission of this crime. We are ready to work for a consensual activation, including by accommodating concerns of certain States, but not based on a jurisdictional regime that would effectively deprive ratifying States of any protection nor one that would send the signal that the States Parties of the ICC refuse the jurisdiction of the Court over their nationals without their prior consent, while the nationals of non-States parties can be prosecuted for war crimes, crimes against humanity and genocide without the consent of their State to the jurisdiction of the Court. Territorial jurisdiction is a pillar of international criminal law, one that should not be undermined at this historic occasion.

Finally, the State of Palestine expresses its solidarity with all victims of atrocities and pledges to support the Court in its endeavor to ensure justice for these victims and safeguard others from enduring such atrocities. It will do so to ensure that one day the pledge we have taken "Never again" is a reality for all human beings across the globe.

Thank you Mr. Vice-President.