



THE ADMISSIBILITY AND LEGAL EFFECTS OF THE PALESTINIAN DECLARATION ACCEPTING THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT

On 5 January 2015, the Registrar of the International Criminal Court (ICC) announced that the Palestinian authorities had lodged a declaration accepting the jurisdiction of the Court on the crimes allegedly committed “in the occupied Palestinian territory, including East Jerusalem, since 13 June 2014”.

By this declaration, the Palestinian authorities have for the second time invested the Office of the Prosecutor (OTP) of the ICC with the issue of deciding on the Palestinian statehood. In fact, on 21 January 2009, the Government of Palestine had already accepted the jurisdiction of the ICC on the crimes allegedly committed “on the territory of Palestine since 1 July 2002”. In that occasion, at the end of a three-year examination, the OTP had decided that Palestine had no right to confer jurisdiction to the ICC since the international community had not (yet) granted it the status of “State”.

On 16 January 2015, the ICC Prosecutor announced the opening of a preliminary examination. Since on 29 November 2012 the UN General Assembly had granted Palestine the status of “non-member State”, in fact, President Abbas was authorized to lodge a declaration under Article 12(3) of the Rome Statute. Having established that Palestine can now be qualified as a State, the OTP will now have to assess the legal effects of the declaration, which will be analysed in the first part of this paper.

Firstly, the OTP will be called to establish if the Palestinian authorities had the right to circumscribe the ICC jurisdiction to the “occupied Palestinian territory” and to the crimes allegedly committed “since 13 June 2014”.

By accepting the limitations provided in the declaration, the OTP would not only define the Court’s jurisdiction *ratione temporis* and *ratione loci*, but also *ratione materiae*. In particular, if it considered the West Bank as an “occupied territory”, the OTP would be called to ascertain if Israeli settlements represent an international crime under Article 8(2)(b)(viii) of the Rome Statute.

On 6 January 2015, the UN Secretary General confirmed that Palestine had deposited the instrument of accession to the Rome Statute. This decision followed a failed attempt to make the UNSC pass a resolution which endorsed the two-State solution and the Palestinian bid to the UN membership, and called Israeli authorities to stop the settlements and respect the 1967 borders.

Having considered this background, in the final part of the paper it will be argued that the involvement of the ICC could be seen as part of a strategy deployed by the Palestinian authorities with the aim of reaching a peaceful agreement with Israel, based on the recognition of the Palestinian statehood and full UN membership. In this spirit, an ICC

investigation on Palestine could thus represent a tool of lawfare, “wielded” against Israel to gain political leverage.