

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

*No.: ICC-01/18*

**Date: 16 March 2020**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Péter Kovács, Presiding Judge  
Judge Marc Pierre Perrin de Brichambaut  
Judge Reine Alapini-Gansou

**SITUATION IN PALESTINE**

**Public Document**

**Submissions on behalf of child victims and their families pursuant to article 19(3)  
of the statute**

**Source:** Defense for Children International - Palestine

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

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## INTRODUCTION

1. The Office of the Prosecutor of the International Criminal Court (“Prosecution”) filed an exceptional request seeking a ruling on the question of whether the International Criminal Court (“Court”) may exercise its jurisdiction over war crimes that have been or are being committed in the West Bank, including East Jerusalem, and Gaza.<sup>1</sup>

2. These submissions are filed on behalf of Palestinian children unlawfully killed by Israeli forces in the West Bank, including East Jerusalem, and Gaza, and their immediate family members (“the victims”), pursuant to article 19(3) or, alternatively, article 68(3) of the Rome Statute. The victims request Pre-Trial Chamber I (the “Chamber”) to make a positive ruling regarding its jurisdiction under article 12(2)(a) of the Statute because Palestine is a state, and its territory encompasses areas occupied by Israel in 1967.

3. The victims support and reaffirm the legal conclusions detailed in the Prosecution’s Request Pursuant to Article 19(3) for a Ruling on the Court’s Territorial Jurisdiction in Palestine (the “Request”), namely that the Court’s territorial jurisdiction extends to the Palestinian territory occupied by Israel during the Six-Day War in June 1967, specifically the West Bank, including East Jerusalem, and Gaza; and this territory has been referred to as the “Occupied Palestinian Territory” and is delimited by the demarcation line agreed to in the 1949 Armistices, which is known as the ‘Green Line.’<sup>2</sup>

4. The victims reaffirm that the Palestinian territory occupied by Israel during the Six-Day War in June 1967, specifically the West Bank, including East Jerusalem, and Gaza, continues to be referred to as the “Occupied Palestinian Territory.”

5. The State of Palestine acceded to the ICC Statute on 2 January 2015 and lodged a declaration under Article 12(3) of the ICC Statute on 1 January 2015 accepting jurisdiction of the Court over alleged crimes committed “in the occupied Palestinian

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<sup>1</sup> Prosecutor’s request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, ICC-01/18, 22 January 2020.

<sup>2</sup> *Id.* at ¶ 3.

territory, including East Jerusalem, since June 13, 2014.”<sup>3</sup> On 1 April 2015, Palestine became the 123rd State Party to the ICC.<sup>4</sup> On 22 May 2018, the State of Palestine referred the situation in Palestine for investigation to the ICC and requested the Prosecutor “to investigate, in accordance with the temporal jurisdiction of the Court, past, ongoing and future crimes within the court's jurisdiction, committed in all parts of the territory of the State of Palestine.”<sup>5</sup>

## SUBMISSIONS

### I. RELEVANT CONTEXTUAL AND FACTUAL BACKGROUND

6. Israel’s 52-year belligerent military occupation of the West Bank, including East Jerusalem, and Gaza is characterized by widespread, systematic, and institutionalized human rights violations and grave breaches of international humanitarian law against Palestinian civilians, including children. Israeli occupation policies and practices expressly deny Palestinians living under Israeli control fundamental human rights guarantees and protections, including the right of self-determination, the right to equality and non-discrimination, and the right to life, liberty and security.

7. The Occupied Palestinian Territory, comprised of the West Bank, including East Jerusalem, and Gaza, has a population of nearly 4.8 million, including approximately 2.1 million persons under the age of 18 years, comprising 45 percent of the total population.<sup>6</sup> This incredibly young Palestinian population has grown up in the shadow of failed negotiations and lives under an oppressive Israeli military

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<sup>3</sup> Declaration Accepting the Jurisdiction of the International Criminal Court, Mahmoud Abbas, President of the State of Palestine, 31 Dec. 2014, [http://www.icc-cpi.int/iccdocs/PIDS/press/Palestine\\_A\\_12-3.pdf](http://www.icc-cpi.int/iccdocs/PIDS/press/Palestine_A_12-3.pdf). On 6 January 2015, the United Nations Secretary General, acting in his capacity as depositary for the Rome Statute, accepted Palestine’s accession to the Rome Statute. United Nations, Depository Notification, Ref:

C.N.13.2015.TREATIES-XVIII.10, 6 Jan. 2015, <https://treaties.un.org/doc/Publication/CN/2015/CN.13.2015-Eng.pdf>. On 7 January, the Registrar of the ICC informed President Abbas of Palestine of his acceptance of the Article 12(3) declaration. Letter from Herman von Hebel (Registrar) to Mahmoud Abbas President of the State of Palestine, Ref: 2015/IOR/3496/HvH, 7 Jan. 2015, <http://www.icc-cpi.int/iccdocs/PIDS/press/150107-Registrar-Letter-to-HE-President-Abbas-regarding-Palestine-Art-12-3--Declaration.pdf>

<sup>4</sup> International Criminal Court, *ICC welcomes Palestine as a new State Party*, 1 April 2015, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1103>.

<sup>5</sup> See ICC, Statement by ICC Prosecutor, Mrs. Fatou Bensouda, on the referral submitted by Palestine, 22 May 2018, <https://www.icc-cpi.int/Pages/item.aspx?name=180522-otp-stat>.

<sup>6</sup> Palestinian Central Bureau of Statistics, *Child Statistics: Main Indicators*, [http://www.pcbs.gov.ps/Portals/\\_Rainbow/Documents/main%20indicator%20E.htm](http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/main%20indicator%20E.htm) (last accessed 12 March 2020).

occupation that has no end in sight. Their futures have been stifled and decimated by systemic discrimination, persistent settlement expansion, closure, and repeated Israeli military offensives.

8. In Gaza, Israel's now 12-year near-total closure has largely cut Gaza off from the rest of the world and prevented or acutely limited a wide range of goods and services from reaching Palestinians in Gaza. It has created and perpetuated an entirely human-made humanitarian disaster with grave consequences for approximately 1.9 million Palestinians living in what is one of the most densely populated areas in the world where Palestinians aged 0–14 comprise at least 41.8 percent of the population.<sup>7</sup>

9. Israel's closure policy toward Gaza has a disproportionate impact on the civilian population and has decimated Gaza's economy. Gaza now has one of the highest unemployment rates in the world at 48.2 percent.<sup>8</sup> With their freedom of movement denied, Palestinians in Gaza continue to slip deeper into poverty with 53 percent of people living in poverty, an increase by more than 14 percent since the last time poverty was assessed in 2011.<sup>9</sup> This is despite the fact that 80 percent of the population receives humanitarian assistance.<sup>10</sup> Without adequate food, health care, education, or safe spaces, children in Gaza are growing up without a childhood.

10. Israeli forces are rarely held accountable for grave violations against Palestinian children, including unlawful killings and excessive use of force. Since 2000, Israeli forces or settlers have killed at least 2,115 Palestinian children in the occupied West

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<sup>7</sup> Population density of the Gaza Strip is 5,204 persons/km<sup>2</sup>. Palestinian Central Bureau of Statistics (PCBS), *On the Occasion of the Int'l Population Day 11/7/2018*, 1 (11 July 2018), [http://www.pcbs.gov.ps/portals/\\_pcbs/PressRelease/Press\\_En\\_IntPopDay2018E.pdf](http://www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_IntPopDay2018E.pdf).

<sup>8</sup> UNICEF, *State of Palestine Humanitarian Situation Report* (July – Sept. 2018), [https://www.unicef.org/appeals/files/UNICEF\\_State\\_of\\_Palestine\\_Humanitarian\\_Situation\\_Report\\_Sept\\_2018.pdf](https://www.unicef.org/appeals/files/UNICEF_State_of_Palestine_Humanitarian_Situation_Report_Sept_2018.pdf) (“UNICEF SitRep July-Sept. 2018”).

<sup>9</sup> U.N. Office for the Coordination of Humanitarian Affairs (OCHA), *Humanitarian Bulletin Occupied Palestinian Territory*, 8 (May 2018), [https://www.ochaopt.org/sites/default/files/hummonitor\\_may\\_04\\_06\\_2018\\_final.pdf](https://www.ochaopt.org/sites/default/files/hummonitor_may_04_06_2018_final.pdf) (“OCHA Humanitarian Bulletin May 2018”).

<sup>10</sup> UNICEF SitRep July-Sept. 2018, *supra* note 8.

Bank, including East Jerusalem, and the Gaza Strip, according to documentation collected by Defense for Children International - Palestine (DCIP).<sup>11</sup>

11. Between January 2014 and December 2019, Israeli forces and settlers killed at least 705 Palestinian children in the West Bank, including East Jerusalem, and Gaza, according to evidence collected by DCIP.

12. While the majority of these deaths occurred during the summer 2014 Israeli military offensive on Gaza, known as Operation Protective Edge, at least 148 Palestinian children were killed outside of this military assault with live ammunition or crowd-control weapons across the Occupied Palestinian Territory, based on evidence collected by DCIP.

13. These submissions set out additional detail regarding (i) direct attacks on children and indiscriminate attacks on civilian homes, schools, and residential neighborhoods during Israel's military offensive during July and August 2014, known as "Operation Protective Edge"; (ii) the increasing use of unjustified intentional lethal force against Palestinian children since 2014; and (iii) unlawful killing and use of excessive force by Israeli forces against Palestinian children in the context of "Great March of Return" demonstrations in the Gaza Strip beginning on 30 March 2018, material that is relevant to understanding the nature of the crimes and therefore to the jurisdictional issue which is before the Court.

#### **A. Killing and maiming of children during Operation Protective Edge**

14. The victims include children killed in direct attacks on civilians and indiscriminate or disproportionate attacks carried out by Israeli forces during the 50-day Israel military offensive on Gaza between 8 July and 26 August 2014. The Israeli military offensive claimed the lives of at least 547 children, according to documentation collected by DCIP.<sup>12</sup>

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<sup>11</sup> Defense for Children International – Palestine, *Distribution of child fatalities by month*, [https://www.dci-palestine.org/child\\_fatalities\\_by\\_month](https://www.dci-palestine.org/child_fatalities_by_month) (last accessed 13 March 2020).

<sup>12</sup> See DEFENSE FOR CHILDREN INTERNATIONAL – PALESTINE (DCIP), *A WAR WAGED ON GAZA'S CHILDREN* (2015),

15. Intensive bombing and shelling in densely populated civilian areas and a large-scale ground invasion caused massive destruction and devastation. Children died at a rate of 11 per day, with many more thousands of children wounded, and approximately 1,000 sustained injuries causing permanent disability.<sup>13</sup>

16. DCIP's investigation into the killing and maiming of Palestinian children during Operation Protective Edge found overwhelming evidence of direct or indiscriminate and disproportionate attacks carried out by Israeli forces, which amount to war crimes.<sup>14</sup>

17. Under international humanitarian law, civilians, including children, must never be targeted, and civilian structures and infrastructure are presumed not to be lawful targets. Despite this, Israeli forces launched numerous unlawful attacks against civilians, civilian homes, and schools where there was no lawful military object reported in the area at the time of attack.<sup>15</sup>

18. During the military offensive, Israeli officials attempted to justify attacks on civilian homes by stating that the intended target was an individual affiliated with Hamas or another Palestinian armed group who was present in the home at the time of the attack.<sup>16</sup>

19. Under International law, the mere alleged presence of a member of a Palestinian armed group is an insufficient justification for an attack on a family home. A civilian home that is in some way deemed by Israeli forces to be "affiliated" with Hamas or another Palestinian armed group does not provide in itself legal justification under international humanitarian law to direct an attack against that object.<sup>17</sup>

20. Even in cases where Israeli forces may be lawfully targeting a legitimate military object, the attack must be in accordance with the principle of proportionality.

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[https://d3n8a8pro7vhmx.cloudfront.net/dcipalestine/pages/530/attachments/original/1436292897/OPE\\_A\\_War\\_Waged\\_on\\_Children.pdf?1436292897](https://d3n8a8pro7vhmx.cloudfront.net/dcipalestine/pages/530/attachments/original/1436292897/OPE_A_War_Waged_on_Children.pdf?1436292897).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

In short, an otherwise lawful attack can become unlawful if it may be expected to cause incidental loss of civilian life or damage to civilian structures that would be excessive in relation to the direct military advantage.<sup>18</sup>

**Overwhelming force directed at residential and densely populated areas**

21. The vast majority of child fatalities and injuries occurred in the context of intensive Israeli airstrikes and artillery shelling in densely populated residential neighborhoods. Children were often present and sheltering in civilian structures when strikes occurred, usually with their extended families in single apartment blocks. As a result, many families lost multiple members.

22. The most heavily bombarded residential areas included the suburbs of the southern Gaza towns of Khan Younis and Rafah; the eastern neighborhoods of Gaza City, including Shuja'iyya, Zeitoun and Tuffah; and Beit Hanoun, Beit Lahia and Jabalia refugee camp in the north of the Gaza Strip.<sup>19</sup>

23. During the 20 July 2014 assault on the Shuja'iyya neighborhood in eastern Gaza City, Israeli forces reportedly fired 4,800 shells into the neighborhood over a seven-hour period contributing to one of the deadliest days for children during the offensive.<sup>20</sup> Israeli forces killed a total of 59 children throughout Gaza on 20 July, including at least 27 children in Shuja'iyya.<sup>21</sup>

24. In attacks similar to Shuja'iyya, Israeli forces bombarded Rafah in the southern Gaza Strip with intensive shelling and airstrikes on 1 August 2014 following reports that a Palestinian armed group had captured an Israeli soldier. The widespread and disproportionate attacks in Rafah contributed to a single-day death toll of 49 children killed throughout the Gaza Strip on 1 August 2014.<sup>22</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Mark Perry, *Why Israel's Bombardment of Gaza Neighborhood Left US Officers 'Stunned,'* AL JAZEERA, Aug. 27, 2014, <http://america.aljazeera.com/articles/2014/8/26/israel-bombing-stunsusofficers.html>.

<sup>21</sup> See DEFENSE FOR CHILDREN INTERNATIONAL – PALESTINE (DCIP), *A WAR WAGED ON GAZA'S CHILDREN* (2015), [https://d3n8a8pro7vbm.cloudfront.net/dcipalestine/pages/530/attachments/original/1436292897/OPE\\_A\\_War\\_Waged\\_on\\_Children.pdf?1436292897](https://d3n8a8pro7vbm.cloudfront.net/dcipalestine/pages/530/attachments/original/1436292897/OPE_A_War_Waged_on_Children.pdf?1436292897).

<sup>22</sup> *Id.*

*Dahiya doctrine*

25. Israeli military operations during July and August 2014 appeared to be consistent with a stated Israeli military strategy known as the “Dahiya Doctrine,” which involves overwhelming and disproportionate force directed at government and civilian infrastructure and residential neighborhoods associated with armed groups that Israeli officials deem to be hostile regimes or factions.<sup>23</sup>

26. In 2006, following an Israeli assault that inflicted massive destruction on the Dahiya quarter of Beirut during the Israel-Hezbollah war, Israeli military commander Gadi Eisenkot declared, “What happened in the Dahiya quarter of Beirut in 2006 will happen in every village from which Israel is fired on. [...] We will apply disproportionate force on it and cause great damage and destruction there. From our standpoint, these are not civilian villages, they are military bases. [...] This is not a recommendation. This is a plan. And it has been approved.”<sup>24</sup>

27. In 2008, a retired Israeli military commander again asserted the military’s intent “to act immediately, decisively, and with force that is disproportionate to the enemy’s actions and the threat it poses” with an aim “at inflicting damage and meting out punishment to an extent that will demand long and expensive reconstruction processes.”<sup>25</sup>

28. Between December 2008 and January 2009 during Operation Cast Lead, Israeli attacks matched the stated objective of the Dahiya doctrine as Israel forces meted out disproportionate force in Gaza to inflict extensive damage to civilian buildings, neighborhoods and infrastructure. Israeli forces killed 353 children in the assault, and the United Nations Fact-Finding Mission on the Gaza Conflict, established to investigate international law violations during the offensive, found Israeli military operations consistent with this doctrine.<sup>26</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, ¶ 1195, U.N. Doc. A/HRC/12/48 (Sep. 25, 2009), <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>.

<sup>25</sup> *Id.* at ¶ 1197.

<sup>26</sup> *Id.* at ¶ 1195.

29. Just as in previous Israeli military offensives on Gaza, Operation Protective Edge was characterized by Israeli attacks directed at government and civilian infrastructure, residential neighborhoods, and individual civilians.

30. While the doctrine attempts to justify the use of indiscriminate and disproportionate attacks against civilians and civilian structures, it exhibits a complete disregard for international law and results in indiscriminate attacks and disproportionate force that constitute war crimes.<sup>27</sup>

### *Attacks on Shuja'iyya neighborhood*

31. DCIP's investigation into attacks on the Gaza City neighborhood of Shuja'iyya found that Israeli forces carried out indiscriminate attacks against civilians, killing at least 27 children and injuring 29 others.<sup>28</sup>

32. On the evening of 19 July 2014, Israeli forces launched an air and ground assault on Shuja'iyya, which was met with fierce resistance from Palestinian armed groups. The assault resulted in one of the deadliest days of the Israeli military offensive.

33. Israeli tanks, artillery, warplanes and aerial drones bombarded areas near Nazaz, Mansoura and Shaaf streets into the early hours of 20 July 2014. During a single seven-hour period, Israeli forces fired 4,800 artillery shells into the neighborhood. In two separate incidents, Israeli warplanes bombed and destroyed two civilian homes, belonging to the Helou and Hayyeh families, killing seven children and wounding two others. The bombing also damaged the Dhaher and Skafi family homes, killing four children and wounding six others.<sup>29</sup>

34. Civilians who survived the overnight bombardment attempted to flee at dawn, when shelling appeared to relent. However, children and their families found

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<sup>27</sup> *Id.* at ¶ 62 (stating “A concept known as the Dahiya doctrine emerged then, involving the application of disproportionate force and the causing of great damage and destruction to civilian property and infrastructure, and suffering to civilian populations.”).

<sup>28</sup> See DEFENSE FOR CHILDREN INTERNATIONAL – PALESTINE (DCIP), A WAR WAGED ON GAZA'S CHILDREN (2015), [https://d3n8a8pro7vhm.cloudfront.net/dcipalestine/pages/530/attachments/original/1436292897/OPE\\_A\\_War\\_Waged\\_on\\_Children.pdf?1436292897](https://d3n8a8pro7vhm.cloudfront.net/dcipalestine/pages/530/attachments/original/1436292897/OPE_A_War_Waged_on_Children.pdf?1436292897).

<sup>29</sup> *Id.*

themselves unprotected on the street as attacks again intensified after a brief respite. Shells, missiles, and shrapnel killed many children, like Mohammad and Shireen Ayyad, in the streets as they tried to flee to safety.<sup>30</sup>

35. Families ended up separated as they tried to escape the bombardment: in some cases, parents only discovered that their child had died in the assault much later, or as they lay in hospital recovering from their own injuries.<sup>31</sup>

36. In other cases, children died for lack of prompt medical treatment. Ambulances struggled to reach victims due to a combination of the ongoing bombardment and the refusal of Israeli authorities to allow rescue teams access to the area. Children may have lived had they been able to access medical care more quickly.<sup>32</sup>

37. For the same reasons, the bodies of many children lay unrecovered until up to a week after the assault on Shuja'iyya.

#### *Hannibal directive*

38. In attempts to justify disproportionate attacks in Rafah, the Israeli military acknowledged implementing another policy known as the “Hannibal directive,” which refers to an Israeli military directive reportedly permitting Israeli forces to use any means necessary to prevent the capture of a soldier by enemy forces.<sup>33</sup> Such means would include the use of excessive force or devastating firepower, even if those means risk the life of the captured soldier.<sup>34</sup> The directive aims to avoid a situation that would force Israeli officials to negotiate for the release of a captured prisoner.

39. During Operation Protective Edge, Israeli forces reportedly implemented the Hannibal directive after claiming Israeli 2nd Lt. Hadar Goldin was taken prisoner by

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> The directive was reportedly developed by three senior military commanders in 1986 and remained a military secret until 2003. Once a “hotly debated” topic that was considered illegal by some commanders, the Hannibal Directive has become less controversial and unquestioned by the military in recent years. See Dimi Reider, “*Captive Soldier Would Have Been Better Off If We Shot Him*”, +972MAGAZINE, 10 Aug 2014, <http://972mag.com/leader-of-rescue-squad-captive-soldier-wouldve-been-better-off-if-we-shot-him/95276/>.

<sup>34</sup> The underlying logic for the use of such force is said to be “a dead soldier is better than a captive soldier.” Sara Leibovich-Dar, *The Hannibal Procedure*, HAARETZ, May 21, 2003, <http://www.haaretz.com/the-hannibal-procedure-1.9412>.

Hamas' military wing during fighting in Rafah on August 1.<sup>35</sup> Following the incident, Israeli officials affirmed, "that commanders on the ground had activated the Hannibal directive and ordered 'massive fire.'"<sup>36</sup> The indiscriminate and disproportionate attacks in Rafah killed nearly two hundred people between 1 and 3 August 2014.<sup>37</sup>

40. Regardless of its policy aims, evidence shows that the Hannibal directive does not conform to international humanitarian law standards because it results in indiscriminate and disproportionate attacks against civilians.

41. In two separate incidents in Rafah on 1 August 2014, Israeli attacks on civilian structures claimed the lives of several children. Around 10:30 a.m., intense Israeli shelling near a school in the Jnaineh neighborhood that was housing displaced families killed six children.<sup>38</sup> Later, around 11 p.m., an Israeli airstrike on a home at a UN housing project in Rafah killed at least 15 people, including 10 children. Eight of the children were from one family.<sup>39</sup> At least two other children were also injured in the attack.

#### **B. Increasing use of live ammunition and unjustified use of intentional lethal force against Palestinian children**

42. Between 2015 and 2019, DCIP confirmed Israeli forces and settlers killed at least 159 Palestinian children in the occupied West Bank, including East Jerusalem, and Gaza, including at least 134 Palestinian children killed by Israeli forces with live ammunition or crowd control weapons.

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<sup>35</sup> Ali Abunimah, *Did Israeli Army Deliberately Kill its Own Captured Soldier and Destroy Gaza Ceasefire?*, THE ELECTRONIC INTIFADA, Aug. 2, 2014, <http://electronicintifada.net/blogs/ali-abunimah/did-israeli-army-deliberately-kill-its-own-captured-soldier-and-destroy-gaza>.

<sup>36</sup> Ruth Margalit, *Hadar Goldin and the Hannibal Directive*, THE NEW YORKER, Aug. 6, 2014, <http://www.newyorker.com/news/news-desk/hadar-goldin-hannibal-directive>.

<sup>37</sup> AL-HAQ, *DIVIDE AND CONQUER: A LEGAL ANALYSIS OF ISRAEL'S 2014 MILITARY OFFENSIVE AGAINST THE GAZA STRIP* 34 (2015), <http://www.alhaq.org/publications/divide.and.conquer.pdf>.

<sup>38</sup> Asma Salem Sulteiman (17) and her sister, Yahya (14), and Bisan Mustafa al-Mahmoum and his siblings, Heba (7), Duaa (4), and Obada (2), were killed in the incidents.

<sup>39</sup> Ahmad Mustafa Zarab (15) and his siblings, Mohammad (12), Walid (5), and Moatasem (2), and cousins, Amir Rafat Zarab (15), and his siblings, Odai (13), Khaled (8), and Shahd (10), were killed in the attack. The two other children killed were Rami Nashat Siam (15) and his brother, Rawan (8).

43. Analyzing these specific incidents and the context in which they occurred shows Israeli forces increasingly targeted Palestinian children with live ammunition to quash protests beginning in 2014.

44. UN-verified information shows that between 2012 and 2013, Israeli forces injured at least 106 Palestinian children with live ammunition.<sup>40</sup> In 2014, that figure spiked to at least 260 live ammunition injuries.<sup>41</sup>

45. This development in 2014 not only marked a significant escalation in Israeli forces' tactics confronting demonstrations throughout the Occupied Palestinian Territory, but it also signified an apparent relaxation in operational protocols in complete disregard of international law that enabled Israeli forces to routinely employ intentional lethal force in situations not justified by international law.

46. In subsequent years, the increasing use of live ammunition combined with complete lack of accountability for Israeli forces' unjustified use of intentional lethal force helped to foster a precarious situation. Between 2015 and 2017, Israeli forces killed at least 71 Palestinian children with live ammunition, according to evidence collected by DCIP, and at least 528 sustained live ammunition injuries.<sup>42</sup>

47. Then, in 2018, the situation deteriorated dramatically. During 2018, UN-verified information shows 59 Palestinian children were killed in the occupied West Bank, including East Jerusalem, and Gaza, including at least 34 children in the Gaza Strip in the context of demonstrations at the perimeter fence.<sup>43</sup> This is the highest number of Palestinian children killed since 2014.

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<sup>40</sup> Since 2007, Defense for Children International - Palestine has been a member of a UNICEF-led working group monitoring and reporting on grave violations against children in Israel and the occupied West Bank, including East Jerusalem, and Gaza. Inputs based on UN-verified information and documentation collected by the working group are regularly submitted to the Office of the Special Representative to the Secretary-General for Children and Armed Conflict. Live ammunition injuries data is monitored through a UNICEF-led working group and tracked in a database managed by UNICEF-OPT, referred to as the CAAC database.

<sup>41</sup> CAAC database.

<sup>42</sup> CAAC database.

<sup>43</sup> UNICEF State of Palestine, Annual Children and Armed Conflict Bulletin 2018 (2018), <https://www.unicef.org/sop/media/886/file/Annual%20CAAC%20Bulletin%202018.pdf>.

48. UN-verified information shows at least 714 Palestinian children were injured with live ammunition in 2018 alone.<sup>44</sup>

### C. Great March of Return

49. The “Great March of Return” civilian demonstrations began in the Gaza Strip on 30 March 2018 in protest of Palestinian refugees’ inability to return to properties lost during events surrounding the establishment of the state of Israel in 1948 and also to demand an end to Israel’s 12-year near total closure of Gaza. These mass civilian protests, which took place weekly in the area along the Israeli-installed Gaza perimeter fence or near the Mediterranean shore, drew large and diverse crowds of demonstrators, including women, children, and elderly people.<sup>45</sup>

50. Between January 2018 and 21 December 2018, Israeli forces and settlers killed at least 46 Palestinian children with live ammunition or crowd-control weapons in the West Bank and Gaza.<sup>46</sup> The majority of these fatalities took place in the context of mass protests along the Gaza Strip perimeter fence.<sup>47</sup>

51. While international law norms concerning the intentional use of lethal force permit live ammunition to be used when an imminent mortal threat or threat of serious injury exists, DCIP found in the overwhelming majority of cases that children killed by Israeli forces with live ammunition did not pose any direct threat to Israeli forces that would justify the use of intentional lethal force at the time they were killed.<sup>48</sup>

52. One example of this is the killing of 14-year-old Othman Hilles. Othman was shot dead by Israeli forces on July 13, 2018 near the perimeter fence east of Gaza City. Video shows him calmly walking up to the fence before a live bullet struck him in the chest and exited through his back. He posed no direct or mortal threat to Israeli forces

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<sup>44</sup> *Id.*

<sup>45</sup> See DCIP, *Submission to the UN Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory concerning unlawful killing and use of excessive force by Israeli forces against Palestinian children*, 11 January 2019, [https://d3n8a8pro7vhm.cloudfront.net/dcipalestine/pages/5218/attachments/original/1548306271/DCIP\\_HRGJ\\_Submission\\_to\\_COI\\_2018\\_Protests.pdf](https://d3n8a8pro7vhm.cloudfront.net/dcipalestine/pages/5218/attachments/original/1548306271/DCIP_HRGJ_Submission_to_COI_2018_Protests.pdf).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

at the time he was killed. In a rare instance, the Israeli soldier alleged to be responsible for the killing agreed to a plea bargain in October 2019. They were not held accountable for the unlawful killing of Othman, but was convicted of “disobeying an order leading to a threat to life or health.”

## II. SUBMISSIONS ON JURISDICTION

53. The victims consider that the Court’s territorial jurisdiction extends to the Palestinian territory occupied by Israel during the Six-Day War in June 1967, specifically the West Bank, including East Jerusalem, and Gaza, as referred to as the “Occupied Palestinian Territory.”

54. The relevant contextual and factual background above and previous information and submissions to the Prosecution establish, and the Prosecution has found, that there is a reasonable basis to initiate an investigation into the situation in Palestine, pursuant to article 53(1) of the statute.<sup>49</sup> The victims’ contextual and factual submissions highlight specific war crimes that have been or are being committed in the West Bank, including East Jerusalem, and Gaza, a conclusion shared by the Prosecution.

55. The victims conclude that the Court may exercise its jurisdiction over the Occupied Palestinian Territory and reaffirm the Prosecution’s legal conclusion that the “territory” over which the Court may exercise its jurisdiction under article 12(2)(a) comprises the Occupied Palestinian Territory, or the occupied West Bank, including East Jerusalem, and Gaza.<sup>50</sup>

### A. Self-determination of the Palestinian people and territorial jurisdiction

56. The victims recall the collective right of self-determination for all peoples enshrined in the Charter of the United Nations and other international human rights treaties and accepted as customary international law.<sup>51</sup> Article 1 of the ICCPR provides

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<sup>49</sup> See Prosecutor’s request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, ICC-01/18, at ¶ 3, 22 January 2020.

<sup>50</sup> *Id.*

<sup>51</sup> See, e.g., U.N. Charter art. 1, ¶2, and International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), Art. 1(1), U.N. Doc. A/6316 (1966); see also UN Fact Finding Mission Report, *supra* n. 24, at ¶ 269.

that “[a]ll peoples have the right of self-determination” and “[b]y virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”<sup>52</sup> The right of self-determination stems from and is directly connected to the right of colonized peoples to secede from a colonial state,<sup>53</sup> and all States have the duty to promote its realization. The right of the Palestinian people to self-determination has been regularly reaffirmed by the UN General Assembly and other UN bodies and special procedure mandate holders.<sup>54</sup>

57. Israeli occupation policies and practices since 1967 have expressly denied Palestinians living under Israeli control the fundamental right of self-determination. In 2009, the UN Fact Finding Mission on the Gaza conflict found that “movement and access restrictions, the settlements and their infrastructure, demographic policies with regards to Jerusalem and Area C, and the separation of Gaza from the West Bank prevent a viable, contiguous and sovereign Palestinian State from being created, [] in violation of the jus cogens right to self-determination.”<sup>55</sup>

58. The Human Rights Committee, reviewing Israel’s compliance with the ICCPR in 2014, expressed concern that “continu[ed] restrictions on access of Palestinians in the OPT, including East Jerusalem...to natural resources, inter alia, agricultural land and adequate water supply” as well as other confiscation of land and restriction of access would “undermine the enjoyment by Palestinians of a wide range of their Covenant rights, including the right to self-determination.”<sup>56</sup>

59. More recently, focusing specifically on Israeli settlement policy and annexation of Palestinian land, the United Nations Special Rapporteur on the situation of human

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Importantly, the right of the Palestinian people to self-determination, including the right to their independent State of Palestine, has been reaffirmed by the United Nations General Assembly in a resolution adopted on 19 December 2017. See G.A. Res. 72/160, U.N. Doc. A/RES/72/160 (23 January 2018), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/455/05/PDF/N1745505.pdf>.

<sup>52</sup> ICCPR, Art. 1.

<sup>53</sup> See, e.g., U.N. General Assembly, Declaration on the granting of independence to colonial countries and peoples, G.A. Res. 1514 (XV), 12 December 1960, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/152/88/IMG/NR015288.pdf>.

<sup>54</sup> See Report of the Secretary-General, *Right of peoples to self-determination*, U.N. Doc. A/73/329 (20 Aug. 2018) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/263/02/PDF/N1826302.pdf>; and UN Fact Finding Mission Report, *supra* n. 24, at ¶ 269.

<sup>55</sup> 2009 UN Fact Finding Mission Report, *supra* n. 24, at ¶ 1549.

<sup>56</sup> Human Rights Committee, 2014 *Concluding Observations: Israel*, ¶ 17.

rights in the Palestinian territories occupied since 1967, Michael Lynk, concluded “the political purpose of the Israeli settlement enterprise has always been to establish facts-on-the-ground and to obstruct Palestinian self-determination.”<sup>57</sup>

60. The Israeli settlement enterprise and resulting *de facto* and *de jure* annexation,<sup>58</sup> and other occupation policies, amounts to the express denial of the right to self-determination for the Palestinian people.

61. The victims demand that any finding by the Court on territorial jurisdiction must be in accordance with the full recognition of the Palestinian people’s right to self-determination in accordance with the Charter of the United Nations and international law. Specifically, the victims believe that the current situation of *de facto* and *de jure* annexation by Israeli authorities must not preclude a finding that the Court can exercise territorial jurisdiction over the West Bank, including East Jerusalem, and Gaza.

**B. Israel’s status as the “Occupying Power” under international law does not preclude the Court from exercising territorial jurisdiction**

62. Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip in 1967 when Israeli forces entered and established authority in the territory.<sup>59</sup> In doing so, Israel became the “Occupying Power” for purposes of international law, which carries clear obligations to protect the Palestinian civilian population under its control. To this day, the West Bank, including East Jerusalem, and the Gaza Strip remain occupied by Israel and claims otherwise are “not supported by law or fact.”<sup>60</sup> Israel

<sup>57</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, ¶ 45, U.N. Doc. A/73/45717 (22 Oct. 2018),

[https://www.ohchr.org/Documents/AboutUs/NY/GA73/A\\_73\\_45717.docx](https://www.ohchr.org/Documents/AboutUs/NY/GA73/A_73_45717.docx).

<sup>58</sup> See generally, *id.*

<sup>59</sup> Territory is deemed “occupied” when it, either wholly or in part, is placed under the authority of the hostile army. See Hague Convention (IV): Laws and Customs of War on Land art. 42, 18 Oct. 1907, <https://www.icrc.org/applic/ihl/ihl.nsf/xsp/.ibmmodes/domino/OpenAttachment/applic/ihl/ihl.nsf/4D47F92DF3966A7EC12563CD002D6788/FULLTEXT/IHL-19-EN.pdf>. In 1967, the U.N. Security Council recognized that Israeli forces had occupied the West Bank, including East Jerusalem and the Gaza Strip. See S.C. Res. 242, ¶ 1(i), U.N. Doc. S/RES/242 (22 Nov. 1967), <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IP%20S%20RES%20242.pdf>.

<sup>60</sup> Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, *Rep. on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, ¶ 10, U.N. Doc. A/62/275 (17 Aug. 2007) (by John Dugard), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/62/275](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/62/275) (“Special Rapporteur on Palestine 2007 Report”).

has consistently been found to occupy Gaza because *inter alia* it maintains “effective control” of Gaza’s borders, coastline, airspace, economy, telecommunications, energy supplies, and water and sewage systems.<sup>61</sup> Despite claims by Israeli officials that Israel no longer occupies Gaza following the September 2005 Disengagement Plan, which removed Israeli settlers and soldiers from permanent locations inside Gaza, the test under international law does not hinge on a permanent ground presence.<sup>62</sup> Israel’s “disengagement” has not been found to affect its status as an Occupying Power.<sup>63</sup>

<sup>61</sup> See, e.g., Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶¶ 78, 101 (July 9, 2004), <https://unispal.un.org/DPA/DPR/unispal.nsf/0/B59ECB7F4C73BDBC85256EEB004F6D20>; Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of Israel*, U.N. Doc. CCPR/C/ISR/CO/4 (21 Nov. 2014), <https://www.icj.org/wp-content/uploads/2015/04/Concluding-Observations-CCPR-Israel-2014-eng.pdf> (“Human Rights Committee, 2014 *Concluding Observations: Israel*”); U.N. Dep’t of Pub. Info., Statement by the Special Advisers of the Secretary-General on the Prevention of Genocide, Mr. Adama Dieng, and on the Responsibility to Protect, Ms. Jennifer Welsh, on the Situation in Israel and in the Palestinian Occupied Territory of Gaza Strip (24 July 2010), [www.un.org/en/preventgenocide/adviser/pdf/24.07.2014%20Special%20Advisers%20Statement%20on%20the%20situation%20in%20Israel%20and%20the%20occupied%20Gaza%20strip.pdf](http://www.un.org/en/preventgenocide/adviser/pdf/24.07.2014%20Special%20Advisers%20Statement%20on%20the%20situation%20in%20Israel%20and%20the%20occupied%20Gaza%20strip.pdf); Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, *Rep. of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, U.N. Doc. A/HRC/25/67 (13 Jan. 2014) (by Richard Falk), <https://www.securitycouncilreport.org/wp-content/uploads/A-HRC-25-67.pdf>; 2009 U.N. Fact Finding Mission Report, *supra* n. 24, at ¶ 276.

For authority on the “effective control” test, see Prosecutor v. Duško Tadić, Case No. IT-94-1-T, Opinion & Judgment, ¶ 580 (Int’l Crim. Trib. for the Former Yugoslavia 7 May 1997), <http://www.icty.org/x/cases/tadic/tjug/en/tad-ts70507JT2-e.pdf>; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), 2005 I.C.J. 168, ¶¶ 172, 175-176 (19 Dec. 2005), <https://www.icj-cij.org/files/case-related/116/116-20051219-JUD-01-00-EN.pdf>; International Criminal Court, The Office of the Prosecutor: *Situation on Registered Vessels of Comoros, Greece and Cambodia Article 53(1) Report*, 6 Nov. 2014, (“OTP Flotilla Report”) ¶ 24, [https://www.icc-cpi.int/iccdocs/otp/otp-com-article\\_53\(1\)-report-06nov2014eng.pdf](https://www.icc-cpi.int/iccdocs/otp/otp-com-article_53(1)-report-06nov2014eng.pdf); 2015 UN Commission of Inquiry Report, *supra* n. 24, at ¶ 26 (“The commission agrees that the exercise of the ‘effective control’ test is the correct standard to use in determining whether a State is the occupying power over a given territory . . .”).

<sup>62</sup> For an elaboration on the application of the test for occupation, in 2007, for example, the former United Nations Special Rapporteur on the Situation of Human Rights in the Occupied Palestinian Territory John Dugard explained that Israel’s continuing effective control of Gaza is manifested by the following: (a) substantial control of Gaza’s six land crossings; (b) control through military incursions, rocket attacks and sonic booms, and the declaration of areas inside the Strip as “no-go” zones where anyone who enters can be shot; (c) complete control of Gaza’s airspace and territorial waters; and (d) control of the Palestinian Population Registry, which has the power and authority to define who is a “Palestinian” and who is a resident of Gaza. Also, where physical control over the territory at any time is established under the “effective control” threshold, determining authority does not require a fixed armed presence. Special Rapporteur on Palestine 2007 Report at ¶ 10.

Withdrawing settlements and permanent military ground installations from the Gaza Strip did not end Israeli control of the territory. See GISHA, *DISENGAGED OCCUPIERS: THE LEGAL STATUS OF THE GAZA STRIP 9* (2009), <http://www.gisha.org/UserFiles/File/Report%20for%20the%20website.pdf>.

<sup>63</sup> See, e.g., 2015 UN Commission of Inquiry Report, at ¶ 26; U.N. General Assembly Resolution 64/92, *Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War*, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories, U.N. Doc A/Res/64/92 (19 Jan. 2010); UNGA Resolution 64/94, *Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem* U.N. Doc A/Res/64/94 (19 Jan. 2010), (UNGA Resolutions to be read jointly).

The Office of the Prosecutor at the International Criminal Court recognized that “Israel reserved its right to re-enter the Gaza Strip on the basis of military necessity and maintained control over the air and maritime space as well as borders of the Gaza Strip,” citing Israel’s Ministry of Foreign Affairs, “The Cabinet Resolution Regarding the Revised Disengagement Plan,” 6 June 2004. OTP Flotilla Report, *supra* n. 19 at ¶ 25.

Indeed, in 2012 the President of the ICRC stated that “[w]hile the shape and degree of this military occupation have varied, Israel has continuously maintained effective control” over the Gaza Strip.<sup>64</sup>

63. Likewise, the accordance to Palestine “non-member Observer status” at the United Nations by the United Nations General Assembly in 2012,<sup>65</sup> the recognition of the “State of Palestine” by an increasing number of States, and Palestine’s inclusion in international bodies<sup>66</sup> do not affect the West Bank, including East Jerusalem, and Gaza’s status as occupied territory and do not alter the international legal obligations imposed on Israel as the Occupying Power.<sup>67</sup>

64. The victims urge the Court to find it has jurisdiction over specific war crimes alleged to have been committed or that are being committed in the West Bank, including East Jerusalem, and Gaza despite Israel’s continuing status as the “Occupying Power” and failure to end its 52-year old military occupation of the territory. Similarly, the victims urge the Court to recognize the existence of historical borders and not preclude a finding of jurisdiction due to any lack of certainty or agreement on future shared borders due the failure to resolve and end Israel’s military occupation of the territory since 1967.<sup>68</sup>

### C. Interpreting the Statute consistently with its deterrence objective

65. The State Parties to the Rome Statute of the International Criminal Court affirmed “that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured

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<sup>64</sup> Peter Maurer, *Challenges to International Humanitarian Law: Israel’s Occupation Policy*, International Review of the Red Cross, vol. 94, number 888, p. 1504-1505.

<sup>65</sup> U.N. General Assembly resolution 67/19, 4 Dec. 2012,

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/67/19](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/19).

<sup>66</sup> See UN General Assembly, “General Assembly Votes Overwhelmingly to Accord Palestine ‘Non-Member Observer State’ Status in United Nations,” 29 Nov. 2012, Press Release GA/11317

<http://www.un.org/press/en/2012/ga11317.doc.htm>; See, e.g., Palestine’s membership in UNESCO

<http://www.unesco.org/new/en/unesco/worldwide/arab-states/palestine/>.

<sup>67</sup> See, e.g., Commentary to Additional Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 U.N.T.S. 3 (“Additional Protocol I”), ¶ 156.

<sup>68</sup> See, e.g., Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136 (July 9, 2004),

<https://unispal.un.org/DPA/DPR/unispal.nsf/0/B59ECB7F4C73BDBC85256EEB004F6D20>

by taking measures at the national level and by enhancing international cooperation,” and declared they were “[d]etermined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes.”<sup>69</sup>

66. Israeli armed forces have been regularly implicated in serious, systematic and institutionalized human rights violations against Palestinian children living in the occupied West Bank, including East Jerusalem, and Gaza.<sup>70</sup> Children affected by armed conflict are entitled to special respect and protections under international law, but Israel consistently violates these protections through indiscriminate and disproportionate attacks that amount to war crimes and crimes against humanity.

67. Additionally, while the right of self-determination for all peoples is enshrined in the Charter of the United Nations and other international human rights treaties,<sup>71</sup> successive Israeli governments since 1967 have implemented, maintained and perpetuated non-rights-respecting, oppressive policies and practices directly preventing Palestinians from freely determining their political status or freely pursuing their economic, social and cultural development.

68. In addition to widespread and systematic violations against Palestinian civilians, Israeli officials have repeatedly taken legal, administrative and practical measures aimed to establish and expand illegal Israeli settlements in occupied territory and simultaneously create a coercive environment resulting in forcible transfer of the occupied Palestinian population. Israeli occupation policies and practices, including the now 12-year closure of Gaza, that actively deny Palestinians

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<sup>69</sup> Rome Statute of the International Criminal Court, 1, 2187 U.N.T.S. 90, *entered into force* July 1, 2002, <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.

<sup>70</sup> See U.N. Committee on the Rights of the Child, *Concluding Observations on the Second to Fourth Periodic Reports of Israel*, U.N. Doc. CRC/C/ISR/CO/2-4 (Jul. 4, 2013), <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ISR-CO-2-4.pdf>; Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of Israel*, U.N. Doc. CCPR/C/ISR/CO/4 (Nov. 21, 2014), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/225/55/PDF/G1422555.pdf>; and *Report of the United Nations Fact Finding Mission on the Gaza Conflict*, U.N. Doc. A/HRC/12/48 (Sep. 25, 2009), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/158/66/PDF/G0915866.pdf>.

<sup>71</sup> See, e.g., U.N. Charter art. 1, ¶2, and International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), Art. 1(1), U.N. Doc. A/6316 (1966).

Importantly, the right of the Palestinian people to self-determination, including the right to their independent State of Palestine, has been reaffirmed by the United Nations General Assembly in a resolution adopted on 19 December 2017. See G.A. Res. 72/160, U.N. Doc. A/RES/72/160 (23 January 2018), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/455/05/PDF/N1745505.pdf>.

the right to self-determination collectively amount to persecution, a crime against humanity under international law.

69. Through its policies and practices, carried out against the civilian population of Gaza as a whole, particularly those Palestinians engaging in peaceful protest since 30 March 2018, Israel has systematically denied Palestinian civilians a range of fundamental rights including but not limited to: the right to self-determination; the right to life; freedom of movement; freedom of expression and opinion; and right to peaceful assembly and association. Moreover, Israel's policies and practices have denied Palestinian civilians the right to not be collectively punished.<sup>72</sup>

70. Those whom are denied these rights are targeted by the Israeli civilian and military leadership based solely on their membership of two primary identifiable groups: their national identity as Palestinians and their political beliefs, based on their opposition to Israel's ongoing occupation and closure; Israel also perceives all Palestinians in Gaza as politically aligned with Hamas, and targets them for this association.<sup>73</sup>

71. Public statements can also be used to illustrate the intent to persecute a group of people. For example, the Israeli Defense Forces Twitter account as well as the public statements made by high ranking government officials consistently describe the civilian population of Gaza as "terrorists" deserving of their punishment.<sup>74</sup> Official Israeli sources, including politicians and military leadership, have repeatedly referred to protestors as "terrorists" and have justified the killing of children by referring to the victims as members of Hamas.<sup>75</sup> Israel's Deputy Minister for Public Diplomacy gave an interview on National Public Radio in the United States in which he stated: "This

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<sup>72</sup> See Fourth Geneva Convention, Art. 33.

<sup>73</sup> See *Gbagbo* Confirmation of Charges Decision, ¶¶ 204-206. In June 2018, the Israeli Knesset chose to deduct funds from tax revenue payments owed to the Palestinian government as compensation because of fires alleged to have been started by Palestinians in Gaza. The Prime Minister himself thanked members of the Knesset for taking such measures and declared, "Those who burn fields knew that there was a price." (translated from Hebrew). Benjamin Netanyahu (@netyahu) Twitter, 11 June 2018, 2:46AM, <https://twitter.com/netanyahu/status/1006110523136577536>.

<sup>74</sup> See, e.g., Israel Defense Forces Verified account (@IDFSpokesperson) Twitter, May 30 and Israel Defense Forces Verified account (@IDFSpokesperson) Twitter, 2 Jun 2018.

<sup>75</sup> *Id.*

is not a peaceful protest. According to the organizers, according to Hamas, the protest was designed to break through the border, to kill Israelis and destroy our country” and further said “There actually is no other effective method we know of defending the border. And the choice is - you know, is paying a price in terms of, you know, tough interviews like this one or letting these terrorists come through the border and kill our civilians. And for us, that's a no-brainer.”<sup>76</sup> Benjamin Netanyahu, Prime Minister of Israel, has tweeted a similar narrative and justified the Israeli forces attacks on civilians by claiming that “Hamas” intends to send thousands of people to break the perimeter fences and “destroy” Israel.<sup>77</sup>

72. In this specific context, such statements illustrate discriminatory speech that aims to create the narrative that the protestors are all terrorists and thus it is justified to kill them. These statements must be understood in the context of operational policies and government practices that have caused, and continue to cause, and indeed, are intended to cause, the severe denial of fundamental rights to Palestinian civilian.

73. The victims submit that failing to find the Chamber that the Court may exercise its jurisdiction under article 12(2)(a), interpreted in light of the Statute’s clear object and purpose concerning justice and accountability, ending impunity, and deterring future crimes, is counter to the Statute’s object and purpose and will perpetuate systemic impunity in a situation where the Prosecution has already determined there is a reasonable basis to believe that war crimes have been or are being committed in the West Bank, including East Jerusalem, and Gaza.<sup>78</sup>

74. Furthermore, the victims believe a general finding by the Chamber that the Court cannot exercise jurisdiction under article 12(2)(a), interpreted in light of the

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<sup>76</sup> Ari Shapiro, *Israel's Deputy Minister For Public Diplomacy Discusses Response To Gaza Protests*, NPR, (16 May 2018), <https://www.npr.org/2018/05/16/611727738/israels-deputy-minister-for-public-diplomacy-discusses-response-to-gaza-protests>.

<sup>77</sup> Benjamin Netanyahu Verified Account (@netanyahu) Twitter, May 14 2018, 9:47 AM, <https://twitter.com/netanyahu/status/996069591389495296>.

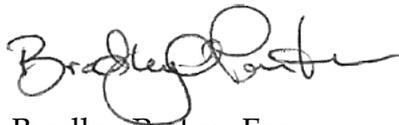
<sup>78</sup> Prosecutor’s request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, ¶ 2, ICC-01/18, 22 January 2020.

Statute's clear object and purpose, is premature given the scope and number of alleged crimes committed and ongoing in the West Bank, including East Jerusalem, and Gaza since 13 June 2014, and the Court should instead engage in a case-by-case assessment.

## CONCLUSION

75. For all the above reasons, the victims respectfully request the Chamber to determine that the Court has jurisdiction under article 12(2)(a) of the Statute because Palestine is a state and its territory encompasses areas occupied by Israel in 1967, specifically the West Bank, including East Jerusalem, and Gaza.

Respectfully submitted,



Bradley Parker, Esq.

Legal Representative of Victims



Adv. Khaled Quzmar

Legal Representative of Victims

Dated this 16 March 2020

At Ramallah, State of Palestine