



## OSSERVATORIO SUI TRIBUNALI INTERNAZIONALI PENALI N. 3/2021

### 1. THE OPENING OF AN INVESTIGATION INTO THE SITUATION IN PALESTINE BY THE OFFICE OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT: THE ROAD UPHILL

#### *1. Introduction: The Opening of an Investigation into the Situation in Palestine*

Following the International Criminal Court (ICC) Pre-Trial Chamber I [Decision on the 'Prosecution request pursuant to article 19\(3\) for a ruling on the Court's territorial jurisdiction in Palestine'](#) of 5 February 2021 (PTC I decision) (for a commentary on the decision, see [L. PROSPERI, \*The Pre-Trial Chamber I Decision on The ICC's Territorial Jurisdiction in Palestine\*, in \*OIDU\*, 2021, pp. 151-160](#)), on 3 March 2021 the Prosecutor of the ICC, Fatou Bensouda, [confirmed the opening of an investigation by the Office of the Prosecutor \(OTP\) into the Situation in Palestine](#). In her statement, Bensouda recalled the legal duty that befalls her office to commence an investigation, pursuant to Article 53(1) of the [Rome Statute](#), when (a) the Prosecutor is satisfied that there is a reasonable basis to believe that one or more crimes within the jurisdiction of the Court have been committed, (b) the case is or would be admissible, and (c) there are no reasons to believe that the investigation would not serve the interests of justice.

Quite unsurprisingly in light of the enormous political pressure that the OTP is facing, much of the language used in the Prosecutor's statement seeks to emphasise the non-partisanship of the investigation. For example, the statement recalls the Prosecutor's refusal to initiate an investigation into the conduct of the Israeli Defence Forces (IDF) in the case of the [Mavi Marmara](#), in support of the claim that the OTP's determinations are guided *only* by the terms of the Rome Statute. In the same spirit, the Prosecutor underlined that the PTC I decision clarifies *only* that the ICC is competent to exercise its criminal jurisdiction over the territory of the State of Palestine and that such territory extends to the West Bank, including East Jerusalem, and the Gaza Strip, while any issues of statehood or borders under general international law "remain to be determined in bilateral discussions between Israeli and Palestinian authorities in the context of a negotiated agreement".

Despite the Prosecutor's seemingly conciliatory language, it is unlikely that the Court will be able to secure the cooperation of the State of Israel or the engagement of Hamas. The cooperation of the Government of Palestine alone will not be sufficient to ensure the success of the investigation. This sets the Court on a tricky path, which it will have to navigate with both sensitivity and boldness.

In this note, after describing the scope of the investigation, I will provide an overview of the main challenges that the OTP is likely to face in the discharge of its investigatory and prosecutorial duties in relation to the situation in Palestine. These include challenges in relation to the cooperation of the States involved and third States on matters relating to information and evidence gathering, the apprehension and surrender of prospective potential suspects pursuant to any future arrest warrant, the protection of victims and witnesses, and, finally, potential challenges to the admissibility of future cases.

## 2. *The Scope of the Investigation*

The OTP is bound by the Rome Statute to act independently and to investigate all potential crimes within the ICC's jurisdiction in a given situation (Articles 42 and 54), regardless of whether they were allegedly committed by the nationals of the State that made a referral or by nationals of other States. Practically, this means that the scope of the OTP's investigation into the situation in Palestine will likely cover crimes committed by both Israelis and Palestinians. It is worth recalling the bases for the OTP's investigation into the situation in Palestine: first, on 1 January 2015, the Government of Palestine lodged a [declaration under Article 12\(3\) of the Rome Statute](#) accepting the jurisdiction of the ICC over alleged crimes committed “in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014”; second, on 2 January 2015 the Government of Palestine [acceded to the Rome Statute](#) by depositing its instrument of accession with the UN Secretary-General (on the effects of such declaration see, among others: [M. MANCINI, \*Adesione della Palestina allo Statuto di Roma e dichiarazione di accettazione della giurisdizione della Corte Penale Internazionale\*, in OIDU, 2015, pp. 358-362](#); and [L. PROSPERI, \*Ricevibilità ed efficacia giuridica della dichiarazione di accettazione della giurisdizione della Corte Penale Internazionale da parte della Palestina\*, in OIDU, 2015, pp. 337-357](#)); third, on 22 May 2018, pursuant to Articles 13(a) and 14 of the Rome Statute, the Government of Palestine [referred the situation in Palestine since 13 June 2014 to the OTP](#). Both Palestine's referrals as a non-party State under Article 12(3) of the Rome Statute and as a State party under Articles 13(a) and 14 of the Rome Statute are open-ended. However, in its 2018 referral, the Government of Palestine, pursuant to Article 14(2) of the Statute, specified the relevant circumstances as including, but not being limited to, “all matters related to the Israeli settlement regime”, in particular “any conduct, policies, laws, official decisions and practices that underlie, promote, encourage or otherwise make a contribution to the commission of these crimes in accordance with the terms of the Statute, including but not limited to those coming within the terms of [...] Articles 7(l)(a), (d), (e), (f), (h), (j) and (k), 8(2)(a)(i), (ii), (iii), (iv), (vi), (vii), (b)(i), (ii), (iii), (iv), (viii), (ix), (xiii), (xvi) and (xxi) of the Rome Statute” (para. 11). The Government of Palestine also specified that information included in the submissions it made confidentially to the OTP since June 2015 was to be considered as integral part of the 2018 referral (para.11, footnotes 6 and 3).

Hence, pursuant to Palestine's above-mentioned referrals and accession to the Rome Statute, and in light of the PTC I decision, the scope of the OTP's investigation encompasses all alleged crimes perpetrated by Israelis or Palestinians on the territory - including the West Bank, East Jerusalem and the Gaza Strip - since the beginning of IDF's Operation 'Brother's Keeper' in response to the kidnapping of three Israeli teenagers by two Hamas members.

Paragraphs 94 and 95 of the [‘Prosecution request pursuant to article 19\(3\) for a ruling on the Court's territorial jurisdiction in Palestine’](#) (2020 Prosecution's Request) specify what crimes the OTP has a “reasonable basis to believe” to have been committed. These include:

(1) war crimes allegedly perpetrated in the context of IDF's Operation "Protective Edge" in the Gaza Strip, including "intentionally launching disproportionate attacks in relation to at least three incidents which the Office has focussed on (article 8(2)(b)(iv)); wilful killing and wilfully causing serious injury to body or health (articles 8(2)(a)(i) and 8(2)(a)(iii), or article 8(2)(c)(i)); and intentionally directing an attack against objects or persons using the distinctive emblems of the Geneva Conventions (article 8(2)(b)(xxiv), or 8(2)(e)(ii));"

(2) war crimes allegedly perpetrated by Hamas and other Palestinian armed groups, including "intentionally directing attacks against civilians and civilian objects (articles 8(2)(b)(i)-(ii), or 8(2)(e)(i)); using protected persons as shields (article 8(2)(b)(xxiii)); wilfully depriving protected persons of the rights of fair and regular trial (articles 8(2)(a)(vi) or 8(2)(c)(iv)) and wilful killing (articles 8(2)(a)(i), or 8(2)(c)(i)); torture or inhuman treatment (article 8(2)(a)(ii), or 8(2)(c)(i)) and/or outrages upon personal dignity (articles 8(2)(b)(xxi), or 8(2)(c)(ii));"

(3) war crimes allegedly perpetrated by Israeli Authorities "under article 8(2)(b)(viii) in relation, *inter alia*, to the transfer of Israeli civilians into the West Bank, since 13 June 2014".

The Prosecutor argued that, based on information available to the OTP at the time of the request, cases arising from (2) and (3) would likely be admissible, pursuant to Article 17(1)(a) - (d) of the Rome Statute, while the assessment of the admissibility of cases under (1) was ongoing, given the OTP's limited access to information relating to any domestic proceedings in relation to crimes allegedly perpetrated by the IDF.

In addition, the Prosecutor specified that the investigation may encompass IDF's conducts in the context of the demonstrations held at the border between the Gaza Strip and Israel, since March 2018 (para. 96). In light of recent events, the investigation may also extend to the conducts of both the IDF and Hamas and other Palestinian armed groups during the military escalation of May 2021 in the Gaza Strip.

It is worth noting that the ICC investigation into the situation in Palestine offers an opportunity for strengthened cooperation between the OTP and at least three UN investigative mechanisms, which were mandated, *inter alia*, to identify those responsible for alleged violations of international humanitarian and human rights law (respectively IHL and IHRL) that could amount to war crimes and crimes against humanity. These are the UN Independent Commission of Inquiry on the 2014 Gaza Conflict, established pursuant to Human Rights Council (HRC) [Resolution S-21/1 of 23 July 2014](#); the UN Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory, established with HRC [Resolution S-28/1 of 18 May 2018](#); and, most recently, a commission of inquiry established with HRC [Resolution A/HRC/S-30/L.1](#), on 27 May 2021, to investigate alleged violations of IHL and IHRL that led to the April 2021 military escalation in the Gaza Strip, as well as the root causes of the recurring cycles of violence.

At present, and in relation to these investigations, the OTP is thus likely to have readily available information regarding potential cases in relation to at least two major events: the 2014 military escalation in the Gaza Strip and the demonstrations that took place at the border between the Gaza Strip and Israel since March 2018. The third inquiry mentioned above is still in its infancy, and it is too early to assess what contribution this mechanism may make in relation to the OTP investigation. However, Israel's systematic criticism – often echoed by its allies – of the HRC compounds the OTP's duty to act independently and to carefully scrutinise any information that may end up on the Prosecutor's desk. In other words, defining the scope of the investigation is a task that befalls the Prosecutor *only*, subject to the scrutiny of the ICC Chambers.

At this stage, it is also worth mentioning, although merely in passing, that information provided by other actors, including non-governmental organisations (NGOs) may contribute, or have contributed, to shaping the scope of the investigation, subject to the scrutiny of the OTP – as of 2018, the OTP had received 125 communications under Article 15 of the Rome Statute in relation to the situation in Palestine ([ICC – OTP, Report on Preliminary Examination Activities – 2018, 5 December 2018, para.251](#)). For example, a recent report by Human Rights Watch calls on the OTP to “[i]nvestigate and prosecute individuals credibly implicated in the crimes against humanity of apartheid or persecution” ([Human Rights Watch, \*A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution\*, 27 April 2021, p.207](#)).

### 3. Cooperation with the State of Israel and the Government of Palestine

Any investigation by the OTP is bound to be one-legged without the cooperation of the State(s) involved. This is crucial, for example, to conduct on site investigations or to retrieve documents relevant for an investigation or prosecution. As a result, all States Parties to the Rome Statute are bound to cooperate fully with the ICC in the investigation and prosecution of crimes within the jurisdiction of the Court (Article 86 of the Rome Statute). While the Government of Palestine has pledged its full cooperation with the ICC, [the State of Israel has maintained that the Court has no authority to investigate the situation and that it would not cooperate with the Court](#). Moreover, the ICC is unlikely to secure any engagement from Hamas, despite the fact that [the group welcomed the Prosecutor’s opening of an investigation into the situation in Palestine](#).

The ICC may invite a non-party State to cooperate, pursuant to Article 87(5)(a) of the Rome Statute. However, should the State in question refuse or fail to cooperate, the only available remedy would be for the Court to inform the Assembly of States Parties or, where the matter was referred to the Court by it, the UN Security Council, but only insofar as the State and the Court are bound by an *ad hoc* arrangement or agreement. In relation to on site investigations, Article 57(3)(d) of the Rome Statute stipulates that a Pre-Trial Chamber may authorise the Prosecutor to undertake some investigative activities on the territory of a State whose cooperation could not be secured, but only if the State is a party to the Rome Statute and the Chamber has determined that the State “is clearly unable to execute a request for cooperation due to the unavailability of any authority or any component of its judicial system competent to execute the request for cooperation”. Hence, it would seem that the ICC has no way of securing the cooperation of the State of Israel.

As noted in the introduction, the ICC Prosecutor’s statement in relation to the opening of an investigation into the Situation in Palestine is carefully worded so as to make clear that the OTP will not be unduly influenced by any external party in its investigation of the situation. The statement – argues Yaël Ronen – is perhaps the “least conflictual message that [could] be expected” from the OTP, and it signals the Prosecutor’s willingness to “reaching out to Israel” (Y. RONEN, *The ICC Prosecutor’s statement on the Situation in Palestine: A Hand Stretched forth in Friendship?*, in *EJIL: Talk!*, 12 March 2021, available [here](#)). In her reflections, Ronen ponders whether the best strategy for Israel to advance its interests should be to cooperate with the Court. Indeed, while publicly refusing to cooperate, [the Israeli Government is reported to have held meetings with justice and political officials in the international community](#), with a view to indirectly presenting their case before the ICC. The IDF Military Advocate General (MAG) has played an essential role in this regard, by

publishing legal updates in relation to accountability measures implemented for alleged IDF soldiers' misconducts in the course of military operations (for example, see [IDF, Investigation of Allegations of Misconduct](#)). The MAG's argument is that Israel is perfectly capable of dealing with alleged crimes through its military justice system. The genuineness of these domestic investigations and prosecutions is, however, at least questionable (see, for example, V. AZAROVA, *The Pathology of a Legal System: Israel's Military Justice System and International Law*, in *Quest. Int. Law*, 2017, pp. 5-20, available [here](#); L. DANIELE, *Enforcing Illegality: Israel's Military Justice in the West Bank*, in *Quest. Int. Law*, 2017, pp. 21-40, available [here](#)).

Be as it may, from the perspective of the ICC, the lack of cooperation by Israel presents serious operational challenges for the investigation. For example, it is highly unlikely that OTP staff will be able to conduct on site investigations in the Occupied Palestinian Territories, given that Israel controls their borders. The only possibility may be to conduct a field investigation in the Gaza Strip through the Rafah Crossing between Egypt and the Gaza Strip, which however would require the cooperation of Egypt, which is not at present a State Party to the Rome Statute.

In relation to the Palestinian authorities, it is worth emphasising that the West Bank is governed by Fatah, while the Gaza Strip is ruled by Hamas. However, only Fatah is considered to be the official government of the Palestinian Authority and therefore the legitimate representative of the Government of Palestine. Moreover, Hamas has been classified as a terrorist organisation by several States (for example, the [United States](#) and the [European Union](#)). Nonetheless, their cooperation would be essential to ensuring that the OTP can effectively investigate some of the events referred to in the above-mentioned 2020 Prosecution's request. While [the Palestinian Authority has pledged to cooperate with the ICC during the investigation](#), Hamas's position is more ambiguous, and it may not be too far stretched to think that they may not be willing to cooperate with the Court: Hamas members are in fact likely to be among the first suspects that they OTP could go after.

#### *4. Cooperation with Third States and the Potential Effectiveness of the ICC Investigation*

Beyond Palestine, all other 122 States Parties to the Rome Statute are under an obligation to cooperate with the ICC. In particular, the Prosecutor's statement on the opening of an investigation into the situation in Palestine explains that "the Office is required to notify all States Parties and those States which would normally exercise jurisdiction over the crimes concerned about its investigation. This permits any such State to request the Office to defer to the State's relevant investigation of its own nationals or others within its jurisdiction in relation to Rome Statute crimes referred to in the notification".

Faced with limited prospects of cooperation by Israel not only in relation to information and evidence gathering but also with regard to the apprehension of prospective potential suspects, the cooperation of third States may be crucial in ensuring a minimum level of effectiveness of the investigation. Third States may be able to host Palestinian or Israeli victims and witnesses to meet with ICC investigators. They are also under a duty to arrest and surrender suspects present on their territory when the ICC has formally requested them to do so, pursuant to Article 89 of the Rome Statute. However, it has been reported that, following the PTC I decision, [Israel prepared a list of Israeli decision-makers and senior military and security officials to be briefed](#) about the ICC investigation and the risk they may incur if they were to travel abroad. In addition, [the Israeli Government is reported to have](#)

[sought some friendly countries' agreement to warn them](#) of any arrest warrant against Israeli nationals.

As noted by the Prosecutor, cooperation between the ICC and third States may also lead to such States taking a central role in the prosecution of the alleged perpetrators of crimes within the jurisdiction of the Court, through the mechanism of universal jurisdiction – or other jurisdictional bases. Article 93(10) of the Rome Statute regulates how the Court may assist a State – including a non-party State – that has requested the Court's to do so in the investigation or prosecution of a conduct that constitutes a crime under the jurisdiction of the ICC. The prospective exercise of universal jurisdiction by third States is likely to cause concerns among both Palestinian and Israeli officials suspected of having been involved in the perpetration of international crimes (in relation to the possibility and effectiveness of prosecuting Israeli officials through universal jurisdiction, see [S. KARMI-AYYOUB, \*Prosecuting Israeli Perpetrators of International Crimes under Universal Jurisdiction Laws: Prospects for Success?\*, in \*The Palestine Yearbook of International Law Online\*, 2020, pp. 96-135](#)).

##### 5. *Victims and Witnesses' Protection*

Another issue that is worth mentioning in relation to cooperation, or lack thereof, is the protection of victims and witnesses in the course of the investigation and subsequent potential prosecution. Article 68 of the Rome Statute stipulates that “[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses ... The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes”. Assistance and protection arrangements are provided to victims and witnesses by the Victims and Witnesses Unit, within the Registry, in consultation with the Protection Strategies Unit, an advisory unit within the Investigation Division in the OTP. The OTP and the Registry have elaborated a Joint Protocol on the Mandate, Standards and Procedure for Protection, which, however, is confidential (see, for example, [OTP, \*The Prosecutor v Bosco Ntaganda, Prosecution's submission in the record of the "Prosecution-Registry Joint Protocol on the Mandate, Standards and Procedure for Protection of 21 March 2011"\*](#), TC VI, 3 July 2015, No. ICC-01/04-02/06). Given the limited resources the ICC can benefit from, it is likely that most protection arrangements will be provided in the Country where the victim or witness resides. Regulation 16(4) of the Rules of Procedure and Evidence stipulates that “Agreements on relocation and provision of support services on the territory of a State of traumatized or threatened victims, witnesses and others who are at risk on account of testimony given by such witnesses may be negotiated with the States by the Registrar on behalf of the Court”. The cooperation of the State where the victim or witness resides is thus crucial to ensuring the effectiveness of any protection arrangement.

Arguably, this positions victims and witnesses in the Gaza Strip at heightened risk of retaliation for their participation in ICC proceedings. While the Government of Palestine has pledged to cooperate with the Court, the Gaza Strip is notably controlled by Hamas, whose operatives are likely to be the target of the OTP investigation and potentially of future arrest warrants, as the Prosecutor has made clear in both her Request and statement on the opening of an investigation into the situation in Palestine. Palestinians residing in Gaza are likely to be key witnesses in relation to any prosecution brought against Hamas operatives, given their proximity to the alleged criminal conduct, but it is unlikely that Hamas will meekly let that happen, given [their staunch defence of their actions](#) (the crackdown on individuals accused

of “collaboration” with Israel or the PA has been documented by Human Rights Watch in the 2018 Report “[Two Authorities, One Way, Zero Dissent: Arbitrary Arrest and Torture Under the Palestinian Authority and Hamas?](#)”).

The ICC will thus have to consider carefully – also in light of their likely limited access to the territory – what protection arrangements will be necessary and viable to ensure that victims and witnesses in the Gaza Strip are able to participate in ICC proceedings.

#### 6. Outstanding Questions of Jurisdiction

Finally, it is likely that, despite the PTC I decision, jurisdictional issues will continue to haunt the OTP throughout the proceedings. The Chamber explicitly stated that its “conclusions pertain to the current stage of the proceedings, namely the initiation of an investigation by the Prosecutor pursuant to articles 13(a), 14 and 53(1) of the Statute. [...] if a State or a suspect submits a challenge under article 19(2) of the Statute, the Chamber will be in a position to examine further questions of jurisdiction which may arise at that point in time” (para. 131).

The crucial issue of whether the ‘territory’ over which the ICC may exercise its jurisdiction extends to the West Bank, including East Jerusalem, and the Gaza Strip does not appear to have been resolved satisfactorily or definitively. In particular, the question of Palestine’s statehood for the sole purpose of determining the extent of the ICC’s territorial jurisdiction appears to have been *only partially* settled with reference to the [UN General Assembly Res. 67/19](#), without however explaining why this represents the adequate basis for such an assessment (see, in particular, L. PROSPERI, *The Pre-Trial Chamber I Decision*, cit., pp. 159-160). Moreover, the relevance – or irrelevance – of the [Oslo Accords](#) for the determination of the ‘territory’ over which the ICC may be able to exercise its criminal jurisdiction remains a matter of controversy (for positions in favour of the relevance of the Oslo Accords, see, *inter multis*: D. JACOBS, J. KERN and D. REISNER, *Implications for the ICC on the Resumption of Israeli-Palestinian Cooperation and the Relevance of the Oslo Accords in Current ICC Litigation*, in *Opinio Juris*, 4 January 2021, available [here](#); K. AMBOS, “Solid jurisdictional basis”? *The ICC’s fragile jurisdiction for crimes allegedly committed in Palestine*, in *EJIL: Talk!*, 2 March 2021, available [here](#); for positions against the relevance of the Oslo Accords, see, *inter multis*: J. HANDMAKER and A. TARTIR, *ICC and Palestine Symposium: The (Non) Effects of Oslo on Rights and Status*, in *Opinio Juris*, 6 February 2020, available [here](#); Y. AL-KHUDAYRI, *Are the Oslo Accords Still Valid? For the ICC and Palestine, It Should Not Matter*, in *Opinio Juris*, 10 June 2020, available [here](#)). While the Majority dismissed the relevance of the Accords for the purpose of their determination in light of the fact that the basis for such a determination is solely the right to self-determination of the Palestinian people (paras. 124-129), Judge Kovács, in his [partially dissenting opinion](#), argued that it is precisely pursuant to the Oslo Accords that the Court can determine the extent of its criminal jurisdiction because they constrain the ability of the Government of Palestine to delegate criminal jurisdiction to the Court (paras. 372-374).

Hence, as Kevin Jon Heller notes, any future suspect that may face charges will have every incentive in challenging the jurisdiction of the Court by contesting the PTC I decision, which opens up the possibility for its reversal (K. J. HELLER, *The OTP Should Have Appealed the Palestine Decision*, in *Opinio Juris*, 4 March 2021, available [here](#)).

## 7. Concluding Remarks

The road that lies ahead of the newly sworn-in Prosecutor of the ICC, Karim Khan, in relation to the Situation in Palestine is uphill. The OTP faces not only fierce political pressure to abandon its investigation, but also significant operational and legal obstacles. Perhaps, that's why both Israel and Hamas seem undeterred as the most recent escalation of violence in the Gaza Strip has demonstrated. Nor seems the recent political turmoil that led to the demise of former Israeli PM Benjamin Netanyahu to be heading towards an improvement of the situation on the ground for victims of alleged crimes; suffice it to note that the newly appointed PM, Naftali Bennett, has in the past [advocated for the annexation of Area C of the West Bank by Israel](#).

Yet, signs that the investigation may be causing some concerns have started to surface. As noted, the Israeli Government is reported to be working behind-the-scenes to, on the one hand, secure intelligence about any arrest warrants that the ICC may issue in the future against Israeli officials and, on the other hand, brief Israeli officials about the situation. Furthermore, while formally refusing to cooperate with the Court, Israel is making full use of its diplomatic ties to indirectly trying to influence the Court proceedings. As one commentator put it, “the Rubicon has been crossed. A young Israeli soldier at the Gaza border now knows she can be held accountable to an international authority — maybe not today or tomorrow but possibly for the rest of her life. This awareness alone is likely to affect Israel’s military operations down the chain of command” (R. HOWSE, *Int’l Criminal Court’s Positive Step on Investigation of Crimes Committed in Palestine*, in *Just Security*, 8 February 2021, available [here](#)).

Hamas and other Palestinian armed groups should equally “fear” the ICC’s investigation. Substantive, procedural and operational factors all seem to indicate that the first warrants will probably be issued against their members: first, as we have seen, the OTP found that there is a reasonable basis to believe that crimes within the jurisdiction of the ICC may have been committed by Hamas and other Palestinian groups; second, the OTP is more likely to be able to conduct on site investigations and interview victims and witnesses in the Gaza Strip, which may provide evidence not only in relation to the IDF’s conduct, but also in relation to the conduct of Hamas and other Palestinian armed groups; third, as has been already pointed out by Kevin Jon Heller, the crimes Hamas operatives are likely to be charged with are easier to prove than those allegedly perpetrated by Israeli officials (K.J. HELLER, *The ICC in Palestine: Be Careful What You Wish For*, in *Justice in Conflict*, 2 April 2015, available [here](#)).

In conclusion, the circumstances of the investigation into the Situation in Palestine warrant that, more than in any other investigation, the OTP show sensitivity and boldness at the same time: sensitivity to reassure all parties involved that the Office is guided only by its duties under the Rome Statute; boldness to signal that external pressures will not deter its determination to go after alleged perpetrators of international crimes. Against this backdrop, it is worth recalling [the newly elected Prosecutor’s swearing-in remarks](#): “I will do my utmost to discharge those responsibilities without fear or favour, faithfully and with integrity, and in full conformity with solemn declaration that I have just given”.

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