

**THE INTERNATIONAL CRIMINAL COURT MUST
PRIORITIZE THE PALESTINIAN CHILD PRISONERS**

***Re: International Human Rights Law;
International Criminal Law;
International Criminal Court,
December 2020***

NABEHA SHAER

ABSTRACT

In the Occupied Palestinian Territories, thousands of Palestinian children have been the subject of numerous human rights abuses through their subjugation to Israeli prisons and military court system. The International Criminal Court (ICC) must hear and prioritize the cases involving Israeli crimes against these Palestinian children. A review of the history of Palestine, an analysis of applicable international law, and a description of the role of the ICC will illustrate the necessity of the ICC's intervention on the crimes committed against the Palestinian children.

I.	THE PALESTINE SITUATION	216
	A. Identity	216
	B. The Balfour Declaration	217
	C. The White Papers	217
	D. Palestine Partition Plan	218
	E. Al-Nakba	218
	F. Al-Naksa.....	219
	G. The First Intifada	219
	H. Second Intifada.....	220
	I. Negotiations	221
	1. Oslo Accords.....	221
	2. Camp David Summit	222
	J. Wars:.....	222
	1. The 2008 Gaza War	222
	2. The 2012 Gaza War	224
	3. The 2014 Gaza War	224
	K. <i>The International Criminal Court, The Palestine Situation.....</i>	226
	L. <i>Gaza's Great March of Return.....</i>	227
	M. <i>Contemporary Diplomacy.....</i>	227
II.	THE PALESTINIAN CHILD PRISONERS	229
III.	BACKGROUND ON SELECT INTERNATIONAL TREATIES	231

IV.	INTERNATIONAL CRIMINAL LAW AND THE INTERNATIONAL CRIMINAL COURT	233
	<i>A. Elements of Crimes Against Humanity</i>	235
	<i>B. Applying Crimes Against Humanity</i>	236
	<i>C. Elements of War Crimes</i>	238
	<i>D. Applying War Crimes</i>	239
V.	POTENTIAL CHALLENGES	240
	<i>A. Accountability</i>	240
	<i>B. Political Intervention</i>	241
	<i>C. Efficiency</i>	241
VI.	FURTHER CONSIDERATIONS	242
	<i>A. Last Resort</i>	242
	<i>B. Erga Omnes</i>	243
	<i>C. Children are Different</i>	244
	<i>D. The Future</i>	245
VII.	CONCLUSION	246

I. THE PALESTINE SITUATION

A. Identity

A historical analysis on recognition of ‘Palestine’ as a state provides analytical context to the present situation of Palestine. Early references to Palestine date at least as far back as the 12th century B.C., during which the “Philistines” inhabited the location of present-day Palestine, also known as Philastine (or Falasteen) in Arabic.¹ It is believed that the name of Palestine derived from these early inhabitants, the Philistines.² From 1517 to 1917 A.D., Palestine was under Ottoman imperial governance, with its own internal governance.³ The internal Palestinian government of this time oversaw the historic outlines of the entire territory of historical Palestine.⁴ This entailed the issuing of money and identity cards, and control over political diplomacy.⁵ A crucial point in formalizing and nationalizing Palestinian identity was the 1834 Palestinian Peasant Revolt against Egypt.⁶ This Revolt is

1. *Palestine*, HISTORY.COM (May 11, 2021), <https://www.history.com/topics/middle-east/palestine>.

2. See Joshua J. Mark, *Palestine Timeline*, ANCIENT.EU (Oct. 25, 2018), <https://www.ancient.eu/timeline/palestine/> (last visited Jan. 25, 2021).

3. *Id.*

4. *Id.*

5. *Id.*

6. Ami Isseroff, *An Early Palestinian Revolt and the Beginnings of Palestinian National Consciousness*, MIDEASTWEB, <http://www.mideastweb.org/palrevolt.htm> (last visited Dec. 11, 2020).

recognized as the first application of the “concept of territorial state” and is observed as a catalyst for Palestinian collective identity.⁷

B. *The Balfour Declaration*

In 1917, just prior to the end of World War I, the British government issued a public statement, the Balfour Declaration.⁸ In this declaration, Britain pledged to establish a “national home for the Jewish people” in Palestine, where indigenous Palestinian Muslims and Christians made up more than ninety percent of the population but where Arab-Jews made up less than ten percent.⁹ The British army ruled over Palestine from the end of 1917, until a civil administration was established in 1920.¹⁰ In 1920, Britain was awarded a mandate of Palestine that was later approved by the League of Nations in 1922.¹¹ While initially issued in 1917, the Balfour Declaration, as an aspect of the Zionist movement, is recognized as a catalyst for the 1948 Nakba (“the Catastrophe”).¹²

C. *The White Papers*

The Zionist movement had two main axes: the acquisition of land and immigration.¹³ After decades of Palestinian revolt to British occupation and Zionist movements, Britain, in 1939, issued the White Paper which states Palestine should be a bi-national state—one to be inhabited by both Arabs and Jews.¹⁴ The result was a five-year limitation of Jewish immigration into Palestine, with required Arab consent to the immigration.¹⁵ It additionally restricted land purchases by the immigrated Jews.¹⁶ Zionist organizations responded by organizing illegal immigration to Palestine until British rule ended.¹⁷ In 1947, the British

7. *Id.*

8. *Id.*

9. *Balfour’s Legacy in Palestine: A Century of Unjust Reign*, GENEVA INT’L CENTER FOR JUSTICE (Mar 11, 2017), <https://www.gicj.org/positions-opinions/gicj-positions-and-opinions/1281-balfour%E2%80%99s-legacy-in-palestine-a-century-of-unjust-reign>.

10. Avital Ginat, *British Mandate for Palestine, 1914–1918*—ONLINE. INTERNATIONAL ENCYCLOPEDIA OF THE FIRST WORLD WAR (Dec. 7, 2018), https://encyclopedia.1914-1918-online.net/article/british_mandate_for_palestine#:~:text=The%20British%20army%20ruled%20Palestine,by%20the%20League%20of%20Nations.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

government announced its intention to terminate the mandate and return the Palestine question to the United Nations (UN).¹⁸

D. Palestine Partition Plan

On November 29, 1947, the UN General Assembly adopted a resolution to partition Palestine.¹⁹ At the time of this partition, there were 1.2 million Arabs and only 608,000 Jews living in Palestine.²⁰ Resolution 181 gave up 54 percent of Palestine for the creation of a Jewish state, despite the Zionist movement owning only 7 percent of the land at this time.²¹ This partition plan upset the indigenous Palestinians for taking the majority of Palestinian territory for a minority colonial settler population, and it upset Zionists who wanted a larger percentage of the land.²² The Zionists, however, accepted the plan, granting them international recognition of a right to a Jewish state, while concurrently undermining the plan by saying its borders “will be determined by force and not by the partition resolution.”²³ To this day, this statement, made by Israel’s first prime minister, remains in effect, as Israel has yet to set its borders.²⁴

E. Al-Nakba

The Zionist desire for an ethnically pure state led to the mass exodus of the native Palestinians, referred to as Al-Nakba by the Palestinians. Between 1947 and 1949, at least 750,000 Palestinians of the 1.9 million population, were forced to become refugees outside the borders of Palestine.²⁵ In these years, Zionist forces took over 78 percent of historic Palestine, ethnically cleansed and destroyed more than 530 villages and cities, and murdered over 15,000

18. *Id.*

19. *Id.* See generally *G.A. Res. 181/2, Future Government of Palestine, A/RES/181 (II)* (Nov. 29, 1947), available at: [undocs.org/en/A/RES/181\(II\)](https://undocs.org/en/A/RES/181(II)).

20. *The Nakba – Introduction*, AMERICAN MUSLIMS FOR PALESTINE (2012), <https://www.ampalestine.org/palestine-101/history/al-nakba/nakba-introduction> (last visited Jan. 25, 2021).

21. *Id.*

22. *UN Partition Plan*, BBC NEWS (Nov. 29, 2001, 11:37 AM), http://news.bbc.co.uk/2/hi/in_depth/middle_east/israel_and_the_palestinians/key_documents/1681322.stm.

23. *Id.*; *The Nakba, 65 Years of Dispossession and Apartheid*, INSTITUTE FOR MIDDLE EAST UNDERSTANDING (May 8, 2013), <https://imeu.org/article/the-nakba-65-years-of-dispossession-and-apartheid>.

24. *UN Partition Plan*, BBC NEWS (Nov. 29, 2001, 11:37 AM), http://news.bbc.co.uk/2/hi/in_depth/middle_east/israel_and_the_palestinians/key_documents/1681322.stm.

25. *The Nakba Did Not Start or End in 1948*, AL JAZEERA (May 23, 2017), <https://www.aljazeera.com/features/2017/5/23/the-nakba-did-not-start-or-end-in-1948>.

Palestinians in a series of more than 70 massacres.²⁶ While Zionists recognize May 14, 1948 as Israeli Independence Day, May 15 marks the commemoration for Al-Nakba by the Arabs.²⁷ To today, Israel continues to oppress and dispossess Palestinians, although sometimes through less explicit methods than those used during the Nakba.²⁸

F. Al-Naksa

The final 22 percent, of Palestine—the Gaza Strip and the West Bank—that remained out of the grasp of Israel in 1948 was later captured in 1967.²⁹ In a six-day war from June 5 to June 10, Israeli forces launched a surprise attack on Egypt, defeating its air force, and then occupied the Gaza Strip and West Bank.³⁰ In this attack, Israel also captured the Sinai Peninsula and the Golan Heights in Syria, allowing Israel to maintain military occupation and control over the land and resources without giving rights or citizenship to those living on the land.³¹ Palestinians refer to this war as Al-Naksa, or the setback.³² Nearly 20,000 Arabs were killed and over 300,000 additional Palestinians were displaced from Gaza and the West Bank.³³

G. The First Intifada

The first Palestinian uprising against the Israeli occupation, the Intifada, occurred in late 1987 after an Israeli truck rammed into a line of Palestinian workers waiting to return to the Gaza Strip, killing four and resulting in spontaneous demonstrations.³⁴ The First Intifada (derived from Arabic verb meaning “to shake off”) began in the Gaza Strip and quickly spread to the West Bank.³⁵

26. *Id.*

27. *Id.*

28. *Id.*

29. 1967 WAR, AMERICAN MUSLIMS FOR PALESTINE, <https://www.ampalestine.org/palestine-101/history/1967%C2%A0war> (last visited Jan. 25, 2021).

30. *Id.*

31. *Id.*

32. *Id.*

33. Nour Abu Aisha, *Palestinians Recall 1967 War, Observe Setback Day*, ANADOLU AGENCY (May 6, 2020), [https://www.aa.com.tr/en/middle-east/palestinians-recall-1967-war-observe-setback-day-/1866274#:~:text=The%20war%20began%20with%20an,dead%20\(soldiers%20and%20civilians\)](https://www.aa.com.tr/en/middle-east/palestinians-recall-1967-war-observe-setback-day-/1866274#:~:text=The%20war%20began%20with%20an,dead%20(soldiers%20and%20civilians)).

34. *The First Intifada – Introduction*, AMERICAN MUSLIMS FOR PALESTINE (2009), <https://www.ampalestine.org/palestine-101/history/intifadas/first-intifada-introduction> (last visited Jan. 25, 2021).

35. *Id.*

The Palestinians engaged in demonstrations, rock-throwing against Israeli troops, and civil disobedience, such as commercial strikes and tax revolts.³⁶ Israeli governmental response was one of “force, might, and beatings,” as described by the Prime Minister.³⁷ Between 1987 and the end of the First Intifada in 1993, Israel killed many Palestinians through live ammunition, deliberately broke demonstrator’s limbs after capture, detained and tortured thousands without charges, and suspected Intifada leaders were deported or assassinated.³⁸ The United Nations Security Council Resolution 605 condemned Israel for the large number of Palestinian deaths occurring in the first weeks of the Intifada as a violation of the Geneva Conventions.³⁹

H. Second Intifada

In late 2000, the Second Intifada, often referred to as Al-Aqsa Intifada, arose out of Israeli occupation policies that continued to violate international law and deprive Palestinians of their basic human rights.⁴⁰ In an attempt to provoke Palestinians, Israel’s Prime Minister, Ariel Sharon, appeared before the Al-Aqsa compound with more than 1,000 Israeli police while repeating a phrase utilized during the 1967 Six-Day War, “[t]he Temple Mount is in our hands.”⁴¹ The Palestinians reacted almost immediately to the threat of Al-Aqsa, one of the holiest sites in Islam and a trust placed on the Palestinians as custodians of the site.⁴² The Israeli Occupational Forces military offensives and administrative policies launched were structured to collectively punish Palestinians for the uprising.⁴³

Although the UN released Resolution 1322 condemning Israel for its use of excessive force against the Palestinians within three weeks after the start of Israeli violence, hundreds of Palestinians had already been murdered and many more injured.⁴⁴ The

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*; see generally S.C. Res. 605 (Dec. 22, 1987) (adopted by the Security Council at its 2777th meeting.)

40. *The Second Intifada – Introduction*, AMERICAN MUSLIMS FOR PALESTINE, (2012), <https://www.ampalestine.org/palestine-101/history/intifadas/second-intifada-introduction> (last visited Jan. 25, 2021).

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*; see S.C. Res. 1322 (Oct. 7, 2000) (the situation in Middle East, including the Palestinian question).

Palestinian Center for Human Rights reported more than 4,973 Palestinian civilians killed during the Second Intifada, with at least 1,262 children amongst them.⁴⁵ In the five years of violence, more than 10,000 children were wounded.⁴⁶ Most of the deaths and injuries inflicted resulted from Israel's utilization of collective punishment, including mass airstrikes against densely populated areas in the Gaza Strip and major land assaults on West Bank cities, villages, and refugee camps.⁴⁷ Israel further demolished about 5,000 Palestinian homes and damaged another 6,500 beyond repair.⁴⁸ Other human rights violations conducted include an oppressive siege on all of Palestine, severe restrictions on Palestinian movements, checkpoints, and curfews. Israel also constructed the Apartheid Wall in 2002, which served as a land grab tactic, that the International Court of Justice ruled illegal.⁴⁹

I. Negotiations

1. Oslo Accords

During the failed Madrid Peace Conference and talks the following year in 1992 in Washington, D.C., the Palestinian political delegation, comprised under the Palestinian Liberation Organization (PLO), focused its efforts on negotiating an end to the illegal Israeli settlements in the occupied West Bank and Gaza Strip.⁵⁰ In the subsequent "peace processes," the Oslo Declaration of Principles (Oslo Accords or Oslo I and Oslo II), Israel set aside such issues of settlements, the status of Jerusalem, and refugees.⁵¹ Rather than serve as an actual peace treaty, the Oslo Accords' aim was to establish interim governance and create a framework for further negotiations for a final agreement to be concluded in 1999.⁵²

The Oslo Accords were intended to last five years, but to this day, there has been virtually no progress.⁵³ The Accords changed

45. *Id.*

46. *The Second Intifada – Introduction*, AMERICAN MUSLIMS FOR PALESTINE, (2012), <https://www.ampalestine.org/palestine-101/history/intifadas/second-intifada-introduction> (last visited Jan. 25, 2021).

47. *Id.*

48. *Id.*

49. *Id.*; *see generally* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 131 (July 9).

50. Rawan Damen, *The Price of Oslo*, PALESTINE REMIX (2013) <https://interactive.aljazeera.com/aje/palestineremix/the-price-of-oslo.html#/14> (last visited Sept. 6, 2020).

51. *Id.*

52. *Id.*

53. *Id.*

control of major Palestinian cities to the newly formed Palestinian Authority (PA).⁵⁴ Oslo II, signed in 1995, divided the illegally occupied West Bank into three non-contiguous regions, Areas A, B, and C.⁵⁵ In Areas A and B, Israel has full control of external security thereby giving Israel the ability to enter at any time, usually to detain individuals or conduct extra-judicial execution, while the PA remains in charge of social aspects, such as education.⁵⁶ While the PA was assigned control over Area C, which represents 60 percent of the West Bank, Israel has retained control over all matters, and transfer of control over Area C to the PA has yet to happen.⁵⁷

2. Camp David Summit

In 2000, there was another attempt for a “peace agreement” with the insistence of U.S. President Bill Clinton.⁵⁸ PLO Chairman, Yasser Arafat, and the Palestinian negotiators offered concessions that were far beyond international consensus for what a peace agreement should include; concessions such as Israeli sovereignty over parts of East Jerusalem.⁵⁹ Yet, the only proposals offered to Palestine by Israel were oral, vague, and only to be used as “bases for negotiations” rather than serve as serious negotiations in itself.⁶⁰ The oral proposals included grave concessions for the Palestinians, such as signing away the Palestinian refugee’s right to return to Palestine.⁶¹ Ultimately, the Camp David Summit ended without an agreement and a short few months later, the Second Intifada began.⁶²

J. Wars

1. The 2008 Gaza War

There are three central wars of the 21st century, against the Gaza Strip, of special significance. First is the 2008 war in which Israel waged a three-week military offensive against the Gaza Strip

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *What Did, in Fact, Happen at Camp David in 2000?*, INSTITUTE FOR MIDDLE EAST UNDERSTANDING (Oct. 28, 2005), <https://imeu.org/article/what-did-in-fact-happen-at-camp-david-in-2000>.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

from the 27th of December to the 18th of January.⁶³ In the initial strike at the start of the offensive, Israel launched “80 jets, war planes, and helicopters dropp[ing] over 100 bombs on dozens of targets. . . .”⁶⁴ According to the United Nations Fact-Finding Mission on the Gaza Conflict, referred to as the Goldstone Report, Israel “launched at least 300 air and sea strikes against the Gaza Strip,” targeting “37 houses; 67 security and training sites; 20 workshops; 25 public and private institutions; 7 mosques; and 3 educational institutions.”⁶⁵ Police stations and the small fishing port were particularly under deliberate attack across Gaza.⁶⁶ On the eighth day, Israel, with one of the world’s strongest and best-equipped armed forces, launched a ground invasion of Gaza, with support by artillery fire and fighter jets.⁶⁷ In contrast, the Palestinians in Gaza have no artillery, heavy weapons, tanks, air force, or navy.⁶⁸ The Goldstone Report details Israel’s attempt to cut the Gaza Strip in two before focusing the attack on the northern portion.⁶⁹

The Report details allegations of Israel’s use of human shields, widespread mistreatment of civilians, detention, and transfer of a large number of Palestinians to Israeli prisons in unlawful circumstances.⁷⁰ Investigations and reports by human rights organizations, including Amnesty International, found that Israel “made extensive use of white phosphorous . . . in residential areas, causing death and injuries to civilians.”⁷¹ According to the Israeli human rights organization, B’Tselem, 1,390 Palestinians were killed in this offensive, including 344 children.⁷² Thousands more were injured.⁷³

63. Rebecca Stead, *Remembering Israel's 2008 War on Gaza*, MIDDLE EAST MONITOR (Dec. 27, 2018, 8:33 AM), <https://www.middleeastmonitor.com/20181227-remembering-israels-2008-war-on-gaza/>.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. Rebecca Stead, *Remembering Israel's 2008 War on Gaza*, MIDDLE EAST MONITOR (Dec. 27, 2018), <https://www.middleeastmonitor.com/20181227-remembering-israels-2008-war-on-gaza/>.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

2. The 2012 Gaza War

In November 2012, tensions between Israeli occupying forces and Gaza increased, leading up to the Israeli offensive from the 14 to 21 of November.⁷⁴ On November 10, Israel killed four Palestinian teenagers playing football in a Gaza sports stadium, in response to an attack on a military Jeep.⁷⁵ This was followed by days of rocket fire on both sides, leading to Israel's official offensive launch.

Israel began by targeting a chief of the Hamas military wing, resulting in widespread protests.⁷⁶ Israel also struck twenty other points in the Gaza Strip and continued its missile strikes through the night. Hamas responded with rocket fire into Israeli cities the following day, no one was killed.⁷⁷ In the following days, Israel broadened its targets to include Hamas government sites. The World Health Organization condemned the strikes, stating Gaza's hospitals were overwhelmed with casualties and faced an imminent shortage of medical supplies.⁷⁸ At the same time, Israel's Interior Minister stated, "[t]he goal of the operation is to send Gaza back to the Middle Ages."⁷⁹ Days later, Israel agreed to a ceasefire.⁸⁰ 174 Palestinians were killed during this offensive, as well as 4 Israelis, and over 1,000 Palestinians were injured.⁸¹

3. The 2014 Gaza War

Two years later, from July 8 to August 26 of 2014, Israel launched its deadliest military offensive in recent history.⁸² A month prior to the start of the offensive, a second Palestinian unity government was being formed between the democratically elected Hamas of the Gaza Strip and the Palestinian Authority (PA) of the West Bank.⁸³ Israeli Prime Minister, Benjamin Netanyahu, warned

74. Hana Hussain, *Remembering Israel's 'Operation Pillar of Defence'*, MIDDLE EAST MONITOR, (Nov. 14, 2017, 8:30 AM), <https://www.middleeastmonitor.com/20171114-remembering-israels-operation-pillar-of-defence/>.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. Hana Hussain, *Remembering Israel's 'Operation Pillar of Defence'*, MIDDLE EAST MONITOR, (Nov. 14, 2017, 8:30 AM), <https://www.middleeastmonitor.com/20171114-remembering-israels-operation-pillar-of-defence/>.

80. *Id.*

81. *Id.*

82. Hana Hussain, *Remembering the 2014 Israeli offensive against Gaza*, MIDDLE EAST MONITOR, (July 8, 2018, 8:30 AM), <https://www.middleeastmonitor.com/20180708-remembering-the-2014-israeli-offensive-against-gaza/>.

83. *Id.*

the PA it had to choose between peace with Hamas or with Israel. Ten days later, three Israeli settlers went missing in the West Bank.⁸⁴ While Israel blamed Hamas, high-ranking Hamas officials denied involvement and there was no evidence to back allegations.⁸⁵ Israeli historian, Ilan Pappé, said any motivation for the kidnapping was caused by the murder of two Palestinian teenagers who were killed by Israeli forces in May.⁸⁶ The autopsy report was released the day before the kidnapping and showed the teenagers were killed by Israeli soldiers' live fire.

Widespread protests ensued in the Gaza Strip and West Bank; meanwhile, Israel bombarded the Gaza Strip, prompting rocket fire in response.⁸⁷ Following failed attempts to a ceasefire, Israel announced its start of the offensive on July 7.⁸⁸ Israel dropped 400 tons of bombs on Gaza within only the first 48 hours.⁸⁹

Over the next two months, over 6,000 airstrikes were launched on the Gaza Strip, an area roughly the size of Washington DC. 500,000 Palestinians were displaced, 300,000 forced to shelter in UN schools, and electricity to hospitals was cut off.⁹⁰ Hamas fired rockets at Israeli military targets, but they lacked precision guidance systems.⁹¹ In contrast, Israel used high-powered, U.S.-financed precision-guided arsenal, targeted at civilian areas including homes, schools, hospitals, and places of worship.⁹²

Israel destroyed 32 tunnels that have been recognized as "Gaza's lifeline" during the 11-year Israeli-enforced blockade.⁹³ Over 20,000 buildings were destroyed, with costs for reconstruction estimated by the UN to be at \$295 million.⁹⁴ By the end of hostilities, 2,251 Palestinians were killed, including 500 children, 67 Israeli soldiers and six civilians were also killed.⁹⁵ According to the UN, over 11,000 more Palestinians were wounded.⁹⁶ In 2015, the UN affirmed that Israel committed war crimes during the offensive due to its

84. *Id.*

85. *Id.*

86. *Id.*

87. Hana Hussain, *Remembering the 2014 Israeli Offensive against Gaza*, MIDDLE EAST MONITOR, (July 8, 2018, 8:30 AM) <https://www.middleeastmonitor.com/20180708-remembering-the-2014-israeli-offensive-against-gaza/>.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

targeting of civilian areas, and supported the Palestinians in filing a petition with the International Criminal Court.⁹⁷

*K. The International Criminal Court,
The Palestine Situation*

The International Criminal Court (ICC or the Court) has accepted the State of Palestine's referral to investigate the Palestine situation. The Office of the Prosecutor is satisfied that there is a reasonable basis to proceed with an investigation and that war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip. Prosecutor Bensouda has found jurisdiction over the Palestine situation.⁹⁸ On December 20, 2018, Prosecutor Fatou Bensouda's Office concluded that the statutory criterion under the Rome Statute for opening an investigation has been met.⁹⁹ These criteria include finding a reasonable basis that war crimes have been or are being committed in the Palestine territories of the West Bank, East Jerusalem, and the Gaza Strip (Gaza), potential cases arising from the situation would be admissible, and there are no substantial reasons to believe an investigation would not serve the interests of justice.¹⁰⁰ However, the Prosecutor requested a Pre-Trial Chamber jurisdictional ruling on the scope of the territorial jurisdiction in Palestine under the Rome Statute.¹⁰¹ This ruling was specifically aimed to determine that the scope of the "territory" overseen by the Court's jurisdiction comprises of the West Bank, East Jerusalem, and Gaza.¹⁰² The Pre-Trial Chamber's decision held that the ICC's territorial jurisdiction "in the Situation in Palestine extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East

97. *Id.*

98. Statement, Office of the Prosecutor, *Statement of ICC Prosecutor, Fatou Bensouda, on the Conclusion of the Preliminary Examination of the Situation in Palestine, and Seeking a Ruling on the Scope of the Court's Territorial Jurisdiction*, ICC (Dec. 20, 2019), <https://www.icc-cpi.int/Pages/item.aspx?name=20191220-otp-statement-palestine>.

99. *Id.*

100. See generally, *Occupied Palestinian Territory*, ILO, https://www.ilo.org/beirut/countries/occupied-palestinian-territory/WCMS_532917/lang-en/index.htm (last visited Oct. 11, 2021); *Gaza Situation Report 87*, U.N. RELIEF AND WORKS AGENCY, <https://www.unrwa.org/newsroom/emergency-reports/gaza-situation-report-87> (last visited Oct. 11, 2021); *State-backed Settler Violence*, B'TSELEM (Nov. 11, 2017), https://www.btselem.org/settler_violence.

101. *Id.*

102. *Statement of ICC Prosecutor, Fatou Bensouda, on the Conclusion of the Preliminary Examination of the Situation in Palestine, and Seeking a Ruling on the Scope of the Court's Territorial Jurisdiction*, *supra* note 98.

Jerusalem.”¹⁰³ The Prosecutor’s next step is to determine the priorities in the investigation.¹⁰⁴ The Palestinian child prisoners must be prioritized.

L. Gaza’s Great March of Return

Starting on March 30, 2018, every Friday for over one year, Palestinians in Gaza have protested along the fence separating the besieged Strip from Israel.¹⁰⁵ The Palestinian protestors are demanding the right to return to their ancestors’ homes—which they were expelled from in the 1948 Nakba—and an end to the continued Israeli blockade that has been deemed a collective punishment by the UN.¹⁰⁶ Throughout the year, Israeli snipers opened fire at protestors; killing 266 people—including 50 children—and injured 30,398 Palestinians.¹⁰⁷ The Gaza protests continued despite this.

M. Contemporary Diplomacy

The Trump administration has effectively ousted the United States from the role of mediator in the Palestinian-Israeli Situation by abandoning dialogue with Palestinian leadership while enthusiastically promoting Israeli far-right interests.¹⁰⁸ Prior to his Middle East Plan, the Trump administration oversaw the closure of the Palestine Liberation Organization in Washington, suspended aid to the Palestinian Authority, illegally transferred the US embassy in Tel Aviv to Jerusalem, and repealed all funding to the UN Relief Works Agency for Palestine Refugees in the Near East (UNRWA).¹⁰⁹

103. Situation in the State of Palestine, ICC-01/18, Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’, 60 (Feb. 5, 2021), https://www.icc-cpi.int/CourtRecords/CR2021_01165.PDF.

104. See Statement, Office of the Prosecutor, *Statement of ICC Prosecutor, Fatou Bensouda, Respecting an Investigation of the Situation in Palestine* (Mar. 3, 2021), <https://www.icc-cpi.int/Pages/item.aspx?name=210303-prosecutor-statement-investigation-palestine>.

105. Huthifa Fayyad, *Gaza’s Great March of Return Protests Explained*, AL JAZEERA (Mar. 30, 2019), <https://www.aljazeera.com/news/2019/03/gaza-great-march-return-protests-explained-190330074116079.html>.

106. *Id.*

107. *Id.*

108. Giulia Macario, *The (Farce) “Deal of the Century”: A Perfect Distraction*, OPINIO JURIS (Mar. 2, 2020), <https://www.opiniojuris.it/deal-of-the-century-3/>.

109. Marwan Bishara, *Trump’s ‘Peace Plan’: The Farce, the Fraud and the Fury*, AL JAZEERA (Jan. 29, 2020), <https://www.aljazeera.com/indepth/opinion/trump-peace-plan-farce-fraud-fury-200128164004266.html>.

Trump's Middle East Plan has four major points, any one of which would provide sufficient reason for any Palestinian negotiator to summarily reject the plan. The four points are: a redrawing of the boundaries to incorporate illegal Israeli settlements into Israeli territory and annexing the Jordan Valley (a fertile area that represents 30% of the Palestinian West Bank) [section 4]; recognizing Jerusalem as the "undivided capital" of Israel with Palestinian ability to name a remote, ancient village of Jerusalem as its own [section 5]; requiring a demilitarized "state" for Palestine without control of borders [section 7]; and denying the internationally-recognized right of return by Palestinian refugees [section 16].¹¹⁰ The reference to Palestine as a "state" is euphemistic, as Israeli settlements would be scattered within and give no real right to self-determination.¹¹¹ Palestinian Authority (PA) President Mahmoud Abbas indeed did reject the plan, calling it the "final phase of the Balfour Declaration."¹¹² Some find that the plan was written in a way intended to make the Palestinians have no option but to reject it.¹¹³

In June 2020, the PA sent international mediators known as the Quartet—an international body comprised of the UN, European Union, US, and Russia—a Palestinian counterproposal.¹¹⁴ This Palestinian proposal aims to create a "sovereign Palestinian state, independent and demilitarized" with East Jerusalem as its capital.¹¹⁵ It leaves the door open to border modifications and exchanges of land equal "in size and volume and value—one to one," according to the Palestinian Prime Minister, Mohammad Shtayyeh.¹¹⁶ This plan came as a response to Trump's plan providing the green light for Israel to annex large areas of the occupied West Bank, including illegal settlements, and the Jordan Valley.¹¹⁷ Shtayyeh warned that if Israel moves ahead with planned annexation, the Palestinian government "will issue an announcement to establish a constitution for the state [of Palestine] and establish a founding council" to function in the place of

110. Macario, *supra* note 108.

111. *Id.*

112. President Mahmoud Abbas, Address following the emergency meeting of Palestinian leadership in Ramallah (Jan. 28, 2020).

113. Macario, *supra* note 108.

114. Ali Younes, *PA Proposes Demilitarised State as Counterproposal to Trump Plan*, AL JAZEERA (June 9, 2020), <https://www.aljazeera.com/news/2020/06/pa-proposes-demilitarised-state-counterproposal-trump-plan-200609180154873.html>.

115. *Id.*

116. *Id.*

117. *Id.*

Parliament.¹¹⁸ Some, however, like Diana Buttu, a former member of the Palestinian negotiating team, criticized the Palestinian attempt at counterproposals.¹¹⁹ Buttu argued, “[t]he only legitimate counter-proposal is to end this Israeli occupation” and that such counterproposals are self-destructive.¹²⁰

II. THE PALESTINIAN CHILD PRISONERS

In the West Bank, occupied by Israel, about 45 percent of the approximately 2.9 million Palestinians are under the age of 18.¹²¹ Israel is the only country in the world that automatically and systematically prosecutes children in military courts that lack fundamental fair trial rights and protection.¹²² Since 1967, Israel has operated two separate legal systems, one for the Israeli settlers comprised of the civilian and criminal legal system, and one where Palestinians live under military law.¹²³ Israel prosecutes approximately 700 Palestinian children each year.¹²⁴ They are arrested, interrogated, and detained by Israeli army, police, and security agents.¹²⁵

A clear, persistent, and systematic use of ill-treatment and abuse against the Palestinian child prisoners by Israeli officials has been clearly documented. The volume, consistency, and persistence of the allegations on such ill-treatment for over a decade is based upon the UN Children’s Fund’s (UNICEF) report of Children in Israeli Military Detention Observations and Recommendations. This report is also supported by monitoring and reporting mechanisms on grave child rights violations and by interviews conducted by UNICEF with Palestinian and Israeli lawyers and Palestinian children.¹²⁶

The UNICEF report found that the pattern of ill-treatment includes arresting children at their homes between midnight and 5:00 AM by heavily armed soldiers, often with threats to the child

118. *Id.*

119. Daoud Kuttab, *Palestinians Make ‘Counter-Proposal’ to Trump Peace Plan*, ARAB NEWS (June 9, 2020), <https://www.arabnews.com/node/1687176/middle-east>.

120. *Id.*

121. About section of the No Way to Treat a Child Campaign, DEFENSE FOR CHILDREN INTERNATIONAL – PALESTINE: NO WAY TO TREAT A CHILD (2020), <https://nwtac.dci-palestine.org/about> [hereinafter NO WAY TO TREAT A CHILD: About].

122. *Id.*

123. *Id.*

124. UNICEF, CHILDREN IN ISRAELI MILITARY DETENTION: OBSERVATIONS AND RECOMMENDATIONS 21 (2013), https://unispal.un.org/pdfs/UNICEF_CHILDINDET.pdf [hereinafter CHILDREN IN ISRAELI MILITARY DETENTION].

125. *Id.* at 9.

126. *Id.* at 2.

and their family. The children then experience extreme hardship from the actions of the armed soldiers. UNICEF found a pattern during the transfer to an interrogation site, which can last an hour to a whole day, that includes blindfolding the children and tying their hands with plastic ties; physical and verbal abuse, including the use of painful restraints amongst other abuses; and lack of access to water, food, toilet facilities, and medical care.

Once relocated to the Israeli interrogation site, the children are inflicted with physical violence; threats of physical violence, death, solitary confinement, and sexual assault against themselves or a family member; coerced confessions; interrogators forcing the child to sign forms and orders, in most cases, written in Hebrew which the vast majority of Palestinian children do not understand; and a complete lack of access to lawyers or family members throughout the interrogation.

During court appearances, treatment that is in contravention to the rights of the child persists.¹²⁷ In court, the children are shackled; denied bail and imposed with custodial sentences; and transferred outside of occupied Palestinian territory to serve sentences inside Israel, inconsistent with the Fourth Geneva Convention Article 76.¹²⁸ The emotional distress inflicted through these incarcerations has further lasting harmful effects, including additional distress from being isolated from their families—sometimes for months—and lack of access to education.¹²⁹

A study of 739 Palestinian children detained by Israeli forces between 2013 and 2018 conducted by the Defense for Children International Palestine (DCIP) illustrates the severity and prevalence of the abuse inflicted onto these children. The DCIP study found that 73 percent experienced physical violence following arrest; 96 percent were interrogated without the presence of a family member; 49 percent signed documents in Hebrew; 74 percent were not properly informed of their rights; 20 percent were subject to stress positions; 64 percent faced verbal abuse, humiliation, or intimidation; 95 percent were hand tied; 86 percent were blindfolded; and 49 percent were detained from their homes in the middle of the night.¹³⁰

These practices, in their entirety and on their own, are in violation of international law that protects all children against ill-treatment when in contact with law enforcement, military, and

127. *Id.* at 14.

128. *Id.* at 12–14.

129. *Id.* at 13.

130. NO WAY TO TREAT A CHILD: About, *supra* note 121.

judicial institutions.¹³¹ International law, applicable in both Israel and Palestine, prohibits the use of torture and other cruel, inhuman, and degrading treatment or punishment under any circumstances.¹³² This prohibition is absolute and unconditional.¹³³ There are no exceptions permissible for this prohibition, including security considerations or even the threat of war.¹³⁴

III. BACKGROUND ON SELECT INTERNATIONAL TREATIES

Under international law, children who are accused, suspected, or convicted of breaking the law must be treated differently from adults in a similar position. The United Nations Convention on the Rights of the Child (CRC or the Convention) is a legally-binding, international agreement that sets out the civil, political, economic, social, and cultural rights of every child, without distinction.¹³⁵ The basic fundamental rights of every child include the rights to life, survival, and development; protection from violence, abuse, or neglect; an enabling education; be raised by, or have a relationship with, their parents; and express their opinions and be listened to.¹³⁶ The CRC is the most widely adopted international treaty in history, as 196 out of the 197 UN member states have ratified it, the United States being the one exception.¹³⁷

While the Convention is essential in its entirety, a number of the Articles are crucial in their applicability to the Palestinian child prisoners.¹³⁸ Article 3, for instance, emphasizes that the best interests of the child must be the primary consideration in all of a States actions, and States Parties are required to ensure the child protection and care for their well-being.¹³⁹ Article 37 prohibits “torture or other cruel, inhuman or degrading treatment or punishment” to be inflicted upon children.¹⁴⁰ Children shall not “be deprived of [their] liberty unlawfully or arbitrarily[, and] arrest,

131. CHILDREN IN ISRAELI MILITARY DETENTION, *supra* note 124, at 9, 12–14.

132. *Id.* at 2.

133. *Id.*

134. *Id.*

135. Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force. Sept. 2, 1990) [hereinafter CRC].

136. *Id.* at art. 6, 9, 12, 19, 40.

137. *Frequently Asked Questions on the Convention on the Rights of the Child*, UNICEF, <https://www.unicef.org/child-rights-convention/frequently-asked-questions> (last visited Oct. 17, 2021).

138. *See* CRC, *supra* note 133, at art. 3, 9, 12, 16, 19–20, 24, 35, 37–38, 40.

139. *Id.* at art. 3.

140. *Id.* at art. 37.

detention or imprisonment of a child shall . . . only [be] a measure of last resort and for the shortest appropriate period of time.”¹⁴¹ “Every child deprived of [their] liberty shall [also] be treated with humanity and respect for the inherent dignity of the human person, and in a manner” that accounts for the child’s age.¹⁴² The child must also “have the right to maintain contact with [their] family [via] correspondence and visits, save in exceptional circumstances.”¹⁴³

Through Article 40, “every child . . . accused of, or recognized as having infringed the penal law [is] to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth.”¹⁴⁴ Particularly, the child must be “presumed innocent until proven guilty;” “be informed promptly and directly,” through their parents, of charges against them and have legal defense; “[t]o have the matter determined without delay by a competent . . . and impartial authority, . . . in the presence of legal” assistance and their parents; to not “be compelled to give testimony or . . . confess guilt;” and “[t]o have free assistance of an interpreter.”¹⁴⁵ Under the CRC, children are entitled to the full spectrum of socio-economic human rights, with the child’s best interests playing a primary role in consideration of all action taken by States.¹⁴⁶ Further, all protections given to adults under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) apply to children.¹⁴⁷ The CRC contextualizes the principles enshrined in the UDHR and ICCPR to children’s rights and the heightened level of protection guaranteed for them.

In addition to the CRC, basic standards relevant to the administration of juvenile justice derives from the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), and the United Nations Rules for the Protection of Juveniles Deprived of

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.* at art. 40.

145. *Id.*

146. *The International Human Rights Community Affirms that Immigration Detention is a violation of the Rights of Children*, END CHILD DETENTION, <https://endchilddetention.org/toolbox/issue-child-immigration-detention/international-law/child-rights/> (last visited Oct 2, 2020).

147. *Id.*; see generally G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR]; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20; 6 I.L.M. 368 (1967) [hereinafter ICCPR].

their Liberty.¹⁴⁸ The fundamental consideration of these instruments is that the imprisonment of young people should be avoided whenever possible, and the younger the person is, the greater the deference to avoiding detention.¹⁴⁹

Important to the context on the abolition of torture is Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).¹⁵⁰ Through CAT, State Party's are required to take effective measures to prevent torture in any territory under its jurisdiction; clarifies that "[n]o exceptional circumstances whatsoever . . . may be invoked as a justification of torture;" and prevents justifying torture on the basis of an order from a superior officer.¹⁵¹ The aforementioned declarations and treaties, applicable in Palestine and Israel, establish the legal framework for international human rights as particularly applied for children.

IV. INTERNATIONAL CRIMINAL LAW AND THE INTERNATIONAL CRIMINAL COURT

International criminal law is meaningful in a number of its objectives, including deterrence, denunciation and education, victim vindication, and reconciliation. Deterrence and denunciation provide an international notice that communicates the nature of the wrong, reaffirming the norm, and educating all facets of society. Victim vindication and reconciliation ensure the protection of those harmed by the violation of international law and allow the victimized society to heal and move forward.

For the International Criminal Court (ICC or the Court) to have jurisdiction, the material crime must be encompassed in Article 5 of the Rome Statute.¹⁵² The case of the Palestinian child prisoners falls within the meaning of crimes against humanity and war crimes.¹⁵³ The ICC must also have personal jurisdiction under Article 26, therefore, the perpetrators must be over the age of 18.¹⁵⁴ The

148. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, HUMAN RIGHTS AND PRISONS: MANUAL ON HUMAN RIGHTS TRAINING FOR PRISON OFFICIALS 157-64 (2005), <https://www.ohchr.org/documents/publications/training11en.pdf>.

149. *Id.*

150. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20 (1988); 23 I.L.M. 1027 (1984) [hereinafter CAT].

151. *Id.* at Article 2.

152. Rome Statute of the International Criminal Court, U.N. Doc. 2187 U.N.T.S. 90, entered into force July 1, 2002 [hereinafter Rome Statute].

153. *Id.* at art. 7-8.

154. *Id.* at art. 26.

situation must also meet the preconditions to the exercise of jurisdiction under Article 12 of accepting the jurisdiction of the Court.¹⁵⁵ This case falls under the territorial link of Article 12(2)(a), as the State on the territory of which the conduct in question occurred, in this case the State of Palestine, is a party or has accepted the jurisdiction of the Court.¹⁵⁶ There are only three trigger mechanisms for how a case can come before the Court.¹⁵⁷ In the case of Palestine, a self-referral was sufficient to trigger an investigation.¹⁵⁸

The ICC serves as a court of “last resort,” meaning that it works in complementarity with national courts. There is a required two-step test to be answered before a case will be considered admissible before the ICC. The first question is to ask if there is an investigation or prosecution occurring at the national level that is being conducted properly.¹⁵⁹ This is relevant to ensure that one is not punished for the same thing twice.¹⁶⁰ The second question is if the party is unwilling or unable to genuinely carry out an investigation or prosecution.¹⁶¹ There is currently no meaningful investigation or prosecution on the Palestine Situation at the national level, nor is there willingness to do so.

The third question is if an investigation would serve the interests of justice. When jurisdiction and admissibility are found in the affirmative, the Prosecutor can still deny investigation of a situation if it ‘would not serve the interests of justice’ when taking into account all relevant circumstances including the ‘gravity of crime’ and ‘interests of victims.’¹⁶² In the *Gaza Flotilla* case, the Pre Trial Chamber I and the Prosecutor agreed on the five factors that influence whether or not a situation would serve the interests of justice.¹⁶³ The first factor is focused on the perpetrator, namely, whether or not prosecution would focus on the persons with the greatest responsibility.¹⁶⁴

The four additional factors focus on the nature of the crimes and require sufficiently high levels of investigation: the scale of crimes

155. *Id.* at art. 12.

156. *Id.*

157. *Id.* at art. 13.

158. *Id.* at art. 14.

159. *Id.* at art. 17.

160. *Id.*

161. *Id.*

162. *Id.*

163. Situation on the Registered Vessels of Comoros, Greece and Cambodia, Article 53(1) Report, ¶¶ 135–36 (Nov. 6, 2014), [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) [hereinafter *Gaza Flotilla*].

164. *Id.* at ¶ 135.

(although not decisive); the nature of crimes (including consideration of the evidence of pain, suffering, and ill-treatment of victims); the manner of commission of crimes (such as the use of force); the impact of crimes (including effects on families, although this is not decisive).¹⁶⁵ Prosecutor Bensouda has previously found that an investigation on the Palestine Situation does not show any significant reason it would not further the interests of justice and has accepted jurisdiction on the Situation.¹⁶⁶

The jurisdiction of the ICC is limited by the most serious crimes of concern to the international community, as established through the Rome Statute.¹⁶⁷ These crimes are comprised of the crime of genocide, crimes against humanity, war crimes, and the crime of aggression.¹⁶⁸ Of important interest in the context of the Palestinian child prisoners are the crime against humanity and war crimes.¹⁶⁹

A. Elements of Crimes Against Humanity

For an act to be deemed a crime against humanity, a number of contextual elements are required. The act must be part of a widespread or systematic attack directed against any civilian population; the perpetrator must be aware of the factual circumstances that established the character (the nature and gravity) of the act; and the perpetrator must know that the conduct was part of or intended to be part of a widespread or systematic attack against a civilian population.¹⁷⁰

The initial creation of the crimes against humanity was done to fill the gap left by the creation of the war crimes cause of action. Contextually, crimes against humanity occur as part of a widespread or systematic attack against any civilian population. Multiple attacks are sufficient to meet this context and it does not necessarily have to consist of armed force.¹⁷¹ There is no requirement for a nexus with armed conflict or for discrimination to be present.¹⁷² It is sufficient for the perpetrator to have

165. *Id.* at ¶ 138–41.

166. *Id.* at ¶ 149.

167. Rome Statute, *supra* note 152, at Preamble.

168. *Id.*

169. *Id.* at art. 7–8.

170. Preparatory Comm. for the International Criminal Court, Report of the Preparatory Commission for the International Criminal Court: Part II Finalized draft text of the Elements of Crimes, art. 7, U.N. Doc. PCNICC?2000/1/Add.2 (Nov. 2, 2000) [hereinafter *Elements of Crimes*].

171. Rome Statute, *supra* note 152, at art. 7.

172. *Elements of Crimes*, *supra* note 170, at art. 7.

awareness of the context and there is no heightened requirement for the intention in relation to the prohibited act.¹⁷³

The acts encompassed in the meaning of 'crime against humanity' of heightened importance in the discourse on Palestinian child prisoners are deportation or forcible transfer of the population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; persecution against any identifiable group in connection with any crime within jurisdiction of the ICC; enforced disappearance of persons; and other inhumane acts of a similar character intentionally causing great suffering.¹⁷⁴

B. Applying Crimes Against Humanity

The acts committed by Israel are sufficient to show a violation of Article 7(1)(d) on the crime against humanity of deportation or forcible transfer of one or more persons.¹⁷⁵ Officers of Israel have forcibly transferred Palestinian children from their homes in the Occupied Palestinian Territories to locations in Israel.¹⁷⁶ The 'forcible' relocation is not restricted merely to physical force, but also includes the threat of force or coercion caused by fear of violence, duress, detention, psychological oppression or abuse of power, or by taking advantage of a coercive environment.¹⁷⁷ These Palestinian children, who are, or were, lawfully present in the Occupied Palestinian Territories, often suffer from abuse and intimidation throughout the process of being arrested, through their transfer to Israeli sites, throughout their court hearings, and in their detention sentencing.¹⁷⁸

The acts of Israel come in conflict with Article 7(1)(e) of the crime against humanity of imprisonment or other severe deprivation of physical liberty.¹⁷⁹ Israeli officials imprison approximately seven hundred Palestinian children a year, depriving them of their physical liberty and in such a way that is a violation of the fundamental rules of international law.¹⁸⁰ Additionally, the manner

173. *Id.*

174. Rome Statute, *supra* note 152, at art. 7.

175. *Elements of Crimes*, *supra* note 170, at art. 7(1)(d).

176. See NO WAY TO TREAT A CHILD: About, *supra* note 121; see CHILDREN IN ISRAELI MILITARY DETENTION, *supra* note 124.

177. *Elements of Crimes*, *supra* note 170, n.12.

178. See NO WAY TO TREAT A CHILD: About, *supra* note 121; see CHILDREN IN ISRAELI MILITARY DETENTION, *supra* note 124.

179. Rome Statute, *supra* note 152, at art. 7(1)(e).

180. See NO WAY TO TREAT A CHILD: About, *supra* note 121; see CHILDREN IN ISRAELI MILITARY DETENTION, *supra* note 124.

in which the Palestinian children are arrested, detained, and tried is an act of the crime against humanity of torture under Article 7(1)(f).¹⁸¹ The pain and suffering experienced by these children did not arise only from, and was not inherent in or incidental to, lawful sanctions.¹⁸² As relates to this crime, no specific purpose for the torture needs to be proven.¹⁸³

The frequent occurrence of this situation rises to an act of a crime against humanity of persecution under Article 7(1)(h) as Israel severely deprives Palestinians of their fundamental rights.¹⁸⁴ The Palestinians have collectively been targeted by reason of their national identity.¹⁸⁵ While these children are being particularly persecuted for their connection with such an identifiable group, their families and communities are also being harmed by the situation at a level that rises to collective punishment.¹⁸⁶ The extent of the emotional harm instituted by Israel through its detention of approximately seven hundred Palestinian children per year extensively disrupts and harms the livelihoods of these Palestinian communities.¹⁸⁷ There is no further mental element necessary for a showing of this crime, beyond that of the perpetrator knowing the conduct was part of a widespread or systematic attack against a civilian population.¹⁸⁸

Israel has also committed the crime against humanity of apartheid as of Article 7(1)(j).¹⁸⁹ The experience of a child's arrest by Israeli forces is entirely dependent on the identity of the child. While Israeli settler children, who reside in the West Bank in violation of international law, are given due process rights and are tried in a civilian legal system, Palestinian children are automatically and systematically prosecuted in military courts under military law.¹⁹⁰ Israeli army, police, and security agents treat the Palestinian children inhumanely throughout the arrest, interrogation, detention, and trial process through an institutionalized regime

181. Rome Statute, *supra* note 152, at art. 7(1)(f).

182. *Elements of Crimes*, *supra* note 170, at art. 7(1)(f)(4).

183. *Id.* at n.14.

184. Rome Statute, *supra* note 152, at art. 7(1)(g)-(h).

185. *Elements of Crimes*, *supra* note 170, at art. 7(1)(h)(1)-(3).

186. *Id.*

187. NO WAY TO TREAT A CHILD: About, *supra* note 121; CHILDREN IN ISRAELI MILITARY DETENTION, *supra* note 124.

188. *Elements of Crimes*, *supra* note 170, n.22.

189. *See* Rome Statute, *supra* note 152, at 4.

190. The Issues section of the No Way to Treat a Child Campaign, DEFENSE FOR CHILDREN INTERNATIONAL – PALESTINE: NO WAY TO TREAT A CHILD (2020), <https://nwtac.dci-palestine.org/about> [hereinafter NO WAY TO TREAT A CHILD: The Issues].

of systematic oppression and domination to promote the superiority of an Israeli race and the degeneration of the Palestinian nationality.¹⁹¹

Israel has violated the crime against humanity of other inhumane acts under Article 7(1)(k) through the infliction of great suffering and serious injury to body, mental, or physical health by inhumane acts against these Palestinian children.¹⁹² This repeated mistreatment of Palestinian children by Israel demonstrates a clear pattern of disregard for international law and constitutes clear crimes against humanity. The ICC must, therefore, hear and prioritize the case of crimes against humanity inflicted against the Palestinian child prisoners.

C. Elements of War Crimes

Required for war crimes, under Article 8, is the context of an international armed conflict.¹⁹³ Encompassed in the term “international armed conflict” is military occupation; this understanding applies to each crime under article 8(2)(a).¹⁹⁴ Each act encompassed under war crimes requires that the person be:

protected under one or more of the Geneva Conventions of 1949; the perpetrator was aware of the factual circumstances that established the protected status; the conduct took place in the context of an international armed conflict; and the perpetrator was aware of the factual circumstances that established the existence of an armed conflict.¹⁹⁵

The context of the presence of a military occupation is sufficient to meet the requirement of a nexus to armed conflict for an act to constitute a war crime, a serious violation of international humanitarian law.¹⁹⁶ The crimes included in Article 8 of the Rome Statute are an exhaustive list that serves to limit the jurisdiction of the ICC.

The acts, derived from Article 8(2)(a), of particular interest on the situation of Palestinian child prisoners are the acts of willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; unlawful deportation or transfer or unlawful

191. *Elements of Crimes*, *supra* note 170, at 16.

192. *Id.* at 17.

193. *Id.* at 18.

194. *Id.* at n. 34.

195. *Id.* at 19.

196. *Elements of Crimes*, *supra* note 170, n. 34.

confinement; torture or inhumane treatment; and willfully causing great suffering, or serious injury to body or health.¹⁹⁷

D. Applying War Crimes

The studies conducted show evidence of acts of war crimes committed by Israeli officials against the Palestinian child prisoners.¹⁹⁸ These children have been denied a fair and regular trial by denying judicial guarantees, as has been defined in the third and the fourth Geneva Conventions of 1949.¹⁹⁹ This is evidenced by the forced signing of legal documents written in Hebrew, coerced confessions, familial separation, and a complete lack of representation.²⁰⁰ Further, the automatic and systematic prosecution of the Palestinian children in military courts is in contravention of the fundamental fair trial rights and protection for children.²⁰¹

Inherent in this system is the discrimination faced by these children who are placed in military courts by virtue of their Palestinian identity. Throughout their court appearances, Israeli officials continue to inflict ill-treatment on the children.²⁰² The children are shackled, denied bail, and are imposed with custodial sentences.²⁰³ The children are not given access to lawyers or family members while undergoing interrogations nor when they are coerced into confessions or the signing of legal orders.²⁰⁴ Through their arrest, the Palestinian children are deported or transferred to another location outside of Palestine and are confined to that location, in contravention of their rights to not be forcibly transferred to another State or location.²⁰⁵ This situation meets the requirements for finding a war crime of denying fair trial, of unlawful deportation and transfer, and of unlawful confinement.²⁰⁶

The Palestinian children are continually inflicted with severe physical or mental pain or suffering. This is evidenced by the showing of high percentages of these children experiencing physical violence following their arrests, being subject to stress position,

197. See Rome Statute, *supra* note 152, at 5.

198. See NO WAY TO TREAT A CHILD: The Issues, *supra* note 190.

199. See *Elements of Crimes*, *supra* note 170, at 21.

200. See NO WAY TO TREAT A CHILD: The Issues, *supra* note 190.

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. See *Elements of Crimes*, *supra* note 170, at 7.

206. Rome Statute, *supra* note 152, at art. 8.

facing verbal abuse, humiliation, or intimidation.²⁰⁷ Additionally, the vast majority of the children were hand tied, blindfolded, and all experience trauma through the process and means by which they are arrested, detained, and transferred.²⁰⁸ The pain and suffering is additionally inflicted for purposes of obtaining information or a confession, punishment, intimidation or coercion, and for reasons based on discrimination.²⁰⁹ This is shown by the systematic placement of the children into military courts due to their Palestinian identity, by the nearly uniform experience of being interrogated without a family member's presence, by not being properly informed of their rights, and by the forced signage of legal documents, often in Hebrew.²¹⁰ This situation illustrates the war crime of torture, of inhuman treatment, and of willfully causing great suffering. The ICC should accordingly hear and prioritize this case.²¹¹

V. POTENTIAL CHALLENGES

A. *Accountability*

Jurisdiction for the Palestine Situation in the ICC arises under the territoriality principle—although jurisdictional requirements in this situation could also be met under the principle of passive nationality or universal jurisdiction.²¹² However, Israel has not consented to the jurisdiction of the Court.²¹³ This will predictably lead to issues of Israeli cooperation with the Court's investigation, failing to adhere to arrest warrants issued by the Court, and preemptive attempts to undermine the Court's legitimacy. International criminal law requires that individuals are held criminally responsible for the acts, which raises issues for ensuring prosecution for the crimes committed against the Palestinian child prisoners.²¹⁴ Without Israel's cooperation to obtain the necessary information in conducting thorough investigations, it may be

207. *See supra* notes 121–34.

208. *Id.*

209. *Elements of Crimes, supra* note 170, at art. 8.

210. *See supra* notes 121–34.

211. Rome Statute, *supra* note 152, at art. 8(ii-iii).

212. *Informal Expert Paper: The Principle of Complementary in Practice*, ICC-OTP (2003), at 20, <https://www.icc-cpi.int/nr/rdonlyres/20bb4494-70f9-4698-8e30-907f631453ed/281984/complementarity.pdf>.

213. Antony J. Blinken, *The United States Opposes the ICC Investigation into the Palestinian Situation*, U.S. DEPT. OF STATE (Mar. 3, 2021), <https://www.state.gov/the-united-states-opposes-the-icc-investigation-into-the-palestinian-situation/>.

214. Rome Statute, *supra* note 152, at art. 25.

difficult for the Court to know which individuals to prosecute. Further, the Court cannot try someone without their presence, thereby creating a reliance on Israel—and Member States—to adhere to any issued arrest warrants. This potential avenue for lack of adherence to the Court's authority may cause not only delays, but also a potential complete inability to prosecute this case.

B. Political Intervention

On June 11, 2020, the U.S. Trump Administration issued the Executive Order on Blocking Property of Certain Persons Associated with the International Criminal Court.²¹⁵ These sanctions, which include economic and legal repercussions, were in response to the Court's decision to investigate alleged war crimes of the U.S. in Afghanistan.²¹⁶ The U.S. Secretary of State, however, made clear that the sanctions were also geared towards defending Israel from the Palestine Investigation.²¹⁷ As of September 2, 2020, economic sanctions on the Prosecutor and a member of her Office were imposed, which were quickly condemned by the Court.²¹⁸ While a newly elected Biden Administration has promised to enact a series of executive actions to undo the many foreign policy actions of the Trump Administration, it has refused to repeal the previous Administration's executive actions, thereby retaining a narrative of undermining the ICC's jurisdiction over the Situation in Palestine.²¹⁹

C. Efficiency

Even so, this does not change serious concerns that an investigation could take years to complete and face logistical and evidentiary obstacles throughout. Out of the three convictions held by the ICC, the first on Germain Katanga took ten years between

215. Exec. Order No. 13928, 85 Fed. Reg. 36139 (June 15, 2020).

216. Julian Borger, *Trump Targets ICC with Sanctions After Court Opens War Crimes Investigation*, THE GUARDIAN (June 11, 2020), <https://www.theguardian.com/us-news/2020/jun/11/trump-icc-us-war-crimes-investigation-sanctions>.

217. Antony J. Blinken, *The United States Opposes the ICC Investigation into the Palestinian Situation*, U.S. DEPT. OF STATE (Mar. 3, 2021), <https://www.state.gov/the-united-states-opposes-the-icc-investigation-into-the-palestinian-situation/>.

218. Fadi El Abdallah, *International Criminal Court Condemns US Economic Sanctions*, ICC (Sept. 2, 2020), <https://www.icc-cpi.int/Pages/item.aspx?name=pr1535>.

219. Eric Bradner & Sarah Mucha, *Biden Plans Executive Actions that Would Undo Trump's Policies*, CNN POLITICS (Nov. 8, 2020), <https://www.cnn.com/2020/11/08/politics/biden-first-day-executive-actions/index.html>; Antony J. Blinken, *The United States Opposes the ICC Investigation into the Palestinian Situation*, U.S. DEPT. OF STATE (Mar. 3, 2021), <https://www.state.gov/the-united-states-opposes-the-icc-investigation-into-the-palestinian-situation/>.

referral and sentencing, the second on Thomas Lubanga took eight years between referral and sentencing, and the third on Ahmad Al Mahdi took four years between referral and sentencing.²²⁰ It is clear that it can take nearly a decade to receive sentencing, not including the potential appeals and further decisions on victim reparations, yet, there is still hope.

The ICC is recognized as a young court and has advanced greatly since its inception in 2002. The ICC has become more efficient over the years and has actively been working to decrease the length of the prosecution while maintaining accuracy and effectiveness.²²¹ An example of this on the Palestine Situation is Prosecutor Bensouda's early request from the Pre-Trial Chamber I to issue a jurisdictional ruling on the scope of the territorial jurisdiction of the ICC in Palestine.²²² The intentions behind this were to have the unique territorial circumstances resolved before the start of an investigation, so as to not hinder any investigations by delaying settlement by the judges.²²³ Prosecutor Bensouda believed that clarity through the Chamber's assistance will allow for greater legitimacy of any rulings and will better support swiftness in the interest of the victims and affected communities.²²⁴ Actions like this can assist the process for prosecution and allow for a more effective approach to the Palestine investigations.

VI. FURTHER CONSIDERATIONS

A. Last Resort

The International Criminal Court owes a duty to the Palestinian children to investigate and prosecute their situation. The ICC serves as a court of last resort; this is the last resort for the Palestinian children. Israel is an unwilling party to investigate or meaningfully try any of these crimes against these children, while Palestine does

220. Prosecutor v. Katanga, ICC-01/04-01/07, Judgment (Mar. 7, 2014); Prosecutor v. Lubanga, ICC-01/04-01/06, Judgment (Mar. 14, 2012); Prosecutor v. Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15, Judgment (Mar. 8, 2018).

221. *International Criminal Justice: Mass Atrocities, the International Criminal Court, and the Role of States*, ICC PROJECT (Apr. 10, 2014), <https://www.international-criminal-justice-today.org/news/international-criminal-justice-mass-atrocities-the-international-criminal-court-and-the-role-of-states/>.

222. Fatou Bensouda, *Statement of ICC Prosecutor, Fatou Bensouda, on the Conclusion of the Preliminary Examination of the Situation in Palestine, and Seeking a Ruling on the Scope of the Court's Territorial Jurisdiction*, ICC (Dec. 20, 2019), <https://www.icc-cpi.int/Pages/item.aspx?name=20191220-otp-statement-palestine>.

223. *Id.*

224. *Id.*

not have the capacity to try these cases or enforce a judgment.²²⁵ The ICC has the jurisdiction and the power to investigate, prosecute, and judge on this situation in an instrumental way to achieve justice and reparations for the victims.

B. Erga Omnes

The United Nation's International Court of Justice's (ICJ) Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Israeli Wall) provides increased justification in the prosecution of this situation by the ICC.²²⁶ The ICJ in Israeli Wall observed that the obligations erga omnes ("towards all") violated by Israel is the requirement to respect the right of the Palestinian people to self-determination and certain of its obligations under international humanitarian law.²²⁷ Citing to Barcelona Traction, the ICJ observed that such obligations are "by their very nature 'the concern of all States' and, '[i]n view of the importance of the rights involved, all States can be held to have a legal interest in their protection.'"²²⁸ Referring to the Legality of the Threat or Use of Nuclear Weapons in regard to international humanitarian law, the ICJ stated that "a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and 'elementary considerations of humanity,'" that they are "to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law."²²⁹ The ICJ found that these rules incorporate obligations that are "essentially of an erga omnes character."²³⁰

The ICJ held that the fundamental principle that "the well-being and development of such peoples form 'a sacred trust of civilization' " applies to all former mandated territories that have not gained independence, thereby being valid today for the Occupied Palestinian Territory.²³¹ This, according to the ICJ, makes "the future of the Palestinian people [a] sacred trust of civilization" that is the direct responsibility and concern of the United Nations.²³² The ICJ found that judicial settlement could not be circumvented by an

225. Rome Statute, *supra* note 152.

226. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. GL No. 131 (July 9) [hereinafter Israeli Wall].

227. *Id.* at 199.

228. *Id.*

229. *Id.*

230. *Id.* (emphasis in original).

231. *Id.* at 165.

232. *Id.*

incorrect contention that the context of the subject-matter was a bilateral dispute between Israel and Palestine.²³³ Rather, “it was directly of concern to the United Nations”.²³⁴

By virtue of the ICC’s capacity to admissibly hear the case, its functioning within an international legal order, and its mandate to “fight against impunity and [establish] the rule of law by ensuring that the most severe crimes do not go unpunished and by promoting respect for international law,” it is imperative that the ICC follows the reasoning by the ICJ to meaningfully try this situation.²³⁵ The strong language contained in the Israeli Wall Advisory Opinion on the erga omnes character of Israeli violations, the importance of the rights involved implicating all States to have a legal interest, and the nature of the foundational rights involved with violations of humanitarian law as is applicable in this situation bolsters the ICC’s obligation to intervene.²³⁶

By understanding the international nature of the plight of the Palestinian peoples, it is clear that the Court must hear the case of the Palestinian children is the ICC. The laws violated directly implicate civilization, at large, and must be deemed a priority for the ICC. Insofar as the ICC has discretion on the cases it hears and prioritizations of the chosen cases, the situation of the Palestinian child prisoners must be at the forefront.

C. Children are Different

This situation does not merely involve crimes against humanity and war crimes, but crimes inflicted against children. Children are a uniquely protected class of vulnerable individuals, whom, inherent to their special status, deserve the utmost protection and utilization of resources for protection and vindication. According to recent findings in developmental psychology and neuroscience, “children are different.”²³⁷ Children are legally considered to be less culpable than adults and it violates the dignity of a child to treat a child not as a child.

233. *Id.* at 159.

234. *Id.*

235. Sang-Hyun Song, THE ROLE OF THE INTERNATIONAL CRIMINAL COURT IN ENDING IMPUNITY AND ESTABLISHING THE RULE OF LAW, UN CHRONICLE, <https://www.un.org/en/chronicle/article/role-international-criminal-court-ending-impunity-and-establishing-rule-law#:~:text=The%20core%20mandate%20of%20the,or%20unwilling%20to%20do%20so> (last viewed Mar. 16, 2022).

236. Israeli Wall, *supra* note 226, at 199.

237. Paolo Annino, *Children are Different: The Abolition of Mandatory Minimum Sentencing in Florida*, FSU College of Law, Public Law Research Paper No. 821 (July 5, 2016), available at: <https://ssrn.com/abstract=2853626> or <http://dx.doi.org/10.2139/ssrn.2853626>.

Additionally, under the 1959 UN Declaration of the Rights of the Child (DRC), a key principle promulgated is that a child is to enjoy “special protection” and “opportunities and facilities, by law and by other means,” for healthy and normal development “in conditions of freedom and dignity.”²³⁸ Included in the DRC principles is a child’s entitlement to nationality and protection against neglect, cruelty and exploitation, and discrimination.²³⁹ The DRC pledges that, “mankind owes to the child the best it has to give.”²⁴⁰

D. The Future

The ICC’s prosecution of violations committed against Palestinian child prisoners would do more than vindicate the tens of thousands of children previously harmed and the hundreds experiencing such abuse today. Employing the ICC in this situation can protect and defend the hundreds of children who are currently at risk of becoming the next Palestinian child prisoner; to protect these vulnerable children from a guaranteed abuse to their rights and freedoms at the hands of Israeli officials. There is no other entity with the capacity to achieve the duties owed to the Palestinian children and to protect them in a way consistent with international legal doctrine other than the ICC. Diplomacy has proven futile, UN Resolutions ineffectual, and internal pressure obsolete. Taking into consideration the ICC’s mandate, the admissibility of this situation, the interests of justice, and the special protection owed to children, the ICC should hear the case of the Palestinian child prisoners and ensure its prioritization before the Court.

The State’s Parties have a further duty and obligation to support the ICC in its investigations as understood by the unique nature of the Palestine Situation and their duty to give children the “best it has to give.” This special context should assist in bolstering the legitimacy of the Court’s hearing of this case and its external validity to those observing the Court’s effectualness.

The ICC does not operate in a vacuum, but in a larger international legal order that is banned together with a duty to protect the vulnerable and, in doing so, legitimize a comprehensive, integrated legal system in which international legal standards are upheld and reinforced. Looking at this international legal system from a distance, it becomes clear the ICC is the only organization with the capacity to vindicate the Palestinian child prisoners. With

238. Declaration of the Rights of the Child, A/RES/1386(XIV) (1959), [hereinafter DRC].

239. *Id.*

240. *Id.*

the unique protections instituted for children, it is with increased urgency that this situation must be a priority for the Court. The interests to protect these children go beyond the harm of the children who suffered in the past, those suffering currently in Israeli detention, but also of those who will suffer if the ICC does not intercede.

VII. CONCLUSION

The International Criminal Court has an obligation to investigate, prosecute, and prioritize the situation inflicting the Palestinian children in the Occupied Palestinian Territories and Israel. The Court serves as the last resort to achieve justice for the Palestinian children and the hundreds of potential victims in the years to come. The ICC is the only legal entity with the capacity to effectuate the special protection owed to the Palestinian children and ensure that the international human rights obligations are upheld.

APPENDIX

For more information, see generally:

- 1) Rome Statute of the International Criminal Court:
<https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>
- 2) Elements of Crimes (of the Rome Statute):
<https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>
- 3) Convention on the Rights of the Child:
<https://www.ohchr.org/documents/professionalinterest/crc.pdf>
- 4) UN Declaration of the Rights of the Child (1959):
<http://www.cirp.org/library/ethics/UN-declaration/>
- 5) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of punishment:
<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>
- 6) Universal Declaration of Human Rights:
<https://www.un.org/en/universal-declaration-human-rights/>
- 7) International Covenant on Civil and Political Rights:
<https://www.ohchr.org/Documents/Professionalinterest/cpr.pdf>
- 8) United Nations (UN) Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines):
<https://humanrights.gov.au/sites/default/files/Annexure%20F%20-%20Riyadh%20Guidelines.pdf>
- 9) UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules):
<https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>

- 10) UN Rules for the Protection of Juveniles Deprived of their Liberty:
https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf
- 11) Israeli Wall Case, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory:
<https://www.fidh.org/IMG/pdf/il2302a.pdf>
- 12) Gaza Flotilla Case, Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia, Union of Comoro:
https://www.icc-cpi.int/RelatedRecords/CR2019_07299.PDF
- 13) The Balfour Declaration:
https://avalon.law.yale.edu/20th_century/balfour.asp
- 14) The 1939 British White Papers:
<https://www.historycentral.com/Israel/documents/White.html>
- 15) United Nations General Assembly (UNGA) Resolution 181 (II), Future Government of Palestine:
<https://unispal.un.org/DPA/DPR/unispal.nsf/0/7F0AF2BD897689B785256C330061D253>
- 16) United Nations Security Council (UNSC) Resolution 605 (1987):
<https://unispal.un.org/DPA/DPR/unispal.nsf/0/A734F62E7C6F8EF9852560DE00695C66>
- 17) Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention):
https://www.un.org/en/genocideprevention/documents/at-rocity-crimes/Doc.32_GC-III-EN.pdf
- 18) Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention):
https://www.un.org/en/genocideprevention/documents/at-rocity-crimes/Doc.33_GC-IV-EN.pdf

- 19) UNSC Resolution 1322 (2000):
<https://unispal.un.org/unispal.nsf/0/22f8a95e5c0579af052569720007921e?OpenDocument>
- 20) Oslo Accords:
https://peacemaker.un.org/sites/peacemaker.un.org/files/IL%20PS_930913_DeclarationPrinciplesnterimSelf-Government%28Oslo%20Accords%29.pdf
- 21) “Peace to Prosperity” (Trump Middle East Plan):
<https://www.whitehouse.gov/peacetoprosperty/>
- 22) UN Children’s Fund’s (UNICEF) Children in Israeli Military Detention Observations and Recommendations:
https://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf