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**Palestine's accession to the Rome Statute:
An impediment to peace?**

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Fokus

Palestine has long sought to hold Israelis accountable for alleged war crimes on the international plane. The UN GA's recognition of Palestine as a non-member observer state in 2012, opened up the way for Palestine to become a member of the Rome Statute. This Bofax briefly analyses possible legal implications of Palestine's latest application for membership.

Quellen
Rome Statute of the ICC;

<http://www.chathamhouse.org/expert/comment/16604>;

<https://www.thenation.com/article/194121/will-palestine-bring-war-crimes-charges-against-israel>

On Wednesday, 31 December 2014, Palestinian National Authority President Mahmoud Abbas signed the Rome Statute of the International Criminal Court (ICC) and Palestinian officials presented the United Nations with the documents for accession shortly after. UN Secretary-General Ban Ki-moon has confirmed that Palestine will become a state party to the Rome Statute (RS) on 1 April 2015 and the ICC has announced it is going to open a preliminary examination into attacks in Palestinian territories. Palestine's move and the ICC's initiative have been condemned by Israel as well as the United States and Canada among others and criticized as counterproductive to peace. But what are the actual implications of Palestinian membership? For once, Palestine will be in a position to refer cases, where crimes within the Court's jurisdiction have been committed, to the Prosecutor if the conduct occurred on Palestinian territory (comp. Art. 12, para. 2 lit. a RS). The Prosecutor could also initiate an investigation in respect of such a crime on her own account (Art. 13 lit. c, Art. 15 RS). As a consequence, Israelis could be held responsible for acts constituting crimes under the Court's jurisdiction when committed in Palestine, even though Israel has consistently refused to become a member state to the RS. This could also include Israel's highly controversial settlement activities. On the other hand, the Court also has jurisdiction if the person accused of a crime is a national of a member state to the RS (Art. 12 para. 2 lit. b RS). Accession thus means that Palestine also accepts the Court's jurisdiction with regard to crimes committed by Palestinians, which might bring attacks of Hamas or extremist Palestinian groups against Israel, such as the firing of rockets, to the attention of the Court. Even though Palestine might not want to refer such cases to the Court, the Prosecutor could still initiate investigations *proprio motu*.

Importantly, the Court may generally exercise its jurisdiction only with respect to crimes committed after the entry into force of the statute for a new member state (Art. 11 para. 2 RS). However, Palestine has made a declaration under Art. 12 para. 3 RS, retroactively accepting the Court's jurisdiction for crimes committed in the second half of 2014 in order to allow for adjudication of Israeli attacks on the Gaza strip. On the other hand, it must be emphasized, that the current preliminary examination is only a first step in order to determine whether an investigation is warranted. The decisions to open an investigation and to subsequently issue an arrest warrant against an individual, depend on the Prosecutor as well as the Court's Pre-Trial Chamber. Further, the principle of complementarity (Preamble para. 10, Art. 1, Art. 17 RS) restricts admissibility of cases in favor of national proceedings. That said, the real weight of Palestine's accession to the RS remains unclear as of yet. What is clear, is that 2014 has seen yet another war in Gaza as well as several deadly attacks by extremists from both sides on Israeli and Palestinian civilians. This political turmoil begs the question why an outside instance that now has jurisdiction over possible crimes committed by both sides on Palestinian territory should be an impediment to peace in the region. Political instability is already a fact and has been for a long time. The ICC may end up to be seen merely as a paper tiger in the region, but it should and has the potential to be a neutral player on the chessboard of the conflict. As has been shown, the ICC would by no means only have to concentrate on alleged Israeli war crimes. At its best, the prospect of an ICC investigation, could be an incentive for actors on both sides to ponder past mistakes, consider future steps more carefully and refrain from taking measures that have undermined the peace process for too long.

Verantwortung

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