

High Representative Josep Borrell Fontelles,
European Commission,
Rue de la Loi / Wetstraat 2000,
1049 Brussels,
Belgium

Date: 13 March 2021

RE: Effective Steps Should be Taken by the EU and its Members States to Ensure Justice to the Palestinian People at the International Criminal Court

Your Excellency,

As a human rights defender who has long-called for international justice, and under my capacity as the General Director of Al-Haq, a Palestinian human rights organisation, I address this letter in relation to concerning statements made by various European Union (EU) member states, rejecting and opposing the landmark [decision](#) of the Pre-Trial Chamber of the International Criminal Court (ICC), which affirmed that the Court has territorial jurisdiction over the Occupied Palestinian Territory (OPT), and the historic [announcement](#) by the Office of the Prosecutor of the ICC on the opening of a full criminal investigation into the Situation in Palestine. As a firm and strong supporter of the ICC, it is vital that the EU and all its member states provide cohesive, public, and compelling support to the independence and impartiality of the Court in all its operations, including its investigation into the Situation in Palestine, which constitutes an important step towards an end of Israel's impunity and the long-awaited justice for the Palestinian people.

The EU has continuously opposed rampant human rights and international law violations, including by condemning Israel's unlawful policies and practices, and urging it to abide by its legal obligation, as Occupying Power. On 17 January 2021, for example, the EU Spokesperson, responding to ongoing Israeli plans to extend the construction of illegal settlements in the OPT, [reaffirmed](#) "the EU's firm position that settlements are illegal under international law." Similarly, on 9 February 2021, the EU Spokesperson [reiterated](#), again, the illegality of settlements, when responding to the confiscation and demolition by Israeli occupying forces of "a total of 46 structures belonging to Palestinian families in [Khirbet Humsa al-Fawqa] in the northern Jordan Valley," displacing "some 60 Palestinians, including 35 children." Noting that such violations "have continued despite the outbreak of the COVID-19 pandemic, notwithstanding the obligations of Israel as the Occupying Power under international humanitarian law," the EU statement recalls its "firm opposition to Israel's settlement policy and actions taken in that context, such as forced transfers, evictions, demolitions and confiscations of homes, which it sees as illegal under international law and as an impediment to a viable two-state solution."

On 22 February 2021, following a meeting between the Office of the Prosecutor at the ICC and Foreign Ministers of the EU and other officials, the Office [reported](#) having discussed "the



challenges facing the Court, from severe resource constraints to coercive measures, threats and pressure placed on its independent and crucial mandate.”

The EU and its member states have been firm supporters of the Court, and were determined to publicly oppose attacks on the independence and impartiality of the institution. On 3 September 2020, in response to the imposed-US sanctions against the ICC, the EU [stated](#) that:

“The sanctions announced by the United States administration on 2 September against two Court staff members, including its Prosecutor, are unacceptable and unprecedented measures that attempt to obstruct the Court’s investigations and judicial proceedings.

The ICC must be able to work independently and impartially, free from outside interference. The United States should reconsider its position and reverse the measures it has taken. Impunity must never be an option.”

Following the 22 February 2021 meeting, and representing the Benelux group of EU states which had organised it, the Benelux Ministers [reiterated](#) that “[f]ull cooperation, as well as diplomatic and political support by all States Parties are essential for the effective functioning of the Court, especially at a time when the ICC faces multifaceted challenges.’

Such cooperation and support for the Court by all state parties will need to be reinforced and consistently reasserted in the wake of the response by various EU member states to the decision of the ICC’s Pre-Trial Chamber to confirm its jurisdiction over the territory of the State of Palestine, and the Prosecutor’s announcement of the opening of a full criminal investigation therein.

On 5 February 2021 the Pre-Trial Chamber asserted that since Palestine is a valid and equal state party to the Rome Statute, and as such a peer with all the EU member states, the Prosecutor is obliged to open a formal investigation into the commission of Rome Statute crimes on the territory of the OPT. In March 2020, EU member states Austria, Czech Republic, Germany, and Hungary had submitted amicus briefs to the Pre-Trial Chamber to assist it in its determination as to the extent of the Court’s jurisdiction over the State of Palestine. The Pre-Trial Chamber duly took those legal opinions into account, including the shared position that Palestine was neither a state, and that the Court should defer to a politically negotiated resolution to conflict, and not examine the Situation in Palestine.

Contrary to the general thrust of these briefs, the Pre-Trial Chamber clearly and properly concluded that: “[i]n the situation at hand, the Prosecutor addressed a legal issue to the Chamber, namely whether ‘the “territory” over which the Court may exercise its jurisdiction under article 12(2)(a) comprises the West Bank, including East Jerusalem, and Gaza’, that is capable of a legal answer based on the provisions of the Statute.”¹ The Pre-Trial Chamber

¹ ICC Pre-Trial Chamber, “Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine,” ICC-01/18, 5 February 2021, para 56.



further affirmed that “potential political outcomes alone should not pose any restrictions on the exercise of the jurisdictional activity.”²

In public statements responding to the decision, Austria [noted](#), on 15 February 2021, that “[w]e do not recognize Palestine as a State and we reaffirm that the ICC decision does not change the status of Palestine under international law, nor does it prejudice the question of future borders.” On 10 February 2021, the Czech Republic [stated](#) that “Palestine is not internationally recognized as a state. The two-state solution must be achieved through a dialogue between the two parties, not by a court decision!”, adding that “the court has only ultimately restricted the right of Israeli democracy to defend itself against terrorism.” On 9 February 2021, on Twitter, Germany [stated](#) that “the court has no jurisdiction” over the Situation in Palestine, [noting](#) that Germany supports “the establishment of a future Palestinian state as part of a two state solution negotiated by Israelis and Palestinians.” On 10 February 2021 Hungary’s Minister of Foreign Affairs and Trade, [stated](#) that Hungary “disagrees with the International Criminal Court’s ruling [...] which found that the court has jurisdiction over Gaza and the West Bank, including East Jerusalem.” The statement further notes that Hungary believes “that peace in the region can only result from talks based on mutual respect,” and that “the International Criminal Court’s ruling does not bring the sides closer to this.”

Similarly, following the announcement by the Office of the Prosecutor of the ICC on the opening of a full criminal investigation into the Situation in Palestine on 3 March 2021, [Israel](#), the [United States of America](#), and EU member state Hungary, responded, reaffirming their previous positions and opposing the principled, and long-awaited decision. On 3 March 2021, Hungary issued a [statement](#), supporting the statement made by the USA, expressing its commitment to Israel and its security and highlighting that “[t]he Hungarian Government has always disputed the decision of the Court that the territorial scope of its jurisdiction extends to Gaza, the West Bank and East Jerusalem.”

Subjected to an apartheid regime, protracted occupation, an aggressive settler-colonial enterprise, prolonged closure in the Gaza Strip, and the systematic denial of the right of return to Palestinian refugees and exiles, the opening on an investigation by the ICC marks an important step towards ending decades of Israel’s unlawfully-enjoyed culture of impunity.

The violations of international law identified by the EU during just January and February of 2021, perpetrated by Israeli occupying forces, and pertaining to Israel’s unlawful settlement enterprise and the related forcible displacement of Palestinian families, even during the COVID-19 pandemic, are precisely the forms of criminal conduct for which the Court was established to address. Israel undertakes such conduct as a matter of state policy, and the Israeli judicial system is both unwilling and unable to hold the perpetrators accountable.

² ICC Pre-Trial Chamber, “Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine,’” ICC-01/18, 5February 2021, para 57.



The imperative for the State of Palestine to request that the Court investigate the Situation in Palestine arises directly from the ongoing and continuous perpetration of Rome Statute crimes in the State of Palestine, amid an environment of impunity managed by the Israeli military occupation. Palestine can no longer be treated as an exception to the application of the international rule of law.

While Al-Haq acknowledges and welcomes statements [made](#) by the EU Spokesperson on 4 March 2021, affirming that the ICC “is an independent and impartial judicial institution with no political objectives to pursue,” and noting that it is “a court of last resort, a fundamental safety net to help victims achieve justice where this is not possible at the national level, thus where the state concerned is genuinely unwilling or unable to carry out the investigation or the prosecution,” Al-Haq is greatly concerned by the aforementioned remarks and statements made by EU member states, undermining the credibility and the work of the ICC, a vital tool of accountability.

As such, Al-Haq calls on all state parties to the Rome Statute, including Austria, Czech Republic, Germany, and Hungary to reaffirm their commitment to fully cooperate with the Office of the Prosecutor as per the obligations set forth in Article 86 of the Rome Statue, and in line with Common Article 1 of the four Geneva Conventions and Article 146 of the Fourth Geneva Convention, and other obligations under international law, to ensure the arrest and transfer to the Hague of persons investigated and accused of international crimes in Palestine, so as to deter and to prevent the further continuation of international crimes against the Palestinian people.

Your sincerely,

Shawan Jabarin

General Director, Al-Haq

