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## Palestine and the politics of international criminal justice

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### Abstract

The indeterminacy of international law rarely works in favour of the peoples of the global South. Ambiguities and uncertainties are invariably resolved by resort to broader legal principles, policy goals or social contexts that have most often been shaped by colonial views of the world and their supporting conceptual apparatuses. The glimmer of hope presented in the wake of Third World decolonisation by an international law that seemed to offer the prospect of a realignment of the global balance of power and the possibility of a new international economic order has long been extinguished. Despite this, nations that were on the wrong side of imperial history remain unwilling to depart the arena of international law, retaining a belief in its transformative potential and in the ideal of law as a means of constraining, if not subverting, the hegemony of empire. The promise of the International Criminal Court in this regard lies in its global potential. By virtue of its mere existence, the Court alters the dynamics of international relations and sounds a warning signal that no Colonel, Comrade or Commander-in-Chief remains impervious. At the same time, however, the reality is that all international legal institutions are intensely political actors. The International Criminal Court is no different. It can be understood as a site of meta-conflict, where conflict over the nature of a given conflict plays out, and inevitably some particular narrative is endorsed and consolidated at the expense of others. What that narrative will be often depends less on the law than on the socio-political context. The premise that international criminal justice can fully transcend international politics is a false one – it is inherently political. The International Criminal Court in both its constitution (its relationship with the Security Council, for example) and its functioning (the Prosecutor's exercise of discretion, for example) essentially serves to implement a form of foreign policy. The Office of the Prosecutor's decision of April 2012 – to eschew a functional approach to Article 12(3) of the Rome Statute and decline jurisdiction over alleged international crimes committed in Palestine – is read in this light. The effect, despite widespread recognition of Palestine and its admission as a member state of UNESCO, is a continuing exclusion of the Palestinians from the mechanisms of international justice.

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As Palestine formally joined the International Criminal Court (ICC) on 1 April 2015, accountability for crimes committed in the Israel/Palestine conflict is no longer an entirely remote possibility. Yet, Palestine joining the ICC may be more a question of playing politics and strengthening its position towards Israel – and the international community more broadly – than obtaining justice for the crimes committed during the conflict. At the same time, key players, including the US, have so far been opposing active ICC intervention in Palestine, raising questions as to whether the Court is capable of Palestine's request that the International Criminal Court investigate crimes allegedly committed by Israel on its territory presents the court with a major investigative and institutional challenge. To this point, the ICC has generally avoided situations where major powers strongly oppose court involvement. *The Politics of Gender Justice at the International Criminal Court: Legacies and Legitimacy* By Louise Chappell Oxford University Press, 2016. Read preview [Overview](#). *Africa's Relationship with the International Criminal Court: More Political Than Legal* By Cole, Rowland J. V. Melbourne Journal of International Law, Vol. 14, No. 2, March 2014. PRPEER-REVIEWED PERIODICAL.