**The flawed ICC Pre-trial Chamber decision to Recognize ICC Jurisdiction over the Territories**

**An irreparable stain on the ICC**

Alan Baker

It is both tragic and ironic that the State of Israel, one of the founding fathers of the vision of creating an independent International Criminal Court after the unimaginable atrocities committed against the Jewish People during the Holocaust, has now become the target of that very International Criminal Court.

As one of the leading countries actively involved, from the start, in the negotiation and drafting of the founding document-the Statute of the ICC, it is all the more ironic that Israel now finds itself being accused by the Court based on Palestinian political manipulation.

What was intended to be an independent juridical body devoted to preventing impunity enjoyed by the most serious and atrocious war criminals, by bringing them to justice, is now being politically manipulated against the one state that since the early 1950s has consistently advocated the establishment of such a body, the State of Israel.

The irony is all the more evident given the legal acrobatics by the politically oriented and politically influenced prosecutor of the Court and the majority of judges of the Pre-Trial Chamber, in their obstinate and flawed insistence on attributing elements of statehood and sovereignty to a Palestinian entity that is distinctly, and by all international standards, not a state.

Nor does such entity have any sovereign territory, and thus, even according to the Statute of the ICC, cannot be the subject of the Court’s jurisdiction. The Palestinians have absolutely no standing in the court.

This ironic situation is not surprising given the prevailing international atmosphere of incitement and hostility towards Israel throughout the UN system.

However, what is shocking is the fact that the one international juridical institution that was hoped and intended by its founders, and stated in its founding document, to be “*an independent, permanent International Criminal Court...with jurisdiction over the most serious crimes of concern to the international communityas a whole*", has allowed itself to be politically manipulated and abused.

What was intended to be an a-political juridical body, devoid of political pressure and influence, has now permitted itself to become one more "Israel-bashing body" at the disposal of those elements in the international community seeking to undermine Israel's legitimacy.

In so doing, the Court has irreparably prejudiced any juridical integrity, credibility and *bona fide*s that it might have had.

This decision by the Court's Pre-Trial Chamber to accept the contention of the prosecutor, based purely on non-binding and un-authoritative political resolutions of the UN General Assembly, that the Court can exercise jurisdiction over disputed territory that is in the midst of an internationally recognized dispute-settlement process, defies all legal logic.

This is all the more illogical given the fact that the State of Israel is not party to the Rome Statute.

Since the ICC Statute is open to sovereign states only, and since no sovereign Palestinian state exists, and since there exists no Palestinian territory over which the Court could exercise its jurisdiction, the Pretrial Chamber, by any legal logic, should have rejected the contentions of the prosecutor.

In light of the fact that the territories subject of the Palestinian referrals to the Court, are under an agreed and internationally accepted dispute-settlement and negotiation process, the Pretrial Chamber of the ICC, by any legal logic, should have rejected the contentions of the prosecutor, rather than attempt to prejudge and undermine the outcome of the negotiating process by determining that there exists sovereign Palestinian territory.

Sadly, and regrettably, this decision not only irreparably harms the integrity and credibility of the ICC, but it also has the potential to undermine and derail the Middle East peace negotiating process, since the Court, at the behest of its prosecutor, is attempting to prejudge the outcome of that process, contrary to all historic and legal logic.

The hijacking, abuse and manipulation of the ICC is the antithesis of the vision of its founding fathers, the states and the international legal experts that devoted so much time, effort, and enthusiasm to establishing a genuinely objective juridical body.