

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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*No.: ICC-01/18*  
Date: **16 March 2020**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Péter Kovács, Presiding Judge  
Judge Marc Pierre Perrin de Brichambaut  
Judge Reine Alapini-Gansou

**SITUATION IN THE STATE OF PALESTINE**

**IN THE CASE OF  
*THE PROSECUTOR v.***

**Public Document**

**OBSERVATIONS ON BEHALF OF VICTIMS**

**Source:** Addameer Prisoner Support and Human Rights Association

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**Legal Representatives of the Applicants**

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**States' Representatives**  
The competent authorities of the State of  
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The competent authorities of the State of  
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## **REGISTRY**

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**Victims and Witnesses Unit**

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**Victims Participation and Reparations  
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## INTRODUCTION

### The victims

1. These submissions are filed pursuant to the Order of Pre-Trial Chamber I (“PTC I”) of 28 January 2020.<sup>1</sup> They are made on behalf of a number of victims who are all nationals of the State of Palestine and who reside in the territory of the State (collectively the “Victims”):
  - a. Victim A from Saer, Hebron, deported (aged 17) to Aldamon Prison, Israel (pre-conviction).
  - b. Victim B from Bethlehem, deported (aged 17) to Aldamon Prison, Israel (pre-conviction).
  - c. Victim C from Jenin Refugee Camp, deported (aged 17) to Megiddo Prison, Israel (pre-conviction).
  
2. These Submissions are made by Addameer Prisoner Support and Human Rights Association (“Addameer”) on behalf of the Victims. Addameer is a Palestinian non-governmental organisation that offers free legal aid and representation to Palestinian political prisoners and human rights defenders in the Israeli military courts and Palestinian civil courts in the West Bank.
  
3. All of the Victims were deported into the territory of the State of Israel from the territory of the State of Palestine after 13 June 2014. They were convicted in the Israeli Military Court in Ofer and/or Salem, in the West Bank, of throwing stones (contrary to Article 212(2) of the Israeli Military Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No.1651),<sup>2</sup> carrying a maximum penalty of 10 years’ imprisonment. Victim C was convicted of the additional charge of “*insulting a soldier*”, contrary to Article 215(d) of the same Order, carrying a maximum penalty of one year’s

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<sup>1</sup> *Situation in the State of Palestine* ([Order setting the procedure and the schedule for the submissions of observations](#)) PTC I, ICC-01/18-14, 28 January 2020 (“PTC I, Order of 28 January 2020”).

<sup>2</sup> [Order](#) regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770-2009.

imprisonment). Each Victim was sentenced to between four and nine months' imprisonment, a suspended term of imprisonment, and the payment of a fine. They suffered ill-treatment during their arrest and detention, and were unable to receive regular family visits or visits from lawyers during their detention in Israel; their education was also impeded.

## Standing

4. Each Victim is the victim of one or more crimes referred to in Article 5 of the Rome Statute of the International Criminal Court ("the Statute"), within the Court's jurisdiction *ratione materiae*, *ratione tempore* and, as submitted below, *ratione loci*. Those crimes include the war crime of unlawful deportation from occupied territory, in violation of Article 8(2)(b)(viii), on which these submissions are focussed. They also include the wilful deprivation of the right to a fair trial, in violation of Article 8(2)(a)(vi)), unlawful confinement in violation of Article 8(2)(a)(vii), inhuman treatment, in violation of Article 8(2)(a)(ii), and outrages on personal dignity, in violation of Article 8(2)(b)(xxi).<sup>3</sup>
  
5. Although these crimes are different in their nature to those identified by the Prosecutor in the Prosecution Request pursuant to article 19(3), those crimes are, as confirmed by the Prosecutor, "*illustrative only*", and would not limit any subsequent investigation undertaken by her into the situation.<sup>4</sup>
  
6. The crimes are of significant gravity in and of themselves, and when understood in the context of the approximately 4,694 Palestinian nationals,

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<sup>3</sup> Although these crimes are different in their nature to those identified by the Prosecutor in the Prosecution Request pursuant to article 19(3), those crimes are, as confirmed by the Prosecutor, "*illustrative only*": Situation in the State of Palestine ([Prosecution request pursuant to article 19\(3\) for a ruling on the Court's territorial jurisdiction in Palestine](#)) ICC-01/18-12, 22 January 2020, para 100.

<sup>4</sup> [Prosecution Request](#), para 100.

including approximately 131 Palestinian minors,<sup>5</sup> who are deported by the Israeli authorities from occupied territory into the State of Israel every year, including for interrogation and/or detention purposes, both pre- and post-conviction in Israeli military courts.

7. Pursuant to Articles 19(3) and 68(3) of the Statute, Rule 85 of the Rules of Procedure and Evidence, and the PTC I Order of 28 January 2020, the Victims, have standing to make these submissions:<sup>6</sup>

### Overview of submissions

8. The Victims submissions may be summarised as follows. *First*, the State of Palestine, as a State Party to the Rome Statute, is a “State” for the purposes of Article 12(2) of the Rome Statute because its Statehood has been determined by its accession to the Statute and, in any event, it is a “State” under customary international law. *Second*, the territory of the State of Palestine, over which the Court has jurisdiction, comprises the whole of the West Bank, including East Jerusalem, and Gaza. *Third*, and without prejudice to the generality of the second submission, the crimes against the victims were committed in part in Palestinian cities in the West Bank which are in the territory of the State of Palestine, such territory also being occupied territory; consequently, the Court has territorial jurisdiction over them.
9. Further and in addition to the above submissions, the Victims adopt and support the submissions made by the Prosecutor in the Prosecution Request pursuant to Article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine (“Prosecution Request”).<sup>7</sup>

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<sup>5</sup> Addameer statistics, calculated from official Israeli Prison Service statistics for 2014-2019, provided to Addameer through the Israeli NGO B'tselem. The figures represent the average number of prisoners and average number of children detained inside Israel as of December of each year.

<sup>6</sup> PTC I, [Order of 28 January 2020](#), para 13.

<sup>7</sup> [Prosecution Request](#).

## SUBMISSION 1: THE STATE OF PALESTINE IS A STATE FOR THE PURPOSES OF ARTICLE 12(2) OF THE STATUTE

10. The Victims' primary submission is that the State of Palestine, as a State Party to the Statute pursuant to Article 125(3), is automatically to be considered a "State" for the purposes of Articles 12(1) and 12(2). Consequently, pursuant to Article 12(2)(a), the Court may exercise jurisdiction with respect to crimes referred to in Article 5 committed on its territory. In the alternative, the Victims submit that the State of Palestine satisfies the criteria for Statehood under customary international law. Moreover, matters such as the bilateral non-recognition of the State of Palestine by various State Parties to the Rome Statute and/or the terms of the "Oslo Accords"<sup>8</sup> have no bearing on the Court's determination of its territorial jurisdiction.

### **The Statehood of the State of Palestine for the purposes of the Statute has been authoritatively determined by its accession to the Statute**

11. In acceding to the Statute,<sup>9</sup> the State of Palestine, has "*thereby accept[ed]*", pursuant to Article 12(1), the jurisdiction of the Court with respect to the crimes referred to in Article 5. Further, the State of Palestine, has, as a State Party, referred the situation in the West Bank, including East Jerusalem, and Gaza since 13 June 2014 ("the **Situation**"), to the Prosecutor, in accordance with Article 14.<sup>10</sup> Pursuant to Article 13(a), the Court may therefore automatically assume jurisdiction in relation to crimes which appear to have been committed in the Situation, including war crimes of deportation, the preconditions to the exercise of the Court's jurisdiction having been met. That

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<sup>8</sup> The Oslo Accords are 1993 The Declaration of Principles on Interim Self-Government Arrangements between Israel and the Palestine Liberation Organization (Oslo I); the 1994 Israel-PLO Agreement on the Gaza Strip and Jericho Area; the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip ("Oslo II"); the 1997 Hebron Protocol; the 1998 Wye River Memorandum; and the 1999 Sharm el-Sheikh Memorandum. See also [Prosecution Request](#), paras 63-76.

<sup>9</sup> UNSG, [Depositary Notification, C.N.13.2015.TREATIES-XVIII](#).10, 6 January 2015.

<sup>10</sup> [Referral by the State of Palestine Pursuant to Articles 13\(a\) and 14 of the Rome Statute](#), 15 May 2018.

means the Court has automatic jurisdiction over crimes committed on the territory of the State of Palestine (per Article 12(2)(a)) and over crimes committed by Palestinian nationals (per Article 12(2)(b)) since 13 June 2014.

12. That the meaning of the term “*State*” in Article 12(2)(a) is the same as in Article 125(3) and Article 12(1) is correct as a matter of the proper interpretation of the Statute.<sup>11</sup> It is also necessarily correct as a matter of the proper functioning of the statutory regime.
  
13. To interpret the meaning of “*State*” in Article 12(2) differently to Article 125(3) or Article 12(1) would undermine the internal regime of the Statute. It would mean a State could become a State Party, and participate in the Assembly of State Parties (ASP) on an equal footing to other States, whilst being concomitantly deprived of the benefits of accession, *i.e.* jurisdiction of the Court over crimes committed on its territory or by its nationals, and the power to refer situations to the Prosecutor for investigation.<sup>12</sup> It would lead to differential membership for different State Parties, with some States having the full benefits of accession, and others not, being bound, pursuant to accession, to pay contributions to the Court’s budget for proceedings to which they could not have recourse, and being entitled to propose and vote on amendments to the Statute, from which they could not benefit.<sup>13</sup>
  
14. Such an interpretation would also undermine the overall object and purpose of the Statute to ensure that “*the most serious crimes of concern to the international community as a whole must not go unpunished*”,<sup>14</sup> in excluding the Court’s jurisdiction over crimes committed in the territory of a State, despite the consent of that State to jurisdiction through accession to the Statute.

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<sup>11</sup> [Prosecution Request](#), ICC-01/18-12, paras 103-123.

<sup>12</sup> This position is advocated in [ICC-01/18-45](#) (Badinter et al), paras 14, 17.

<sup>13</sup> [Statute](#), Articles 112, 115(a), 121. It would also mean that such State party could refer a situation occurring on the territory of any other State party but not one taking place on its own territory.

<sup>14</sup> [Statute](#), preambular para 4.

15. The effect of the “*all States*” formula employed Article 125(3), is to condition accession to the Statute on “*unequivocal indications from the [UN General] Assembly that it considers a particular entity to be a State*”.<sup>15</sup> That is irrespective of whether the Statehood of the entity in question has been accepted by all States Parties to the Statute.<sup>16</sup> Notably, the Statute does not make accession dependent on UN membership<sup>17</sup> or the consent of the States Parties,<sup>18</sup> or require a specific invitation for membership to be extended by the ASP.<sup>19</sup>
16. It is therefore immaterial whether UN General Assembly resolution 67/19, which unequivocally indicated that the State of Palestine is a State,<sup>20</sup> possessed declaratory or constitutive normative force, concerned a matter of substance or procedure, gave rise to obligations binding on UN Member States, and/or is opposable to bodies outside the UN.<sup>21</sup> It is also irrelevant that the role of a

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<sup>15</sup> UNOLA, [UNSG Depository Practice](#) (1999), para 83 (see also paras 81-82). Such a clause commonly appears in multilateral treaties and there are good reasons why States might choose such an option (see, e.g., [Prosecution Request](#), para 111). All treaty bodies established under human rights treaties ratified by the State of Palestine, such as the Human Rights Committee, the CESCR, the CAT, the CRC, the CEDAW Committee and, notably, the CERD Committee, have all followed the same approach and accepted the State of Palestine as a party to the respective treaties without determining for themselves whether the State of Palestine fulfils the criteria for Statehood under general international law and despite certain (albeit a very limited number of) States questioning the right of the State of Palestine to accede to the relevant treaty. See, [Report of the Human Rights Committee, A/70/40](#) (2015), para 2 and Annex II, p 31; [Report of CESCR, E/2015/22; E/C.12/2014/3](#) (2015), para 1; [Report of the CAT, A/69/44](#) (2014), Annex I, p 213 and Annex XI, p 254; [Report of the CRC, A/71/41](#) (2016), para 1; [Report of the CEDAW Committee, A/70/38](#) (2015), p 10, para 1; CERD Committee, [Decision on the Committee’s jurisdiction regarding the inter-state communication submitted by the State of Palestine vs. Israel](#), CERD/C/100/5 (12 December 2019), para 3.9. See also [Prosecution Request](#), paras 127-129.

<sup>16</sup> See [Prosecution Request](#), para 116 (and also paras 108-110); Clark, “Final Clauses” in Triffterer and Ambos (eds), *Rome Statute of the International Criminal Court: A Commentary* (2016), p 2318 (“*The General Assembly’s subsequent action later in 2012 in according non-Member State observer status to Palestine would appear to provide a definitive affirmative answer to whether Palestine could accede to the Statute or make an effective article 12 (3) declaration*”) [Annex to Observations pp 5-6].

<sup>17</sup> [Statute of the ICJ](#), Article 35; [UN Charter](#), Article 93.

<sup>18</sup> Aust, *Modern Treaty Law and Practice* (3<sup>rd</sup> ed, 2013), p 102; McNair, *The Law of Treaties* (1961), p 151 [Annex pp 7-11].

<sup>19</sup> [Genocide Convention](#), Article XI (non-UN Member State require an invitation).

<sup>20</sup> [UNGA Resolution 67/19](#) (2012), para 2 (emphasis added).

<sup>21</sup> See the applications indicating this point would be addressed: [ICC-01/18-49](#) (Hungary), para 8; [ICC-01/18-29](#) (Germany), para 10; [ICC-01/18-18](#) (European Centre for Law and Justice), para 10; [ICC-01/18-45](#) (Badinter et al), para 15; [ICC-01/18-37](#) (Buchwald, Rapp), p 8; [ICC-01/18-33](#) (Blank et al), para 17; [ICC-01/18-34](#) (IJL), paras 11, 19; [ICC-01/18-26](#) (The Lawfare Project et al), para 20; [ICC-01/18-21-Corr](#) (Touro Institute on Human Rights and the Holocaust), para 4.

depository is only administrative in nature.<sup>22</sup> What is relevant is that the States Parties consented to the designation of an entity as a “State” by the UN General Assembly as being determinative for accession by a State to the Statute. Such designation leads automatically, following accession, to the participation of the State in the ASP. It similarly automatically confers territorial jurisdiction on the Court over the territory of the State.<sup>23</sup>

17. It is on that premise that accession by the State of Palestine to the Rome Statute led to its automatic welcome to the ASP,<sup>24</sup> and its full participation therein, as demonstrated *inter alia* by its election to the Bureau in 2017,<sup>25</sup> its appointment to the Credentials Committee and Advisory Committee on the nomination of judges in 2018,<sup>26</sup> and by the receipt of its annual contributions to the budget.<sup>27</sup>
18. On the same premise, the fact of accession by the State of Palestine requires the Court, in determining its jurisdiction,<sup>28</sup> to accept as fact the status of the

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<sup>22</sup> See the applications indicating this point would be addressed: [ICC-01/18-49](#) (Hungary), para 7; [ICC-01/18-45](#) (Badinter et al), para 16; [ICC-01/18-37](#) (Buchwald, Rapp), pp 7-8; [ICC-01/18-34](#) (IJL), para 9; [ICC-01/18-58](#) (Israel Forever Foundation), para 6(iii). See also UNSG, [Depositary Notification, C.N.57.2015.TREATIES-XVIII.10](#), 23 January 2015 (Canada).

<sup>23</sup> Once treaty parties consent to a procedure for and/or conditions to accession through the inclusion of a clause to that effect, such consent is given “*once and for all*”, subject to any subsequent modification or abrogation of the clause pursuant to the treaty or by mutual agreement of the parties: McNair, n18 [Annex pp 7-11], p 151; Villiger, *Commentary to the 1969 Vienna Convention on the Law of Treaties* (2009), pp 219-220 [Annex pp 12-14]; [VCLT](#), Article 15(a).

<sup>24</sup> [Speech by the President of the Assembly of States Parties](#), 1 April 2015.

<sup>25</sup> ASP Official Records, 16<sup>th</sup> Sess. (2017), ICC-ASP/16/20, [Vol I](#), para 17; ASP, [Annotated list of items included in the provisional agenda](#), ICC-ASP/17/1/Add.1, 29 November 2018, p 3 (elected on recommendation of Bureau).

<sup>26</sup> ASP Official Records, 17<sup>th</sup> Sess. (2018), ICC-ASP/17/20, [Vol I](#), paras 8, 27.

<sup>27</sup> ASP Official Records: 15<sup>th</sup> Sess. (2016), ICC-ASP/15/20, [Vol I](#), pp 114-115 and [Vol II](#), pp 256, 317; 16<sup>th</sup> Sess. (2017), ICC-ASP/16/20, [Vol II](#), pp 241, 308, 387; 17<sup>th</sup> Sess. (2018), ICC-ASP/17/20, [Vol II](#), pp 243, 322, 410.

<sup>28</sup> This is so whether the issue is decided under Article 19(3) or under Article 119(1), on the basis that a “*dispute*” may have arisen regarding the Court’s jurisdiction (Request Under Regulation 46(3) of the Regulations of the Court ([Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19\(3\) of the Statute”](#)), PTC I, ICC-RoC46(3)-01/18-37, 18 September 2018 (“*Bangladesh Jurisdictional Decision*”), para 28 (but see [Partially Dissenting Opinion of Judge Marc Perrin de Brichambaut](#), paras 14-23)).

State of Palestine as a State Party,<sup>29</sup> and to ensure the jurisdictional consequences that flow from accession, notably that the Court may exercise jurisdiction with respect to conduct occurring on its territory and/or by its nationals.

**The State of Palestine is, in any event, a “State” for the purpose of Article 12(2)(a) because it is a State under customary international law**

19. If the Court were to consider that “State” in Article 12(2)(a) requires interpretation by reference to customary international law, pursuant to Article 21(1)(b),<sup>30</sup> and insofar as the Montevideo criteria are deemed to be reflective of such law,<sup>31</sup> then the State of Palestine satisfies the relevant criteria for Statehood: it has (i) a permanent population, (ii) a defined territory, that being the West Bank, including East Jerusalem, and Gaza, (iii) a government, and (iv) the capacity to enter into relations with other States.<sup>32</sup> Palestine’s own declaration of its Statehood,<sup>33</sup> and the recognition of the State of Palestine by at

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<sup>29</sup> Pursuant to the “*all States*” formula, the Court cannot properly gainsay an “*unequivocal indication*” by the UN General Assembly, as accepted by the UN Secretary-General, any more that it could properly gainsay a contrary indication (e.g. the UN General Assembly determination that the “homelands” established by Apartheid South did not qualify as States (see e.g. [UNGA Resolution 31/6A](#) (1976), para 2)). Moreover, Article 2(2) of the [Relationship Agreement between the Court and the UN](#) obliges “[t]he Court [to] recognize (...) the responsibilities of the United Nations under the Charter” and Article 2(3) obliges that the Court to respect the UN General Assembly’s mandate. These considerations are all the more pertinent in light of the UN General Assembly’s repeated confirmation of its “*permanent responsibility*” for the question of Palestine (e.g., [UNGA Resolution 67/19](#) (2012), preambular para 25; [UNGA Resolution ES-10/17](#) (2007), preambular para 2).

<sup>30</sup> *Prosecutor v. Bemba Gombo et al.* ([Judgment on the appeals of the Prosecutor, Mr Bemba Gombo et al against the decision of Trial Chamber III entitled “Decision on Sentence pursuant to Article 76 of the Statute”](#)) AC, 8 March 2018, ICC-01/05-01/13-2276-Red, para 76.

<sup>31</sup> [ICC-01/18-66](#) (Quigley), paras 39-49. Undisputed borders are not a necessary condition for Statehood (Crawford, *The Creation of States in International Law* (2<sup>nd</sup> ed, 2006), p 48 [Annex p 16]; [ICC-01/18-66](#) (Quigley), paras 50-51; see further [Prosecution Request](#), ICC-01/18-12, para 191, fn 608 and sources cited therein). Self-determination territories have become States despite claims to the *whole* of their territory. See, e.g., [UNGA Resolution 36/3](#) (1981) (admitting Belize to the UN) and [UNGAOR, 36<sup>th</sup> Sess., 13<sup>th</sup> Plen. Mtg.](#) (1981), A/36/PV.13, paras 1-33 (statement by Guatemala).

<sup>32</sup> See Prosecution Request paras. 136-182.

<sup>33</sup> [Declaration of Independence of the State of Palestine](#) (1988), Letter to UNSG, Annex III, p 15.

least 138 of 193 UN Member States provides further evidence that the conditions for Statehood under customary international law are satisfied.<sup>34</sup>

20. Neither belligerent occupation nor the purported annexation of territory in violation of international law<sup>35</sup> are capable of vitiating Statehood.<sup>36</sup> In particular, the requirement of effective governmental authority or control, pursuant to (iii) above, is mitigated in circumstances where a people's control of their territory is being impeded in contravention of their right to self-determination.<sup>37</sup> That is a consequence of the customary law duty of non-recognition of any situation resulting from a serious breach of the right to self-determination as a peremptory norm binding on States,<sup>38</sup> and on this Court as an international organisation.<sup>39</sup> The duty of non-recognition requires the Court

<sup>34</sup> [Prosecution Request](#), para 178(a).

<sup>35</sup> Both of which Israel is perpetrating in the State of Palestine: see [Prosecution Request](#), paras 5, 145-146, 157-177; [UNGA Resolution 67/19](#) (2012), preambular para 10 (*"the annexation of East Jerusalem is not recognized"*).

<sup>36</sup> See, e.g., Pictet, [The Geneva Conventions of 12 August 1949 Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War](#) (1958), p 275 (*"occupation ... deprives the occupied Power of neither its statehood nor its sovereignty; it merely interferes with its power to exercise its rights"*); [UNSC Resolution 662](#) (1990), paras 1-2 (rejecting the annexation of Kuwait and treating it as without affect as regards Kuwaiti Statehood).

<sup>37</sup> See [Prosecution Request](#), paras 141-142 and particularly fn 475. See also Crawford, n31, p 128 (*"The secession of a self-determination unit, where self-determination is forcibly prevented by the metropolitan State, will be reinforced by the principle of self-determination, so that the degree of effectiveness required as a precondition to recognition may be substantially less than in the case of secession within a metropolitan unit"*) [Annex pp 17-19]. The fact that a self-determination entity has become a State does not mean that its population loses the right to self-determination in circumstances where it was prevented from fully exercising that right in accordance with international law: [Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965](#) (2019) I.C.J. General List No. 169 (*"Chagos Advisory Opinion"*), para 178.

<sup>38</sup> ILC, [Articles on State Responsibility](#) (2001) A/56/10, pp 26-143 (*"ASR"*), Article 41(2); [Legal Consequences for States of the Continued Presence of South Africa in Namibia \(South West Africa\) notwithstanding Security Council Resolution 276 \(1970\)](#), *Advisory Opinion*, I.C.J. Reports 1971, p 16 (*"Namibia Advisory Opinion"*), para 126. For completeness, the obligation of non-recognition in the present case attaches to the situation arising out of any and all breaches of peremptory norms, including the Palestinian people to self-determination as well as violations of international humanitarian and human rights law. See, in respect of *"an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem"*: [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#), *Advisory Opinion*, I.C.J. Reports 2004, p 136 (*"Wall Advisory Opinion"*), para 159.

<sup>39</sup> ILC, [Articles on the Responsibility of International Organizations](#) (2011), A/66/10, pp 52-172 (*"ARIOs"*), Article 42(2); [Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion](#), I.C.J. Reports 1980, p 73 (*"WHO Advisory Opinion"*), para 37; [Bangladesh Jurisdictional Decision](#), para 48. See also as regards interpretation of the Statute: [Statute](#), Article 21(1)(b).

to treat the situation arising from any such breach as being without any legal effect.<sup>40</sup>

21. This is the basis on which the international community has consistently recognised the Palestinian people as retaining “*sovereignty over their territory*”;<sup>41</sup> it is also the basis on which the questions of Palestinian Statehood under customary international law and the territorial jurisdiction of the Court fall to be considered. For the Court to have regard to the effects of Israel’s unlawful conduct in Palestinian territory, insofar as it has undermined the effective authority or control by the Palestinian government, would be to recognise such conduct as capable of depriving the Palestinian people of their right to self-determination and their ability to attain Statehood.<sup>42</sup> It would also be for the Court to rely on the effect of crimes within its jurisdiction *ratione materiae*<sup>43</sup> to deprive it of jurisdiction *ratione loci*. Such considerations could not properly lead to a determination that the State of Palestine is not a State for the purposes of Article 12(2)(a).

**Neither bilateral non-recognition of the State of Palestine nor the Oslo Accords impact upon the Court’s jurisdiction over the Situation**

22. Bilateral non-recognition of the State of Palestine by a minority of States Parties is immaterial to the proper interpretation and application by the Court of the Statute, as a multilateral treaty, which is not itself concerned with bilateral treaty relations. There is no basis pursuant to Article 21 for the Court

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<sup>40</sup> Jennings and Watts, *Oppenheim’s International Law* (9<sup>th</sup> ed, 1996), pp 198-200.

<sup>41</sup> See, e.g., [UNGA Resolution 43/177](#) (1988), para 2. See further [Prosecution Request](#), para 141, fn 474.

<sup>42</sup> In this respect, see *Wall Advisory Opinion*, [Sep. Op. of Judge Al-Khasawneh](#), para 9 (“*what prevents this right of self-determination from being fulfilled is Israel’s prolonged military occupation with its policy of creating faits accomplis on the ground*”).

<sup>43</sup> Including, the transfer of parts of Israel’s own population into the territory of the State of Palestine, contrary to Article 8(2)(b)(viii).

to take such matters into account in construing the provisions of the Statute.<sup>44</sup> Further, a number of the States Parties that have obtained permission to intervene, including Brazil, the Czech Republic, Hungary and Uganda,<sup>45</sup> have already recognised the State of Palestine as a State bilaterally.<sup>46</sup> The principle of good faith precludes them from now seeking to assert that the State of Palestine is not a State for the purpose of Article 12(2)(a) or otherwise.

23. It has been suggested that the Court is precluded from exercising jurisdiction as the State of Palestine cannot delegate to the Court criminal jurisdiction over all or parts its territory and/or in relation to Israeli citizens because it does not possess such jurisdiction pursuant to the Oslo Accords,<sup>47</sup> in particular Oslo II.<sup>48</sup> Such arguments are flawed for the following reasons.
24. First, the Court does not exercise delegated jurisdiction. As the Appeals Chamber has confirmed, “international courts act on behalf of the international community as a whole”,<sup>49</sup> not on behalf of individual States. The Court’s exercise of jurisdiction therefore goes beyond that of States’ jurisdiction domestically, because such limitations that apply to States domestically “find no application in relation to an international court such as the International Criminal Court”.<sup>50</sup> That

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<sup>44</sup> Cf [VCLT](#), Articles 31(3)(a)-(b) regarding subsequent agreements and practice evidencing agreements between parties to a treaty as to the interpretation of the treaty. See also [VCLT](#), Article Article 63 regarding the lack of diplomatic or consular relations between treaties parties being immaterial to the operation of the treaty unless such relations are “indispensable for the application of the treaty”

<sup>45</sup> [ICC-01/18-47](#) (Brazil), para 7; [ICC-01/18-22](#) (Czech Republic), para 6; [ICC-01/18-49](#) (Hungary), para 10, and [ICC-01/18-62](#) (Uganda).

<sup>46</sup> [ICC-01/18-47](#) (Brazil), para 6 and [Letter from President Luiz Inácio Lula da Silva to President Mahmoud Abbas](#), 1 December 2010 (recognising the State of Palestine “within the 1967 borders”). Czechoslovakia recognised the State of Palestine in 1988 (UNESCO, [Request for the Admission of the State of Palestine to UNESCO as a Member State](#) (1989), 31 EX/43, Annex II, p 2). The Czech Republic considered itself a “successor” State and continued all obligations of Czechoslovakia under multilateral treaties (see [MTDSG, Czech Republic](#)) and subsequently retained ties with Palestine (Palestine has an embassy in Prague and the Czech Republic has a consulate in Bethlehem and a diplomatic office in Ramallah). [ICC-01/18-49](#) (Hungary), para 9.

<sup>47</sup> E.g., [Shany \(2010\) 8 JICJ 329](#), pp 339-342.

<sup>48</sup> Oslo II (1997) 36 IM 557, Annex IV, Article 1 [Annex pp 23-24].

<sup>49</sup> *Prosecutor v. Al Bashir* ([Judgment in the Jordan Referral re Al-Bashir Appeal](#)), AC, ICC-02/05-01/09-397-Corr, 6 May 2019, para 115. See also [Prosecution Request](#), para 117.

<sup>50</sup> *Ibid.*

has been expressly determined to be the case in relation to immunities from prosecution applicable in domestic legal systems, and would apply equally in relation to domestic amnesties, which would not operate to restrict the Court's jurisdiction.<sup>51</sup> In a similar way, insofar as the provisions of Oslo were interpreted as continuing to limit the domestic criminal jurisdiction of the State of Palestine over Israelis and/or over crimes committed in Oslo Area C, that would "*find no application*" in relation to this Court. For the Court to assume jurisdiction over crimes within its jurisdiction *ratione materiae*, all that is required, as per Articles 4(b) and 12(1) is that the State in question consent (by acceding to the Statute) to the exercise of *international* criminal jurisdiction by the Court in relation to its territory and nationals, *not* that the State delegate its own domestic criminal jurisdiction to the Court.

25. Second, even if Article 12 were to be deemed to give effect to a system of delegated jurisdiction, the State of Palestine has the same jurisdiction under international law as any other State.<sup>52</sup> It is the general customary international law jurisdiction that States Parties would delegate to the Court and not any specific jurisdiction that a particular State possessed with respect to particular persons or territory.<sup>53</sup> That any such alleged delegation is one of general authority is confirmed by the practice of the Court in not reviewing the

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<sup>51</sup> *Prosecutor v. Gaddafi* ([Decision on the 'Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17\(1\)\(c\), 19 and 20\(3\) of the Rome Statute'](#)), PTC I, ICC-01/11-01/11-662, 5 April 2019, paras 77-78 (and [Separate Opinion of Judge Marc Perrin de Brichambaut](#), para 148).

<sup>52</sup> Even as an occupied State, the *de jure* position is that the State of Palestine retains sovereignty over its territory and all the competence and authority that comes with it. It is not correct to say that any jurisdiction the State of Palestine possesses is derived from or limited by Oslo II.

<sup>53</sup> *Situation in the Republic of Bangladesh/Republic of the Union of Myanmar* ([Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar](#)) PTC III, ICC-01/19-27, 14 November 2019 ("**Bangladesh Article 15 Decision**"), para 60. See also paras 56-59 (inquiry into the general criminal jurisdiction of States under customary international law). Likewise, see [Bangladesh Jurisdictional Decision](#), paras 65-66 (establishing the general position under customary international law), paras 67-68 (using the examples of the domestic legal systems of Bangladesh and Myanmar to further bolster the position that custom permits States to prosecute cross-border crimes), and paras 70-71 (concluding on that issue). See also [Prosecution Request](#), para 184.

specific competence of the State Party every time a referral is made.<sup>54</sup> It is also confirmed by the text of the Statute itself: while the drafters of the Statute were fully alive to the possibility of the Court exercising authority in a manner that might require States Parties to breach their existing international obligations, they only made provision for the same in Article 98. That provision however relates *exclusively* to matters of cooperation<sup>55</sup> while no parallel rule exists in relation to Article 12.

26. As concerns war crimes, such as those of which the Victims are victims, the State of Palestine as a High Contracting Party to the Fourth Geneva Convention (“GCIV”),<sup>56</sup> has both jurisdiction and an “obligation”, pursuant to Article 146(2) GCIV, “to search for persons alleged to have committed, or to have ordered to be committed such grave breaches, and shall bring such persons, regardless of their nationality before its own courts”, and/or by preference, hand them over for trial elsewhere.<sup>57</sup> Article 47 GCIV makes clear that Palestinians in occupied territory cannot be deprived “in any case or in any manner” of the benefits of GCIV, including the benefit of having the suspect perpetrator of war crimes against them prosecuted, “as a result of any agreement concluded between the authorities of the occupied territories”.<sup>58</sup> The right of an occupied population not to be deprived of the safeguards of the Fourth Geneva Convention is a right *erga omnes*,<sup>59</sup> opposable to all subjects of international law including the

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<sup>54</sup> On the practice of an international organisation as relevant to the interpretation of its constitutive instrument under Articles 31-32 of the [VCLT](#), see ILC, [Conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties](#) (2018), A/73/10, pp 16-116, Conclusion 12(3) and paras 26-37.

<sup>55</sup> [Statute](#), Article 98 (requests for surrender or assistance).

<sup>56</sup> Palestine acceded to the Fourth Geneva Convention on 2 April 2014 (see Swiss Federal Department of Foreign Affairs, [Notification 242.512.0 – GEN 2/14](#), 10 April 2014). Israel ratified/acceded on 6 June 1951 (recorded by ICRC, “[Treaties, States Parties and Commentaries – Israel](#)”). See also [UNGA Resolution 70/88](#) (2015) on the applicability of the Geneva Conventions to the Occupied Palestinian Territory.

<sup>57</sup> Article 146(2) [GCIV](#) makes particular reference to such persons being handed over to “another High Contracting Party”. As noted in the [Prosecution Request](#), at fn 603, that did not preclude the handing over of an individual to an international criminal court, as per the [ICRC Commentary to Article 146 GCIV](#), p 593.

<sup>58</sup> See also [Prosecution Request](#), paras 186-189. The non-violability of rights of an occupied population is also reflective of customary international law: Pictet, n36, p 272.

<sup>59</sup> [Wall Advisory Opinion](#), para 157.

Court.<sup>60</sup> In the same way that the Oslo Accords cannot preclude the operation of Article 146(2) GCIV in relation to the territory of the State of Palestine, they similarly do not limit the jurisdiction of this Court over individuals responsible for grave breaches of GCIV, as criminalised pursuant to the Statute, and/or any other of the crimes over which the Court has jurisdiction *ratione materiae*.<sup>61</sup>

27. More generally bilateral agreements only have effect, as a matter of international law, *inter partes*. As such, even were Oslo II to be properly recognised as an international treaty that binds the State of Palestine,<sup>62</sup> any subsisting obligations under it would operate only on a bilateral basis. As *res inter alios acta*, Oslo II would not create a restriction on the State of Palestine's international law competence that would be opposable to third parties, including this Court;<sup>63</sup> no more than a bilateral treaty could create a broader competence for the State than existing under customary law which could be delegated to the Court.<sup>64</sup>

## **SUBMISSION 2: THE COURT'S HAS TERRITORIAL JURISDICTION OVER THE TERRITORY OF THE STATE OF PALESTINE, WHICH COMPRISES THE OCCUPIED PALESTINIAN TERRITORY OF THE WEST BANK, INCLUDING EAST JERUSALEM, AND GAZA**

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<sup>60</sup> [WHO Advisory Opinion](#), para 37; [Bangladesh Jurisdictional Decision](#), para 48. Also [Statute](#), Article 21(1)(b).

<sup>61</sup> Further, and to the extent the Oslo Accords can be regarded as "treaties", if they conflict with a peremptory norm of international law—including fundamental rules of international humanitarian law such as Article 146 GCIV—they will be void. See generally the rule reflected in [VCLT](#), Article 53.

<sup>62</sup> This is not accepted, applying *mutatis mutandis*, [Chagos Advisory Opinion](#), para 172 ("In the Court's view, it is not possible to talk of an international agreement, when one of the parties to it ... was under the authority of the latter"), which would apply here.

<sup>63</sup> See [Territorial and Maritime Dispute \(Nicaragua v. Colombia\), Judgment, I.C.J. Reports 2012](#), p 624, para 95 ("Treaties concluded by Colombia with neighbouring States ... are *res inter alios acta* with regard to Nicaragua"); [Anglo-Iranian Oil Company \(U.K. v. Iran\), Judgment of July 22nd, 1952, I.C.J. Reports 1952](#), p 93, p 109 ("A third-party treaty, independent of and isolated from the basic treaty, cannot produce any legal effect as between the United Kingdom and Iran: it is *res inter alios acta*").

<sup>64</sup> The legality of any such treaty or domestic law provision would also be questionable.

28. The “*territory of*” the State of Palestine, on which the Court has jurisdiction for the purposes of Article 12(2)(a), consists of the whole of the West Bank, including East Jerusalem, and Gaza. That is because: (a) that is the territory to which the right of self-determination of the Palestinian people attaches; or (b), in the alternative, such territory constitutes the “defined territory” ascertained by the proper application of the Montevideo criteria.
29. Pursuant to the duty of non-recognition, international organisations, including the Court must not recognise as lawful, or render any assistance in the maintenance of, Israel’s unlawful occupation of the State of Palestine.<sup>65</sup> That includes the effects of any conduct by the State of Israel that would purport to redefine the scope of the Palestinian territory East of the Green Line, including East Jerusalem.<sup>66</sup> The ICJ has affirmed, in particular, that the Oslo Accords have “*done nothing to alter*” the legal status of the whole of the West Bank, including East Jerusalem, as constituting occupied Palestinian territory.<sup>67</sup> Consequently, there can be no proper suggestion that the Oslo Accords have altered the “territory of” the State of Palestine over which the Court may exercise jurisdiction for the purpose of Article 12(2)(a) to only that over which

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<sup>65</sup> See para 20 above.

<sup>66</sup> See, e.g., [UNSC Resolution 252](#) (1968), preambular para 6, para 2 (affirming the prohibition on acquisition of territory by force and declaring that “*all ... actions taken by Israel ... which tend to change the legal status of Jerusalem are invalid and cannot change that status*”); [UNSC Resolution 478](#) (1980), preambular para 2, paras 3, 5; [UNGA Resolution 67/19](#) (2012), preambular paras 5, 10; [UNSC Resolution 2334](#) (2016), paras 1, 3, 5. See similarly, the international community’s rejection of South Africa’s purported redrawing of territorial boundaries to create Bantustans in violation of the peremptory prohibitions on apartheid and racial discrimination: [UNGA Resolutions 2775E \(XXVI\)](#) (1971); [UNGA Resolution 3411D \(XXX\)](#) (1975); [UNGA Resolution 31/6 A](#) (1976); [UNSC Resolution 402](#) (1976); [UNGA Resolution 32/105N](#) (1977) and [UNGA Resolution 34/93G](#) (1979). See the same rejection of the purported creation of Bantustans in South West Africa (Namibia), which also violated the right of the population of that territory to self-determination: [UNSC Resolution 264](#) (1969). In the same vein, and factually relevant here as regards the peremptory prohibition on the acquisition of territory by force, see: ILC, ASR, Article 41 (commentary, para 7); [UNSC Resolution 662](#) (1990), paras 1-2 (Kuwait); [UNSC Resolution 384](#) (1975), para 1 (East Timor); [UNSC Resolution 541](#) (1983), paras 1-2, 5-7 and [UNSC Resolution 550](#) (1984), paras 2-4, 9 (Turkish Republic of Northern Cyprus); [UNGA Resolution 68/262](#) (2014), paras 1-2, 6 and [UNGA Resolution 74/17](#) (2019) preambular paras 1-2, 7, 10, paras 1, 15, 17 (Crimea). In this respect, it is important to note that the right to self-determination includes the right to the integrity of the self-determination unit’s territory: [Chagos Advisory Opinion](#), para 160.

<sup>67</sup> [Wall Advisory Opinion](#), para 78 (referring to paras including para 77 dealing with the Oslo Accords).

the State of Palestine exercises criminal jurisdiction under the Oslo Accords (i.e. Areas A and B<sup>68</sup>).

**The “territory of” the State of Palestine for the purpose of Article 12(2)(a) is the territory to which the right of self-determination of the Palestinian people attaches**

30. The territorial jurisdiction of the Court under Article 12(2)(a) extends to the “territory of” a State that is a Party to the Statute. The words “territory of” a State are not defined in the Statute and, as such, must be interpreted consistently with international law.<sup>69</sup> The “territory” of a State under international law is the territory to which it has a sovereign entitlement. The international community recognises that the right to self-determination involves a sovereign entitlement to a particular territory: the right to self-determination inheres in the people of a given territory, as a single territorial unit,<sup>70</sup> and involves a right with respect to that territory.<sup>71</sup> The ICJ itself has recently confirmed that the right to territorial integrity is an important “corollary” of the right to self-determination, that the right to self-determination by a people applies “*in relation to their territory as a whole*”, and that any “*detachment*” by another Power of any part of such territory, “*unless based on the freely expressed and genuine will of the people of the territory concerned,*

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<sup>68</sup> Palestine also has jurisdiction over offences committed by Palestinians or their visitors in Area C Areas A and B where the offence does not relate to Israeli security interests. See Oslo II (1997) 36 ILM 557, Annex IV, Article 1 [Annex pp 23-24].

<sup>69</sup> [Statute](#), Article 21(1)(b).

<sup>70</sup> Shaw, *Title to Territory in Africa* (1986), p 140 [Annex p 35]. See also Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1995), p 72 [Annex pp 36-38]. See also [Chagos Advisory Opinion](#), para 160 (“*the right to self-determination of the people concerned is defined by reference to the entirety of a non-self-governing territory*”). See also Jennings and Watts, n40, pp 715-716 [Annex pp 25-34].

<sup>71</sup> Cassese, n70, p 72 [Annex pp 36-38]. See also the repeated affirmation of the right of self-determination entities to independence in their territory face of attempted encroachments on such territory: [UNGA Resolution 2066 \(XX\)](#) (1965), para 2 (Mauritius/the Chagos Archipelago), [UNGA Resolution 1817 \(XVII\)](#) (1962), preambular para 7, para 1 and [UNGA Resolution 1954 \(XVIII\)](#) (1963), para 1 (Basutoland, Bechuanaland and Swaziland); [UNGA Resolution 3485 \(XXX\)](#) (1975), preambular para 4, paras 1, 5 and [UNSC Resolution 384](#) (1975), preambular para 4, para 1 (East Timor).

*is contrary to the right to self-determination*".<sup>72</sup> Therefore, the "territory of" the State of Palestine for the purposes of Article 12(2)(a) is the territory to which its right to self-determination attaches.

31. As to the territory to which the right to self-determination of the Palestinian people attaches, the ICJ in its *Wall Advisory Opinion* determined it to be the "*Palestinian territories which before the conflict lay to the east of the Green Line*".<sup>73</sup> In doing so the ICJ: (i) distinguished between those territories and "*the territory of Israel itself*",<sup>74</sup> (ii) held "[a]ll these territories, including East Jerusalem"<sup>75</sup> to be both Palestinian, and occupied,<sup>76</sup> and (iii) determined that the route of Israel's separation Wall that deviated from the route of the Green Line, severely impeded the right of the Palestinian people to self-determination and breached Israel's obligation to respect that right.<sup>77</sup> The "*Palestinian territories which before the conflict lay to the east of the Green Line*" consist of the whole of Gaza and the West Bank, including East Jerusalem, as delimited by the 1949 Armistice Agreement or "*Green Line*". This is the self-same territory in relation to which Palestine made its referral pursuant to Articles 13(a) and 14.<sup>78</sup>
32. That the right of self-determination of the Palestinian people inheres in the whole of the occupied Palestinian territory was reaffirmed by the UN General Assembly in its Resolution 67/19 of 2012 granting the State of Palestine the status of a non-member observer State. The Resolution reaffirms that "*the Palestinian people have the right to self-determination and to sovereignty over their territory*" and "*the right ... to independence in their State of Palestine on the*

<sup>72</sup> [Chagos Advisory Opinion](#), para 160. See also para 178, as regards the fact that a self-determination entity has become a State has not lost its right to self-determination in circumstances where it was prevented from fully exercising that right in accordance with international law.

<sup>73</sup> [Wall Advisory Opinion](#), para 101.

<sup>74</sup> *Ibid*, para 67.

<sup>75</sup> *Ibid*, para 78.

<sup>76</sup> The ICJ also affirmed that the none of the measures taken by Israel to change the status of Jerusalem, the 1994 boundary treaty between Israel and Jordan, or Oslo Accords altered this position (*ibid*).

<sup>77</sup> *Ibid*, para 122.

<sup>78</sup> [Referral by the State of Palestine Pursuant to Articles 13\(a\) and 14 of the Rome Statute](#), 15 May 2018, para 9, fn 4.

*Palestinian territory occupied since 1967.*”<sup>79</sup> Indeed, the UN General Assembly has consistently recognised the entirety of the territory as Palestinian, since at least 1982, based on the right of the Palestinian people to self-determination.<sup>80</sup>

33. This was further reaffirmed in UN Security Council Resolution 2334 of 2016 which confirmed that the UN Security Council would “*not recognize any changes to the 4 June 1967 lines*” (“*frontières du 4 juin 1967*” in the French text) “*including with regard to Jerusalem, other than those agreed by the parties through negotiations*”<sup>81</sup> (notably the Resolution expressly refers to “*the Palestinian territory occupied since 1967*” in the singular, underscoring the indivisibility of the Palestinian territory occupied by Israel<sup>82</sup>). It is also reflected in the conduct of numerous UN organs, States, and international organisations.<sup>83</sup>
34. It follows that, for the purposes of Article 12(2)(a), the territory of the State of Palestine consists of Gaza and the entirety of the “*Palestinian territories... to the east of the Green Line*”, including East Jerusalem.<sup>84</sup> That suffices for the establishment of jurisdiction, and the subsequent determination of whether crimes have been committed “*on the territory*” of the State of Palestine.<sup>85</sup>

**The “*territory of*” the State of Palestine for the purpose of Article 12(2)(a) is the “*defined territory*” ascertained by the proper application of the Montevideo criteria to the particular circumstances of this case**

<sup>79</sup> [UNGA Resolution 67/19](#) (2012), preambular para 12, para 1 (emphasis added). See further preambular para 8 (reaffirming “*the right of the Palestinian people to self-determination, including the right to their independent State of Palestine*”), preambular para 9 (“*the right to self-determination and the right to their independent State*”).

<sup>80</sup> [Prosecution Request](#), paras 197-201, 203-205, 207.

<sup>81</sup> [UNSC Resolution 2334](#) (2016), para 3.

<sup>82</sup> *Ibid.*, preambular para 4, paras 1-2.

<sup>83</sup> [Prosecution Request](#), paras 202, 206, 208-215.

<sup>84</sup> [Wall Advisory Opinion](#), para 101. Cf. expressions of concern about the need for questions of territory to be determined through a political process: [ICC-01/18-62](#) (Uganda), para 5; [ICC-01/18-47](#) (Brazil), para 10; [ICC-01/18-49](#) (Hungary), para 9; [ICC-01/18-29](#) (Germany), para 9; [ICC-01/18-45](#) (Badinter et al), paras 19-20; [ICC-01/18-31](#) (UK Lawyers for Israel et al), para 14; [ICC-01/18-33](#) (Blank et al), paras 33-34; [ICC-01/18-58](#) (Israel Forever Foundation), para 6(iv).

<sup>85</sup> [Bangladesh Article 15 Decision](#), para 62.

35. Alternatively, the “territory of” the State of Palestine is the “defined territory” for the purpose of satisfying the Montevideo criteria. The defined Palestinian territory consists of the West Bank, including East Jerusalem, and Gaza, as delimited by the Green Line. As set out above, that is the territory which has been consistently recognised by the international community as “Palestinian”. Since the declaration by the State of Palestine of its Statehood on that territory, it is properly to be recognised as constituting the territory of the State.<sup>86</sup> That all or part of territory is occupied<sup>87</sup>, or not under a State’s effective control<sup>88</sup> does not prevent it from being the “territory of” the State for the purpose of Article 12(2).<sup>89</sup>

**SUBMISSION 3: THE TERRITORY FROM WHICH THE VICTIMS WERE DEPORTED IS THE TERRITORY OF THE STATE OF PALESTINE, SUCH TERRITORY ALSO BEING OCCUPIED TERRITORY AS A MATTER OF INTERNATIONAL LAW**

36. Further, and without prejudice to the generality of Submission 2 (above), the Court has territorial jurisdiction in relation to the crimes committed against the Victims. That is because each Victim was unlawfully deported from a Palestinian city in the West Bank, namely Bethlehem, Hebron, or Jenin, into Israel, in violation of Article 8(2)(b)(viii). Those Palestinian cities are all designated as Oslo Area A, pursuant to Oslo II, under the full control of the Palestinian Authority,<sup>90</sup> rather than Area C or Gaza, areas on which those

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<sup>86</sup> See paras 31-33 above.

<sup>87</sup> *Prosecutor v. Thomas Lubanga Dyilo* ([Decision on the Prosecutor’s Application for a Warrant of Arrest, Article 58](#)), PTC I, 10 February 2006, ICC-01/04-01/06-1-Corr-Red, para 27 and *Prosecutor v. Thomas Lubanga Dyilo* ([Decision on the Confirmation of Charges](#)), PTC I, 29 January 2007, ICC-01/04-01/06-803-tEN, paras 166, 220, finding that crimes occurring in Ituri were “on the territory of” the DRC notwithstanding it was occupied by Uganda. See also OTP, [Report on Preliminary Examination Activities](#), 5 December 2018, paras 62-63, 68, 80 (regarding Crimea as occupied Ukrainian territory).

<sup>88</sup> *Situation in Georgia* ([Decision on the Prosecution Request for authorization of an investigation](#)) PTC I, ICC-01/15-12, 27 January 2016 (“*Georgia Article 15 Decision*”), paras 6, 64 (affirming that jurisdiction extended to South Ossetia over which Georgian authorities had no effective control); [Prosecution Request](#), para 191.

<sup>89</sup> The determination of the “territory of” the State of Palestine for the purpose of Article 12(2)(a) would be without prejudice to any negotiated settlement.

<sup>90</sup> Oslo II (1997) 36 ILM 557, Articles XI(2), XI(3)(a); XIII(1) [Annex pp 39-40].

arguing against the Court's jurisdiction are focused.<sup>91</sup> They are not border areas, nor are they areas that would be the subject of any future negotiated and agreed land swap.<sup>92</sup> They are areas in the State of Palestine's territory in relation to which *"there has been a clear and unequivocal erga omnes Palestinian commitment to its territorial pursuits"*.<sup>93</sup> They constitute the territory of the State of Palestine. They are also unquestionably *"occupied territory"*, as determined by the ICJ.<sup>94</sup>

37. Given that *"undisputed territorial borders are not ... a prerequisite for statehood"*,<sup>95</sup> and that the Court *"may assert jurisdiction pursuant to article 12(2)(a) of the Statute if at least one element of the crime within the jurisdiction of the Court or part of such a crime is committed on the territory of a State Party to the Statute"*,<sup>96</sup> the Court need not pronounce on questions concerning the precise scope of the territory of the State of Palestine in assuming jurisdiction over the crimes committed against the Victims.<sup>97</sup> That is because the Victims have unquestionably been deported from part of the territory of the State of Palestine, and which are occupied territory, into the territory of the State of Israel. The Court's territorial jurisdiction flows from the fact that part of the

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<sup>91</sup> [ICC-01/18-45](#) (Badinter et al), paras 27-28; [ICC-01/18-28](#) (Benvenisti), para 14; [ICC-01/18-33](#) (Blank et al), para 31; [ICC-01/18-29](#) (Germany), para 12; [ICC-01/18-34](#) (IJL), para. 20; [ICC-01/18-23](#) (Israel Bar Association), para 14; [ICC-01/18-26](#) (The Lawfare Project et al), paras 16 and 22; [ICC-01/18-31](#) (UK Lawyers for Israel et al), para 16. See also [State of Israel Office of the Attorney General, The International Criminal Court's Lack of Jurisdiction over the so-called "Situation in Palestine"](#) 20 December 2019, paras 20, 49-60.

<sup>92</sup> It is not accepted that such matters are relevant in relation to the territorial scope of the State of Palestine, which, as set out above, consists of the whole of the West Bank, including East Jerusalem, and Gaza. However, these submissions are focused on the fact that the Court's territorial jurisdiction is established notwithstanding those arguments.

<sup>93</sup> [ICC-01/18-28](#) (Benvenisti), para 16.

<sup>94</sup> [Wall Advisory Opinion](#), paras 78, 83, 95-101, 112, 139-140.

<sup>95</sup> See [Prosecution Request](#), para 191, fn 608 citing Crawford, Shaw, Craven, Ronen and Worster. See also [ICC-01/18-66](#) (Quigley), paras 51-52.

<sup>96</sup> [Bangladesh Jurisdictional Decision](#), para 64.

<sup>97</sup> Albeit that it is the Victims' submission that these questions are settled as a matter of international law, for the reasons set out at paras 10-35 (above); see also the [Prosecution Request](#) at paras 136-138, 145-156, 178-182.

crimes of which they are victim occurred on the territory of the State of Palestine.<sup>98</sup>

38. The above submission is developed by reference to: (a) the nature of the crime of deportation from occupied territory contrary to Article 8(2)(b)(viii); (b) the Court's territorial jurisdiction over the crime; and (c) admissibility pursuant to Article 17(1).

### **The nature of the crime of deportation contrary to Article 8(2)(b)(viii)**

39. Pursuant to Article 8(2)(b)(viii), *“the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory”* is a war crime within the jurisdiction *ratione materiae* of the Court.
40. Article 8(2)(b)(viii), relating to the deportation of parts of the population of the occupied territory outside this territory,<sup>99</sup> reflects in material part the provisions of Article 85(4)(a) of Additional Protocol I to the Fourth Geneva Convention which prohibits *“the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention”*. Article 49(1) of the Fourth Geneva Convention in turn provides that *“deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country,*

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<sup>98</sup> [Prosecution Request](#), para 192. As set out above, the Victims assert that the entirety of the West Bank, including East Jerusalem, and Gaza form the territory of the State of Palestine. However, such a determination by the Court would not be necessary in order for jurisdiction to be established over the crimes committed against the Victims.

<sup>99</sup> The [Prosecution Request](#) at para 95 also specifies crimes contrary to Article 8(2)(b)(viii), in relation to which the Prosecutor suggests there is a “reasonable basis to believe... members of the Israeli authorities have committed war crimes” under Article 8(2)(b)(viii); however, that is concerned with the transfer by Israel of parts of its own civilian population into the territory it occupies, which is the other mode of commission of this crime. These submissions are concerned with the deportation of parts of the population of the occupied territory outside this territory.

*occupied or not, are prohibited, regardless of their motive”.*<sup>100</sup> Article 49(1) is codified as a crime pursuant to Article 8(2)(a)(vii) of the Rome Statute, of which the Victims are also victims.<sup>101</sup>

41. The prohibition in Article 8(2)(b)(viii) is broad and unequivocal. This is reflected in the elements of the crime, as set out in the Court’s “Elements of Crimes”, which provide that the crime will be committed where a perpetrator “[d]eported... all or parts of the population of the occupied territory within or outside this territory”, “the conduct took place in the context of and was associated with an international armed conflict”, and that “the perpetrator was aware of factual circumstances that established the existence of an armed conflict”.<sup>102</sup>
42. All deportations of parts of the occupied population outside of the occupied territory are prohibited, regardless of the motive or rationale for the deportation,<sup>103</sup> regardless of what crimes (if any) might have been committed by the individuals in question,<sup>104</sup> and regardless of the length or duration of the term of deportation.<sup>105</sup> A “part” of the population need not be a significant part, and may consist of a small number of individuals, as confirmed in numerous Security Council resolutions.<sup>106</sup>

<sup>100</sup> [Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 \(“GCIV”\)](#).

<sup>101</sup> See further para 51 below.

<sup>102</sup> International Criminal Court (ICC), [Elements of Crimes](#), 2011, Article 8(2)(b)(viii).

<sup>103</sup> No special intent is required. See, e.g., K. Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary* (2003), p. 106 [Annex pp 41-43].

<sup>104</sup> Clapham, Gaeta, and Sassòli, *The 1949 Geneva Conventions. A Commentary*, (2015), page 1188[10] [Annex pp 44-45].

<sup>105</sup> Notably, deportations need not be intended to be permanent: [Prosecutor v. Stakic](#) (Stakic), IT-97-24-A, Judgment (AC), 22 March 2006, para. 306; [Prosecutor v. Jadranko Prlić](#), Case No. IT-04-74-T, Judgment (TC), 29 May 2013, Volume I of VI, para. 57; [Prosecutor v. Radovan Karadžić](#), Case No. IT-95-5/18-T, Public Redacted Version of Judgment Issued on 24 March 2016 – Volume I of IV (TC), 24 March 2016, para. 493.

<sup>106</sup> [UNSC Resolution 608](#) (1988), read in conjunction with the [Letter dated 5 January 1988 from the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People addressed to the Secretary-General](#), UN Doc. A/43/77- S/19405, 5 January 1988, concerning the deportation by Israel of nine Palestinians ; see also: [UNSC Resolution 641](#) concerning the deportation of five Palestinian civilians, and [UNSC Resolution 694](#) (1991) concerning the deportation of four Palestinian civilians as a breach of GCIV; Triffterer / Ambos, *The Rome Statute of the International Criminal Court*, (2016), p.415, marginal note 402 [Annex pp 46-47].

43. Here, the Victims themselves collectively constitute a “part” of the population of the occupied territory,<sup>107</sup> who have been deported outside this territory. Further, they form a “part” of the population as a number of over 28,000 Palestinian nationals, including an estimated almost 800 children, who have been deported outside of occupied territory since 2014,<sup>108</sup> with many tens of thousands more having been deported since 1967.<sup>109</sup> It is estimated that over 80 percent of Palestinians detained to face charges in the Israeli Military Court system are detained in Israel, including over 50 percent of child prisoners.<sup>110</sup>
44. The conduct took place in the context of an international armed conflict, that being the ongoing belligerent occupation of Palestinian territory by Israel.<sup>111</sup> The perpetrators are members of the Israeli Army, including members of the Israeli military judiciary, responsible for ordering the pre- and post-trial detention of Palestinians in the Israeli military court system, and members of the Israeli Border Police and the Israeli Prison Service.
45. The numbers and circumstances in which the crimes were committed evidence that they were committed as part of a large-scale commission of the crime of deportation and as part of a plan or policy, such that the court would have

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<sup>107</sup> The determination by the Israeli High Court in *Abu Awad v The Military Commander* [1979] HCJ 97/79, para 11 [Annex pp 48-51]; [Afu v IDF Commander in the West Bank \[1988\] HCJ 785/87, PD 42\(2\) 4](#). This cannot be sustained, Article 49(1) GCIV makes no distinction between individual and collective deportation. See, e.g. Clapham, Gaeta, and Sassòli, *The 1949 Geneva Conventions. A Commentary*, (2015), page 1188[11] [Annex pp 44-45].

<sup>108</sup> Addameer statistics, calculated from official Israeli Prison Service statistics for 2014-2019, provided to Addameer through the Israeli NGO B'tselem. The figures represent the total number of prisoners held inside Israel, and as a subset of that the total number of children, as of December of each year.

<sup>109</sup> Human Rights Watch, [Born Without Civil Rights](#), 17 December 2019, pp.12 – 13; see also B'Tselem, [Military Courts](#), 11 November 2017.

<sup>110</sup> Addameer statistics, as above.

<sup>111</sup> [Wall Advisory Opinion](#), paras 78, 83, 95-101, 112, 139-140.

jurisdiction under Article 8(1).<sup>112</sup> For reasons further developed below, the gravity of the crimes, is also such as to warrant the assumption of jurisdiction.

### **The Court's territorial jurisdiction over the crime of deportation from occupied territory contrary to Article 8(2)(b)(viii)**

46. The crime of deportation<sup>113</sup> outside of occupied territory is a crime that necessarily involves two distinct territories, in that it requires a transfer from occupied territory to another place outside that territory (as per Article 8(2)(b)(viii)).<sup>114</sup> As determined by PTCIII in the Bangladesh Article 15 Decision, crimes of deportation being necessarily trans-territorial,<sup>115</sup> the Court may assert jurisdiction pursuant to Article 12(2)(a) *"if at least one element of the crime within the jurisdiction of the Court or part of such a crime is committed on the territory of a State Party to the Statute"*.<sup>116</sup> The Court's territorial jurisdiction thus extends to crimes committed wholly or partially on the territory of a State Party. This is consistent with the approach of the Appeals Chamber in its 5 March 2020 decision on the situation in Afghanistan, in which it accepted that the Court's territorial jurisdiction is not limited by the geographical extent of the "situation" to be investigated.<sup>117</sup>

47. In order for the crime contrary to Article 8(2)(b)(viii) to be made out, it suffices that there has been a deportation outside of occupied territory: there is no

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<sup>112</sup> Palestinians in the occupied West Bank are arrested and detained pursuant to the provisions of the Israeli Military [Order regarding Security Provisions \[Consolidated Version\] \(Judea and Samaria\)](#) ("Military Order No. 1651"), 5770-2009, 2 May 2010.

<sup>113</sup> The distinction between the crimes of forcible transfer and deportation was articulated by PTC III in relation the crime against humanity of deportation or forcible transfer of population (Article 7(1)(d)) : [Bangladesh Jurisdictional Decision](#), paras 52 – 61. These submissions are concerned with the crime of deportation.

<sup>114</sup> [Bangladesh Jurisdictional Decision](#), paras 60, 71,

<sup>115</sup> As above, PTC III was concerned with the crime against humanity of deportation contrary to Article 7(1)(d).

<sup>116</sup> [Bangladesh Jurisdictional Decision](#), para 64.

<sup>117</sup> [Situation in the Islamic Republic of Afghanistan \(Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan\)](#) AC, ICC-02/17-138, 5 March 2020, paras 72-77.

requirement for the exact moment of transfer to be identified temporally or geographically in relation to a border.<sup>118</sup> This reflects the position under customary international law, as expressly set out in Article 49 of the Fourth Geneva Convention and in numerous UN Security Council Resolutions, including resolutions concerning deportations from the occupied Palestinian territory.<sup>119</sup>

48. In relation to the crime of deportation committed against the Victims, the Court has territorial jurisdiction on the basis that they were deported outside of occupied territory. There is no need for the Court to determine the borders of the State of Palestine in order to assume jurisdiction.

#### **Jurisdiction of the court over the other crimes committed against the Victims**

49. The Victims also assert that the Court has jurisdiction in relation to the other crimes of which they are victim.
50. They include the wilful deprivation of the right to a fair trial in violation of Article 8(2)(a)(vi)), over which the Court has territorial jurisdiction, the legal proceedings concerned having taken place primarily or exclusively within the territory of the State of Palestine, at the Israeli military courts in Ofer and Salem in the West Bank. The serious failings of the Israeli military court system in which Palestinians, including Palestinian children, suspected of violating Israeli military orders enacted in the West Bank are extensive. In addition to Palestinian detainees having restricted access to legal representation, charges and evidence them are also frequently withheld, on

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<sup>118</sup> In contrast to the crime against humanity of deportation contrary to Article 7(1)(d) for which “forced displacement across international borders” is an element of the crime: [Bangladesh Jurisdictional Decision](#), paras 60, 71.

<sup>119</sup> See, e.g. See, e.g. [UNSC Resolution 469](#) (1980); [UNSC Resolution 484](#) (1980); [UNSC Resolution 607](#) (1988); [UNSC Resolution 608](#) (1988); [UNSC Resolution 636](#) (1989); [UNSC Resolution 641](#) (1989); [UNSC Resolution 681](#) (1990); [UNSC Resolution 694](#) (1991); [UNSC Resolution 726](#) (1992); as set out in [Stakic](#), para. 300.

the grounds of security, seriously inhibiting the ability of detainees, and their legal representatives, to meet or defend the charges.<sup>120</sup> Serious and undue pressure is also often exerted upon Palestinian detainees, including children, to confess.<sup>121</sup> Pressure techniques include solitary confinement, denial of access to legal representation, verbal abuse, threats and ill-treatment during the interrogation process.<sup>122</sup> Palestinian detainees, particularly child detainees, are incentivised to plead guilty and a large number of cases are resolved by plea bargain.<sup>123</sup> The pressure to plead is exacerbated by the presumption that bail will not be given,<sup>124</sup> delays in the trial process and the extremely high conviction rates within the military courts,<sup>125</sup> leading defendants to plead guilty routinely to charges they would otherwise deny. It is the Victims' submission that the circumstances led to them being wilfully deprived of the right to a fair trial.

51. The Court also has jurisdiction over the crime of unlawful confinement outside of occupied territory, the Victims' imprisonment outside of occupied territory being at all times *per se* unlawful and in violation of Article 8(2)(a)(vii). The Court's jurisdiction extends to those crimes as continuing internationally wrongful acts<sup>126</sup> that began in the territory of the State of Palestine and continued following the deportation of the Victims into Israel. This follows from the judgment of PTC III in *Bangladesh*, holding that to limit the Court's territorial jurisdiction to crimes that begin and end in the territory of a State Party "would mean that the Court could not hear cases involving war crimes committed in international armed conflicts involving non-States Parties. There

<sup>120</sup> [Military Order 1651](#), ss. 290 – 291.

<sup>121</sup> DCI Palestine, [No Way to Treat a Child](#), April 2016, p.37.

<sup>122</sup> *Ibid*, pp.8, 40 – 45.

<sup>123</sup> *Ibid*, p.2, 50.

<sup>124</sup> UNICEF, [Children in Israeli Military Detention: Observations and Recommendations](#), February 2013, p.12.

<sup>125</sup> Human Rights Watch, [Born Without Civil Rights](#), 17 December 2019, pp.12 – 13 citing Chaim Levinson, "Nearly 100% of All Military Court Cases in West Bank End in Conviction, Haaretz Learns", Haaretz, November 29, 2011, DCI Palestine, [No Way to Treat a Child](#), April 2016, p.1, 49-53.

<sup>126</sup> See as regards the concept of a continuing wrongful act: ILC, [ASR](#), Article 14(2) and commentary thereto.

is no indication anywhere in the Statute that the drafters intended to impose such a limitation".<sup>127</sup> It is also consistent with the approach of the Appeals Chamber in its 5 March 2020 decision on the situation in Afghanistan, in which it accepted that the Court's territorial jurisdiction is not limited by the geographical extent of the "situation" to be investigated.<sup>128</sup>

52. The Court further has jurisdiction over the outrages on personal dignity (in violation of Article 8(2)(b)(xxi)) and the inhuman treatment (in violation of Article 8(2)(a)(ii)) committed against the Victims on the same basis. The crimes against the Victims are to be understood in the context of the routine and credible reports that Palestinian adults and children are "systematically subject to degrading treatment, and often to acts of torture" in Israeli custody.<sup>129</sup>

### Admissibility

53. As set out above, and insofar as relevant to questions of standing and jurisdiction, the crimes committed against the Victims are of sufficient gravity to justify further action by the Court, having regard to considerations of both quantity and quality.<sup>130</sup> The large number of victims of the crimes in question, of which the Victims represent but four cases, meets gravity requirement from a "quantitative perspective",<sup>131</sup> having regard to "the extent

<sup>127</sup> [Bangladesh Article 15 Decision](#), para 60.

<sup>128</sup> *Situation in the Islamic Republic of Afghanistan* ([Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan](#)) AC, ICC-02/17-138, 5 March 2020, paras 72-77.

<sup>129</sup> Amnesty International, [Annual Report: Israel and Occupied Palestinian Territory](#), 2019; [UN Special Committee Report](#), paras 19 – 24; UN Committee on the Rights of the Child, [Concluding Observations: Israel](#), UN Doc. CRC/C/ISR/CO/2-4, para 73, 4 July 2013.

<sup>130</sup> *Prosecutor v Bahar Idriss Abu Garda* ([Decision on the Confirmation of Charges](#)), PTC I, ICC-02/05-02/09-243, PTC I, 8 February 2010, para 31; confirmed in, *Situation in the Republic of Kenya*, ([Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya](#)), PTC II, ICC-01/09-19, 31 March 2010, para. 62.

<sup>131</sup> *Prosecutor v Bahar Idriss Abu Garda* ([Decision on the Confirmation of Charges](#)), PTC I, ICC-02/05-02/09-243, 8 February 2010, paras 31-32.

*of damage caused, in particular, the harm caused to victims and their families, the nature of unlawful behaviour and the means employed to execute the crime”*.<sup>132</sup>

54. The fact that large numbers of Palestinian children are affected by the crime of deportation increases its gravity from a qualitative perspective.<sup>133</sup> Since 2014, at least 1,562<sup>134</sup> children have been detained in Israeli custody, at a rate of approximately 260 per year.<sup>135</sup> Like the Victims, the majority of them are accused of throwing stones.<sup>136</sup> More than half of these children are deported and confined out of occupied territory.<sup>137</sup> The unpredictability and violence associated with the deportations, together with their impact on access to family visits, to legal assistance and, in the case of children, to education, , access to legal representation before and during Military Court proceedings, and access to education,<sup>138</sup> compounds the gravity of this crime. Palestinians suspected of offences can be arrested at any time, and arrests frequently take place in the middle of the night,<sup>139</sup> with those detained, including children, often being subject to physical violence or ill treatment.<sup>140</sup>

<sup>132</sup> International Criminal Court, [Rules of Procedure and Evidence](#), Rule 145(1)(c).

<sup>133</sup> DCI Palestine, [Number of Palestinian Children \(12 – 17\) in Israeli Military Detention](#), 20 January 2020.

<sup>134</sup> Addameer statistics, as above.

<sup>135</sup> Addameer statistics, as above.

<sup>136</sup> DCI Palestine, [No Way to Treat a Child](#), April 2016; UN, [Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories \(“UN Special Committee Report”\)](#), UN Doc. A/69/355, 26 August 2014, para 26; p.2; B’Tselem, [No Minor Matter: Violations of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone-Throwing](#), July 2011.

<sup>137</sup> Specifically 50.2%. Addameer statistics, as above.

<sup>138</sup> See, e.g., B’Tselem, [Israel continues to mistreat relatives of thousands of Palestinians held illegally in its territory](#), 9 August 2018; Addameer, [The Detention of Activist and Artist Hafez Omar](#), April 2, 2019; UN High Commissioner for Human Rights, [Human rights situation in the Occupied Palestinian Territory, including East Jerusalem](#), 21 February 2018, UN Doc. A/HRC/37/42, para 28; DCI Palestine, [No Way to Treat a Child](#), April 2016, p.1; UN Human Rights Committee, [Concluding Observations on the fourth periodic report of Israel](#), 21 November 2014, UN Doc. CCPR/C/ISR/CO/4, para 10.

<sup>139</sup> Amnesty International, [Annual Report: Israel and Occupied Palestinian Territory](#), 2019; DCI Palestine, [No Way to Treat a Child](#), April 2016, pp.24-25; [UN Special Committee Report](#), para 22; UNICEF, [Children Affected by Armed Conflict – Israel and State of Palestine](#), 2013.

<sup>140</sup> [UN Special Committee Report](#), para 25, See also: UNICEF, [Children in Israeli Military Detention](#), 2 February 2015; DCI Palestine, [Military detention](#).

55. The gravity of the crimes is further amplified by the fact that significant numbers of Palestinian deportees, including children, are detained without trial, pursuant to Israeli military powers which allow an individual to be detained for a period of six months, renewable indefinitely, if there are *“reasonable grounds to believe that [they] must be held in detention for reasons to do with regional security or public security”*.<sup>141</sup> Over two thirds of administrative detainees (estimated to number over 3,100 since 2014) are deported out of occupied territory.<sup>142</sup>
56. In terms of complementarity, there is no recourse for the Victims in the domestic legal systems of the States of Palestine or Israel. Notably, the Israeli Supreme Court has determined (i) that Israeli law permitting the deportation of Palestinians from occupied territory into Israel prevails over any international law prohibiting it,<sup>143</sup> and (ii) that in any event, the construction of detention facilities in the occupied Palestinian territory would not be in the interests of Palestinians, due to the *“need that would arise to seize lands for building”*.<sup>144</sup> Further and in any event, the Israeli Supreme Court has determined that the prohibition on deportation under the Fourth Geneva Convention applies exclusively to mass deportations.<sup>145</sup> Such a determination is incompatible with the elements of the crimes contrary to Article 8(2)(b)(viii) and 8(2)(a)(vii).

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<sup>141</sup> [Military Order 1651](#), ss. 285(A), 285(B).

<sup>142</sup> Addameer statistics, calculated from official Israeli Prison Service statistics for 2014-2019, provided to Addameer through the Israeli NGO B'tselem. The figures represent the total number of administrative detainees held inside Israel as of December of each year.

<sup>143</sup> [Yesh Din v Minister of Defence](#), HCJ 2690/09, 28 March 2010, para 6.

<sup>144</sup> *Ibid.*, para 6.

<sup>145</sup> [Abu Awad v The Military Commander](#) [1979] HCJ 97/79, para 11 [Annex pp 48-51]; [Afu v IDF Commander in the West Bank](#) [1988] HCJ 785/87, PD 42(2) 4.

**CONCLUSION**

57. For the reasons set out below, the Court is respectfully invited to determine that it has jurisdiction to assume jurisdiction over crimes committed on the territory of the State of Palestine, such as the crimes of which the Victims are victim.

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Steven Powles QC  
Sahar Francis  
Legal Representatives of Victims



Dated this 16th day of March 2020

At London, United Kingdom