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Pénale
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**International
Criminal
Court**

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No.: **ICC-01/18**

Date: **23 July 2024**

PRE-TRIAL CHAMBER I

Before: **Judge Iulia Antoanella Motoc, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Ganzou
Judge Nicolas Guillou**

SITUATION IN THE STATE OF PALESTINE

Public

**Submissions on behalf of child victims and their families pursuant to
articles 19(3) and 68(3) of the statute**

Source: **Bradley Parker; Khaled Quzmar**

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

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae
United Kingdom

REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The undersigned Victims' Legal Representatives submit the following written observations pursuant to Article 68(3) of the Rome Statute and, to the extent current proceedings before the Pre-Trial Chamber I constitute continuing "proceedings with respect to jurisdiction," pursuant to Article 19(3) of the Rome Statute on legal issues arising from the 27 June 2024 order by the Pre-Trial Chamber I authorizing the United Kingdom leave to file written observations pursuant to Rule 103 of the RPE concerning the Pre-Trial Chamber I's decision issued on 5 February 2021 holding that the territorial jurisdiction of the International Criminal Court (the "Court") in the Situation of Palestine extends to Gaza and the West Bank, including East Jerusalem.¹

2. These observations are submitted on behalf of Palestinian children unlawfully killed by Israeli forces in Gaza and the West Bank, including East Jerusalem, and their immediate family members ("the victims") who have suffered direct harm as a result of crimes within the jurisdiction of the Court in accordance with Rule 85 of the RPE.

3. The victims, recalling that Rule 86 of the RPE establishes the general principle in accordance with Article 68 of the Rome Statute that the Pre-Trial Chamber I and other organs of the Court shall take into account the particular needs of child victims and witnesses when making any direction or order or otherwise performing their functions under the Rome Statute or the RPE, urge the Pre-Trial Chamber I to consider the context of persistent and escalating atrocity crimes perpetrated by Israeli forces against the Palestinian population in the occupied West Bank, including East Jerusalem, and Gaza Strip, where systemic impunity is a pervasive component of the seemingly permanent Israeli military occupation of Palestinians since 1967 and the 17-year Israeli-imposed closure of Gaza.

¹ Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', Pre-Trial Chamber I, 5 February 2021, ICC-01/18-143 (holding that Palestine is a State Party to the Rome Statute; 2) Palestine qualifies as the State on the territory of which the conduct in question occurred for the purposes of article 12(2)(a) of the Rome Statute; and 3) the Court's territorial jurisdiction in the *Situation of Palestine* extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem) (hereinafter "Jurisdiction Decision").

4. The victims respectfully request that the Pre-Trial Chamber I act expeditiously to narrowly examine the Prosecutor’s applications for the issuance of arrest warrants in the Situation in the State of Palestine pursuant to Article 58 of the Rome Statute, reaffirming that: (1) the jurisdiction of the Court is not derived from the criminal jurisdiction of States and that once States confer jurisdiction on the Court, jurisdiction of the Court is adequately established for both situations and cases before the Court; (2) the prior decision by the Pre-Trial Chamber I issued on 5 February 2021 holding that the Court’s territorial jurisdiction in the Situation in the State of Palestine, a State party to the Rome Statute, extends to the territories occupied by Israel since 1967; and (3) any challenges to the jurisdiction of the Court shall be made pursuant to the explicit provisions in Article 19 of the Rome Statute.

II. PROCEDURAL HISTORY

5. On 1 January 2015, the Government of Palestine lodged a declaration under Article 12(3) of the Rome Statute accepting the jurisdiction of the Court over alleged crimes committed “in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014.”²

6. On 2 January 2015, the State of Palestine acceded to the Rome Statute after depositing its instrument of accession with the U.N. Secretary-General, and on 1 April 2015, the Rome Statute entered into force for the State of Palestine as it became the 123rd State Party to the Rome Statute.³

7. On 22 May 2018, the State of Palestine referred the Situation in the State of Palestine for investigation to the Court and requested the Prosecutor “to investigate,

² Declaration Accepting the Jurisdiction of the International Criminal Court, Mahmoud Abbas, President of the State of Palestine, 31 Dec. 2014, http://www.icc-cpi.int/iccdocs/PIDS/press/Palestine_A_12-3.pdf. On 6 January 2015, the United Nations Secretary General, acting in his capacity as depository for the Rome Statute, accepted Palestine’s accession to the Rome Statute. United Nations, Depository Notification, Ref: C.N.13.2015.TREATIES-XVIII.10, 6 Jan. 2015, <https://treaties.un.org/doc/Publication/CN/2015/CN.13.2015-Eng.pdf>. On 7 January, the Registrar of the ICC informed President Abbas of Palestine of his acceptance of the Article 12(3) declaration. Letter from Herman von Hebel (Registrar) to Mahmoud Abbas President of the State of Palestine, Ref: 2015/IOR/3496/HvH, 7 Jan. 2015, <http://www.icc-cpi.int/iccdocs/PIDS/press/150107-Registrar-Letter-to-HE-President-Abbas-regarding-Palestine-Art-12-3--Declaration.pdf>

³ International Criminal Court, *ICC welcomes Palestine as a new State Party*, 1 April 2015, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1103>.

in accordance with the temporal jurisdiction of the Court, past, ongoing and future crimes within the court's jurisdiction, committed in all parts of the territory of the State of Palestine.”⁴

8. On 20 December 2019, the Prosecutor announced that the preliminary examination into the Situation in the State of Palestine had concluded with the determination that there was a reasonable basis to proceed with an investigation pursuant to Article 53(1) of the Rome Statute for crimes that have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip.⁵

9. On 22 January 2020, the Prosecutor requested a ruling pursuant to Article 19(3) of the Rome Statute from the Pre-Trial Chamber I on the territorial scope of the Court’s jurisdiction in the Situation of the State of Palestine.⁶

10. On 28 January 2020, the Pre-Trial Chamber I issued an order inviting victims in the Situation in the State of Palestine, among others, to submit written observations on the Prosecutor’s request before 16 March 2020.⁷

11. On 16 March 2020, in response to the order issued by the Pre-Trial Chamber I on 28 January 2020 the undersigned Victims’ Legal Representatives submitted observations on behalf of the same victims represented in this submission.⁸

12. On 18 March 2020, the undersigned Victim’s Legal Representatives received a request from the Victim Participation and Reparations Section (“VPRS”) to submit powers of attorney for the victims represented in the 16 March 2020 written observations.

⁴ See ICC, Statement by ICC Prosecutor, Mrs. Fatou Bensouda, on the referral submitted by Palestine, 22 May 2018, <https://www.icc-cpi.int/Pages/item.aspx?name=180522-otp-stat>.

⁵ Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court’s territorial jurisdiction, 20 December 2019, <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-conclusion-preliminary-examination-situation-palestine>

⁶ Prosecutor’s request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, 22 January 2020, ICC-01/18.

⁷ Pre-Trial Chamber I, Order setting the procedure and the schedule for the submission of observations, 28 January 2020, ICC-01/18-14, para. 13.

⁸ Brad Parker & Khaled Quzmar, Submissions on behalf of child victims and their families pursuant to article 19(3) of the statute, 16 March 2020, ICC-01/18-102.

13. On 1 April 2020, the undersigned Victim's Legal Representatives sent an initial batch of completed powers of attorney forms signed by the victims to VPRS via ICC ShareFile with additional powers of attorney forms sent in subsequent days.

14. On 9 April 2020, the VPRS transmitted all powers of attorney received from legal representatives of victims by 7 April 2020, and informed the Pre-Trial Chamber I that, as a consequence of the restrictions related to the COVID-19 pandemic, some legal representatives were not in a position to transmit all of the powers of attorney for all the victims represented by the 3 April 2020 deadline.⁹ The VPRS announced that it would prepare additional transmission filings if and when additional powers of attorney were received. Subsequently, the VPRS transmitted additional powers of attorney received from legal representatives of victims on 24 April 2020¹⁰ and 11 May 2020.¹¹

15. On 5 February 2021, after considering the Prosecutor's request for a ruling clarifying the territorial scope of the Court's jurisdiction and submissions from legal representatives on behalf of victims, including the undersigned Victims' Legal Representatives, States, organizations and scholars, the Pre-Trial Chamber I issued a decision, by majority, that the Court's territorial jurisdiction in the Situation in the State of Palestine extends to the territories occupied by Israel since 1967, specifically Gaza and the West Bank, including East Jerusalem.¹²

16. On 3 March 2021, the Office of the Prosecutor issued a statement confirming that an investigation had been initiated in the Situation of Palestine, examining crimes within the jurisdiction of the Court alleged to have been committed in Gaza and the West Bank, including East Jerusalem since 13 June 2014.¹³

⁹ Public redacted version of "Transmission of Powers of Attorney", 9 April 2020, ICC-01/18-129.

¹⁰ Public redacted version of "Second Transmission of Powers of Attorney", 24 April 2020, ICC-01/18-130.

¹¹ Public redacted version of "Third Transmission of Powers of Attorney", 11 May 2020, ICC-01/18-133.

¹² Jurisdiction Decision, para. 118.

¹³ Office of the Prosecutor, *Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine*, 3 March 2021, <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine>.

17. On 20 May 2024, the Prosecutor issued a statement publicizing that the Office of the Prosecutor submitted applications for the issuance of five arrest warrants against both State party and non-State party nationals to the Pre-Trial Chamber I in the Situation in the State of Palestine.¹⁴
18. On 10 June 2024, the United Kingdom filed a “secret” request to provide written *amicus curiae* observations under Rule 103(1) of the RPE.¹⁵
19. On 27 June 2024, the Pre-Trial Chamber I issued a decision authorizing the United Kingdom to file written observations pursuant to Rule 103 of the RPE by 12 July 2024 and set the same date as the deadline for any other requests for leave to make observations under Rule 103.¹⁶
20. On 2 July 2024, the United Kingdom made a “secret” request to the Pre-Trial Chamber I for an extension of the time limit to file *amicus curiae* observations submitting there was good cause to grant an extension of time due to the general election scheduled on 4 July 2024 in the United Kingdom.¹⁷
21. On 4 July 2024, the Pre-Trial Chamber I issued a decision granting the United Kingdom’s request for an extension, authorizing the United Kingdom to file its observations by 26 July 2024.¹⁸
22. On 4 July 2024, the United Kingdom general election was held to elect members of Parliament to the House of Commons and the governing Conservative Party was defeated by the opposition Labour Party.¹⁹

¹⁴ Office of the Prosecutor, *Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine*, 20 May 2024, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>.

¹⁵ United Kingdom, Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103, ICC-01/18-171-SECRET-Exp-Anx (reclassified as public on 27 June 2024, ICC-01/18-171-Anx) (hereinafter “United Kingdom Secret Request”).

¹⁶ Pre-Trial Chamber I, Order deciding on the United Kingdom’s request to provide observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence, and setting deadlines for any other requests for leave to file *amicus curiae* observations, 27 June 2024, ICC-01/18-173-Red.

¹⁷ United Kingdom, Request by the United Kingdom for Extension of Time Limit, 2 July 2024, ICC-01/18-176.

¹⁸ Pre-Trial Chamber I, Decision on the ‘Request by the United Kingdom for Extension of Time Limit’, 4 July 2024, ICC-01/18-178.

¹⁹ Matthew Bloch, *United Kingdom 2024 Election: Labour Wins*, N.Y. Times, 4 July 2024, <https://www.nytimes.com/interactive/2024/07/04/world/europe/results-uk-general-election.html>.

23. On 12 July 2024, the undersigned Victim's Legal Representatives filed written observations with the Pre-Trial Chamber I on behalf of Palestinian child victims and their families pursuant to Article 19(3) and Article 68(3) of the Rome Statute, or alternatively Rule 103 of the RPE, explicitly noting that victims' completed powers of attorney forms were previously requested and accepted by the Court.²⁰

24. On 12 or 15 July 2024, the Registry transmitted Victim's Legal Representatives filing to the Pre-Trial Chamber I, incorrectly characterizing the written observations as a request for leave to submit observations in accordance with Rule 103(1) of the RPE.²¹

25. On 22 July 2024, the Pre-Trial Chamber I issued a decision on requests for leave to file observations pursuant to Rule 103 of the RPE granting nearly all requests made by States, organizations, and persons;²² setting 6 August 2024 as the deadline for Rule 103 observations to be filed;²³ and incorrectly characterizing the submission on 12 July 2024 by the undersigned Victim's Legal Representatives made pursuant to Article 68(3) of the Rome Statute as a request to make observations pursuant to Rule 103 of the RPE.²⁴

III. SUBMISSIONS

A. The victims and brief situation overview

26. The victims include Palestinian children killed in direct attacks by Israeli forces against civilians and indiscriminate attacks on civilian homes, schools, and residential neighborhoods in Gaza during Israel's military offensive during July and August 2014 and Palestinian children killed in the West Bank and Gaza by Israeli forces utilizing

²⁰ Submissions on behalf of child victims and their families pursuant to articles 19(3) and 68(3) of the statute, paras. 12–14, ICC-01/18-216-SECRET-Exp-Anx.

²¹ Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence, 22 July 2024, Pre-Trial Chamber I, ICC-01/18-249, para. 9.

²² *Id.* at para. 11.

²³ *Id.* at para. 12.

²⁴ *Id.* at para. 14. The decision noted Rule 103 observations are not the proper venue to provide views and concerns of "potential victims" and noted that submissions on behalf of victims should be made pursuant to Article 68(3). Respectfully, the undersigned Victim's Legal Representatives not only submitted written observations on 12 July 2024 pursuant to Articles 19(3) and 68(3) of the Rome Statute, but did so on behalf of victims that previously completed and signed powers of attorney forms that were submitted to VPRS in 2020.

unjustified intentional lethal force and excessive force during demonstrations, along with their surviving immediate family members.²⁵

27. The victims have suffered direct harm as a result of crimes within the jurisdiction of the Court and, importantly, victims who are surviving immediate family members of Palestinian child victims killed after 13 June 2014 continue to suffer direct harm as a result of crimes within the jurisdiction of the Court, including the specific war crimes and crimes against humanity identified in the Prosecutor's applications for warrants of arrest for Benjamin Netanyahu, the Prime Minister of Israel, and Yoav Gallant, the Minister of Defence of Israel.

28. Israel's 57-year belligerent military occupation of the West Bank, including East Jerusalem, and Gaza is characterized by widespread, systematic, and institutionalized human rights violations, grave breaches of international humanitarian law, and atrocity crimes against Palestinians, in particular children. Israeli occupation policies and practices expressly deny Palestinians living under Israeli control fundamental human rights guarantees and protections, including the right to self-determination, the right to equality and non-discrimination, and the right to life, liberty and security. Systemic impunity has fueled persistent and escalating atrocity crimes perpetrated by Israeli forces against the Palestinian civilian population in the occupied West Bank, including East Jerusalem, and Gaza Strip.

29. The Israeli-occupied West Bank, including East Jerusalem, and the Gaza Strip has a population of around 5.2 million, including approximately 2.3 million persons under the age of 18 comprising 44.2 percent of the total population.²⁶ This incredibly young population has grown up in the shadow of failed political negotiations and live under an oppressive Israeli military occupation that has no end in sight. Their futures have been stifled and decimated by discrimination, persistent settlement expansion,

²⁵ See paras. 12–13, noting that the undersigned Victims' Legal Representatives previously submitted completed and signed powers of attorney forms for the victims to VPRS.

²⁶ Palestinian Central Bureau of Statistics, Main Indicators, https://www.pcbs.gov.ps/statisticsIndicatorsTables.aspx?lang=en&table_id=901

closure, and repeated Israeli military offensives where Israeli forces and officials exhibit near complete disregard for international law.

30. Between 13 June 2014 and 6 October 2023, Israeli forces and settlers killed at least 884 Palestinian children in the Occupied Palestinian Territory, according to information from Defense for Children International - Palestine.

31. Since 7 October 2023, Israeli forces have killed over 38,000 Palestinians in Gaza,²⁷ including at least 14,000 Palestinian children,²⁸ and at least 138 Palestinian children in the occupied West Bank.²⁹ Over 20,000 Palestinian children in Gaza are estimated to be lost, disappeared, detained, buried under the rubble or in mass graves.³⁰

B. Article 19 is the proper and explicit procedure for challenges to the jurisdiction of the Court

32. There is no dispute that the Court has the inherent power and duty to determine the boundaries of its own jurisdiction and competence pursuant to Article 19(1) of the Rome Statute.³¹ Relatedly, Article 19(2) provides limitations on challenges to the jurisdiction of the Court, explicitly providing that challenges to jurisdiction may be made by “(a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58; (b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or (c) A State from which acceptance of jurisdiction is required under Article 12.”

²⁷ United Nations Office for the Coordination of Humanitarian Affairs, Humanitarian Situation Update No. 188-Gaza Strip, 8 July 2024, <https://www.ochaopt.org/content/humanitarian-situation-update-188-gaza-strip>.

²⁸ UNICEF, *Statement by UNICEF Executive Director Catherine Russell on military operations and border closures in Rafah, Gaza*, 9 May 2024, <https://www.unicef.org/press-releases/statement-unicef-executive-director-catherine-russell-military-operations-and-border>.

²⁹ Defense for Children International – Palestine, *Israeli forces kill 14-year-old Palestinian boy, injure five others south of Jenin*, 11 July 2024, <https://www.dci-palestine.org/israeli-forces-kill-14-year-old-palestinian-boy-injure-five-others-south-of-jenin>.

³⁰ Save the Children, *Gaza’s Missing Children: Over 20,000 children estimated to be lost, disappeared, detained, buried under the rubble or in mass graves*, 24 June 2024, <https://www.savethechildren.net/news/gazas-missing-children-over-20000-children-estimated-be-lost-disappeared-detained-buried-under>.

³¹ Situation in Uganda, Decision on the Prosecutor’s Application that the Pre-Trial Chamber Disregard as Irrelevant the Submission Filed by the Registry on 5 December 2005, Pre-Trial Chamber II, 9 March 2006, ICC-02/04-01/05-147, paras. 22–23.

33. While the Court undoubtedly has the power and duty to make an initial determination on whether the case against an accused falls within the jurisdiction of the Court prior to issuing a warrant of arrest, the United Kingdom's "secret" request made pursuant to Rule 103 of the RPE seeking leave to provide written *amicus curiae* observations on "[w]hether the Court can exercise jurisdiction over Israeli nationals, in circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords"³² constitutes a *prima facie* challenge to the jurisdiction of the court improperly initiated outside of Article 19 by a State without standing under Article 19 to initiate such a challenge to the jurisdiction of the Court.

34. In its request to submit Rule 103 observations, the United Kingdom submits as part of its rationale for the Court to grant its request the fact that the Pre-Trial Chamber I previously granted and accepted Rule 103 requests to file written observations on this and other legal issues.³³ Importantly, it must be highlighted that those previously submitted Rule 103 observations referenced in the United Kingdom request were distinct from the United Kingdom's request because they were actually part of formal Article 19 proceedings then initiated by the Prosecutor. Here, it is clear there are no Article 19 proceedings and the United Kingdom lacks standing to initiate a challenge to jurisdiction under Article 19. Moreover, after the Pre-Trial Chamber I considered those Rule 103 observations raising the Oslo Accords and arguments around delegation of criminal jurisdiction,³⁴ the Chamber rejected them declaring the agreements to be "not pertinent to the resolution of the issue under consideration,"³⁵ and went on to hold that jurisdiction was established for the Court, in part because the State of Palestine had effectively conferred jurisdiction on the Court.³⁶

35. While the jurisdiction decision by the Pre-Trial Chamber I generally noted, as the United Kingdom also submits in their request, that further questions of jurisdiction

³² United Kingdom Secret Request, para. 27.

³³ United Kingdom Secret Request, para. 22.

³⁴ See e.g., Observations by the Federal Republic of Germany, Situation in the State of Palestine, 16 March 2020, ICC-01/18, para. 16.

³⁵ Jurisdiction Decision, para. 129.

³⁶ Jurisdiction Decision, para. 118.

may be examined by the Pre-Trial Chamber I at later stages of proceedings,³⁷ this language does not specifically reference legal issues raised by the Oslo Accords and does not provide the United Kingdom with the authority to challenge the jurisdiction of the Court outside of Article 19 proceedings. Instead, after holding that arguments regarding the Oslo Accords were not pertinent to the question of jurisdiction in connection with the initiation of an investigation by the Prosecutor, the Chamber chose not only to substantively not address the arguments but also explicitly declared that, rather, “these issues may be raised by interested States based on article 19 of the Statute,”³⁸ effectively deferring to the process and standing detailed in Article 19 of the Rome Statute. Thus, the Chamber’s general limiting language highlighted by the United Kingdom simply reaffirms the Article 19 limitations on challenges to the jurisdiction of the Court and existing legal authority that “an initial determination on whether the case against [the accused] fall[s] within the jurisdiction of the Court [...] is a prerequisite for the issuance of a warrant of arrest.”

36. The United Kingdom also argues in its request to submit Rule 103 observations that the complexity of the legal issues necessitates the United Kingdom be granted leave to file observations specifically focused on the significance of the Oslo Accords with respect to jurisdiction.³⁹ However, any complexity on this specific legal issue has been dispelled of by the Pre-Trial Chamber I when it considered and rejected the legal premise in its jurisdiction decision issued on 5 February 2021 that the State of Palestine could not delegate criminal jurisdiction to the Court.⁴⁰

37. Thus, the victims urge the Pre-Trial Chamber I to reaffirm, as this Chamber articulated in the 5 February 2021 jurisdiction decision, that challenges to the jurisdiction of the Court shall be made pursuant to the explicit provisions in Article 19

³⁷ Jurisdiction Decision, para. 131, which states:

It is further opportune to emphasise that the Chamber’s conclusions pertain to the current stage of proceedings, namely the initiation of an investigation by the Prosecutor pursuant to articles 13(a), 14 and 53(1) of the Statute. When the Prosecutor submits an application for the issuance of a warrant of arrest or summons to appear under article 58 of the Statute, or if a State or a suspect submits a challenge under article 19(2) of the Statute, the Chamber will be in a position to examine further questions of jurisdiction which may arise at that point in time.

³⁸ Jurisdiction Decision, para. 129.

³⁹ United Kingdom Secret Request, para. 24.

⁴⁰ Jurisdiction Decision, para. 129.

of the Rome Statute and to reject attempts to challenge jurisdiction or raise questions impacting jurisdiction outside of challenges initiated pursuant to Article 19 of the Rome Statute.

C. Jurisdiction is sufficiently established to not prohibit the issuance of arrests warrants for non-State party nationals in the Situation of the State of Palestine

38. The statutory duty of the Court to satisfy itself that it has jurisdiction is limited to “any case” brought before it pursuant to Article 19(1) of the Rome Statute. The Rome Statute, the RPE, and the Regulations of the Court draw a distinction between situations and cases.⁴¹ While “an initial determination on whether the case against [the accused] fall[s] within the jurisdiction of the Court [...] is a prerequisite for the issuance of a warrant of arrest”,⁴² the Court does not have a duty under Article 19(1) of the Rome Statute to make a determination *proprio motu* that it has jurisdiction over an investigation into a situation⁴³ because, at least in part, Article 53(1)(a) of the Rome Statute provides the Prosecutor with the authority to determine whether the Court has jurisdiction.

39. Recalling generally that “[c]ases [...] entail proceedings that take place after the issuance of a warrant of arrest or a summons to appear” while “[s]ituations [...] entail the proceedings envisaged in the Statute to determine whether a particular situation should give rise to a criminal investigation as well as the investigation as such”,⁴⁴ and taking into account that the Pre-Trial Chamber I has previously decided there is jurisdiction in the Situation of the State of Palestine and relevant procedure pursuant to Article 19 and Article 58 of the Rome Statute, the victims submit that this is not the proper time to address any challenges or questions related to the significance, if any,

⁴¹ Situation in the Democratic Republic of Congo, Decision on the Application for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, and VPRS 6, Pre-Trial Chamber I, 17 January 2006, ICC-01/04-101-tENG-Corr, para. 65.

⁴² Situation in the Democratic Republic of the Congo, Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58, Pre-Trial Chamber I, 10 February 2006, ICC-01/04-02/06-20-Anx2, para. 18.

⁴³ See Situation in Republic of Kenya, ICC-01/09-19-Corr, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, Pre-Trial Chamber II, 31 March 2010, para. 64.

⁴⁴ Situation in the Democratic Republic of Congo, Decision on the Application for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, and VPRS 6, Pre-Trial Chamber I, 17 January 2006, ICC-01/04-101-tENG-Corr, para. 65.

of the Oslo Accords to the Court's jurisdiction. Instead, and pursuant to Article 19, challenges and questions related to the Oslo Accords should be more narrowly addressed following proceedings formally initiated by the accused or interested States pursuant to Article 19 and subsequent to the issuance of arrest warrants.

40. The victims submit that a broad determination *proprio motu* at this stage outside of Article 19 would undoubtedly imperil not only existing jurisdictional precedent in the situation at issue but could effectively upend the jurisdictional foundation of other cases already before the Court to the extent that existing cases involve the Court's exercise of jurisdiction over non-State party nationals.⁴⁵

Inherent in the Court's exercise of jurisdiction over non-State party nationals is the understanding that the jurisdiction of the Court is not derived or delegated from the criminal jurisdiction of a State, but conferred by a State in accordance with the Rome Statute. Thus, as the Prosecutor noted in the Article 19(3) request,⁴⁶ the substantive details of the national law of the territorial State and any treaty relationships with other States are, as the Pre-Trial Chamber I held in the 5 February 2021 decision, irrelevant to the question of jurisdiction where a State has conferred jurisdiction on the Court. The victims reaffirm the State of Palestine effectively conferred jurisdiction on the Court establishing jurisdiction sufficient for the issuance of arrest warrants under Article 58 of the Rome Statute.

⁴⁵ See e.g. Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, 17 March 2023, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>; Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", Pre-Trial Chamber I, 6 September 2018, ICC-RoC46(3)-01/18; Situation in Darfur, Sudan, Judgment in the Jordan Referral re Al-Bashir Appeal, Appeals Chamber, 6 May 2019, ICC-02/05-01/09 OA2; Situation in the Islamic Republic of Afghanistan, Judgment on the appeal against the decision on the authorization of an investigation into the situation in the Islamic Republic of Afghanistan, Appeals Chamber, 5 March 2020, ICC-02/17 OA4; and Situation in the State of Palestine, Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', 5 February 2021, ICC-01/18-143, para. 129, (rejecting arguments that the Oslo Accords affected the Court's territorial jurisdiction).

⁴⁶ See Prosecutor's request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, 22 January 2020, ICC-01/18, para. 185.

IV. CONCLUSION

41. If there are specific concerns about the exercise of the jurisdiction of the Court over non-State party nationals in the Situation in the State of Palestine such as raised by the United Kingdom, the victims recall that the primary way to avoid the possibility that the Court exercises the jurisdiction conferred on it to issue arrest warrants is to refrain from committing atrocity crimes in the territory of a State party to the Rome Statute.

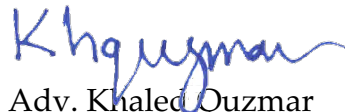
42. The victims respectfully submit that jurisdiction is adequately established to permit the issuance of arrest warrants based on acts by the State of Palestine that effectively conferred jurisdiction on the Court in accordance with the Rome Statute. Written observations such as those the United Kingdom sought leave to file before the Court that argue the Oslo Accords prohibit the Court's exercise of jurisdiction over non-State party Israeli nationals have already been considered and rejected by the Pre-Trial Chamber I. The United Kingdom's Rule 103 request is a challenge to the jurisdiction of the Court that should not be accepted outside of Article 19 of the Rome Statute.

43. For all the above reasons, the victims respectfully request the Pre-Trial Chamber I act expeditiously to narrowly examine the Prosecutor's applications for the issuance of arrest warrants in the Situation in the State of Palestine pursuant to Article 58 of the Rome Statute, reaffirming that: (1) the jurisdiction of the Court is not derived from the criminal jurisdiction of States and that once States confer jurisdiction on the Court, jurisdiction of the Court is established for both situations and cases before the Court; (2) the prior decision by the Pre-Trial Chamber I issued on 5 February 2021 holding that the Court's territorial jurisdiction in the Situation in the State of Palestine, a State party to the Rome Statute, extends to the territories occupied by Israel since 1967; and (3) any challenges to the jurisdiction of the Court shall be made pursuant to the explicit provisions in Article 19 of the Rome Statute.

Respectfully submitted,



Bradley Parker, Esq.
Legal Representative of Victims



Adv. Khaled Quzmar
Legal Representative of Victims

Dated this 23 July 2024

At New York, United States and Ramallah, State of Palestine