

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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Date: 6 August 2024

**PRE-TRIAL CHAMBER I**

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

**SITUATION IN THE STATE OF PALESTINE**

**Public Document**

***Amicus Curiae* Observations from the International Centre of Justice for Palestinians and  
the Centre for Human Rights Law, SOAS University of London**

**Source:**                    **International Centre of Justice for Palestinians and the Centre for Human  
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**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

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## I. Introduction

1. The following *amicus curiae* observations are submitted by the International Centre of Justice for Palestinians (ICJP) and the Centre for Human Rights Law, SOAS University of London (CHRL). Pursuant to rule 103 of the Rules of Procedure and Evidence,<sup>1</sup> and the case law of the Court,<sup>2</sup> these *amicus curiae* observations are submitted in accordance with the Pre-Trial Chamber's 'Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence' of 22 July 2024, granting, *inter alia*, ICJP and CHRL leave to provide *amicus curiae* observations.<sup>3</sup>

## II. Primary Submissions

2. As ICJP and CHRL indicated in their Request for Leave,<sup>4</sup> the primary submission of these *amicus curiae observations* is that jurisdiction in the 'Situation in the State of Palestine' is settled and clear, and that the matter of jurisdiction of Israeli nationals constitutes a non-issue and is not a barrier to the full exercise of the Court's jurisdiction. It thus allows the Chamber to move swiftly to its determination and grant the Prosecution's applications for warrants of arrest submitted on 20 May 2024<sup>5</sup> – nearly three months ago.
3. The history of jurisdictional decisions in the Situation in the State of Palestine ('Palestine Situation') as well as the Court's broader jurisprudence demonstrates that jurisdiction has been thoroughly considered and confirmed, including the Court's jurisdiction over Israeli nationals for serious crimes of international concern committed in the Occupied Palestinian Territory. It is recalled that the Court's jurisdiction has been considered since January 2009 when the State of Palestine (Palestine) took steps to lodge an Article 12(3) declaration accepting the exercise of jurisdiction by the Court,<sup>6</sup> triggering the Prosecution's preliminary examination of jurisdiction and the position that the Palestinian Authority's status as an 'observer entity' at the

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<sup>1</sup> ICC, Rules of Procedure and Evidence, Rule 103, p.41.

<sup>2</sup> See, *Situation in the State of Palestine*, Request for Leave to Submit Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence from the International Centre of Justice for Palestinians and the Centre for Human Rights Law, SOAS University of London, ICC-01/18-207-SECRET-Exp-Anx, 12 July 2024, paras. 5-9 [*hereinafter* ICJP and CHRL Request for Leave].

<sup>3</sup> *Situation in the State of Palestine*, Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence, ICC-01/18-249, 22 July 2024, para. 11 [*hereinafter* PTC Decision of 22 July 2024].

<sup>4</sup> ICJP and CHRL Request for Leave, para. 25.

<sup>5</sup> ICC Press Release, '[Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine](#)', 20 May 2024.

<sup>6</sup> [Article 12\(3\) Declaration](#), Palestinian National Authority Ministry of Justice, Declaration recognizing the Jurisdiction of the International Criminal Court, 21 January 2009.

time meant it could not join the Rome Statute.<sup>7</sup> Jurisdiction was considered again after the UN General Assembly adopted Resolution 67/19 in November 2012 granting Palestine ‘non-member observer State’ status,<sup>8</sup> and after Palestine lodged a 12(3) declaration on 1 January 2015<sup>9</sup> and deposited an instrument of accession on 2 January 2015.<sup>10</sup> Finding Resolution 67/19 determinative to the Court’s jurisdiction, the Prosecution announced the opening of a Preliminary Examination into the Situation,<sup>11</sup> which was followed by the Situation’s assignment to a Pre-Trial Chamber after referral by the Government of the State of Palestine.<sup>12</sup>

4. Further consideration of the Court’s jurisdiction clarified the scope of its territorial jurisdiction which defines the “*parameters of the Prosecutor’s investigation in accordance with the Statute.*”<sup>13</sup> In its decision, the Pre-Trial Chamber found ‘exhaustive’ support that Palestine is “*State Party to the Statute, and, as a result, a ‘State’ for the purposes of article 12(2)(a)*” which has “*the right to exercise its prerogatives under the Statute and be treated as any other State Party would.*”<sup>14</sup> In confirming the scope of the Court’s jurisdiction,<sup>15</sup> it was reiterated that “*disputed borders have never prevented a State from becoming a State Party to the Statute and, as such, cannot prevent the Court from exercising its jurisdiction.*”<sup>16</sup>
5. Indeed, the Court’s jurisprudence has applied this position in other situations before the Court, including where occupied territory is at issue. For example, in the Situation in Ukraine (a situation for which jurisdiction stems from Article 12(3) Declarations and not accession to the Rome Statute), the Prosecution confirmed subject-matter jurisdiction over crimes committed

<sup>7</sup> ICC, Office of the Prosecution, [Determination: Situation in Palestine](#), 3 April 2012. See also, ICC Press Release, [‘The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine’](#), 16 January 2015.

<sup>8</sup> UN General Assembly, Status of Palestine in the United Nations: resolution / adopted by the General Assembly on 29 November 2012, [A/RES/67/19](#), 4 December 2012.

<sup>9</sup> See, [Declaration lodged by Palestine pursuant to article 12\(3\) of the Rome Statute](#), 1 January 2015 See also, *Situation in the State of Palestine*, Presidency, Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I, 24 May 2018, ICC-01/18-1-AnxI, p. 2.

<sup>10</sup> ICC Press Release, [‘The State of Palestine accedes to the Rome Statute’](#), 7 January 2015; and Secretary-General of the United Nations, ‘Rome Statute of the International Criminal Court, Rome, 17 July 1998, State of Palestine: Accession’, 6 January 2015, C.N.13.2015. TreatiesXVIII.10.

<sup>11</sup> Press Release, [‘The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine’](#), 16 January 2015.

<sup>12</sup> *Situation in the State of Palestine*, Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I (‘Presidency Decision’), ICC-01/18-1, 24 May 2018. See also, Annex I, ICC-01/18-1-AnxI.

<sup>13</sup> *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’ ICC-01/18-143, 5 February 2021, para. 130 [*hereinafter* Decision on Territorial Jurisdiction].

<sup>14</sup> Decision on Territorial Jurisdiction, para 112.

<sup>15</sup> Decision on Territorial Jurisdiction, para. 118 stating “*the Chamber finds that the Court’s territorial jurisdiction in the Situation in Palestine extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem.*”

<sup>16</sup> Decision on Territorial Jurisdiction, paras. 115.

in Crimea and in eastern Ukraine with no issue as to exercising jurisdiction over crimes committed in disputed areas of Ukraine and areas considered to be under occupation.<sup>17</sup> This was evidenced by the issuance of arrest warrants for the crimes committed in the disputed and occupied areas of Ukraine; namely, unlawfully transferring children from ‘occupied areas of Ukraine’ into Russia.<sup>18</sup>

6. With this, ICJP and CHRL submit that personal jurisdiction over Israeli nationals in the Situation should not be at issue. The Court’s case law and practice confirm that with territorial jurisdiction, personal jurisdiction follows, with specific consideration by the Court on the ability to charge and try nationals of a non-member State under the Court’s jurisdiction based on Article 12(2)(a).<sup>19</sup> In fact, this was applied in regards to Israeli nationals in the Registered Vessels Situation whereby Article 12(2)(a) jurisdiction over conduct committed on board ships flying the flag of Member States meant that Israeli nationals’ conduct within the ‘territory’ was subject to the jurisdiction of the Court – *“Although Israel is not a State Party, according to article 12(2)(a) of the Statute, the ICC can exercise its jurisdiction in relation to the conduct of non-Party State nationals alleged to have committed Rome Statute crimes on the territory of, or on vessels and aircraft registered in, an ICC State Party.”*<sup>20</sup>
7. In fact, the Court’s case law has gone so far as finding that jurisdiction will also apply to nationals of a non-member State whose conduct and contribution to a Rome Statute crime might have occurred completely outside the territory of the State for which Article 12(2)(a) jurisdiction is based – where the individual’s criminal conduct on the territory of a non-member State constituted one element of the crime which was then completed on the territory of a Rome Statute member,<sup>21</sup> or where the conduct involved actions to launch an attack from the territory of a non-member State into the territory of a State which has conferred jurisdiction on the Court.<sup>22</sup>

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<sup>17</sup> See, Office of the Prosecutor, [Report on Preliminary Examination Activities 2020](#), 14 December 2020, paras. 277-279.

<sup>18</sup> ICC Press Release, ‘[Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova](#)’, 17 March 2023.

<sup>19</sup> *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’, ICC-RoC46(3)-01/18-37, 6 September 2018, para. 46 [*hereinafter* Decision on Prosecution’s Regulation 46(3) Request]. See also, *Situation in the Republic of Korea*, [Article 5 Report](#), The Office of the Prosecutor, June 2014, para. 40 in which Prosecution found that when the “*territorial requirement has been met, the Court may exercise its jurisdiction over the perpetrators*” who were nationals of a non-member State.

<sup>20</sup> *Situation on Registered Vessels of Comoros, Greece and Cambodia*, Article 53(1) Report, ICC-01/13-6-AnxA, 6 November 2014, para. 14.

<sup>21</sup> Decision on Prosecution’s Regulation 46(3) Request, paras. 63, 64, 70, 71.

<sup>22</sup> See, for example, *Situation in the Republic of Korea*, The Office of the Prosecutor - [Article 5 Report](#), June 2014, paras. 7, 38-41. In the *Situation in the Republic of Korea*, whereby a missile was shot from the territory of a non-state

8. Therefore, with the Court’s decision on territorial jurisdiction under Article 12(2)(a),<sup>23</sup> from which flows personal jurisdiction over Israeli nationals, along with the Chamber’s insistence that Palestine must “*be treated as any other State Party would*”,<sup>24</sup> it is primarily submitted that jurisdiction over Israeli nationals is not at issue and should not be a barrier to swiftly considering and granting the Prosecution’s applications for arrest warrants.

### III. Further Submissions

9. As noted in the Request for Leave, ICJP and CHRL sought (and were granted) leave<sup>25</sup> to submit observations on issues concerning jurisdiction and complementarity which have been or might be raised,<sup>26</sup> and which were noted as potentially relevant to the Chamber’s considerations.<sup>27</sup> ICJP and CHRL recognise that the impact of the United Kingdom (UK)’s request to submit observations on the Court’s exercise of jurisdiction over Israeli nationals (despite the UK’s subsequent withdrawal from the process<sup>28</sup>) prompted a process through which further questions or challenges could be raised to the same or any other issues; issues which unfortunately remain secretly classified to the other parties and *amici*, but for which ICJP and CHRL are nevertheless eager to provide observations so as not to leave them unanswered. For this purpose, and without prejudice to ICJP and CHRL’s primary submission above, observations on the issues understood to be before the Chamber, or which might be raised, are below.

- *Interpretation of the Oslo Accords under international law*

10. These observations respond to the question of whether the Oslo Accords impact the Court’s

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party (North Korea) onto a ship flying the flag of a state which had accepted the jurisdiction of the Court (South Korea), the Prosecution confirmed that given that the Republic of Korea (ROK / South Korea) had accepted the Court’s jurisdiction, at para. 38, “[t]he Court may therefore exercise jurisdiction over conduct occurring on the territory of the ROK or on vessels and aircraft registered in the ROK”, stating, at para. 39, that “[i]t is not possible to separate the conduct of firing” which occurred in North Korea “from the conduct of hitting the targeted area” in South Korea. Therefore, with the requirement of territorial jurisdiction met, at para. 40, “the Court may exercise its jurisdiction over the perpetrators” who are likely to be nationals of a non-State Party, including “DPRK nationals.”

<sup>23</sup> Decision on Territorial Jurisdiction, para. 118.

<sup>24</sup> Decision on Territorial Jurisdiction, para. 112. See further paras. 109-113, 130.

<sup>25</sup> PTC Decision of 22 July 2024, para. 11.

<sup>26</sup> *Situation in the State of Palestine*, Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103, ICC-01/18-173-Red, 10 June 2024, para. 27 [*hereinafter* UK Request of 10 June 2024].

<sup>27</sup> *Situation in the State of Palestine*, Public redacted version of ‘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’, ICC-01/18-173-Red, 27 June 2024, para. 5 [*hereinafter* Order of 27 June 2024].

<sup>28</sup> See, Washington Post, ‘[U.K. ending challenge to ICC arrest warrants for Israeli leaders](#)’, 26 July 2024.

exercise of jurisdiction over Israeli nationals, an issue the Pre-Trial Chamber acknowledged was raised by various *amici* and victims during its consideration on territorial jurisdiction,<sup>29</sup> and which the UK initially suggested is relevant to consideration of the arrest warrant applications.<sup>30</sup> Based on passages in Oslo II, including Article XVII(2)(c) and Article I(1)(a) of Annex IV, the Chamber noted arguments that “*Palestine could not have delegated part of its jurisdiction to the Court*” because this ability is limited by terms within Oslo II concerning criminal jurisdiction over Israeli national.<sup>31</sup> Of particular focus is Annex IV, ‘Protocol Concerning Legal Affairs’, Article I – stating that “*Israel has sole criminal jurisdiction over [...] offenses committed in the Territory by Israelis.*”<sup>32</sup>

11. As a starting point, these observations raise the temporary and interim nature of the Oslo Accords in both time and scope, and the fact that there are real and legitimate outstanding questions regarding the continued applicability of the Oslo Accords, including Oslo II’s provisions.<sup>33</sup> This raises concerns whether it would be useful or appropriate for the Court to utilise these provisions to impact a State Party’s “*right to exercise its prerogatives under the Statute and be treated as any other State Party would.*”<sup>34</sup>
12. Nevertheless, even if the Court finds the Oslo Accords maintain relevance and applicability such that interpretation of its provisions is necessary to discern any impact on the Court’s jurisdiction, ICJP and CHRL submit that the bilateral agreement does not interfere with the Court’s jurisdiction, including over Israeli nationals.
13. Here, ICJP and CHRL refer to the Prosecution’s submission that any limitation set out within the provisions of the Oslo Accords does not constitute “*obstacles to the Court’s exercise of jurisdiction,*”<sup>35</sup> nor a limitation on Palestine’s prescriptive jurisdiction concerning “*the ability to vest the ICC with jurisdiction.*”<sup>36</sup> The provisions raised within the Oslo Accords cannot be interpreted as barring the Court’s exercise of its prescriptive jurisdiction, including as it pertains to the issuance of arrest warrants, but could only be interpreted as “*limit[ing] the*

<sup>29</sup> Decision on Territorial Jurisdiction, paras. 125, 126.

<sup>30</sup> UK Request of 10 June 2024, para. 16.

<sup>31</sup> Decision on Territorial Jurisdiction, para. 126.

<sup>32</sup> [Oslo Accords II](#), Annex IV, ‘Protocol Concerning Legal Affairs’, Article I(2).

<sup>33</sup> See, for example, language in the [Preamble](#) of the Oslo Accords about the intended limited duration of the arrangement which refers to the “*transitional period not exceeding five years from the date of signing the Agreement.*” See also, *Situation in the State of Palestine*, Written Observations Pursuant to Rule 103 (John Quigley), ICC-01/18-254, 29 July 2024, para. 8.

<sup>34</sup> Decision on Territorial Jurisdiction, para. 112.

<sup>35</sup> *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. 183 [*hereinafter* Prosecution Request].

<sup>36</sup> Prosecution Request, para. 184.

*jurisdiction to enforce*”<sup>37</sup> – in other words, the right of Palestine to “*entertain legal proceedings*”<sup>38</sup> or the “*material ability of actually exercising jurisdiction over either the territory in question or over certain individuals within or outside that territory.*”<sup>39</sup> Instead, Palestine’s prescriptive jurisdiction is recognised as a ‘right to delegate’ and as “*an internationally recognized legal authority*” so that Palestine “*would retain the authority to vest the ICC with jurisdiction.*”<sup>40</sup> This is supported by Palestine’s accession to over a hundred agreements and treaties, the Rome Statute key among them, wherein the limitation in Oslo II did not prove prohibitive.<sup>41</sup>

14. This understanding that Palestine’s jurisdiction is among a State’s ‘rights’ is important, particularly that it can be recognised as a customary right.<sup>42</sup> This includes the right to delegate or prescribe jurisdiction as constituting a “*state’s right under international law to assert the applicability of its law to given circumstances.*”<sup>43</sup> It recalls foundational case law from the Permanent Court of International Justice which found that the “*Court declines to see in the conclusion of any Treaty ... a restriction upon the exercise of the sovereign rights of the State*”, such as the customary right of Palestine to prescribe jurisdiction and including “*the right of entering into international engagements [as] an attribute of State sovereignty*”, such as the Rome Statute.<sup>44</sup>
15. To this, it is noted that Article XXXI(6) of the Oslo Accords itself states that neither party would be deemed, by entering into the agreement, “*to have renounced or waived any of its existing rights, claims or positions*”.<sup>45</sup> Along these lines, the Fourth Geneva Convention is also relevant, and its Article 47 key. Within the section concerning protected persons in occupied territories, Article 47 prohibits the deprivation “*in any manner whatsoever, of the benefits of the present Convention ... by any agreement concluded between the authorities of the occupied*

<sup>37</sup> Carsten Stahn, Response: The ICC, Pre-Existing Jurisdictional Treaty Regimes, and the Limits of the Nemo Dat Quod Non Habet Doctrine--A Reply to Michael Newton, 49 *Vanderbilt Law Review* 443, 450 (2021).

<sup>38</sup> Roger O’Keefe, Response: “Quid,” Not “Quantum”: A Comment on “How the International Criminal Court Threatens Treaty Norms”, 49 *Vanderbilt Law Review* 433, 436 (2021) [*hereinafter* O’Keefe].

<sup>39</sup> Yuval Shany, In Defence of Functional Interpretation of Article 12(3) of the Rome Statute, 8 *Journal of International Criminal Justice* 329, 339 (2010) [*hereinafter* Shany].

<sup>40</sup> Carsten Stahn, Response: The ICC, Pre-Existing Jurisdictional Treaty Regimes, and the Limits of the Nemo Dat Quod Non Habet Doctrine--A Reply to Michael Newton, 49 *Vanderbilt Law Review* 443, 450 (2021); and Shany, *supra* note 39, at 339.

<sup>41</sup> See, for example, FCDO, [UK Treaties online – ‘Palestine’](#); and Switzerland, [Fedlex – ‘Palestine’](#).

<sup>42</sup> O’Keefe, *supra* note 38, at 439.

<sup>43</sup> O’Keefe, *supra* note 38, at 436.

<sup>44</sup> Permanent Court of International Justice, [Case of the S.S. “Wimbledon”](#), United Kingdom and others v Germany, Judgment, 17 August 1923, PCIJ Series A No 1, para. 35.

<sup>45</sup> See, Oslo II, [Article XXXI\(6\)](#).



*territories and the Occupying Power.*”<sup>46</sup> Articles 7 and 8 provide a similar protection. Importantly, in setting out protections for protected persons against grave breaches, the Fourth Geneva Convention at Article 146 speaks to giving these protections meaning and effect through accountability and the obligation to search for and try persons alleged to have committed or ordered these crimes “*regardless of their nationality*”<sup>47</sup> – a provision which addresses a State’s obligations but also inherently recognises protected persons’ right to justice and accountability. Article 47 therefore bars an interpretation of Oslo II which would deprive protected persons of this right, or the right to prescriptive jurisdiction allowing Palestine to meet its obligation under Article 146 by designation of jurisdiction to the ICC.

16. On this issue, the International Court of Justice (ICJ) recently confirmed that “*in interpreting the Oslo Accords, it is necessary to take into account Article 47 of the Fourth Geneva Convention*” and “*the Oslo Accords cannot be understood to detract from Israel’s obligations under the pertinent rules of international law applicable in the Occupied Palestinian Territory.*”<sup>48</sup> Here, the ICJ considered another relevant right, namely the right to self-determination which it recalls as among “*the ‘legitimate rights’ of the Palestinian people recognized in the Oslo Accords,*”<sup>49</sup> and which the ICJ itself recognises as a “*fundamental human right*” and “*one of the essential principles of contemporary international law.*”<sup>50</sup> Indeed, the ICJ concludes, within the context of considering this right in regards to the situation in Palestine, that “*in cases of foreign occupation such as the present case, the right to self-determination constitutes a peremptory norm of international law.*”<sup>51</sup>
17. Here, the Vienna Convention on the Law of Treaties (VCLT) must apply to an analysis of Oslo II, and particularly Article 53 stating that “*A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.*”<sup>52</sup> The provisions of the Oslo Accords as an international bilateral agreement, including the limitations within Oslo II, cannot

<sup>46</sup> [Fourth Geneva Convention](#), Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Art. 47.

<sup>47</sup> [Fourth Geneva Convention](#), Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Art. 146.

<sup>48</sup> International Court of Justice, [Advisory Opinion](#), Legal Consequences Arising From The Policies And Practices Of Israel In The Occupied Palestinian Territory, Including East Jerusalem, 19 July 2024, para. 102 [*hereinafter* ICJ Advisory Opinion of 19 July 2024].

<sup>49</sup> ICJ Advisory Opinion of 19 July 2024, para. 102 citing ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 183, para. 118.

<sup>50</sup> ICJ Advisory Opinion of 19 July 2024, paras. 232-233 citing ICJ, East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995, p. 102, para. 29.

<sup>51</sup> ICJ Advisory Opinion of 19 July 2024, para. 233.

<sup>52</sup> [Vienna Convention on the Law of Treaties 1969](#), art. 53. See also, Art. 64 which states that “*If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.*”

be interpreted to undermine or extinguish the existing rights of Palestinians, which constitute peremptory norms under international law – including the right to self-determination. Considering that the UN General Assembly in Resolution 3236 recognised that the “*inalienable rights of the Palestinian people in Palestine ... to self-determination without external interference*” must be read alongside the right to sovereignty,<sup>53</sup> and the rights which flow from Palestine’s sovereignty include the right of prescriptive jurisdiction, an interpretation of Oslo II which limits Palestine’s ability to fully designate the exercise of jurisdiction to the Court would be at odds with Article 53 of the VCLT. Therefore, although it is asserted above that the language of Oslo II does not limit Palestine’s prescriptive jurisdiction, even if the language did include such a limitation, it would be an impermissible limitation which would render the treaty void.

18. This is supported by prior interpretation of the right to self-determination vis-à-vis the issue of jurisdiction in its decision on territorial jurisdiction which noted Article 21(3) of the Rome Statute and emphasised that “‘[h]uman rights underpin the Statute; every aspect of it including the exercise of jurisdiction of the Court’ and that ‘[i]ts provisions must be interpreted and more importantly applied in accordance with internationally recognized human rights.’”<sup>54</sup>
19. Finally, ICJP and CHRL submit that arguments raised to the Chamber that ‘part of’ Palestine’s jurisdiction could not be delegated to the Court are misconceived.<sup>55</sup> In its decision on territorial jurisdiction, Pre-Trial Chamber I emphasised “*By becoming a State Party, Palestine has agreed to subject itself to the terms of the Statute and, as such, all the provisions therein shall be applied to it in the same manner than to any other State Party.*”<sup>56</sup> This is mirrored in jurisprudence prohibiting a State from submitting a referral to the Court which “*limit[s] the Prosecutor to investigate only certain crimes, e.g. crimes committed by certain persons ...*” and finding that a referral must allow the Prosecution to initiate investigations and prosecutions fully and within the full context of the situation referred.<sup>57</sup> Mindful of the fact that Palestine referred the Situation in the State of Palestine to the Court on 22 May 2018,<sup>58</sup> if Oslo II is

<sup>53</sup> UN General Assembly, Res 3236 (XXIX), 22 November 1974, para. 1(a), (b).

<sup>54</sup> Decision on Territorial Jurisdiction, paras. 119, and Decision on Prosecution’s Regulation 46(3) Request, paras. 87-88. Both citing, *Prosecutor v Lubanga*, Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute of 3 October 2006, ICC-01/04-01/06-772, 14 December 2006, para. 37.

<sup>55</sup> Decision on Territorial Jurisdiction, para. 126.

<sup>56</sup> Decision on Territorial Jurisdiction, para. 102.

<sup>57</sup> *Prosecutor v Mbarushimana*, Decision on the ‘Defence Challenge to the Jurisdiction of the Court’, ICC-01/04-01/10-451, 26 October 2011, para. 27.

<sup>58</sup> *Situation in the State of Palestine*, Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I (‘Presidency Decision’), ICC-01/18-1, 24 May 2018. See also, Annex I, ICC-01/18-1-AnxI.

deemed to exclude Israeli nationals from the jurisdiction of the Court, then this would apply to the scope of Palestine's referral and would be in contravention of the Court's jurisprudence barring such a limitation within a referral.

20. To interpret the Oslo Accords to mean that Palestine could delegate the exercise of jurisdiction to the Court only in regards to territorial jurisdiction, but not personal jurisdiction over nationals of certain States, in effect, makes the delegation of jurisdiction to the Court subject to parceling and opens the door to fractured and varying degrees of jurisdiction before the Court. Most problematically, this runs counter to the Rome Statute's objective "*to put an end to impunity for the perpetrators of [the most serious] crimes*" by rendering individuals of certain nationalities above the rule of law.<sup>59</sup>
21. Therefore, it is submitted that the Oslo Accords cannot be interpreted to interfere with or limit the Court's jurisdiction, including over Israeli nationals.

- *Issues of admissibility in relation to complementarity*

22. It is understood that among the issues which may be raised as relevant to the Chamber's determination on the applications for arrest warrants, the issue of admissibility in regards to complementary might be included as a barrier – specifically that complementarity cannot be considered during an ongoing conflict potentially preventing the Chamber's determination on the arrest warrant applications. While ICJP and CHRL do not have sight of the intended submission to this point, these observations wish to provide the Court with submissions which may guide the Chamber in this respect.
23. ICJP and CHRL submit that the practice and case law of the Court make such a proposition unsustainable. The Court has regularly considered and granted applications for arrest warrants during situations whereby an armed conflict is ongoing, noting as examples the Court's swift consideration and issuance of warrants in the *Ukraine* and *Libya* Situations despite acknowledging the ongoing status of the conflict.<sup>60</sup>

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<sup>59</sup> ICC, Rome Statute, Preamble.

<sup>60</sup> See, for example, Office of the Prosecutor, [Report on Preliminary Examination Activities 2020](#), 14 December 2020, paras. 276, 282; and Case of the *Prosecutor v Mahmoud Mustafa Busayf Al-Werfalli*, Warrant of Arrest, ICC-01/11-01/17-2, 15 August 2017, para. 25.

24. The suggestion that the Chamber must find a case, detailed within the application for an arrest warrant, inadmissible before the Court because complementarity cannot be considered during an ongoing conflict would mean that, in some Situations, the Court could never act due to an extended and ongoing conflict. This would have impacted the Situation in Ukraine where the armed conflict has persisted since the Court was designated jurisdiction in 2014.<sup>61</sup> Such an approach would frustrate the central purpose of the Court to “*end[] impunity by establishing individual criminal responsibility for crimes.*”<sup>62</sup> Indeed, if the Court were to accept the proposition that an arrest warrant application could not be considered and granted because complementarity could not be determined until the end of a conflict, it would extinguish the Court’s deterrent effect and would encourage those subject to an arrest warrant application to extend and prolong a conflict – a barrier to achieving peace. Delaying consideration would also be at odds with a ‘victim centered’ approach which takes into account the rights of victims in the Palestine Situation who have been waiting for accountability for almost a decade since jurisdiction was accepted before the Court.

#### IV. Conclusion

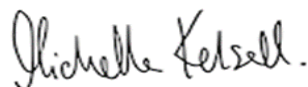
25. For the reasons set out above, ICJP and CHRL submit that there is no barrier to the Chamber’s swift consideration and granting of the applications for arrest warrants.

#### For the International Centre of Justice for Palestinians:



Mr Tayab Ali  
Ms Haydee Dijkstal

#### For the Centre for Human Rights Law, SOAS University of London:



Dr Michelle Staggs Kelshall  
Professor Lutz Oette

**Dated 6<sup>th</sup> August 2024**  
**London, United Kingdom**

<sup>61</sup> See, Office of the Prosecutor, [Report on Preliminary Examination Activities 2020](#), 14 December 2020, para. 276.

<sup>62</sup> Decision on Territorial Jurisdiction, para. 111.