

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**
Date: **2 August 2024**

PRE-TRIAL CHAMBER I

Before:

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

SITUATION IN THE STATE OF PALESTINE

Public

***Amicus Curiae* Observations of Professor Steven E. Zipperstein
Pursuant to Rule 103**

Source: Steven E. Zipperstein

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 (“the Observations”) are submitted pursuant to the Pre-Trial Chamber’s 22 July 2024 Order.¹ The observations address the Prosecutor’s 20 May 2024 request to the Pre-Trial Chamber to issue arrest warrants for Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant of the State of Israel.
2. The Observations make the following arguments: First, the Court lacks jurisdiction to issue the arrest warrants, because Palestine explicitly waived jurisdiction over Israeli nationals in the Oslo Accords, which were legally binding when signed and remain legally binding today. Thus, Palestine cannot delegate jurisdiction to the Court pursuant to Article 12 of the Rome Statute, nor is there any other basis for this Court’s jurisdiction. Second, even if jurisdiction exists, the Prosecutor’s request for arrest warrants fails to satisfy the reasonable grounds requirement of Article 58(1)(a). Third, even if reasonable grounds exist, the request fails to satisfy the necessity requirement of Article 58(1)(b).

II. The Oslo Accords

A. The Oslo Accords Were Legally Binding When They Took Effect

3. The Oslo Accords, the result of arms-length, robust negotiations between Israel and the Palestine Liberation Organization (PLO),² comprise several landmark documents signed between 1993 and 1995.
4. In the first Oslo agreement, the 13 September 1993 *Declaration of Principles on Interim Self-Government Arrangements*, Israel and the PLO solemnly agreed in writing, witnessed by the United States and the Russian Federation, “to put an end to decades of confrontation and conflict, recognize their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and

¹ ICC-01/18-14, 22 July 2024. The Order granted permission to the undersigned to submit *amicus curiae* observations.

² Mahmoud Abbas, the current President of the Palestinian Authority, served as the lead negotiator of the Accords from the Palestinian side alongside former PLO Chairman Yassir Arafat. In his memoir of the negotiations, Abbas recounted how the Palestinian delegation gave “attention to every word, sentence and expression. It was even necessary to scrutinize every comma and full stop so that we could eliminate the likelihood of fatal pitfalls occurring in the future.” M. Abbas, *Through Secret Channels* (Garnet, 1995) at 161-62.

achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process.”³

5. The most significant document among the Oslo Accords is the 28 September 1995 *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip* (“the Oslo II Agreement”),⁴ in which the PLO, among other negotiated items, explicitly agreed to waive jurisdiction over Israeli nationals. The United States, Russia, the European Union, Egypt, Jordan and Norway formally witnessed the Oslo II Agreement. Israel and the PLO, together with the United States and the Russian Federation, submitted the Oslo II Agreement to the Secretary General of the United Nations, and requested it be made an official record of the General Assembly and the Security Council.⁵
6. Both Israel and the PLO had the legal capacity in 1993 and 1995 to enter into binding international agreements such as the Oslo Accords. Israel could so in its capacity as a State. The PLO, which was not a State, had gained acceptance globally as a national liberation movement as of 1993, and as such could be deemed a “partial subject of international law” with the legal capacity to sign binding international agreements.⁶
7. Although the Oslo Accords cannot be characterized as a “treaty” between states pursuant to Article 2(1)(a) of the 1969 Vienna Convention on the Law of Treaties, the Accords are nevertheless binding on both Israel and Palestine under international law.
8. Article 3 of the Vienna Convention on the Law of Treaties anticipated situations such as the Oslo Accords, in which international agreements might not rise to the level of a treaty but should still be viewed as legally binding on the parties. Article 3 provides:

³ A/48/486 S/26560, *Declaration of Principles on Interim Self-Government Arrangements, Israel-Palestine Liberation Organization* (13 September 1993).

⁴ UNGA A/51/889, UNSC S/1997/357, *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip* (28 Sept. 1995).

⁵ Letter dated 27 December 1995 from the Permanent Representatives of the Russian Federation and the United States of America to the United Nations addressed to the Secretary-General; Letter dated 28 December 1995 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General; Letter dated 19 December 1995 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General, available at <https://www.un.org/unispal/document/auto-insert-185434/>.

⁶ P. Malanczuk, *Some Basic Aspects of the Agreements Between Israel and the PLO from the Perspective of International Law*, Eur. J. Int'l L., 7:4, 485-500 at 489 (1996); see also G. Watson, *The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements* at 101-02 (Oxford Univ. Press, 2000) (“the Oslo Accords are legally binding international agreements. Thus, there is a legal basis for the assertion that the Oslo process is ‘irreversible.’ . . . Conversely, there is no basis for the claim that the Accords are non-binding ‘political’ documents.”); O. Corten and P. Klein (eds.), *The Vienna Convention on the Law of Treaties: A Commentary* (Vol. I) at 75 (Oxford Univ. Press 2011) (“Insurrectional movements regarded as belligerents have the capacity to conclude treaties . . . groups known as national liberation movements have the capacity to conclude treaties.”); R. Sabel, *International Law and the Arab-Israeli Conflict* at 272-75 (Cambridge Univ. Press, 2022) (“both Israel and the PLO intended the [Oslo Accords] to be a binding legal instrument.”).

“The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect: (a) the legal force of such agreements; (b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention; (c) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.”⁷

9. The language of Article 3 applies directly to the Oslo Accords. The Accords were “international agreements concluded between States and other subjects of international law,” such as Israel and the PLO. Thus, the Accords are infused with legal force, and are subject to the rules of the Vienna Convention and the rules of international law.
10. The most important such rule can be found in Article 26 of the Vienna Convention, embodying the customary international law principle of *pacta sunt servanda*: “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.” Therefore, under Article 3 of the Vienna Convention, the principle of *pacta sunt servanda* applies to the Oslo Accords.
11. Professor Geoffrey Watson, a leading commentator on the Oslo Accords, has argued the Accords are legally binding on both the Israelis and the Palestinians: “Most of the Accords have the formal attributes of binding instruments; they are styled ‘agreements’ and ‘protocols,’ they are structured like treaties, and they contain mandatory rather than permissive language . . . It appears, then, that the Oslo Accords are legally binding international agreements.”⁸
12. Therefore, because both parties had the legal capacity to enter into the Oslo Accords, and because the Accords constituted a valid and legally binding international agreement between the parties, Israel and the PLO/Palestinian Authority were required by law to comply with the Accords at the time they took effect.

B. The Oslo Accords Remain Legally Binding Today

13. The Preamble to the Oslo II Agreement proclaims, “the peace process and the new era that it has created, as well as the new relationship established between the two Parties as described above, are irreversible.”

⁷ Vienna Convention on the Law of Treaties, 23 May 1969, UN Doc. A/CONF.39/27, Art. 3(a).

⁸ G. Watson (2000), *op. cit.* at 101-02.

14. Nevertheless, both parties have occasionally accused each other of breaching the Accords. The alleged breaches on both sides arguably could give rise to a claim by either party under Article 60(1) of the Vienna Convention to terminate or suspend the Oslo Accords in part or in full based on a “material breach” by the other party. Article 60(3) defines “material breach” as “(a) a repudiation of the treaty not sanctioned by the present Convention; or (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.”
15. Significantly, however, neither side has invoked Article 60 or otherwise abrogated the Oslo Accords as of the present date. Notwithstanding Palestinian Authority (“PA”) President Mahmoud Abbas’ recent public criticism of the Oslo Accords (which he negotiated on behalf of the PLO), “the Protocol Concerning Legal Affairs remains applicable and Israeli nationals continue to be immune from prosecution in Palestinian courts, even for crimes committed on Palestinian territory.”⁹ Moreover, “[s]ince neither side has to date renounced the Oslo Accords and succeeding instruments, they remain in effect.”¹⁰
16. Indeed, despite the respective claims of breach, both Israel and the PA continue to fulfil the Oslo Accords on a daily basis in the West Bank. For example, notwithstanding recent pronouncements to the contrary, the reality on the ground is that the PA maintains security cooperation with Israel based on the Oslo framework.¹¹ Moreover, both sides continue abiding by the allocation of governance and authority over Areas A, B and C of the West Bank, including the jurisdictional provisions.
17. Nevertheless, even if one or both parties were to invoke Article 60(1) of the Vienna Convention and suspend or terminate the Oslo Accords, Article 70 of the Convention provides that the termination or suspension would not affect Israel’s rights “created through the execution of the treaty prior to its termination,” such as the Palestinian waiver of jurisdiction over Israeli nationals in Articles XVII.1, XVII.2.c and Annex

⁹ M. Cormier, *The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties* at 111 (Cambridge Univ. Press, 2020).

¹⁰ M. Shaw, *International Law* (9th ed.) at 216 (Cambridge Univ. Press, 2021). Arab commentators view Abbas’ statements (in response to the Abraham Accords) proclaiming the “end of Israeli-Palestinian agreements” as merely symbolic and made for domestic consumption, with no substantive steps taken and no legal impact. See, e.g., “Abbas’s Declaration: The Oslo Accords are Now Dead and Buried.” Arab Center, Washington DC (20 May 2020), <https://arabcenterdc.org/resource/abbas-declaration-the-oslo-accords-are-now-dead-and-buried/>.

¹¹ See A. Oseran, Analysis: Israeli-Palestinian Security Coordination Continues in West Bank, Despite Tensions (26 Feb. 2023), <https://www.i24news.tv/en/news/israel/defense/1677263977-analysis-israeli-palestinian-security-coordination-continues-in-west-bank>

IV, Article I.2.b of the Oslo II Agreement.¹² Therefore, the Oslo Accords remain legally binding as to the matters at issue before this Chamber.

III. Palestine Cannot Delegate Jurisdiction Over Israeli Nationals to the Court

18. On 5 February 2021, in its majority ruling on territorial jurisdiction in the *Situation in Palestine* ("Territorial Decision"), Pre-Trial Chamber I left open the jurisdictional issues relating to the Oslo Accords: "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."¹³
19. The Palestinian waiver of jurisdiction over Israeli nationals in the Oslo II agreement is now a live matter before the Pre-Trial Chamber on the Prosecutor's application for arrest warrants. Article 19(1) of the Statute provides, in part, that "[t]he Court shall satisfy itself that it has jurisdiction in any case brought before it." Pre-Trial Chambers have consistently relied upon Article 19(1) to hold that an initial determination as to whether the case falls within the jurisdiction of the Court is a prerequisite for the issuance of warrants of arrest.¹⁴
20. Because Israel is not a party to the Rome Statute and has not consented to this Court's jurisdiction regarding the *Situation in Palestine*, absent a UN Security Council referral, the only way for the Court to obtain jurisdiction over Israeli nationals pursuant to Article 12 of the Rome Statute would be through a valid delegation of such jurisdiction from the State of Palestine.¹⁵

¹² E. Benvenisti, *The Israeli-Palestinian Declaration of Principles: A Framework for Future Settlement*, Eur. J. Int'l. L. 4:4, 542-554 at 545 (1993) (analyzing the 1993 Declaration of Principles, but equally applicable to the Oslo II Agreement).

¹³ Pre-Trial Chamber I, Decision on the "Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine," para. 131 (5 Feb. 2021).

¹⁴ ICC-02/05-01/07-1-Corr, Pre-Trial Chamber I, Decision on the Prosecution Application under Article 58(7) of the Statute, 27 April 2007, public, para. 13. See, e.g., ICC-01/04-01/06-1-Corr-Red, Pre-Trial Chamber I, Decision on the Prosecutor's Application for a warrant of arrest, Article 58, 10 February 2006, reclassified as public, para. 18; ICC-01/11-12; Pre-Trial Chamber I, Decision on the Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Alsenussi, public, paras. 6-10 (27 June 2011).

¹⁵ The majority of scholarly commentators view the Court's jurisdiction over nationals of non-consenting and/or non-party states under Article 12 of the Rome Statute as based on the delegation theory, under which State parties to the Rome Statute may delegate to the Court jurisdiction they otherwise possess over crimes committed by nationals of non-state parties. See, e.g., M. Cormier, *op. cit.* at 36-70; see also Todd Buchwald, "International Criminal Court and the Question of Palestine's Statehood: Part II" (23 Jan. 2020), in "justsecurity.org," at 4 et

21. For the delegation of powers to be valid, the delegating state must possess the jurisdiction that it purports to delegate. As the Court held in the *Myanmar* case, "the drafters of the Statute intended to allow the Court to exercise its jurisdiction pursuant to article 12(2)(a) of the Statute *in the same circumstances in which States Parties would be allowed to assert jurisdiction over such crimes under their legal systems*".¹⁶ [Emphasis added.]
22. The State of Palestine, however, does not have jurisdiction over Israeli nationals for acts alleged to have been committed in the Gaza Strip because Palestine explicitly waived jurisdiction over Israeli nationals in two separate provisions of the Oslo II agreement: first, Article XVII.2.c provides, in pertinent part: "the territorial and functional jurisdiction of the [Palestinian] Council will apply to all persons, *except for Israelis*, unless otherwise provided in this Agreement." [Emphasis added.] Second, Article I.2.b of Annex IV (Protocol Concerning Legal Affairs) provides that "Israel has *sole* criminal jurisdiction over . . . offenses committed in the Territory [West Bank and Gaza Strip] by Israelis." [Emphasis added.] Palestine therefore lacks jurisdiction over any alleged crimes committed by the Prime Minister and the Defense Minister of the State of Israel in the Gaza Strip. Thus, Palestine cannot delegate to this Court jurisdiction which Palestine does not possess in the first instance.¹⁷
23. Absent jurisdiction based on a valid delegation or UN Security Council referral, no other provision of the Rome Statute confers jurisdiction in this matter. In particular, the Statute cannot be construed to permit jurisdiction over nationals of non-state parties based on the theory of "universal jurisdiction." Scholars have noted that doing so would disregard the careful balance between state sovereignty and the limitations on the Court's jurisdiction reflected in Articles 12, 13, 17 and 53 of the Statute.¹⁸

seq. <https://www.justsecurity.org/68227/international-criminal-court-and-the-question-of-palestines-statehood-part-ii/> ("It has been taken as fundamental that the Court operates on the basis of jurisdiction that only States can delegate.")

¹⁶ *Bangladesh/Myanmar, Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute*, ICC-RoC46(3)-01/18-37, para. 70 (6 Sept. 2018).

¹⁷ Cormier concedes that Palestine cannot delegate jurisdiction to the Court so long as Palestine remains bound by the Oslo Accords. *Id.* at 111.

¹⁸ O. Bekou and R. Cryer, *The International Criminal Court and Universal Jurisdiction: A Close Encounter?* *International & Comparative Law Quarterly* 56:1, 49-68 (2007) (drafters of the Rome Statute carefully balanced the court's jurisdiction against state sovereignty, and therefore did *not* intend to confer universal jurisdiction).

IV. Even If the Court Has Jurisdiction, It Should Not Issue the Arrest Warrants

24. Article 58(1)(a) of the Rome Statute provides that arrest warrants can only be issued when the Court is satisfied that “there are *reasonable grounds* to believe that the person has committed a crime within the jurisdiction of the Court.” [Emphasis added.]
25. The ICC Prosecutor issued a public statement on 20 May 2024 asserting the alleged factual basis for seeking arrest warrants against the Prime Minister and the Defense Minister of the State of Israel. For example, the Prosecutor asserted, apparently based on United Nations information published in March 2024, that the Prime Minister and Defense Minister of Israel have used “Starvation of civilians [in Gaza] as a method of warfare . . .”¹⁹
26. However, two weeks *after* the Prosecutor requested the issuance of arrest warrants, the United Nations reversed itself in an updated report acknowledging the widespread availability of food in the Gaza Strip, while continuing to call for close monitoring of the situation.²⁰ This new United Nations report significantly undermines the prosecutor’s allegation that the Prime Minister and the Defense Minister of the State of Israel are deliberately starving Gazan civilians “as a weapon of war.” Moreover, according to an April 2024 PLO-run television report and other sources, Hamas has been stealing food deliveries to Gaza and killing aid workers.²¹
27. The Prosecutor’s other allegations of war crimes and crimes against humanity generally involve unverified claims that the Prime Minister and the Defense Minister of the State of Israel are *deliberately targeting* civilians in Gaza. It is tragic that

¹⁹ *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>. Although the prosecutor did not specifically cite the March 2024 United Nations report, it is reasonable to infer he was referring to that report.

²⁰ *IPC Famine Review Committee: Review of the Famine Early Warning Systems Network (FEWS NET) IPC-Compatible Analysis for the Northern Governorates of the Gaza Strip* (4 June 2024), https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/documents/IPC_Famine_Review_Committee_Report_FEWS_NET_Gaza_4June2024.pdf (“Since the FRC review conducted in March 2024, there seems to have been a significant increase in the number of food trucks entering northern Gaza . . . caloric availability from humanitarian assistance increased from 9% in February to 34% to 36% in March and 59% to 63% in April. The opening of alternative routes to the Rafah and Kerem Shalom crossings, the authorization of commercial truck entry, as well as airdrops, allowed for an increase of food availability.”)

²¹ “Fatah: Hamas kills aid workers and steals food for itself,” Palestine Media Watch (21 Apr. 2024), <https://palwatch.org/page/35086> (quoting report from Fatah/PLO-run Awdah TV); *see also* TOI Staff, “Gaza Aid Truck Stolen by Gunmen and Looted as Convoys Start Crossing from Israel,” Times of Israel (17 Dec. 2023), <https://www.timesofisrael.com/gaza-aid-trucks-stolen-by-gunmen-and-looted-as-convoys-start-crossing-from-israel/>; G. Pacchiani, “Video Shows Gunmen Stealing from Aid Trucks Shooting at Gaza Civilians,” Times of Israel (5 Dec. 2023), https://www.timesofisrael.com/liveblog_entry/video-shows-gunmen-stealing-from-aid-trucks-shooting-at-gaza-civilians/.

thousands of civilians in Gaza have died. Hamas *deliberately* uses civilians as human shields, placing them in harm's way as the key to its longstanding strategic doctrine. Hamas hopes it will gain public opinion leverage when civilians are killed and injured during Israeli counterattacks, despite Israel's efforts to avoid civilian casualties.²²

28. On the other hand, there is *no* evidence that the Prime Minister and the Defense Minister of the State of Israel are *deliberately targeting* Gazan civilians.²³ Armies fighting defensive wars against terrorists in urban environments generally inflict a civilian to militant casualty ratio of 9:1.²⁴ However, Israel's civilian to terrorist casualty ratio is between 1 to 2 civilians for every terrorist killed,²⁵ meaning Israel's efforts to avoid civilian deaths have resulted in a far lower civilian to terrorist casualty ratio than in other conflicts.²⁶ The Chair of Urban Warfare Studies at the Modern War Institute at the United States Military Academy has stated unequivocally that Israel is following the laws of war in Gaza, proclaiming "Israel has implemented more

²² See, e.g., "Hamis official says group 'well aware' of consequences of attack on Israel, Palestinian liberation comes with 'sacrifices'," Arab News (20 Oct. 2023), <https://www.arabnews.com/node/2394966/middle-east>; see also NATO Strategic Communications Centre of Excellence, *Hybrid Threats: Hamas' Use of Human Shields in Gaza*, (6 June 2019), https://stratcomcoe.org/pdfs/?file=/publications/download/hamas_human_shields.pdf?zoom=page-fit; Hamas' Use of Human Shields in Gaza, Stratcomcoe, 2008-2014 at https://stratcomcoe.org/cuploads/pfiles/hamas_human_shields.pdf; B. Jensen, "Hamis Isn't the First Military Group to Hide Behind Civilians," American University (16 Nov. 2023), <https://www.american.edu/sis/news/20231116-hamas-isnt-the-first-military-group-to-hide-behind-civilians.cfm#:~:text=International-.Hamis%20isn't%20the%20First%20Military%20Group%20to%20Hide%20Behind,ways%20to%20weaken%20their%20opponent>.

²³ Prime Minister Netanyahu addressed these allegations in his 24 July 2024 speech to a joint session of the United States Congress: "The IDF has dropped millions of flyers, sent millions of text messages, made hundreds of thousands of phone calls to get Palestinian civilians out of harm's way. But at the same time, Hamas does everything in its power to put Palestinian civilians in harm's way. They fire rockets from schools, from hospitals, from mosques. They even shoot their own people when they try to leave the war zone. A senior Hamas official Fathi Hamad boasted . . . that Palestinian women and children excel at being human shields." The full transcript of Prime Minister Netanyahu's speech is available at <https://www.timesofisrael.com/were-protecting-you-full-text-of-netanyahus-address-to-congress/>

²⁴ UN Security Council Meeting SC/14904, 25 May 2022, "Ninety Per Cent of War-Time Casualties Are Civilians, Speakers Stress, Pressing Security Council to Fulfil Responsibility, Protect Innocent People in Conflicts," <https://press.un.org/en/2022/sc14904.doc.htm>. In the 2016-2017 Battle of Mosul, for example, 10,000 civilians were killed compared to roughly 4,000 ISIS terrorists. <https://apnews.com/article/middle-east-only-on-ap-islamic-state-group-bbea7094fb954838a2fdc11278d65460>; <https://www.armyupress.army.mil/Portals/7/Primer-on-Urban-Operation/Documents/Mosul-Public-Release1.pdf>

²⁵ <https://www.washingtontimes.com/news/2024/apr/18/israels-war-against-hamas-posts-lower-civilian-to-/>; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-217>; <https://www.timesofisrael.com/the-genocide-claim-against-israel-doesnt-add-up/>

²⁶ <https://www.jns.org/misplaced-moral-outrage-on-civilian-casualties/#:~:text=Likewise%2C%20Kemp%20praised%20the%20IDF,in%20general%20is%201%3A9%E2%80%9494> (Col. Richard Kemp, former commander of British forces in Afghanistan, stating the average combatant-to-civilian death ratio in urban warfare is 1:9).

precautions to prevent civilian harm than any military in history – above and beyond what international law requires.”²⁷

29. But even if reasonable grounds were deemed to exist for issuing the requested arrest warrants, the Pre-Trial Chamber must also be satisfied under Article 58(1)(b) that issuing the warrants “appears *necessary* (i) To ensure the person’s appearance at trial; (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime . . .” [Emphasis added.]
30. None of those requirements can be satisfied in this situation. Neither the Prime Minister nor the Defense Minister of the State of Israel would be more or less likely to appear at trial regardless of the issuance of arrest warrants. There is no evidence that either of them will obstruct or endanger the investigation or the court proceedings. Nor are the warrants necessary to prevent the continued commission of alleged crimes.
31. Finally, issuing the requested arrest warrants will not advance the cause of peace. To the contrary, as Prime Minister Netanyahu said in his 24 July 2024 speech to the United States Congress, “the war in Gaza could end tomorrow if Hamas surrenders, disarms and returns all the hostages.”²⁸

V. Conclusion

32. For the foregoing reasons, the Pre-Trial Chamber should deny the Prosecutor’s request for the issuance of arrest warrants for the Prime Minister and the Defense Minister of the State of Israel.

Respectfully submitted:



Steven E. Zipperstein

Dated this 2 day of August 2024

At Santa Barbara, California USA

²⁷ J. Spencer, “Israel Has Created a New Standard for Urban Warfare. Why Will No One Admit It?” *Newsweek* (25 Mar. 2024), <https://www.newsweek.com/israel-has-created-new-standard-urban-warfare-why-will-no-one-admit-it-opinion-1883286>

²⁸ See note 23, *supra*.