

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/18

Date: 06 August 2024

PRE-TRIAL CHAMBER I

Before:

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

SITUATION IN THE STATE OF PALESTINE

Public Document

**Observations by the State of Palestine to the Pre-Trial Chamber I pursuant to Rule
103 of the Rules of Procedure and Evidence**

Source: The State of Palestine

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

The Office of the Prosecutor

Mr. Karim A.A. Khan KC

Ms. Nazhat Shameem Khan

Mr. Mame Mandiaye Niang

Counsel for the Defence

Legal Representatives of the Victims

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

REGISTRY

Registrar

M. Zavala Giler, Osvaldo

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

The Pre-Trial Chamber has already determined that Palestine is a State Party for purposes of Article 12(2)(a) of the Statute and that the Court's territorial jurisdiction in the *Situation in the State of Palestine* extends to the territory Israel has occupied since 1967, namely Gaza and the West Bank, including East Jerusalem. Subsequently, the Office of the Prosecutor proceeded with the investigation and a request for arrest warrants concerning the *Situation in the State of Palestine*. Having been granted leave to file these observations, the State of Palestine asserts that there is no legal basis for *amici curiae* to challenge the Court's jurisdiction over a case following the commencement of the Prosecutor's investigation.¹ The framework for assessing the Court's jurisdiction in the context of the Prosecutor's request for the issuance of arrest warrants in the *Situation in the State of Palestine*, as in any other case before the Court, is clear from the plain text of the Rome Statute. This framework must in all cases be interpreted and applied in accordance with international law, including laws of occupation, which make it clear that occupation will not result in any legal title or sovereignty being granted to the occupying Power and that jurisdictional competence remains with the occupied State, and in accordance with international human rights law, particularly the right to self-determination. This framework must also advance, rather than deprive, Palestinian victims of Rome Statute crimes of the protection of the Court, including the fundamental right to access justice.

The Court cannot interpret or apply its jurisdictional framework in a way that would relieve or obstruct a State's duty to pursue accountability for Rome Statute crimes. Where the most serious crimes of concern to the international community as a whole continue to be perpetrated systematically, willfully, and with impunity, as is the case on the territory of the State of Palestine and against the Palestinian people, the Court must promptly reject the bad faith arguments advanced by parties that have no standing under Article 19, and allow international criminal justice to take its course in relation to the requested arrest warrants for Israeli Prime Minister Netanyahu and Israeli Defence Minister Gallant.

¹ The State of Palestine excepted.

II. The Pre-Trial Chamber has ruled on matters pertaining to the Court's jurisdiction over the Situation in the State of Palestine and the Prosecutor's investigation has proceeded on this basis.

On 5 February 2021, the Pre-Trial Chamber I affirmed that the State of Palestine 'is a State Party to the Statute, and, as a result, a 'State' for the purposes of Article 12(2)(a) of the Statute'.² Further, it ruled 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'.³ Finally, the Chamber acknowledged that the investigation into the Situation in Palestine had commenced 'as a matter of law' on the basis that the Prosecutor was 'satisfied that the relevant criteria established by the Statute are fulfilled'.⁴

III. There is no legal basis for *amici curiae* to challenge the Court's jurisdiction following the commencement of the Prosecutor's investigation.

Challenges to the Court's jurisdiction following commencement of an investigation are governed by Article 19 of the Rome Statute. Paragraph (2) of this Article limits standing to make challenges to the Court's jurisdiction to: (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 the case; or (c) A State from which acceptance of jurisdiction is required under Article 12.⁵

With the exception of the State of Palestine, no State, organization or person that has sought leave from the Court to file observations under Rule 103 satisfies the provisions of Article 19(2), unless, in the case of a State, it can demonstrate that it is actually investigating the case against Israeli Prime Minister Benjamin Netanyahu or Defence Minister Yoav Gallant as outlined in the Prosecutor's application. Any observations submitted to the Court under Rule 103 that seek to challenge the Court's jurisdiction over Israeli nationals in the context of the *Situation in the State of Palestine* must be disregarded for lack of standing and acknowledged

² Situation in the State of Palestine, [ICC-01/18-143](#), Decision on the 'Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court's Territorial Jurisdiction in Palestine,' 05 February 2021, para. 112. ('Palestine 19(3) Decision')

³ [Palestine 19\(3\) Decision](#), para. 118.

⁴ [Palestine 19\(3\) Decision](#), para. 65, referencing Rome Statute Art. 53(1)(a) and Appeals Chamber, Situation in the Islamic Republic of Afghanistan, *Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan*, 05 March 2020, [ICC-02/17-138](#), para. 28. ('Afghanistan Judgment on Appeal on Decision on Authorisation')

⁵ [Rome Statute](#), Article 19.

as an impermissible attempt to circumvent Article 19 and politicize a judicial process. The Court cannot do through the backdoor of Rule 103 what is not permitted by the text of the Rome Statute itself. Thus, where the Court nonetheless examines its jurisdiction under Article 19(1), only submissions from those parties permitted to submit observations under Article 19(3) may be received, to wit, those States referring the situation or victims and their representatives. The Court must, in particular, dismiss the observations of others where the original requester, the United Kingdom, has declined to file any observations and has announced it will no longer pursue its jurisdictional challenge.⁶

IV. The framework for assessing the Court’s jurisdiction in the context of the Prosecutor’s request for the issuance of arrest warrants in the Situation in Palestine, as in any other case before the Court, is clear from the plain text of the Rome Statute.

Article 21(1) of the Rome Statute provides that: ‘The Court shall apply: [i]n the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence’. Only in the second place, and only where appropriate, can the Court consider ‘applicable treaties and the principles and rules of international law’. Finally, only ‘failing that’, should the Court consider in the third place, ‘as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards’.⁷

Indeed, the Court’s Appeals Chamber affirmed in *Prosecutor v. Lubanga* that if ‘a matter is exhaustively dealt with by [the Statute] or [...] the Rules of Procedure and Evidence, [...] no room is left for recourse to the second or third source of law [in Article 21(1) of the Statute] to determine the presence or absence of a rule governing a given subject’.⁸ The basis for the Court’s exercise of jurisdiction is governed, and exhaustively dealt with, by the Rome Statute. The Statute expressly provides, and the Chambers of the Court have consistently upheld, that for conduct to fall within the jurisdiction of the Court, it need only:⁹

⁶ K. Stacey, [‘Britain drops its challenge to ICC arrest warrants for Israeli leaders’](#), The Guardian, 26 July 2024.

⁷ Rome Statute, Article 21.

⁸ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, 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 03 October 2006, 14 December 2006, [ICC-01/04-01/06-772](#), para. 34.

⁹ Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, *Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, 14 November 2019, [ICC-01/19-27](#), para. 40.

(i) fall within the category of crimes set out in article 5 and defined in articles 6 to 8 *bis* of the Statute (*jurisdiction ratione materiae*); (ii) fulfil the temporal conditions specified in article 11 of the Statute (*jurisdiction ratione temporis*); and (iii) meet one of the two requirements contained in article 12(2) of the Statute (*jurisdiction ratione loci* or *ratione personae*).

With regard to Article 12(2), the Pre-Trial Chamber I affirmed that the Rome Statute exhaustively covers the jurisdictional requirements, noting:¹⁰

The Statute mandates that the preconditions to the exercise of the Court's jurisdiction under article 12(2) of the Statute be assessed in keeping with the outcome of the accession procedure pursuant to articles 12(1), 125(3) and 126(2) of the Statute, subject to the settlement of a dispute regarding the accession of an entity by the Assembly of States Parties under article 119(2) of the Statute, and consistent with the purpose of the Court of ending impunity by establishing individual criminal responsibility for crimes. The Statute, thus, exhaustively deals with the issue under consideration. [Emphasis added.]

It is clear from the text that the Rome Statute does not provide, explicitly or otherwise, for any obligation or right to assess the national legislation and bilateral agreements of a State Party in determining whether the Court may exercise its own international jurisdiction. This is despite its detailed coverage of jurisdictional requirements and preconditions to the exercise of the Court's jurisdiction. It must thus follow that no such obligation or right exists, which is confirmed by the Court's own jurisprudence and addressed in several key decisions to date. These include the Pre-Trial and Appeals decisions regarding the request of the Prosecutor to open an investigation into the Afghanistan situation,¹¹ the decisions in the Bangladesh/Myanmar situation,¹² and in Pre-Trial Chamber I's 2021 jurisdictional decision in the present Situation, where it found that:¹³

the arguments regarding the Oslo Agreements in the context of the present proceedings are not pertinent to the resolution of the issue under consideration, namely the scope of the Court's territorial jurisdiction in Palestine. The Chamber considers that these issues may be raised by interested States based on article 19 of the Statute, rather than in

¹⁰ [Palestine 19\(3\) Decision](#), para. 111.

¹¹ Situation in the Islamic Republic of Afghanistan, *Decision Pursuant to Article 15 of the Rome Statute on the authorisation of an investigation into the Situation in the Islamic Republic of Afghanistan*, [ICC-02/17-33](#), 12 April 2019. ('Afghanistan Art. 15 Decision')

¹² Situation in the People's Republic of Bangladesh/Republic of the Union of 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](#), 06 September 2018, para. 30.

¹³ [Palestine 19\(3\) Decision](#), para. 129.

relation to a question of jurisdiction in connection with the initiation of an investigation by the Prosecutor arising from the referral of a situation by a State under articles 13(a) and 14 of the Statute. As a consequence, the Chamber will not address these arguments.

These decisions have consistently rejected the idea that the Court's jurisdiction is somehow dependent upon the national law or the horizontal treaty relations of the States accepting its jurisdiction. In the *Situation in Afghanistan*, the Pre-Trial Chamber II considered whether a Status of Forces Agreement (SOFA) with Afghanistan that vested jurisdiction over U.S. nationals operating on Afghan territory in the United States had any bearing on the Court's jurisdiction in the situation where U.S. nationals were accused of perpetrating crimes on the territory of Afghanistan. The Chamber held that neither the nationality of the potential accused, nor the presence of the SOFA between the United States and Afghanistan, could prevent the Court from exercising its jurisdiction.¹⁴ The Court reaffirmed that the test for establishing whether the Court may exercise its jurisdiction in a particular instance is contained in, and limited to that delineated by, the Rome Statute:¹⁵

The conducts that have allegedly occurred in full or in part on the territory of Afghanistan or of other State Parties fall under the Court's jurisdiction, irrespective of the nationality of the offender. The Court has jurisdiction if the conduct was either completed in the territory of a State Party or if it was initiated in the territory of a State Party and continued in the territory of a non-State Party or vice versa.

The irrelevance of such external considerations, and specifically the Oslo Accords, in assessing whether the Court may exercise its jurisdiction, is also linked to the principle of effectiveness, which requires that 'in interpreting a provision of the founding texts, the bench must dismiss any solution that could result in the violation or nullity of any of its other provision'.¹⁶ As noted by the Pre-Trial Chamber I, 'it would indeed be contradictory to allow an entity to accede to the Statute and become a State Party, but to limit the Statute's inherent effects over it. This is further confirmed by the fact that, on the basis of Article 124 of the Statute, the only exemption to the jurisdiction of the Court relates to a particular category of crimes, namely war crimes, for a limited period of time, which entails that the Statute is automatically activated in respect

¹⁴ [Afghanistan Art. 15 Decision](#), paras. 58-59. The Pre-Trial Chamber dismissed the case on interest of justice grounds, which was reversed on appeal. *Afghanistan Judgment on Appeal on Decision on Authorisation*.

¹⁵ [Afghanistan Judgment on Appeal on Decision on Authorisation](#), para. 50.

¹⁶ Trial Chamber II, *The Prosecutor v. Germain Katanga*, Judgment pursuant to article 74 of the Statute, 07 March 2014, [ICC-01/04-01/07-3436-tENG](#) ('*Katanga* Trial judgment'), para. 46; [Palestine 19\(3\) Decision](#), para. 102.

of all other matters’.¹⁷ In specific relation to the State of Palestine, the Pre-Trial Chamber I has affirmed this position, noting its ‘right to exercise its prerogatives under the Statute and be treated as any other State Party would’.¹⁸

Indeed, to take the view of the United States in the Afghanistan situation, or politically like-minded States or commentators in the Palestine situation, would mean that the jurisdiction of the Court in each case not referred by the Security Council would have to be examined in light of the national legislation of the territorial state, the State of the potential accused’s nationality, and potentially all States with jurisdiction over the offence, in addition to any potential limits imposed by treaties such as SOFAs or the Oslo Accords. This would reduce the Court to a ‘mere jurisdictional instrument’ – contrary to the intent of negotiators of the Rome Statute, who plainly rejected this conception.¹⁹ Most importantly, it would contradict and undermine the principle of complementarity, which underlies the jurisdiction of the Court, and already limits the Court to seizing its jurisdiction only when States are unwilling or unable to do so.²⁰

Particularly in the *Situation in the State of Palestine*, where Palestine stated in its Referral in 2018, ‘the crimes committed by Israeli officials, including officials at the highest levels of the State, are entrenched as a matter of State policy, planned and perpetrated pervasively, systematically and on a widespread basis, attract no accountability, and have continued with impunity’.²¹ This well-documented and longstanding pattern of Israeli impunity and Israel’s declared unwillingness to investigate those responsible for Rome Statute crimes on the territory of the State of Palestine, including the Prime Minister and Defense Minister, further prove that the Court is duty-bound to exercise its jurisdiction under the complementarity principle to ensure that crimes committed do not remain unpunished.

In its submission in 2020, Palestine also explained that ‘the need for Palestine to seek the jurisdictional assistance of the Court in order to bring to justice crimes committed on its territory results from the unlawful occupation of its territory by Israel, which has deprived Palestine of its full ability to bring a halt to these crimes and to punish these crimes without the

¹⁷ [Palestine 19\(3\) Decision](#), para. 102.

¹⁸ [Palestine 19\(3\) Decision](#), para 112.

¹⁹ See, for example, L. Sadat, ‘[The Conferred Jurisdiction of the International Criminal Court](#)’, 99 *Notre Dame Law Review* 549 (2023).

²⁰ [Rome Statute](#), Art. 17

²¹ [Referral by the State of Palestine Pursuant to Articles 13\(a\) and 14 of the Rome Statute](#), 15 May 2018, para. 15.

help of others’.²² An unlawful occupation founded in its design and purpose on the commission of international crimes cannot impede either Palestine’s jurisdiction and sovereignty over its territory nor the Court’s jurisdiction over the territory of a State Party. This was duly acknowledged by the Appeals Chamber in *Katanga* when it said that, ‘[i]f States do not or cannot investigate and, where necessary, prosecute, the International Criminal Court must be able to step in’.²³

Accordingly, the International Court of Justice (ICJ) adamantly rejected such politicized arguments against the ICJ’s involvement in its Advisory Opinion on Israeli policies and practices; arguments similar to the current requests before the Court on Oslo Accords were raised and the ICJ found that 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’.²⁴ The ICJ also concluded that ‘Israel may not rely on the Oslo Accords to exercise its jurisdiction in the Occupied Palestinian Territory in a manner that is at variance with its obligations under the law of occupation’.²⁵

V. The Court’s jurisdictional framework, as explicitly set out under the Rome Statute, must in all cases be interpreted and applied in a way that advances rather than deprives Palestinian victims of international crimes of the protection of the Court, including the fundamental right to access justice.

Palestine reiterates its adoption of the Prosecution’s submissions in paragraphs 183-189 of its Article 19(3) Request of 2020²⁶ and its own submissions²⁷ regarding the lack of relevance and effect in these proceedings of certain agreements signed by Palestine. It also recalls Article 21(3) of the Rome Statute and the holding by the Court’s Appeals Chamber in *Lubanga*, which describes: ‘Article 21(3) of the Statute stipulates that the law applicable under the Statute must

²² *Situation in the State of Palestine*, The State of Palestine’s observations in relation to the request for a ruling on the Court’s territorial jurisdiction in Palestine, 16 March 2020, [ICC-01/18-82](#), para. 60.

²³ *Prosecutor v. Katanga*, Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, [ICC-01/04-01/07-1497](#), 25 September 2009, para. 85. See also footnote attached to that holding (fn 179) and authorities cited therein.

²⁴ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, [Advisory Opinion](#), 19 July 2024, Para 102.

²⁵ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, [Advisory Opinion](#), 19 July 2024, Para 140.

²⁶ [Palestine 19\(3\) Decision](#), paras. 183-189.

²⁷ *Situation in the State of Palestine*, The State of Palestine’s observations in relation to the request for a ruling on the Court’s territorial jurisdiction in Palestine, 16 March 2020, [ICC-01/18-82](#); *Situation in the State of Palestine*, The State of Palestine’s response to the Pre-Trial Chamber’s Order requesting additional information, 04 June 2020, [ICC-01/18-135](#).

be interpreted as well as applied in accordance with internationally recognized human rights. Human rights underpin the Statute; every aspect of it including the exercise of jurisdiction of the Court, adding that '[i]ts provisions must be interpreted and more importantly applied in accordance with internationally recognized human rights',²⁸ including the right to self-determination repeatedly identified as central to interpreting the right of the people of Palestine to enjoy independence, to exercise its sovereignty over the entirety of its territory and to enjoy their fundamental rights.

As for international humanitarian law, among the most elementary rights and benefits secured by the Fourth Geneva Convention, to which both Israel and the State of Palestine are Parties, is the right of the population of an occupied territory to the protection of the rule of law.²⁹ This includes the fundamental right to access to justice.³⁰ These elementary rights would be grievously undermined if the Court were to interpret or apply its jurisdictional framework in a way that would immunize persons accused of having committed international crimes against members of the protected population. The ICJ also made this clear when it rejected any objection to its jurisdiction and competence over Israeli violations in Palestine.³¹

VI. Similarly, the Court could not interpret or apply its jurisdictional framework in a way that would relieve or obstruct a State's duty to pursue accountability for Rome Statute crimes.

The Rome Statute 'mandates that the preconditions to the exercise of the Court's jurisdiction under Article 12(2) of the Statute be assessed ... consistent with the purpose of the Court of ending impunity by establishing individual criminal responsibility for crimes'.³² This accords with the fact that the obligations mentioned in the Statute's Preamble of every State to investigate and prosecute such crimes are held *erga omnes*.³³ It also comports with the fact that the Rome Statute reflects *jus cogens* prohibitions that prevail over any competing legal

²⁸ *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, 14 December 2006, [ICC-01/04-01/06-772](#), para. 37, emphasis added; [Palestine 19\(3\) Decision](#), para. 119.

²⁹ See, for example, the rights secured in Geneva Convention IV, [Article 27](#).

³⁰ See, Universal Declaration of Human Rights, [GA Res 217 A \(III\)](#), UN Doc A/810 (1948) 71, Articles 8, 10.

³¹ *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, [Advisory Opinion](#), 24 July 2024, para. 102.

³² [Palestine 19\(3\) Decision](#), para. 111. See also, [Rome Statute](#), Preamble, "Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes".

³³ See, for example, ICRC, Customary Law Study, [Rule 144](#); see also, ICRC, [2016 Commentary](#), Geneva Convention I, paras. 119-120, 143. See also Geneva Convention IV, [Articles 49\(6\)](#) and [147](#), and Additional Protocol I to the Geneva Conventions of 1977, [Article 85\(4\)\(a\)](#).

obligations not of the same rank.³⁴ A *jus cogens* prohibition, or peremptory norm, enjoys a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules.³⁵ These norms are non-derogable and have overriding character. The prohibition on, and punishment of, war crimes, crimes against humanity, and genocide, and aggression, are *jus cogens* norms.³⁶ This means that in situations where jurisdictional requirements have been fulfilled, no State individually or collectively, can validly renounce – by treaty or otherwise – such obligations, and no State can relieve preparators of genocide, war crimes, crimes against humanity, and aggression.³⁷ As a consequence of that normative status, neither the Court nor any State can release a State from its obligation to comply with a peremptory norm.³⁸ Indeed, any interpretation or application of the Rome Statute jurisdictional framework that effectively relieves a State of its obligations under international law, including international humanitarian law, or that could otherwise be interpreted as providing impunity for perpetrators of Rome Statute crimes, would be flatly contradicted by the peremptory rules of international law, in addition to contravening the purpose of the Rome Statute.

VII. Conclusion

The crimes that the arrest warrants relate to do not occur in a vacuum but are part and parcel of impunity by Israeli officials and Israeli nationals for the most serious crimes that threaten international peace and security.³⁹ The Court’s jurisdiction is clearly defined by the plain text of the Rome Statute. To accept bad faith or manifestly meretricious arguments challenging this foundation would lead to pernicious outcomes that are deeply at odds with the Rome Statute, the norms of *jus cogens* on accountability for international crimes, and self-determination as a *jus cogens* bedrock value against oppression, occupation and colonialism.⁴⁰ It would promote

³⁴ [Vienna Convention on the Law of Treaties](#), 23 May 1969, Articles 53 and 64; See also, M. Villiger, [Commentary on the 1969 Vienna Convention on the Law of Treaties](#), Brill 2008, Articles 53 and 64.

³⁵ ICTY, Trial Chamber, *Kupreškić et al.*, Judgment, 14 January 2000, [IT-95-16-T](#), footnote 771.

³⁶ ICTY, Trial Chamber, *Kupreškić et al.*, Judgment, 14 January 2000, [IT-95-16-T](#), para. 520.

³⁷ See, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, [Advisory Opinion](#), 09 July 2004, para. 155-156; See also, ICJ, Case Concerning the Barcelona Traction, Light and Power Company (Belgium v. Spain), [Final Judgment](#), 5 February 1970, para. 34; ICTY, Trial Chamber, *Furundžija*, Judgment, 10 December 1998, [IT-95-17/1-T](#); ICRC, Customary Law Study, [Rule 144](#).

³⁸ ILC, [Responsibility of States for Internationally Wrongful Acts](#), p. 85, para. 6, Commentary to Article 26.

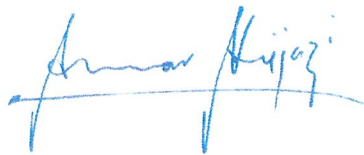
³⁹ Indeed even Israel itself, when at a time has an interest in prosecuting international crimes, the Israeli Supreme Court held in the *Eichmann* case that ‘it is the universal character of the crimes in question [i.e. international crimes] which vests in every State the authority to try and punish those who participated in their commission’, See, Israel Supreme Court, *Attorney General v. Eichmann*, 29 May 1962, [36 ILR 277](#), p. 298

⁴⁰ *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, [Advisory Opinion](#), 24 July 2024, paras. 231-234.

impunity for ‘the most serious crimes of concern to the international community as a whole’ in the context of an unlawful occupation that has repeatedly been condemned by each of the principal organs of the United Nations. It would render the Rome Statute’s provision on complementarity obsolete, in circumstances where the Court was created for exactly such a scenario. It would undo not only the Court’s work in the *Situation in the State of Palestine* that has been before the Court since 2015, but decades of work to ensure accountability including by other international courts. It would usher in a new and retrogressive era of international order where politics and impunity prevail over justice and accountability.

Any attempt to claim that the Oslo Accords have relieved Israel from its obligations under international law, including international humanitarian law, or that such agreements and the unlawful occupation and annexation have altered the status of the Palestinian Territory occupied in 1967 or the sovereign rights within that territory, are contradicted by the rules of international law, and have been consistently rejected by the international community and most recently the ICJ. The State of Palestine accordingly requests that the now moribund request by the United Kingdom and all other similar submissions be rejected. The arguments for ensuring impunity for Israeli perpetrators would allow for the commission of international crimes, by an occupying Power, against a defenseless occupied people, who are denied justice, in an unlawfully occupied territory – the very hallmarks of abusive colonial power, which is an anathema to the Court’s promise of equal accountability under law for international crimes and to its promise of justice to all victims. The State of Palestine stresses the importance of achieving justice for the victims of international crimes and reaffirms its commitment to cooperate fully with the Court. The State of Palestine maintains that ensuring justice and accountability is crucial to achieving peace, to deterring the commission of crimes, and to the integrity and credibility of the Court itself.

Respectfully submitted,



Ambassador Ammar Hijazi
Assistant Minister for Multilateral Affairs
Ministry of Foreign Affairs and Expatriates of the State of Palestine

Signed on 06 August 2024
At Ramallah, State of Palestine