

**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

Observations on the Prosecutor’s Request on behalf of The Touro Institute on Human Rights and the Holocaust, in accordance with the Chamber’s Decision of 22 July 2024

Source: *Amicus Curiae* The Touro Institute on Human Rights and the Holocaust

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

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1. On 22 July 2024, the Chamber granted the request of the Touro Institute on Human Rights and the Holocaust (IHRH) of 11 July 2024, having “evaluated the requests received to assess whether the observations proposed are desirable for the proper determination of the case.”¹ Accordingly, the undersigned hereby provides the following *amicus curiae* observations. Previous observations on related issues earlier in these proceedings by the IHRH are incorporated by reference.²
2. The Prosecutor’s request for arrest warrants against Israeli nationals exceeds this Court’s authority. The Prosecutor asks this Chamber to allow the Palestinian entity to delegate to this Court jurisdiction which it has never in history possessed itself, even though it does not meet the legal test for statehood, and then use that jurisdiction to issue arrest warrants against senior officials of a non-Party State which does not recognize its statehood. This violates the Rome Statute and fundamental principles of international law.
3. The Prosecutor also violated the principle of complementarity by remaining willfully blind to information about Israeli investigations that would have been necessary to assess whether this case was admissible. His unprecedented choice to announce the request on live television confirms that his request for warrants of arrest against Israeli nationals (the “Request”) was a political matter rather than a legal one.
4. The IHRH thus submits that despite the fact that an entity calling itself the “State of Palestine” purported to accede to the Rome Statute, in reality the Court does not have jurisdiction over Israeli nationals. Such jurisdictional questions were reserved for the arrest warrant stage in the Pre-Trial Chamber’s (PTC) earlier decision in this case.³

I. The Request should be denied because “Palestine” has never had criminal jurisdiction over Israelis and cannot delegate such jurisdiction to the Court

5. This Court may only “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, within the confines imposed by international law and the Statute.”⁴ This mirrors the rule that a State “could not transfer more rights than she herself possessed,”⁵ or *nemo plus iuris transferre potest quam ipse habet*. The PA cannot delegate

¹ Decision, para.10.

² Previous IHRH Submissions.

³ Investigation Decision, para. 131.

⁴ *Bangladesh* Decision, para.70; see Kovács Dissent, para.370.

⁵ *Island of Palmas* case, p.838. See Newton.

jurisdiction over Israeli nationals that it has never had, and that it would not “be allowed to assert” under its own legal system, to the ICC. The Court thus cannot “satisfy itself that it has jurisdiction” to “a degree of certainty” and the Request must fail.⁶

6. The Oslo Accords⁷ are the first basis in history for the PA’s exercise of governmental functions in territory previously governed by the Roman, Ottoman, and British Empires, Egypt, Jordan, and Israel. They make clear the PA has never had jurisdiction over Israeli nationals.

7. The Accords state unambiguously that Israel maintains *all jurisdiction over Israelis* and so Palestinian authorities would entirely lack *any criminal jurisdiction over Israelis* - as the Prosecutor has previously acknowledged.⁸ For instance, Article XVII (2)(c) of the Interim Agreement on the West Bank and the Gaza Strip stipulates that “the territorial and functional jurisdiction of the Council [“...construed as meaning the Palestinian Authority”] will apply to all persons, **except for Israelis**, unless otherwise provided in this Agreement” (emphasis added).⁹ Similar provisions denying the Palestinian entity any jurisdiction over Israelis recur repeatedly.¹⁰ This is not limited to jurisdiction to *enforce* law, but also includes jurisdiction to *prescribe* Israeli nationals’ conduct: under Oslo II, any PA legislation that purported to assert jurisdiction over Israelis “shall have no effect and would be void *ab initio*.”¹¹

8. Since the Trial Chamber’s 2021 decision, both Parties have reaffirmed that they are “commit[ted]... to full and mutual implementation” of the Accords and the obligations they entail.¹² International institutions have found similar agreements binding.¹³ And this aspect of the Accords has been applied consistently on the ground – there is no evidence the PA has ever prosecuted an Israeli national.

⁶ Rome Statute, Art. 19(1); Bemba Decision, para.24. See 2012 OTP Palestine Decision (requiring that the question “Does the PA have the capacity to try Israeli citizens?” would have to be “convincingly answered in the affirmative” for the Court to take jurisdiction).

⁷ The Accords is used herein as shorthand for a series of agreements between Israel and the recognized representatives of the Palestinian people, initially the Palestine Liberation Organization (PLO) and later the PA.

⁸ 2020 Request, para.183.

⁹ Protocol Concerning Legal Affairs, Art. I(2)(b): “Israel has sole criminal jurisdiction over the following offences:...offences committed in the Territory by Israelis” (emphasis added)

¹⁰ E.g. Declaration of Principles, Art.VIII; Agreed Minutes to the Declaration of Principles; Agreement on the Gaza Strip and the Jericho Area, Articles V(1)(b) and (c); Interim Agreement on the West Bank and the Gaza Strip, Article V(3)(a), Article VIII(1) of the Article XVII(1)(a) and (2)(c); Interim Agreement on the West Bank and the Gaza Strip, Annex IV, Article II(2)(c); Protocol Concerning Legal Affairs, Art. I(1)(A).

¹¹ Oslo II, Art. XVIII.4(a).

¹² Sharm El-Sheikh Memorandum. See Aqaba Joint Statement, para.1.

¹³ E.g. Darfur Commission of Inquiry Report, para.174.

9. The Request thus asks the Chamber to replace ICC’s jurisdictional principles with a magical process whereby in the initial position neither “Palestine” nor the ICC has jurisdiction over Israeli nationals; “Palestine” delegates jurisdiction (even though it does not have any); and then jurisdiction mysteriously appears and is exercised by the ICC.

10. The illogicality of this formula is matched by illogical attempts to justify its outcome. First, some amici analogize to a case where an existing State has criminal laws that apply to everyone within its jurisdiction but has agreed not to apply them to nationals of a certain country.¹⁴ In that case, the delegating State has jurisdiction – it has simply agreed not to exercise it. But the Accords demonstrate that the PA never had jurisdiction over Israelis to begin with.¹⁵

11. Others have suggested an agreement which divested a party of jurisdiction over any war crimes would violate international law because of states’ obligations to prevent and punish war crimes. This too misunderstands the legal issue. The ICC is not a court of universal jurisdiction nor are states obliged to enact universal jurisdiction statutes. Instead, even charges of war crimes are subject to typical jurisdictional rules, including jurisdictional limitations¹⁶ and immunities.¹⁷ In this case, those same rules show this Court lacks jurisdiction.

12. Others have argued that if the PA’s attempt to delegate jurisdiction over Israeli nationals to the ICC violates the Oslo Accords, that does not affect the ICC’s exercise of jurisdiction because it would be the PA, not the Court, engaged in a wrongful act. But the Chamber cannot “satisfy itself” that it has jurisdiction, which clearly requires an independent analysis, if there was no jurisdiction to delegate in the first place. And the argument’s conclusion is akin to suggesting that someone who unknowingly receives stolen property from a thief is under no obligation to return it when they discover it was stolen.

13. Some amici also criticize the delegation model. But in doing so, they ignore their own previous scholarship¹⁸ and mischaracterize this Chamber’s decision in the *Bangladesh* case.¹⁹

¹⁴ Contra Quigley Amicus, pp.11-12.

¹⁵ Because the PA is not a state as a matter of international law and lacks defined borders, the Prosecutor cannot rely on a state’s inherent jurisdiction over acts within its borders. See below.

¹⁶ Bensouda statement (ISIS).

¹⁷ *Arrest Warrant* decision.

¹⁸ E.g. Schabas (2010) (“In the case of Heads of State of non-party states, the [ICC’s] claim to be able to prosecute rests upon the proposition that somehow States Parties may do collectively what they are not allowed to do individually... while a State Party to the Rome Statute may abandon the immunity that it is entitled to by international law, it would seem that it cannot, by treaty, remove it from non-party States...”).

¹⁹ Amicus Schabas suggests the language from the *Bangladesh* decision reading “within the confines of international law and the statute” means the Court did not actually mean it could exercise jurisdiction only in “the same

II. **Purported statehood, ICC accession, and self-determination do not create jurisdiction where none existed before**

14. Under international law “Palestine” is not a State, so it has no territory on which crimes within the jurisdiction of the Court could have been committed: (a) it does not fulfil the test set forth in the Montevideo Convention²⁰; (b) it does not fulfil the requirement of more recent state practice that a newly-established state respect democratic norms and human rights, (c) it fails to find support from current UN practice, and (d) acquisition of some of the requisite attributes of statehood are governed by the Oslo Accords and remain unsatisfied.²¹

15. Furthermore, UN actors, Palestinian leaders, and international organizations regularly speak of Palestinian statehood as something they hope will be achieved *in the future* – not a state that exists in the present. Even some international bodies that have asked this Court to treat “Palestine” as a State do not speak of it as having achieved Statehood themselves.²²

16. “Palestine” fails the Montevideo test since it has no defined territory²³ over which it “exercises exclusive and complete authority.”²⁴ The Accords indicate that the Palestinian territory remains undefined because several areas are in dispute with Israel, and when the UN Security Council declined to admit “Palestine” to the UN in 2011, members pointed out that Hamas’s control of Gaza means “the PA could not be considered to have effective government control of the claimed territory.”²⁵ This remains true in 2024. In fact, the Prosecutor’s request for warrants against leaders of Hamas and not the PA indicates that he could not establish the PA leaders had the requisite control over Gaza or Hamas. Having taken no measures to prevent or punish the crimes for which he has sought warrants against Hamas leaders, PA leaders would be liable if they did have control.

circumstances in which States Parties would be allowed to assert jurisdiction over such crimes under their legal systems”. But those latter words are meaningful. First, judges are not presumed to have included meaningless language in important decisions. And second, this language immediately follows a paragraph in which the judges addressed whether Bangladesh would be able to assert jurisdiction over the crimes in question under its own domestic system and concluded it would. Bangladesh Decision, para.68.

²⁰ See *Milošević* Decision, paras.85-87.

²¹ Amicus filings that presume “Palestine” is a state as a matter of international law are thus irrelevant. E.g. Heinsch and Pinzauti Amicus.

²² Kovács Dissent, paras.253-261.

²³ Montevideo Convention, Art. I; *Milošević* Decision, paras.85-87.

²⁴ 2019 Preliminary Examination Report, para.48.

²⁵ UNSC Membership Committee Report on “Palestine”, para.12.

17. Under contemporary state practice, for a non-state entity to achieve statehood requires “respect for democracy, the rule of law, and human rights...”²⁶ and “guarantees for ethnic groups and minorities.”²⁷ The Palestinian entity does not satisfy these criteria.

18. The PA is a dictatorship, not a democracy.²⁸ Even though PA law requires elections every four years, the last PA Chair elections were held in 2005 and its last parliamentary elections were held in 2006. Mahmoud Abbas is now in the 20th year of his first 4-year term. Pledges to hold elections have gone unfulfilled.²⁹

19. Far from providing guarantees to non-Arab minorities, in exercising its Oslo Accord rights to self-governance, the PA has sought to achieve ethnic homogeneity through fundamentally discriminatory laws and systematic racial discrimination against Jews. Israeli Jews are not permitted to enter Area A, where the PA is responsible for security, while Israeli Arabs live there freely.³⁰ PA law prohibits anyone from selling land in PA territory to a Jew (also referred to as a “citizen” or “subject” of the “enemy state” of Israel) on penalty of “life imprisonment with hard labor.”³¹ The Palestinian leadership has repeatedly stressed “we will not allow a single Israeli settler to remain in a Palestinian state.”³² PA Prime Minister Abbas described Jews on the Temple Mount, Judaism’s holiest site, as “filthy”,³³ and said Jew-hatred was “legitimate” and the Holocaust was “deserved”.³⁴ The Charter of Hamas – which governs Gaza - contains an explicit

²⁶ Schuster Report, para.41; see Shaw, p.162. This standard is not applied to existing undemocratic states, which would raise many different issues. Peters, pp.9-10.

²⁷ Schuster Report.

²⁸ Hirsch 2022.

²⁹ See Annex E.

³⁰ E.g. Algemeiner, “Thousands of Israelis Live in Area A, but No One Condemns Them – Because They Aren’t Jewish,” November 11, 2021.

³¹ “Clause 1: The wording of clause 114 of Penal Code Number 16 of 1960 and its amendments will be canceled and replaced with the following wording: 1. Any Palestinian...who has attempted to sell or lease part of the Palestinian territories to an enemy state or to one of its citizens or subjects...will be sentenced with a life sentence with hard labor if his actions described above bore results (i.e., the attempt succeeded)...” Penal Code Amendment Decision. For an example of the application of this discriminatory law as recently as 2018 by the Palestinian Grand Criminal Court, see State Department 2018 Report, p. 44; Daragameh (2018); Al Jazeera (2018).

³² “I say to [Israel]: Every stone you have built on our land and every house you have built on our land - there is no escaping that they will disappear, Allah willing. And the more they announce houses here or settlements there - they will all disappear, Allah willing, and will be in the garbage dump of history.” Abbas 2019 Speech.

³³ Abbas 2015 Speech; NYT 2015.

³⁴ Abbas 2018 Speech: “...Jews who migrated to eastern and western Europe were subjected to massacres by some state every 10 to 15 years from the 11th century until the Holocaust that took place in Germany. OK, but why did this happen?...The hatred of the Jews is not due to their religion, but rather due to their social role. If so, it's a different issue. And therefore, the Jewish problem that was common in all of the states of Europe against the Jews was not due to their religion, but rather due to their social role that was connected to usury, and banks, and so forth.”

call for genocide against Jews,³⁵ a call which it implemented on 7 October 2023 and has promised to repeat again and again.

20. The weakness of the arguments for current Palestinian statehood is reflected by attempts to use sources with no legal weight to support such claims. For instance, amici rely on a Security Council vote this April. But in that vote, the Security Council declined to admit “Palestine” as a U.N. member and expressed no collective view on whether it met legal standards for statehood.³⁶ Similarly, amici ask this Chamber to rely on a separate one-judge statement in nonbinding advisory proceedings at another court.³⁷ These sources are not treaties. And they do not reflect customary international law, or a decision by an institution authorized to decide the issue.

21. The 2012 and 2023 decisions by the General Assembly (UNGA) granting some U.N. participatory rights to the “State of Palestine”³⁸ similarly do not establish statehood. UNGA has no power to make international law – only “recommendations.”³⁹ And the votes do not confer statehood on “Palestine” as a matter of customary international law: they were not adopted by consensus, the specially-affected state (Israel) voted against, and their mere repetition does not evidence *opinio juris* of the voting states. The standard set out in the *Nuclear Weapons* case⁴⁰ is not satisfied.

22. Reliance on the Palestinian entity’s status as a State Party to the Rome Statute is similarly misguided. This status is based on the depositary’s acceptance of the Palestinian instrument of ratification – which the depositary itself described at the time as a purely “administrative” function,⁴¹ consistent with international law.⁴² A ‘State Party’ which is not also a *state* as a matter of international law does not *ipso facto* acquire the ‘territory’ that states do, namely, defined borders within which it has sovereign control, or the authority to delegate over such territory.⁴³

23. Finally, arguments about the right of self-determination do not change the conclusion that “Palestine” is not presently a State. The right of self-determination does not automatically confer

³⁵ Hamas Covenant. See Annex F

³⁶ On the contrary, see S/2024/313; and contra Schabas Amicus, para.3.

³⁷ Schabas, paras.4-5.

³⁸ A/RES/67/19; A/RES/ES-10/23.

³⁹ UN Charter, Art. 13. See OLA Recommendation Memorandum; Suy, p. 190, quoted by Wood, fn.126.

⁴⁰ Nuclear Weapons Case, para.73.

⁴¹ SG Depositary Clarification.

⁴² See VCLT Art. 77 (endowing depositaries with only administrative functions, not with any authority to adjudicate contentious legal issues).

⁴³ Contra Investigation Decision.

statehood. When the ICC⁴⁴ or other international courts⁴⁵ have been called upon to determine whether particular entities have achieved statehood, they have asked whether the entity *actually is* a State rather than considering whether it had a right to *become* a State.

24. In addition, the claimants of self-determination here themselves deny it to the very people they purport to represent. Self-determination has been defined at the ICJ as “the need to pay regard to the freely expressed will of peoples...”⁴⁶ As set forth above, “Palestine” is a dictatorship where there is no opportunity for the freely expressed will of its people. No vote; no elections; no parliament; no legislative body; no free expression⁴⁷ - denying key components of self-determination for which Palestinian leaders are directly to blame.

25. Third, like other ICCPR rights, self-determination should not be interpreted and applied to “result in the destruction (or impairment) of any of the other rights protected” by the ICCPR.⁴⁸ On the contrary, “the rights of both individuals and groups need to be protected against oppressive acts in the name of self-determination.”⁴⁹ But the PA has used the legal authority given it by Oslo to violate the human rights of both Jews and Palestinians.⁵⁰ And international law has long recognized the Jewish people has self-determination rights too.⁵¹ Respecting both groups’ rights is not achieved by abandoning legal standards in order to recognize a Palestinian state which seeks to ethnically cleanse the territories it claims of their Jewish populations.

III. The request violates the principle of complementarity and should be denied because the Prosecutor cannot show cases would be admissible

26. The Preamble to the Rome Statute highlights that “the International Criminal Court established under this Statute shall be complementary to national criminal jurisdiction.” And the Statute makes clear that cases which are being investigated by any State which is willing and able to conduct such investigations are inadmissible at the ICC.⁵²

27. That principle has not been followed here. As widely reported, the Prosecutor and members of his staff were scheduled to meet with Israeli officials in May 2024 to receive information about

⁴⁴ *Georgia Decision*.

⁴⁵ *Milošević Decision* pars.85-87.

⁴⁶ *Western Sahara Advisory Opinion*, para. 59f.

⁴⁷ E.g. *Palestine Concluding Observations*.

⁴⁸ McQuorodale, at p. 876. See also ICCPR, Art.5(1).

⁴⁹ McQuorodale, at p. 878.

⁵⁰ See above paras.18-19.

⁵¹ E.g. *Palestine Mandate*; *Shaheed Report*.

⁵² *Rome Statute*, Arts. 17, 53.

domestic investigations but they precipitously cancelled plans to do so.⁵³ Instead, immediately upon cancellation the Prosecutor took a highly performative path, publicly announcing these warrant requests.

28. Because the Prosecution has remained wilfully blind to the details of Israeli investigations, it cannot be sure the allegations in the warrant are not already being “investigated... by a State which has jurisdiction”. This wilful blindness is inexplicable. The Prosecutor has recognized that Israel has a “robust system intended to ensure compliance with international humanitarian law.”⁵⁴ And Israel is carrying out the “timely, independent examination and investigation” of “credible allegations of crimes” that he called for: Israel’s Military Advocate General is already “conducting examinations and investigations of possible misconduct in the context of operational activity, in accordance with its obligations under Israeli and international law”⁵⁵ – not many years after the fact, as in other situations where the Prosecution has respected the complementarity principle, but while the conflict is intensively ongoing.

29. Indeed, Israel has demonstrated its commitment to the rule of law and principles of accountability throughout its history and in the context of multiple wars and operations.⁵⁶ Israel has conducted numerous investigations, prosecuted Israelis for their conduct during hostilities, and created commissions of inquiry that actively engaged in scrutinizing doctrinal issues, as well as follow-up commissions to ensure implementation of recommendations.⁵⁷ These commissions, ongoing inquiries and changes in combat doctrine demonstrate Israel’s ability to conduct credible investigations and pursue accountability for violations.

30. OTP’s policy on complementarity requires it to “assess[] complementarity... in seizing a Chamber with a request for an arrest warrant”⁵⁸ and to “step out” if national authorities are carrying out “relevant investigations.”⁵⁹ Hence, this was a critical moment for the OTP to have had accurate information about domestic processes.

⁵³ Reuters 2024; Blinken Statement.

⁵⁴ Khan December 2023 Statement.

⁵⁵ MAG February Statement; MAG May Speech.

⁵⁶ For information regarding how the IDF implements international law to its conduct, directives, training; issues relating to conduct of hostilities; and information regarding the Israeli justice system and military justice system, see 2014 Gaza Report pp. 138-149, 155-194, 218-232.

⁵⁷ E.g. Turkel Commission Report A; Turkel Commission Report B; Ciechanover Report; September 2014 MAG Report; December 2014 MAG Report; March 2015 MAG Report; June 2015 MAG Report; August 2016 MAG Report; August 2018 MAG Report; IDI 2023.

⁵⁸ OTP Policy on Complementarity and Cooperation, para.146.

⁵⁹ Id., para.153.

31. OTP's wilful blindness has also resulted in its failure to treat States equally. In Colombia, Guinea, Iraq/UK and other situations, the Prosecution worked with State officials for years to facilitate domestic investigations and prosecutions.⁶⁰ In this case, just months after the conduct in question, the Prosecutor abruptly broke off cooperation with domestic authorities. In doing so, he proudly warned that we must apply the law "equally" and not "selectively."⁶¹ Sadly, by treating Israel differently than Colombia, Guinea, and others, and departing from its complementarity policy mere weeks after announcing the policy, the Prosecution has done exactly what he warned us against – it has applied the law selectively, not equally.

32. The lack of ICC jurisdiction and failure to abide by complementarity each independently provide sufficient reasons for the Chamber to deny the Prosecutor's request. Should the Chamber nonetheless consider the merits of the request, it should keep the Prosecutor's rush to judgment in mind and carefully review the supporting evidence he has submitted to justify the request. In particular, the Chamber should refrain from considering reports from U.N. bodies, NGOs, and others as direct evidence that can support a warrant request⁶² without evaluating the actual source of the allegations contained in such documents.⁶³ Many international sources have been unable to collect information directly in Gaza and their allegations have been repeatedly debunked as originating with Hamas, other terrorist groups, and others involved in the 7 October atrocities.

33. It is particularly important to effectuate the ICC's claim of rigorous evidentiary standards, and not enhance the weight given to third-party reports, because international organizations have not been fully objective, reliable, transparent, or accountable in this situation. Multiple UN Secretaries-General have decried institutional U.N. bias against Israel.⁶⁴ Since the Hamas atrocities on 7 October, UN bodies and appointed actors, for instance, have published reports making false accusations against Israel and refused to withdraw them in light of clear and convincing contrary evidence;⁶⁵ violated due diligence in collecting and assessing evidence

⁶⁰ E.g. Guinea MoU (reflecting a 13-year complementarity process); Colombia Cooperation Agreement (reflecting a 17-year complementarity process); Iraq/UK Final Report.

⁶¹ Request Announcement.

⁶² E.g. *Bemba Trial Judgment*, paras.270-271.

⁶³ See e.g. *Armed Activities Case*, paras.152, 154, 215. See Kovács s Dissent, paras. 6-11, 93, 270.

⁶⁴ Annan Address; Ban Ki-Moon Statement.

⁶⁵ A press release blaming Israel for bombing the Al Ahli Arab Hospital remains posted on the website of the UN Office of the High Commissioner for Human Rights without retraction, notwithstanding evidence that the missile which struck the hospital was actually hit by a Palestinian Islamic Jihad rocket that was aimed for Israeli civilians and misfired. Expert Erroneous Allegation; CNN 18 October; CNN 19 October.

(including failures to find sexual atrocities against Israeli women on 7 October)⁶⁶ and used antisemitic and appalling rhetoric that undermines their credibility and legitimacy.⁶⁷

34. Biases of UN bodies and actors⁶⁸ makes it particularly important for the Chamber to safeguard and uphold evidentiary standards. Indeed, there is a risk such bias has already tainted the Request in light of repeated announcements by the COI of its “close” relationship with the OTP, including public statements expecting ICC reliance upon their output.⁶⁹

IV. Conclusion

35. For the above-listed reasons, the Court lacks criminal jurisdiction over Israelis and the Prosecutor’s request for warrants against Israeli national defendants should be denied.

Respectfully submitted,



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Director

Touro Institute on Human Rights and the Holocaust

Dated this 6th day of August 2024

New York, New York

⁶⁶ E.g. Alsalem Interview and UN Human Rights Council Commission of Inquiry; see Annex C. Similarly, contrary to publicly and widely available videographic and photographic evidence, victim testimony, and witness statements, the COI report on October 7th states that “concerning rape” of Israeli victims the COI has “not been able to independently verify such accusations.” COI 12 June Report.

⁶⁷ For instance, the conduct of UN Human Rights Council appointed Special Rapporteur Francesca Albanese was described as “scandalous” by France; “appalling” by Germany; and caused the U.S. to deem her “not fit for this or any position at the UN.” France MFA Tweet; German MFA Tweet; U.S. Albanese Statement. See Annex D; Kothari Video; Pillay 30 October Interview (“But the point I’m making is when you have a whole population oppressed for so long with no remedies, no relief, they are actually forced to resort to armed struggle.”)

⁶⁸ See e.g. UNRWA: WSJ 2024, Times of Israel February 18, 2024, Fox News 2024, Government of Israel 2024, IDF Press Release February 2024, IDF Tweet July 2024, Times of Israel, February 10, 2024. Amici may also rely on the recent ICJ opinion even though the presiding judge had formerly served at the highest levels of the diplomatic corps of a state which does not recognize Israel, been directly and recently involved in his country’s political sphere, and has questioned Israel’s legitimacy. Mroue ; Salam Statements ; Salam Tweet.

⁶⁹ E.g. Pillay 25 October Briefing (“[W]e’re working very closely with the Prosecutor already”); Pillay 30 October Interview; Pillay 16 April Briefing; COI Press Conference