

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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PRE-TRIAL CHAMBER I

Before: Judge Nicolas Gaillou, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Beti Hohler

SITUATION IN THE STATE OF PALESTINE

Public Document

**OPCV Observations
on the State of Israel's challenge to the jurisdiction of the Court
pursuant to article 19(2) of the Rome Statute**

Source: Office of Public Counsel for Victims

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☐ Unrepresented Victims

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I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”) herewith submits her observations on behalf of unrepresented Victims in relation to the challenge to the jurisdiction of the Court filed by the State of Israel (the “Jurisdictional Challenge”).¹

2. It appears that the Jurisdictional Challenge relates to a) a general dispute to the jurisdiction of the Court over Israeli nationals (at the ongoing investigation stage, as well as at the time when Israeli nationals have been identified as suspects);² and b) the territorial scope of jurisdiction pertaining to the State of Palestine.³

3. As directed by the Chamber, the present observations will address both (i) the substance of Israel’s arguments as set out in the Jurisdictional Challenge; and (ii) the applicable legal basis under article 19(2) of the Rome Statute (the “Statute”).⁴

4. On the substance of the State of Israel’s contentions, the Principal Counsel submits that, as found by Pre-Trial Chamber I in a previous composition (the “Former Chamber”), the general matter of territoriality of the State of Palestine has been settled through its lawful accession to the Statute. It is thus understood that its *territory* encompasses the areas occupied by Israel since 1967, namely the Gaza Strip, the West Bank, and East Jerusalem. Since the matter was not appealed, it has attained the status of *res judicata*. The ruling of the Former Chamber is therefore binding on subsequent proceedings, prohibiting parties from re-litigating an issue that has already been adjudicated.

¹ See the “Public Redacted Version of ‘Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute”, [No. ICC-01/18-354](#), 23 September 2024 (the “Jurisdictional Challenge”).

² *Idem*, paras. 1, 38-123.

³ *Idem*, para. 2.

⁴ See the “Decision on the conduct of proceedings and other procedural matters related to ‘Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute’” (Pre-Trial Chamber I), [No. ICC-01/18-435](#), 28 May 2025, para. 16.

5. Concerning the issue of territoriality and the State of Palestine's delegation of jurisdiction to the Court, it is argued that, for the purposes of fulfilling its obligations as a State Party, the State of Palestine does have *de jure* jurisdiction over the territory of the Gaza Strip and the West Bank, including East Jerusalem, as previously determined by the Former Chamber in its ruling of 5 February 2021 on the Court's territorial jurisdiction in Palestine. This is confirmed by the fact that the State of Palestine, through its internationally recognised government in Ramallah (the Palestinian Authority), has *de jure* control over the Gaza Strip, despite its lack of *de facto* control of the territory. In this regard, the '*territory of*' a State Party for the purposes of article 12(2) of the Statute encompasses the geographical area to which that State has *de jure* title under international law.

6. Article 19(2)(c) of the Statute is the only legal basis pursuant to which the State of Israel may bring a challenge against the jurisdiction of the Court on the *sole* basis of the Israeli nationality of the alleged perpetrators. However, said standing cannot be imported into the broader context of the Situation and has to be confined to *a case* at which juncture the criteria under article 17 of the Statute apply. In fact, the matter of the Court's jurisdiction over specific persons only becomes relevant if and when the jurisdiction of the Court is challenged under article 17, once a *case* has been opened and a suspect identified.

7. Victims in contact with the Office have expressed concern at the possibility that the Court re-open the question of the validity of the State of Palestine's accession to the Rome Statute and its status as a member State with the authority to delegate jurisdiction, a matter they consider definitely settled.

8. For the Victims, the Court's very existence is founded on the wish of the international community to end impunity and to answer to *de facto* domestic inabilities to investigate and prosecute the most heinous crimes. Therefore, they are concerned

that re-opening the matter could lead to impunity for persons allegedly responsible for the crimes committed in the context of the Situation.

II. PROCEDURAL BACKGROUND

9. On 5 February 2021, following a request from the Prosecution,⁵ the Former Chamber issued the “Decision on the ‘Prosecution’s request pursuant to article 19(3) for a ruling on the Court’s jurisdiction in Palestine’” (the “Article 19(3) Jurisdiction Decision”).⁶

10. On 20 May 2024, the Prosecutor announced that he had filed several applications before a newly constituted Pre-Trial Chamber I (the “Chamber”) for warrants of arrest for Mr Yahya Sinwar, Mr Mohammed Diab Ibrahim Al-Masri (Deif), and Mr Ismail Haniyeh for war crimes and crimes against humanity allegedly committed on the territory of the State of Israel and the State of Palestine (in the Gaza Strip) from at least 7 October 2023; as well as for Mr Benjamin Netanyahu and Mr Yoav Gallant for war crimes and crimes against humanity allegedly committed on the territory of the State of Palestine (in the Gaza Strip) from at least 8 October 2023.⁷

11. On 10 June 2024, the United Kingdom filed a request to provide written *amicus curiae* observations on “*whether the Court can exercise jurisdiction over Israeli nationals, in*

⁵ See the “Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine”, [No. ICC-01/18-12](#), 22 January 2020. See also, the OPCV “Observations on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’ on behalf of unrepresented victims”, [No. ICC-01/18-105](#), 16 March 2020 (the “OPCV Submissions of 16 March 2020”).

⁶ See the “Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’” (Pre-Trial Chamber I), [No. ICC-01/18-143](#), 5 February 2021 (the “Article 19(3) Jurisdiction Decision”).

⁷ See the “[Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine](#)”, 20 May 2024.

circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords”⁸ and related sub-issues.⁹

12. On 12 August 2024, following a request¹⁰ and having been authorised by the Chamber,¹¹ the Office filed observations representing the general interests of Victims on the jurisdictional matter raised by the United Kingdom.¹²

13. On 25 October 2024, the Presidency reconstituted the Chamber.¹³

14. On 21 November 2024, the Chamber rejected the Jurisdictional Challenge (the “Decision on the Jurisdictional Challenge”).¹⁴

15. On 13 December 2024, the State of Israel filed an appeal against the Decision on the Jurisdictional Challenge.¹⁵

16. On 24 April 2025, the Appeals Chamber reversed the Decision on the Jurisdictional Challenge, and remanded the matter to the Chamber to rule on the substance of the challenge,¹⁶ noting that “[i]t is for the Pre-Trial Chamber to determine the

⁸ See the “Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103”, No. ICC-01/18-171-SECRET-Exp-Anx, 10 June 2024. Pursuant to Order [No. ICC-01/18-173-Red](#), dated 27 June 2024, the document was reclassified as public, [No. ICC-01/18-171-Anx](#).

⁹ *Ibid.*

¹⁰ See the “OPCV Request to appear before the Chamber pursuant to regulation 81(4) of the Regulations of the Court”, No. ICC-01/18-185-SECRET, 11 July 2024. Pursuant to Order [No. ICC-01/18-256-Conf](#), dated 30 July 2024, the document was reclassified as public, [No. ICC-01/18-185](#).

¹¹ See the “Decision concerning the views, concerns and general interests of victims” (Pre-Trial Chamber I), No. ICC-01/18-256-Conf, 30 August 2024. A public redacted version of the decision was issued on 7 August 2024 as [No. ICC-01/18-256-Red](#).

¹² See the “OPCV Observations on Jurisdictional Matters affecting the general interests of Victims”, [No. ICC-01/18-327](#), 12 August 2024.

¹³ See the “Decision replacing a judge in Pre-Trial Chamber I” (Presidency), [No. ICC-01/18-366](#), 25 October 2014.

¹⁴ See the “Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute” (Pre-Trial Chamber I), [No. ICC-01/18-374](#), 21 November 2024.

¹⁵ See the “Appeal of ‘Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute (ICC-01/18-374)’” (Appeals Chamber), [No. ICC-01/18-402 OA2](#), 13 December 2024.

¹⁶ See the “Judgment on the appeal of the State of Israel against Pre-Trial Chamber I’s ‘Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute’” (Appeals Chamber), [No. ICC-01/18-422 OA2](#), 24 April 2025, para. 64.

*applicable legal basis under article 19(2) of the Statute for addressing Israel's jurisdictional challenge at the present stage of the proceedings, and to provide any required further instructions on the procedure to be followed."*¹⁷

17. On 28 May 2025, the Chamber issued the "Decision on the conduct of proceedings and other procedural matters related to 'Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute'",¹⁸ instructing the Victims Participation and Reparations Section to contact the relevant Legal Representatives of the Victims to facilitate the submission of their observations by 27 June 2025.¹⁹

18. On 2 June 2025, the OPCV requested leave to submit observations pursuant to regulation 81(4) of the Regulations of the Court (the "Regulations").²⁰

19. On 4 June 2025, the Chamber authorised the OPCV to submit observations on behalf of unrepresented Victims by 27 June 2025.²¹

III. SUBMISSIONS

20. The present submissions will first address the existence of territorial sovereignty and plenary jurisdiction on the part of the State of Palestine for the purpose of article 12(2)(a) of the Statute.²² Thereafter, the issue of the State of Israel's standing to challenge the jurisdiction of the Court under article 19(2)(c) will be examined.

¹⁷ *Ibid.*

¹⁸ See the "Decision on the conduct of proceedings and other procedural matters related to 'Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute'", *supra* note 4.

¹⁹ *Idem*, p. 8.

²⁰ See the "OPCV's request to appear before the Chamber pursuant to regulation 81(4) of the Regulations of the Court.", [No. ICC-01/18-438](#), 2 June 2025.

²¹ See the "Decision on the 'OPCV's request to appear before the Chamber pursuant to regulation 81(4) of the Regulations of the Court'" (Pre-Trial Chamber I), [No. ICC-01/18-439](#), 4 June 2025.

²² See the Jurisdictional Challenge, *supra* note 1, para. 2.

A. The matter of the territory of the State of Palestine has acquired the status of *res judicata*

21. The State of Israel contends that the precondition to the exercise of the jurisdiction enshrined in the Statute – namely that the conduct occurred on the **territory** of a State – is not met in the present instance because the act of accession by the State of Palestine does not fulfil the requirements of article 12(2).²³

22. Preliminarily, the Principal Counsel recalls that Palestine has been a State Party to the Statute since 2015, when it deposited its instrument of accession with the United Nations Secretary General. The latter's acceptance of said instrument based on General Assembly Resolution 67/19²⁴ settled the question of Palestine's statehood for the purposes of accession to the Statute. Palestine also qualifies as a 'State' for the purposes of article 12(2)(a) on the same basis.²⁵

23. Moreover, the question of jurisdiction *ratione loci* in relation to the State of Palestine within the meaning of article 12 of the Statute, has been authoritatively settled in the Article 19(3) Jurisdiction Decision which has not been appealed.²⁶ Consequently, the matter of the territory of the State of Palestine for the purposes of the interpretation of the Statute has attained the status of *res judicata*.

24. In particular, the decision recalled that, while the matter of Palestinian statehood in international law and the realities of territoriality under military occupation undoubtedly remain extraordinarily complex and unresolved, the territory of the State of Palestine comprises, *for the purposes of its ability to accede to international treaties, such as the Statute*, the Palestinian territory occupied by the State of Israel since 1967, namely the Gaza Strip and the West Bank, including East

²³ *Ibid.*

²⁴ See Resolution 67/19 adopted by the General Assembly Resolution on 29 November 2012, UN Doc. [A/Res/67/19](#), recalling that the territory of the State of Palestine comprises the Palestinian territory occupied since 1967, currently under Israeli military occupation.

²⁵ In this sense, see the OPCV Submissions of 16 March 2020, *supra* note 5, paras. 2, 12-15.

²⁶ See the Article 19(3) Jurisdiction Decision, *supra* note 6, para. 112.

Jerusalem.²⁷ Indeed, “*the recognition of the state of Palestine by UNGA Resolution 67/19 encompasses the international recognition of territory belonging to that state, notwithstanding the absence of Israeli consent (of whatever meaning) with respect to that territory*”.²⁸

25. The Former Chamber, albeit by majority, confirmed that the Court can exercise jurisdiction within the territory of the State of Palestine; and that the Oslo Accords²⁹ are not applicable when determining the Court’s jurisdiction.³⁰ In this regard, the Office has already argued that, bilateral political agreements such as said Accords do not supersede international law.³¹ In fact, the criminal justice system of an occupied State remains and jurisdiction is retained by the State of Palestine under international law – irrespective of any political arrangement agreed upon with the occupying power over three decades ago.

B. The question of the non-recognition by the State of Israel of the sovereignty of the State of Palestine is irrelevant for the issue at stake

26. The State of Israel contends that, since the State of Palestine is a non-sovereign entity, an inquiry is required into its competences under international law in accepting the jurisdiction of the Court.³²

27. The Principal Counsel submits that the Court has no competence to question the internal prerogatives of any entity. Once a State has acceded to the Statute, the Court can only treat said State as a single entity. Since the Statute does not allow for any reservations,³³ it follows that the newly acceded State cannot put any limitations

²⁷ *Idem*, paras. 118.

²⁸ See RONEN (Y.), “Israel, Palestine and the ICC – Territory Uncharted but Not Unknown”, *Journal of International Criminal Justice*, Vol. 12, 2014, p. 12.

²⁹ See the Declaration of Principles on Interim Self-Government Arrangements, annexed to UN Doc. [A/48/486](#), 13 September 1993 (the “Oslo Accords”).

³⁰ See the Article 19(3) Jurisdiction Decision, *supra* note 6, para. 129.

³¹ See the “OPCV Observations on Jurisdictional Matters affecting the general interests of Victims”, [No. ICC-01/18-327](#), 12 August 2024, para. 3.

³² See the Jurisdictional Challenge, *supra* note 1, para. 4.

³³ See Article 120 of the Statute.

on the Court's *ratione loci* jurisdiction excluding certain areas of its territory from said jurisdiction. Conversely, no provision of the Statute allows the Court to question whether the State may have concluded agreements with another State about whether or not it would exercise criminal jurisdiction over the latter's nationals on its territory, or whether certain enclaves within its territory were under the control of that other State.

28. Once a State has become Party to the Statute, it must be treated as such, and as possessing *de jure* control of its territory. And indeed, the then Court's Vice-President unequivocally confirmed, upon Palestine's accession, that it thereby acquired "*all the rights as well as responsibilities that come with being a State Party to the Statute [...] substantive commitments, which cannot be taken lightly*".³⁴

C. The State of Palestine possesses territorial sovereignty and primary jurisdiction

29. The State of Israel further argues that Palestinian "*sovereignty remains indeterminate pending final status negotiations*" and that the "*the Oslo Accords [...] establish the jurisdictional competences over the territory between the Parties in the interim period. These agreements make clear that the Palestinian authorities have no criminal jurisdiction either in law or in fact over Area C, Jerusalem and Israeli nationals – and thus cannot validly delegate such jurisdiction to the Court. Suggestions that the Palestinian authorities have plenary jurisdiction that exceeds the competences that were specifically ascribed to them in the Israeli-Palestinian bilateral agreements, are without legal foundation*".³⁵

30. The Principal Counsel submits that, for the purposes of the fulfilment of its obligations as a State Party, the State of Palestine does have *de jure* jurisdiction over the territory of the Gaza Strip and the West Bank, including East Jerusalem, as

³⁴ See the ICC Press Release, "[ICC welcomes Palestine as a new State Party](#)", 1 April 2015 (emphasis added).

³⁵ See the Jurisdictional Challenge, *supra* note 1, para. 8.

previously determined by the Former Chamber in the Article 19(3) Jurisdiction Decision.³⁶

31. By virtue of the obligations deriving from its valid accession to the Statute, the State of Palestine cannot act in contravention of the Statute or raise reservations thereto – such as renouncing any jurisdiction over non-Palestinians. As observed by the International Court of Justice (the “ICJ”):

*“It is [...] a generally recognized principle that a multi-lateral convention is the result of an agreement freely concluded upon its clauses and that consequently **none of the contracting parties is entitled to frustrate or impair, by means of unilateral decisions or particular agreements, the purpose and raison d’être of the convention**”.*³⁷

32. Notwithstanding the position that no inquiry with respect to the impact of the Oslo Accords has to be undertaken by the Chamber as a matter of law,³⁸ the Principal Counsel underlines that the question of the Oslo Accords and any lack of Palestinian criminal jurisdiction over Area C, Jerusalem and Israeli nationals, previously raised in the Article 19(3) Jurisdiction Decision, would still not be strictly pertinent for the disposition of the current challenge, as it pertains to investigations into and cases for crimes allegedly committed *in (on the territory of) the Gaza Strip*.³⁹

33. In this regard, as briefly illustrated *infra*, the State of Palestine, through its internationally recognised government in Ramallah (the Palestinian Authority), has *de jure* control over the Gaza Strip, despite its lack of *de facto* control of said territory.

34. The Agreements on the territory of the Gaza Strip were regulated by the Cairo Agreement (also known as the Gaza-Jericho Agreement) which forms part of the Oslo Accords and was concluded between the Palestinian Liberation Organisation (the

³⁶ See the Article 19(3) Jurisdiction Decision, *supra* note 6, para. 123.

³⁷ See ICJ, [Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide](#), Advisory Opinion, 28 May 1951, p. 10 (emphasis added).

³⁸ See *supra* para. 25.

³⁹ See the Jurisdictional Challenge, *supra* note 1, para. 1.

“PLO”) and the State of Israel on 4 May 1994.⁴⁰ According to the Cairo Agreement, the Gaza Strip was initially governed by the Palestinian Authority,⁴¹ established by the 1993 Oslo Accord.⁴²

35. Subsequently, on 28 September 1995, the State of Israel and the PLO signed the *Israeli-Palestinian Interim Agreement regarding the West Bank and the Gaza Strip*,⁴³ according to which a certain degree of administrative control over the occupied Palestinian territories was to be handed over to the Palestinian Authority. In particular, the Agreement provided for the creation of a “Council” understood as an executive authority. By virtue of Article I(2) of the Agreement the term “Council” meant the Palestinian Authority.⁴⁴

36. Matters of jurisdiction regarding the territory of the West Bank and Gaza Strip were contained in Article XVII of the Oslo Accord II for the interim period. The territorial and functional jurisdiction of the Council was agreed to apply to all persons, except for Israelis, with certain other exceptions, such as Israeli military installation areas and settlements.⁴⁵

⁴⁰ See the [Agreement on the Gaza Strip and Jericho Area](#), 4 May 1994.

⁴¹ *Idem*, [Article III\(1\)](#). See also the [Torkel Commission Report](#), para. 15.

⁴² See Article I of the [Declaration of Principles on Interim Self-Government Arrangements](#), 13 September 1993 (the “OSLO I Accord”).

⁴³ See the [Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip](#), 28 September 1995 (the “Oslo II Accord”).

⁴⁴ See the Preamble of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, *idem*. See also Article I(2).

⁴⁵ *Idem*, Article XVII of the Oslo II Accord. The relevant part reads: “1. In accordance with the DOP, the jurisdiction of the Council will cover West Bank and Gaza Strip territory as a single territorial unit, except for: a. issues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis; and b. powers and responsibilities not transferred to the Council. 2. Accordingly, the authority of the Council encompasses all matters that fall within its territorial, functional and personal jurisdiction, as follows: a. The territorial jurisdiction of the Council shall encompass Gaza Strip territory, except for the Settlements and the Military Installation Area shown on map No. 2, and West Bank territory, except for Area C which, except for the issues that will be negotiated in the permanent status negotiations, will be gradually transferred to Palestinian jurisdiction in three phases, each to take place after an interval of six months, to be completed 18 months after the inauguration of the Council. **At this time, the jurisdiction of the Council will cover West Bank and Gaza Strip territory**, except for the issues that will be negotiated in the permanent status negotiations. Territorial jurisdiction includes land, subsoil and territorial waters, in accordance with the provisions of this Agreement. b. The functional jurisdiction of the Council extends to all powers and responsibilities transferred to the Council, as specified in this Agreement or in

37. In 2005, Israel unilaterally⁴⁶ withdrew from the Gaza Strip pursuant to the *Disengagement Plan* adopted in 2004.⁴⁷ Following Israel's withdrawal from the Gaza Strip and evacuation of its settlements from that territory in September 2005,⁴⁸ parliamentary elections for the Palestinian Authority were held in January 2006.⁴⁹ Hamas emerged with a majority vote.⁵⁰

38. Hamas subsequently gained *de facto* control within the Gaza Strip on 15 June 2007. However, the Palestinian Authority in Ramallah remained the internationally recognised government of the State of Palestine.⁵¹ To this day, Hamas continues to exercise *de facto* control within the territory of the Gaza Strip,⁵² while the Palestinian Authority is the sole, recognised and legitimate Palestinian Government whose territory encompasses the Gaza Strip and the West Bank, including East

any future agreements that may be reached between the Parties during the interim period. c. The territorial and functional jurisdiction of the Council will apply to all persons, except for Israelis, unless otherwise provided in this Agreement. d. Notwithstanding subparagraph a. above, the Council shall have functional jurisdiction in Area C, as detailed in Article IV of Annex III. 3. The Council has, within its authority, legislative, executive and judicial powers and responsibilities, as provided for in this Agreement. 4. a. Israel, through its military government, has the authority over areas that are not under the territorial jurisdiction of the Council, powers and responsibilities not transferred to the Council and Israelis. b. To this end, the Israeli military government shall retain the necessary legislative, judicial and executive powers and responsibilities, in accordance with international law. This provision shall not derogate from Israel's applicable legislation over Israelis in personam" (emphasis added).

⁴⁶ See the [Statement of former Prime Minister of the State of Israel Ariel Sharon](#) delivered at the Sharm el-Sheikh summit of 8 February 2005 (official English translation).

⁴⁷ See the Disengagement Plan as per [the Cabinet Resolution Regarding the Disengagement Plan](#), 6 June 2004.

⁴⁸ See the [Turkel Commission Report](#), p. 28.

⁴⁹ See the UN Press Release, [Statement on Palestinian Elections by Bureau of Committee on Palestinian Rights](#), 7 February 2006.

⁵⁰ See the official [election results](#) of the election of 25 January 2006 indicating Hamas ("Change and Reform") winning 74 seats of 132 seats in the Palestinian Legislative Council with a [majority in all Gaza districts](#).

⁵¹ See the [OCHA Report on the occupied Palestinian Territory in the Humanitarian Monitor](#), Issue 14 June 2007, dated 26 July 2007. See also, the [Gaza Strip: OCHA Situation Report](#), 15 June 2007; and the UN Press Release of the General Assembly, [GA/PAL/1058](#), 3 July 2007.

⁵² See the UNSCO [Report to the Ad-Hoc Liaison Committee](#) 22 September 2022, p. 11; UNSCO Report, [As tensions in Gaza are temporarily contained, the viability of the Palestinian Authority is threatened by major financial, economic and political challenges](#), 25 April 2019, p. 1. See also, [Hamas has been hit hard but is not out of Gaza](#), 29 January 2025.

Jerusalem,⁵³ as consistently recognised by the United Nations General Assembly and the ICJ.⁵⁴

39. The Principal Counsel submits that the “*territory of*” a State Party for the purposes of article 12(2)(a) of the Statute encompasses the geographical area to which that State has *de jure* title under international law, a *de facto* control over said area being neither necessary nor sufficient.⁵⁵ In this regard, she recalls her previous submissions on the status of the Palestinian territory.⁵⁶ For the sake of argument, even if the State of Palestine could only confer jurisdiction over areas for which it can exercise criminal jurisdiction within its territory, this would have no impact on the issue at stake where the alleged crimes under the jurisdiction of the Court were committed within the Gaza Strip, given that, since the State of Israel’s disengagement in 2005, there are no longer Israeli settlements and military installation areas (excluded from Palestinian jurisdiction under the Oslo Accords) on said territory.

40. If *arguendo*, the Chamber would entertain Israel’s contention that it needs to conduct an analysis of the limitations of Palestinian jurisdiction in accordance with the Oslo Accords, the result would nevertheless be a finding that the Gaza Strip is under the full *de jure* jurisdiction of the Palestinian Authority for the purpose of the Court’s jurisdiction *ratione loci*. Thus, any crime under the jurisdiction of the Court committed on the territory of the Gaza Strip – including its land, subsoil and territorial waters – would, barring an effective and genuine investigation and prosecution of the

⁵³ See UNSCO, [Report to the Ad-Hoc Liaison Committee](#), 22 September 2022, pp. 7-9. See also, UNSCO Press Release, [United Nations launches draft early recovery strategy for Gaza](#), 25 September 2024.

⁵⁴ See ICJ, [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#), Advisory Opinion, 9 July 2004, para. 78. See also, e.g. UN General Assembly Resolutions: UN Docs. [A/RES/79/163](#), 17 December 2024; [A/RES/68/154](#), 18 December 2013; [A/RES/58/292](#), 17 May 2004; and [A/RES/49/62 \(A-D\)](#), 14 December 1994 and prior resolutions recalled therein.

⁵⁵ See the OPCV Submissions of 16 March 2020, *supra* note 5, para. 32 referring to [Ronen \(2014\)](#), p. 13: “How wide a state’s territory extends depends on international recognition of its sovereignty rather than on effective control. The latter is neither sufficient (as demonstrated by the impermissibility of acquiring sovereignty through use of force or occupation) nor indispensable (as demonstrated by the retention of territorial sovereignty by the non-governing state in situations of occupation and of territorial lease)”.

⁵⁶ *Idem*, para. 47.

most responsible by the State of Palestine, come under the jurisdiction of the Court. For the purposes of activating the Court's jurisdiction, it would be irrelevant whether the alleged perpetrator were Palestinian or a national of any other country. If such crimes were committed on the territory of the Gaza Strip, the State of Palestine is the only 'State on the *territory of which*' the crimes occurred. If the alleged perpetrator were Palestinian, there would also be no other State that could alternatively exercise jurisdiction *ratione personae*. A contrary interpretation would create a complete and utterly unacceptable accountability gap for the entire territory of the Gaza Strip and render null and void the State of Palestine's accession to the Statute.

41. Consequently, any question related to the effective prosecution of international crimes under the jurisdiction of the Court, committed on the territory of a State Party, will always be a factual question. This includes cases involving the lack of *de facto* jurisdiction over persons acting within and under its *de jure* jurisdiction, or other inability. However, such factual questions are to be assessed at the relevant time and not *in abstracto*. Moreover, such assessment is to be made by applying the criteria under article 17(1) of the Statute, such as 'inability' to investigate or prosecute, which are precisely the requirement that regulate the jurisdiction of the Court for crimes allegedly committed on the territory of a State Party under article 19(2)(b) of the Statute. Similarly, any question of competing jurisdiction would become a factual assessment to be undertaken within the framework of a case in application of the principle of complementarity.

D. Applicable legal basis under article 19(2) of the Statute

42. The State of Israel challenged the jurisdiction the Court "*in the [then] pending application concerning Benjamin Netanyahu and Yoav Gallant, or in any other investigative action on the same jurisdictional basis*",⁵⁷ pursuant to article 19(2)(c) of the Statute.

⁵⁷ See the Jurisdictional Challenge, *supra* note 1, para. 1.

43. In particular, Israel submits that article 19(2)(c) of the Statute allows for a jurisdictional challenge from a State “*from which acceptance of jurisdiction is required under article 12*”.⁵⁸ Israel avers that it has standing under said provision on two independent grounds: (i) as “*a State of which the person accused of the crime is a national*” under article 12(2)(b); and (ii) “*a State which is not a Party to this Statute*” in respect of which a declaration accepting the exercise of jurisdiction of the Court is required under article 12(3) of the Statute.⁵⁹ Israel further argues that the Article 19(3) Jurisdiction Decision presupposed that it would have standing to bring a jurisdictional challenge at the appropriate juncture.⁶⁰

44. For the reasons set out *infra*, the Principal Counsel posits that article 19(2)(c) of the Statute is the only legal basis pursuant to which Israel may bring a challenge against the jurisdiction of the Court on the *sole* basis of the Israeli nationality of the alleged perpetrators.

45. Israel argues that article 19 of the Statute expressly permits jurisdictional challenges – as opposed to admissibility challenges – to be brought in relation to a *Situation* as a whole, and not only in relation to a case, as expressed by the disjunctive *or* used in the provision and its *chapeau*.⁶¹ It submits that the ordinary language of the Statute is reinforced by the statutory context in that there is no requirement of a pre-existing “case” for a State to make a jurisdictional challenge under article 19(2) generally, and article 19(2)(c) of the Statute specifically.⁶²

46. Lastly, Israel submits that article 19(5) of the Statute requires a State referred to in subparagraph 2(b) and (c) to make a challenge to the Court’s jurisdiction ‘at the earliest opportunity.’⁶³ It argues that, since the Prosecutor’s public announcement of

⁵⁸ *Idem*, para. 38.

⁵⁹ *Idem*, paras. 38-39.

⁶⁰ *Idem*, para. 40.

⁶¹ *Idem*, para. 51.

⁶² *Idem*, para. 53.

⁶³ *Idem*, para. 49, referring to article 19 of the Statute.

seeking arrest warrants for, *inter alia*, two Israeli nationals, it is now acting as a State under article 19(2)(c) that is “faced with various actual or potential legal acts against senior Israeli officials [...] know[ing] that these legal measures target Israeli nationals for alleged acts on the territory of the Gaza Strip.”⁶⁴

47. The Principal Counsel disagrees with the reading of the provision as proposed by the State of Israel. While Israel is correct in pointing to the disjunctive ‘or’ in the *chapeau* of article 19 of the Statute with respect to jurisdiction and admissibility, it misconceives the separate nature of the provision’s subsections, most notably the self-contained nature of article 19(2).

48. Indeed, Pre-Trial Chamber I, in a different composition, clarified in the *Venezuela I* Situation what the Former Chamber has already stated in the Article 19(3) Jurisdiction Decision, namely that “‘the third paragraph of article 19 of the Statute is not restricted to a case’, whereas ‘the references to ‘case’ specifically restrict the scope of application of the mechanisms set forth in article 19(1)-(2) of the Statute’”.⁶⁵ This is evident both from a plain reading of article 19(2), subsections a) through c), as well as from a teleological reading of said provision. It indeed refers to those actors with standing to challenge jurisdiction in a *case*, starting with the accused or the suspect, continuing with a State with jurisdiction and ending with other interested States.

49. The Appeals Chamber has recently interpreted different meanings of the word ‘or’ within the Statute, depending on the context of the relevant provision, noting that while a chamber “adopted the meaning of ‘or’ allowing for distinguishing between two ‘different and independent situations’, the word ‘or’ may also have a related but distinct meaning. The word ‘or’ can also be used in an inclusive or weak sense to separate notions

⁶⁴ *Ibid.*

⁶⁵ See the “Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute” (Pre-Trial Chamber I), [No. ICC-02/18-27](#), 27 June 2023 (the “*Venezuela I* Decision”), para. 35 (emphasis added).

which are **not** entirely ‘different **and independent**’ from each other. [...] the Statute sometimes uses ‘or’ with one of these two meanings and at other times with the other”.⁶⁶

50. The fact that the *accused* or a person under a warrant of arrest or a summon to appear is included in the enumeration of the relevant actors within article 19(2) of the Statute undoubtedly indicates that the word ‘or’ in the *chapeau* is to be read as an inclusive disjunction. In fact, the word ‘or’ can function as an inclusive disjunction when “the statement is true if at least one of the conditions is true, or if both are true”.⁶⁷ Moreover, “[t]he inclusive sense of the disjunction ‘or’ is captured by the phrase ‘either, possibly both’”.⁶⁸ This reading also conforms with a teleological reading of the *chapeau* of sub-section 2, which expressly refers to article 17 grounds upon which the challenge would have to be grounded. Thus, the meaning of the provision as a whole must necessarily refer to the stage of proceedings where suspects have been identified and a ‘*case*’ been opened against a particular person through the formal issuance of a warrant of arrest or a summon to appear.

51. As expressed by the ICJ, in its Advisory Opinion on the interpretation of peace treaties, a court may not attribute a meaning to a specific clause which would be contrary to their letter and spirit.⁶⁹ The ICJ, on another occasion, underlined that where the meaning of a provision is clear in light of its object and purpose, it is not necessary to resort to the preparatory work in order to determine the meaning of that provision.⁷⁰ The Principal Counsel is of the view that this is the case in relation to article 19(2) of the Statute.

⁶⁶ See the “Judgment on the appeal of Mr Joseph Kony against the decision of Pre-Trial Chamber III of 29 October 2024 entitled ‘Decision on the criteria for holding confirmation of charges proceedings in absentia’”, [No. ICC-02/04-01/05-610 OA 4](#) (Appeals Chamber), 3 June 2025, para. 40 (emphasis added).

⁶⁷ *Idem*, para. 41.

⁶⁸ *Idem*. See also, the “Judgment on the appeal of Mr Joseph Kony against the decision of Pre-Trial Chamber III of 29 October 2024 entitled ‘Decision on the criteria for holding confirmation of charges proceedings in absentia’”, *supra* note 66, para. 41.

⁶⁹ See ICJ, [Interpretation of Peace Treaties with Bulgaria, Hungary and Romania](#), (Second Phase), Advisory Opinion, 18 July 1950, p. 12.

⁷⁰ See ICJ, *LaGrand Case* (Germany v. United States of America), [Judgment](#), 27 June 2001, paras. 102-103.

52. Nevertheless, “Article 19(2) provides that two types of persons and two groups of States may challenge the admissibility of a case on the grounds referred to in Article 17 or the jurisdiction of the Court over a case”.⁷¹ Indeed, the drafting history of the provision reveals that the majority of the States preferred to even limit the right to *accused persons*, at the exclusion of *suspects*, limiting the scope of formal challenges to the jurisdiction of the Court and confine them to very limited, well-defined cases.⁷² In this regard, concerning the text which corresponds to current article 19, the delegate of the United Kingdom observed⁷³:

*“Regarding [article 19], the United Kingdom delegation favoured ‘accused’ in paragraph 2 (a); in paragraph 2 (b), it strongly supported the reference to ‘a State’ since, if a State that was not a party was carrying out an effective prosecution in its own territory, there was no reason for the Court to intervene and also conduct a prosecution”.*⁷⁴

53. The delegate for the Philippines observed that:

*“With regard to [article 19], the phrase ‘an accused’ in paragraph 2 (a) was preferred, since there was no point in a suspect being able to question admissibility”.*⁷⁵

54. The Venezuelan delegate expressed that:

*“With regard to [article 19], the text of paragraph 1, dealing with the responsibility of the Court to satisfy itself as to its jurisdiction, should form a separate article; in paragraph 2 (a), reference to ‘an accused’ only was preferable”.*⁷⁶

55. Poland stressed that:

“With regard to [article 19], Poland believed that, under paragraph 2, it should be possible for challenges to be made by an accused or by the

⁷¹ See NSEREKO (D.D.N.) and VENTURA (M.J.), “Article 19: Challenges to the Jurisdiction of the Court or the Admissibility of a Case”, in AMBOS (K.) (ed.), *Rome Statute of the International Criminal Court: article-by-article commentary*, 4th edition, München, C.H. Beck, 2022, p. 1053 (emphasis added).

⁷² *Ibid.*, referring to the discussions on the International Law Commission Draft of 1994 (emphasis added). It is noted that the Israeli delegation preferred an inclusion of ‘suspects’. See the [United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998 Official Records, Volume II, Final documents](#), p. 216.

⁷³ *Idem*, p. 213.

⁷⁴ *Idem*, p. 215.

⁷⁵ *Idem*, p. 216.

⁷⁶ *Ibid.*

*State which had jurisdiction over the crime, and that the Prosecutor should be empowered to seek a ruling from the Court regarding a question of jurisdiction or admissibility”.*⁷⁷

56. This brief excursus of the Preparatory Works reinforces the understanding that the provision relates to challenges of rather advanced proceedings against an identified person in relation to a formulated *case* only.

57. The Principal Counsel submits that this is the only possible reading of the provision in light of the object and purpose of the Statute, as expressly referred to its article 17(1). Challenges must relate to a precise and sufficiently formulated *case* and defendant to enable the consideration whether *effective* investigation or prosecution for the most serious crimes of concern to the international community as a whole is guaranteed. This interpretation of the provision was also applied in the *Venezuela I* Situation, where the Pre Trial Chamber I found that “*considering that the Prosecution has not yet identified any suspects, a jurisdictional challenge by Venezuela pursuant to article 19(2) of the Statute is, at this juncture, premature*”.⁷⁸ Conversely, this also gives effect to the view expressed by most States during the Statute negotiations that such challenges should not be possible in relation to a *Situation* as detailed *supra*.

58. Thus, while the State of Israel has standing to eventually challenge the specific cases against Messrs Netanyahu and Gallant, given the publicly known fact that these two Israeli nationals are sought by the Court in connection with their alleged commission of crimes under the Statute, pursuant to article 19(2)(c) by virtue of the alleged perpetrators’ nationality, said standing cannot be imported into the broader context of the Situation.⁷⁹

59. Despite general standing to challenge the jurisdiction of the Court with respect to its nationals, a State cannot bring generalised challenges in a Situation and thus at

⁷⁷ *Idem*, p. 217.

⁷⁸ See the *Venezuela I* Decision, *supra* note 65, para. 36.

⁷⁹ See the Jurisdictional Challenge, *supra* note 1, para. 1.

the investigation stage of the proceedings because no ‘case’ exists of which it has sufficient notice to enable it to satisfy the Court that it is genuinely investigating or prosecuting the same conduct against the same person.

60. A State, whether State Party or not, may request deferral of the Prosecutor’s investigations where it can demonstrate that it is investigating or prosecuting the same person for the same conduct as in the proceedings before the Court. Crimes under the Statute are indeed core international crimes and punishable as a matter of customary international law. Not being party to the Rome Statute does not relieve States of their customary legal obligations to investigate, prosecute and punish said crimes.

61. Finally, Israel contends that the Article 19(3) Jurisdiction Decision cannot be regarded as *res judicata* with respect to the Court’s jurisdiction. It claims that “[w]hatever the legal findings made by the Majority of the Pre-Trial Chamber at that stage of the proceedings, these cannot constitute a bar to a State or an individual exercising their right to challenge the jurisdiction of the Court or the admissibility of a case under Article 19(2), under a claim of *res judicata*”.⁸⁰ In support of its argument, Israel points to the Commentary on the Rome Statute that ostensibly supports its position that “an Article 19(3) decision should not per se prevent a concerned State from subsequently demonstrating to the Court [...] that the Court does not have jurisdiction [...]”.⁸¹

62. The State of Israel misrepresents both the *ratio* of the Article 19(3) Jurisdiction Decision, as well as the Commentary. First, the Decision cannot be read as preventing any interested State from challenging the jurisdiction of the Court as this interpretation would infringe the complementarity principle and the duty of States to investigate and prosecute international crimes. Second, the Commentary expresses precisely the Former Chamber’s assertion that a preliminary finding under the separate limb of article 19(3) on the *general* jurisdiction of the Court in a specific

⁸⁰ *Idem*, para. 58.

⁸¹ *Idem*, para. 59, referring to NSEREKO (D.D.N.) and VENTURA (M.J.), *op. cit. supra* note 71, p. 1064.

situation may always be challenged at a later stage, in accordance with article 19(2) – namely in a *case* – by those persons and States outlined in article 19(2)(c) of the Statute.

63. For all the above reasons, the Jurisdictional Challenge should be rejected.

Respectfully submitted.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is fluid and cursive, with the last name "Massidda" being more prominent and underlined.

Paolina Massidda
Principal Counsel

Dated this 27th day of June 2025

At The Hague, The Netherlands