

Annex

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**
Date: **12 July 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

Request for Leave to File Observations Pursuant to Rule 103

Source: Al-Quds Human Rights Clinic, Al-Quds University, Jerusalem, Palestine

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

The Office of the Prosecutor



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

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Amicus Curiae

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Counsel Support Section

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Detention Section

Victims Participation and Reparations
Section

Other

I. INTRODUCTION

1. Al-Quds University's Human Rights Clinic (hereinafter, the Clinic) hereby requests leave by the court to submit an amicus curiae, pursuant to rule 103 of the rules and to the court's decision on 26 June 2024.¹

II. INTEREST AND EXPERTISE

2. The Clinic is based in Al-Quds University's Faculty of Law, based in Jerusalem, Palestine. It works on, among other activities, training students to conduct monitoring, documentation and researching human rights abuses in the context of the occupied Palestinian territory. Furthermore, the Clinic conducts international academic research projects focusing on international human rights law, international humanitarian law and international criminal law.
3. The Clinic is headed by Dr. Munir Nuseibah, an assistant professor of international law, whose expertise is focused on international human rights law, international humanitarian law, international criminal law and transitional justice. He also heads a center in Al-Quds University that provides pro-bono legal aid in Jerusalem and actively engages in international advocacy especially using the United Nations mechanisms.
4. The other contributors of the amicus that we request your permission to submit are Ms. Tamara Tamimi and Mr. Osama Risheq. Tamara Tamimi is a PhD student at Queen's University Belfast School of Law, focusing in her thesis on international law and the Palestine question. Tamara specializes in human rights, settler colonialism, transformative justice, and international criminal law. Osama Risheq is a PhD student at Vrije University of Amsterdam, focusing in his thesis on international criminal law and transitional justice in the case of Palestine. Osama specializes in international criminal law, international humanitarian law, and human rights.
5. All three contributors have extensive practical experience. Dr. Nuseibah lectures on human rights, international law, and transitional justice. Similarly, Mr. Risheq lectures on and conducts research in international law, human rights, transitional justice, and human

¹ Public Redacted Version of 'Order deciding on the United Kingdom's request to provide observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence, and setting deadlines for any other requests for leave to file amicus curiae observations' <<https://www.icc-cpi.int/court-record/icc-01/18-173-red>>.

rights clinic course. All three contributors have published widely on issues pertaining to forced displacement, settler colonialism, home demolitions, and legal status of Jerusalem and Palestine.

III. SUMMARY OF PROPOSED OBSERVATIONS

6. The Clinic requests the permission to submit an amicus curiae that aims to assist the court in deciding whether it can prosecute Israeli citizens within the geographic jurisdiction in the State of Palestine. It will argue that despite the agreements between the Palestine Liberation Organization and Israel, the ICC continues to have a jurisdiction over any alleged perpetrator of international crimes within the scope of the Rome Statute, in line with the territorial jurisdiction that the Pre-trial Chamber announced in its decision on February 5, 2021.²
7. Our submission intends to assist the court by presenting a number of arguments, including an original argument that the authors have not seen in former submissions to the ICC, including in the Pre-Trial Chamber. Two of the applicants had published an academic book chapter on this issue in 2022.³
8. The main argument of this submission will focus on the concept of state equality and sovereignty in international law. Every state inherently enjoys full sovereignty over its territorial jurisdiction, but some states are unable to exercise their jurisdiction as a result of compulsory circumstances, such as civil wars or foreign occupation. We build on the arguments put forward by the ICC Prosecution before the Pre-Trial Chamber that the Oslo Accords do not bar the exercise of the Court's jurisdiction,⁴ and argue that the inability to enforce jurisdiction does not nullify this jurisdiction.
9. The Oslo Accords are considered a 'special agreement' within the terms of the Fourth Geneva Convention, concluded between Israel and the Palestinian Liberation Organization, as the legitimate representative of the Palestinian people. The Accords

² Prosecutor v. None, Decision on Territorial Jurisdiction in Palestine, ICC-01/18-143 (Pre-Trial Chamber I, Feb. 5, 2021)

³ Nuseibah, Munir, and Tamara Tamimi. "The Impact of the Oslo Accords on the Territorial Jurisdiction of the International Criminal Court in Palestine." *International Law between Translation and Pluralism: Examples from Germany, Palestine and Indonesia*, edited by Noorhaidi Hasan and Irene Schneider, Harrassowitz Verlag, 2022, pp. 311–24. JSTOR, <http://www.jstor.org/stable/j.ctv337mjpf.19>. Accessed 12 July 2024.

⁴ Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, ICC-01/18 (Pre-Trial Chamber I, Jan. 22, 2020) pp. 98-102.

were intended to be temporary and establish practical steps for the administration of the occupied Palestinian territory. Yet, special agreements cannot violate peremptory rights nor can they derogate from or deny the rights of 'protected persons' under occupation.

10. Israel exercises enforcement jurisdiction on Palestinians and Israelis in the State of Palestine due to the Oslo Accords, which were intended to be temporary. Apart from their indefinite extension, Israel exercises jurisdiction due to its occupation of the West Bank, including East Jerusalem, and Gaza. In this occupation, Israel does not adhere to the legal principles of military occupation, namely that (1) the occupying power must refrain from exercising sovereignty, as sovereignty and title in an occupied territory are vested in the people under occupation, as per the principle of the inalienability of sovereignty; (2) the management by the occupying power of public order and civil life should be to the benefit of the people under occupation; and, (3) occupation must be of a temporary nature, being neither permanent nor indefinite.⁵ Israel's lack of adherence to these principles renders its occupation illegal, which is a matter under examination currently by the International Court of Justice. In this sense, Israel exercises unlawful *de facto* authority. Based on the principle *ex injuria jus non oritur* 'unlawful acts do not create law', we argue that this principle is significantly more relevant to the determination of jurisdiction than that of *nemo dat quot non habet*, and that basing determinations on the latter principle goes against the purpose and object of the Court to fight impunity and advance international justice. It would additionally establish a dangerous precedent of might-makes-right.
11. In the case of the State of Palestine, its statehood preceded the Oslo agreement. The peace process aimed at reaching a final solution. As a transitional measure, the Oslo agreements stipulated that the occupying power, Israel, would be delegated the exercise of criminal jurisdiction over Israelis within the State of Palestine. In parallel, a temporary (5-year) transitional Palestinian Authority would exercise the jurisdiction over Palestinians and foreigners.
12. Palestine is a State. Hence, Palestine is sovereign and enjoys inherent jurisdiction over its territory. The transitional agreement meant that Palestine, temporarily, delegates its

⁵ Orna Ben-Naftali, Aeyal M. Gross, and Keren Michaeli, 'Illegal Occupation: Framing the Occupied Palestinian Territory' (2005) 23(3) Berkeley Journal of International Law 554-555.

jurisdiction to Israel, placing responsibilities on Israel to prosecute Israeli criminals.

Given that Palestine is unable to exercise enforcement jurisdiction, which it is lawfully entitled to, and Israel refuses to exercise the jurisdiction that was delegated to it, in line with the principle of complementarity, the Rome Statute transfers this jurisdiction to the ICC. The court's territorial jurisdiction in Palestine cannot be seen as a unique jurisdiction that is accorded any special formulas.

IV. CONCLUSION

13. The Clinic respectfully requests the permission to submit its written observations to the court pursuant to rule 103.



Munir Nuseibah

Director, Al-Quds Human Rights Clinic

Al-Quds University

Jerusalem

Palestine

Dated this 12 July 2024

Jerusalem, Palestine