

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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**Case: ICC-01/18
Date: August 11, 2024**

PRE-TRIAL CHAMBER I

Before: Judge Iulia Motoc, Presiding Judge
Judge Nicolas Guillou, Judge
Judge Reine Alapini-Gansou, Judge

SITUATION IN THE STATE OF PALESTINE

**Public Redacted Version of
Observations under article 68(3) on behalf of victims of Palestinian terror**

Source: [Redacted] Victims of Palestinian Terror (listed in Annex 1)

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The competent authorities of 'Palestine'
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Amicus Curiae

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**Victims Participation and Reparations
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"Without (the victims) views and concerns being effectively heard, then any talk of a fair trial will be no more than talk in the abstract, or there cannot be any concept of fairness without the concept of justice and there can be no criminal trial without victims of the crimes charged"¹

I. Introduction

1. In its decision on "requests for leave to make observations pursuant to article 68(3) of the Rome Statute"² from 30 July 2024 (hereinafter: 'the Decision'), the chamber ruled that "Should any of the notified persons, who have not done so thus far, wish to submit observations under article 68(3) of the Statute at this stage of the proceedings, they may do so in accordance with the instructions set out at paragraph 7 of the present decision."³
2. Therefore, pursuant to the Court's notification, consistent with the Decision and in accordance with article 68(3) of the Statute, the following observations on behalf of victims of Palestinian Terror, whose names and stories are listed in confidential Annex I (hereinafter: the Victims)⁴ is hereby respectfully submitted.

II. THE VICTIMS

3. Victims have suffered direct harm as result of the most serious crimes specified in the Statute: they have lost their loved ones in hideous terrorist attacks either before the terrible massacre perpetrated by Hamas and other Palestinian terrorist groups on October 7, 2023, in Israel, either during that genocidal attack – in which 1,200 people were brutally massacred and more than 250 were taken hostage, or in following attacks by Palestinian terrorists during the war in Gaza. Amongst them are families of hostages still held incommunicado by Hamas in Gaza for 10 months on the day of the submission of this request. Their loved ones – amongst them young children and women – suffered unimaginable atrocities and were brutally murdered in unimaginable ways, including by their abduction, by torture, by their shooting and stabbing in their homes and beds and in other horrific ways.

¹ Opening remarks, council for the victims, [Prosecutor v. William Samoei Ruto and Joshua Arap Sang](#), pp. 42-43.

² Rome Statute of the International Criminal Court, July 1, 2002, 2187 U.N.T.S. 90, 37 I.L.M. 1002 ("The Statute").

³ Pre-Trial Chamber I, **Decision concerning the views, concerns and general interests of victims**, 30 July 2024, ICC-01/18-256 ("the Decision").

⁴ Victims note that written observations on behalf of some of the victims have been submitted in the in ICC-01/18-109 ('Victim's 2020 Observation') following the Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, 22 January 2020, ICC-01/18-12 ('OTP 2020 Request'). Powers of attorney for some of these victims have been on file with this Chamber since March 2020. These Victims are now joined with victims of current hostilities, arising from Hamas' genocidal attack on Israel on October 7, 2023, whose Powers of Attorney are attached.

III. Observations

A. Observation 1: Chamber should consider the issues of jurisdiction, admissibility and the Victims' right for justice in current proceedings

4. Jurisdiction is a precondition, with which Chamber must "satisfy itself" according to Art. 19(1) to the Statute.⁵ In addition, although initial determination by the Pre-Trial Chamber that the case is admissible is not a prerequisite for the issuance of a warrant of arrest pursuant to article 58(1), Appeals Chamber accepted that Chamber has the discretion pursuant to article 19(1) to address this issue, stressing that "it is also imperative that the exercise of this discretion take place bearing in mind the **rights of other participants**"⁶. Indeed, the practice of this Court is to address both Jurisdiction and admissibility in the context of Art. 58(1) applications⁷.
5. Fairness of the process, in general, and specifically victims' right for justice, must also be considered. Article 68(3) entails a component of assuring fairness for victims.⁸ Victims legitimate expectations for fairness and remedy can also be learned from applicable treaties, the principles and rules of international law and internationally recognized human rights according to Art. 21⁹. Victims' expectation for "prompt redress for the harm that they have suffered" is embedded also in the UN Declaration of Basic Principles for Justice for Victims of Crime and Abuse of Power¹⁰. In other words, Chamber CANNOT TURN A BLIND EYE from a flawed or biased request or one that undermines the achievement of justice and remedy for the Victims.

B. Observation 2: OTP's request flawed, biased and undermines Victims' right for justice

6. **While Victims' position is that the Court lacks jurisdiction over the case, and anyway - against Israelis, it does not exempt the Prosecutor from conducting his investigation with due diligence, impartiality and with equal protection for victims on each side.**
7. For years, the Victims experienced an abyss between the Prosecutor's public statements of

⁵ Indeed, Chamber has left the door open to further challenges of it in these proceedings: Pre Trial Chamber I, [Decision on the 'Prosecution request pursuant to article 19\(3\) for a ruling on the Court's territorial jurisdiction in Palestine'](#) ICC-01/18-143 (5/2/2021) (Hereinafter: Decision on Territorial Jurisdiction)

⁶ Appeals Chamber, [Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled "Decision on the Prosecutor's Application for Warrants of Arrest, Article 58"](#) ICC-01/04-169 (12/7/2006) para. 52.

⁷ See: Pre-Trial Chamber II, [Public redacted version - Decision on the Prosecutor's Application under Article 58](#), ICC-01/04-02/06-36-Red (13/07/2012); Pre-Trial Chamber III, [Decision on the Prosecutor's Application Pursuant to Article 58 for a warrant of arrest against Charles Blé Goudé](#), ICC-02/11-02/11-3 (6/1/2012) and more.

⁸ K. Gray, 'Evidence Before the ICC', in D. McGoldrick et al. (eds), THE PERMANENT INTERNATIONAL CRIMINAL COURT (Oxford University Press, 2004) 287, at 302; D. Donat-Cattin, Article 68', in O. Triffterer (ed.), COMMENTARY ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: OBSERVERS' NOTES, ARTICLE BY ARTICLE (2nd edn., Beck/Hart/Nomos, 2008) §§ 17 18.

⁹ Alessandra Cuppini, [Fairness to Victims in Proceedings Before The ICC: Lessons from the Inter-American Court of HR](#)

¹⁰ [UN Doc A/40/53](#) (1985).

"impartiality" and the contradicting *de-facto* treatment of the conflict, as a whole, and of Israeli victims, specifically. Words are one thing and deeds another. After the hideous massacre in Israel on October 7, 2023 and the Prosecutor's visit to Israel, the Victims hoped to witness a more balanced approach by the Prosecutor and better protection of Israeli victims' rights. Allas, how wrong they were. The bias towards Israel and Israeli victims is evident in each of the OTP's actions and echoes throughout these proceedings, deeply affecting the interests of the Victims:

1.1 Prosecutor's disregard of admissibility and complementarity requirements

8. Victims are concerned that Prosecutor has refrained from acting in accordance with the requirements of Art. 18, and specifically pursuant to Israel's deferral request¹¹. The Prosecutor denied Israel the opportunity to present its domestic investigation and legal review, as required by the principle of complementarity¹² and in accordance with his own office policies¹³. Furthermore, according to publications – the Prosecutor filed his request for arrest warrants despite an already pre-scheduled visit and meeting with Israeli officials on the very same day(!)¹⁴
9. The Prosecutor's actions are particularly harsh, considering Israel's independent legal system¹⁵ and the unparalleled scope of judicial oversight by the Israeli Supreme Court of Justice, before which a petition regarding the same subject matter of humanitarian assistance to Gaza is now being heard¹⁶. The Israeli judicial system's independence, its oversight over operational matters, and its actions to enforce criminal law, even against high level officials¹⁷, are unquestionable¹⁸.
10. These concerns are also supported by the fact that shortly after the Prosecutor's request was submitted, alleging the use of starvation as method of warfare by Israel, the Famine Review Committee (FRC) issued its report, correcting its previous conclusions, indicating that despite the situation in Gaza, there is no supported evidence that the situation in Gaza amounts to

¹¹ See: [Written Observations by the United States of America Pursuant to Rule 103](#) ICC-01/18-300 (6/8/24)

¹² See: Federal Republic of Germany, [Observations Pursuant to Rule 103\(1\) of the Rules of Procedure and Evidence](#) ICC-01/18-307 (6/8/2024)

¹³ Office of the Prosecutor, [Policy on Complementarity and Cooperation](#) (2024), para. 4.

¹⁴ Anthony Deutsch, Stephanie van den Berg and Humeyra Pamuk, Exclusive: [ICC prosecutor opted for warrants over visit to Gaza](#), **Reuters**, July 5, 2024.

¹⁵ Israel is one of the few countries in the world to conduct an independent external review, under the supervision of international experts, of its justice system in the context of Violations of the Laws of Armed Conflict. See: The Public Commission to Examine the Maritime Incident of 31 May 2010, [Part Two: Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict](#).

¹⁶ HCJ 2844/24 [Gisha – legal center for freedom of movement vs. The Prime Minister](#).

¹⁷ In fact, an indictment against the Prime Minister Benjamin Netanyahu is already pending on other matters.

¹⁸ The centrality of the issue in Israel can be demonstrated by the [debate over the 'judicial reform'](#) in Israel in 2023. See also: HCJ 5658-23 [Movement for Quality Government in Israel v. Knesset](#) (2024).

famine.¹⁹ In fact, the Report found that the IPS evaluation was dramatically mistaken for excluding commercial and privately contracted food supplies, a considerable portion of the supply to Gaza²⁰. Further professional assessment of Israel's military conduct has been submitted now by military experts who visited Israel and Gaza²¹. Other submissions focus on the credibility of both UN and Palestinian sources as the basis for the Prosecutor's request²², all stressing that the requirements of Art. 18 are crucial to serving the interest of justice.

1.2 Victims pay the price of the OTP's conduct regarding admissibility and complementarity

11. The above conduct by the OTP, including his refraining from conducting a meaningful *bona-fide* engagement with the Israeli justice system, comes at the expense of the Victims since it limits, undermines, and damages the investigation against Hamas leaders, both by Israel and the OTP: although some evidence against Hamas can be obtained from witnesses and media by the Prosecutor, the main source for incriminating evidence against Hamas and others terrorists is the Israeli authorities, which have launched the country's largest criminal investigation ever and have detained thousands of Hamas terrorists, including many who commanded and participated in the massacre²³. Further evidence, including Hamas documents captured in Gaza should have been obtained from Israel²⁴. The Prosecutor's office does not possess the knowledge and evidence

¹⁹ Famine Review Committee: [Review of the Famine Early Warning Systems Network IPC-Compatible Analysis for the Northern Governorates of the Gaza Strip](#) (4/6/2024) ("The FRC does not find the FEWS NET analysis plausible given the uncertainty and lack of convergence of the supporting evidence employed in the analysis"). The report also cast doubt on the assumption that reported deaths of Palestinians (by the Hamas led Ministry of Health!) were the result of famine (*supra*, p. 6). Further support of lack of famine continued in June: "In contrast with the assumptions made for the projection period ... the amount of food and non-food commodities allowed into the northern governorates increased... In this context, the available evidence does not indicate that Famine is currently occurring" IPC, [Famine Review Committee: Gaza Strip](#), June 2024.

²⁰"However, the exclusion of all commercial and/or privately contracted deliveries and WFP deliveries of flour, sugar, yeast, and salt to bakeries, translates to the exclusion of food equal to as much as 38% to 49% coverage of the daily kilocalorie requirement in April. While FEWS NET estimated the caloric availability in the area as covering only 59-63% of the needs (based uniquely on Humanitarian Food Assistance) in April, the review done by the FRC estimates that this range would be 75% to 109% if commercial and/or privately contracted food deliveries were included (157% if a higher estimate was used)." *Supra*, page 4-5.

²¹ High Level Military Group, [Amicus Curiae observation of High Level Military Group pursuant of Rule 103](#) ICC-01/18-267 (05/08/2024)

²² [ICC-01/18-295](#)

²³ See for example: Omer Benjakob, Ran Shimoni, Chen Maanit, [Israel Collecting Digital Evidence for War Crimes Case Against Hamas](#), *Haaretz* (26/10/2023); Adi Nirman, [Like father, like son – Hamas terrorists confess to rape, murder of civilians on Oct. 7](#), *Israel Hayom* (23/5/2024); [IDF releases video of Hamas operatives' confession of Shifa Hospital's use as a Gaza command center](#), *The economic Times* (26/3/2024), [Palestinian Islamic Jihad terrorist admits to raping woman during Oct 7 attack](#), *i24 NEWS* (28/3/2024); [Hamas' Terrorists' Bone Chilling Confession On Camera Tapes Reveal Horrific Motive, Details](#), *Times Now* (26/10/2023); ['\\$10,000 Stipend, Apartment': Israel Releases Chilling Video Of Hamas Fighters' 'Confessions'](#), *Times Now* (24/10/2023).

²⁴ The Meir Amit Terrorism and Intelligence center, [Documents brought back from the Gaza Strip indicate that Hamas premeditated its atrocities against Israelis and to kidnap and maltreat them](#) (20/1/2024); Itay Ilina and Filipp Piatov,

regarding Hamas leaders' criminal responsibility as Israel. Considering the Prosecutor's above-mentioned conduct, chances of a meaningful cooperation with Israeli law enforcement authorities has now been dramatically diminished²⁵.

12. Furthermore, **the duality in the existence of an unsynchronized investigation by two different uncommunicative criminal systems may impair both investigations**. Amongst others, evidence gathered by one may not be shared with the other, conflicting actions, contracting finds and many more problems may arise. Victims, from both sides, will pay the price for this. No doubt, respecting admissibility requirements may have diminished chances for this outcome.

1.3 Arrest warrants against Hamas delayed to simultaneously be sought against Israeli officials

13. Actions against Hamas terrorists, and specifically – the request for arrest warrants – should have and could have been taken **much more in proximity** to the October 7 massacre. Unlike most investigations, abundant incriminating evidence was instantly available. It was literally the most documented massacre in the history of mankind: from the 'live' images and videos of the atrocities which flooded media and social media, to the public statements of the Hamas leaders proudly taking responsibility. The Prosecutor himself visited in early December and witnessed the atrocities. Further evidence, including of sexual assaults have soon emerged and alarming evidence of assaults and torture of the hostages were supported by testimonies of returned hostages, first responders, and later in a UN issued report²⁶.
14. Furthermore, since October 7, the fact that hundreds of men, women, children and even elderly Holocaust survivors have been taken as hostages is undeniable. Hamas leaders' involvement in this crime and their ability to release the hostages could have been easily gleaned from their statements, from eyewitnesses, such as returned hostages who were met by Sinwar²⁷, and their direct role in the negotiations for the hostages' release²⁸. The issuing of arrest warrants must have been taken immediately **'to prevent the person from continuing with the commission of that crime'** according to Art. 58(1)(b)(3) to the Statute. Yet, Prosecutor did nothing – not on day 1,

[Like sadistic Nazis: Secret Hamas papers reveal step-by-step action plan for Oct. 7](#) (28/6/2024).

²⁵ The Victims also note that further evidence could have also been obtained from other states, such as the United States, which initiated their own criminal investigations [see for example: The Jerusalem Post Staff, [US interviews released hostages, builds case against Hamas's October 7 crimes – report](#), Jerusalem Post (10/7/2024)].

²⁶ Special Representative of the Secretary-General on Sexual Violence in Conflict, [Mission report Official visit of the Office of the SRSG-SVC to Israel and the occupied West Bank 29 January – 14 February 2024](#) (4/03/2024).

²⁷ I24 news, [Ex-hostage recounts meeting Hamas leader Sinwar while in captivity](#)

²⁸ For example: TheNewArab, [Hamas's Haniyeh in Egypt to discuss potential Gaza truce and hostage release deal](#) (20/12/23); Elad BenAri, [Haniyeh stresses: We are sticking to our conditions for hostage deal](#), **Arutz 7** (4/4/2024).

not on day 50, not even on day the 100th day of the hostages' captivity. Prosecutor waited no less than 227 days(!), during which HE KNEW hostages continue to suffer the most horrible atrocities, including well established evidence of their being sexually abused and tortured, gathered from the testimonies of Hamas terrorists²⁹, released hostages and the UN report³⁰.

15. Victims note, with great frustration, that expeditious actions leading to the issuance of arrest warrants against Hamas leaders could have contributed to the release of the hostages: even if Hamas leaders were not physically detained, the mere existence of the warrants could have impacted states who hosted these leaders, supported them, or took active part in the negotiations. Furthermore, these warrants could have had an important contribution to counter disinformation and denial campaigns, which spread like wildfire after October 7³¹ and contributed to the dramatic surge in antisemitism worldwide. When not stopped, denial and disinformation campaigns progressed, turning victims into oppressors and *vice-versa*.
16. Yet, in his clearly 'politically-correct' actions, the Prosecutor chose to wait and do nothing until 'proper' accusations against Israeli heads of state – his real target – can be dug-up, all at the expense of the Victims. Apparently, issuing arrest warrants – at the most necessary of times – only against Palestinian murderers, kidnappers, and rapists was bad public relations.
17. In fact, when finally sought in these proceedings – the simultaneous request for arrest warrants did much worse than just create a twisted moral equivalence between a democracy fighting for its survival and a terror organization which attacked it: the Hamas warrants became nothing but a 'stage set' for the Israeli ones - means to further demonize, degrade, and segregate Israel as well as fuel hatred against Jews. As for the hostages, the simultaneous request by the Prosecutor for arrest warrants has achieved the complete opposite outcome: the moral equivalence between Israel and Hamas has damaged negotiations and further risked the lives of the hostages³².

1.4 The limited scope of Hamas requested warrants *in personam* and *in materia*

18. Victims have a primary interest in ensuring that the Prosecutor undertakes full investigations that

²⁹ See: Lilach Shoval, [Hamas terrorists confess to raping corpses, beheading children](#) **Israel Today** (24/10/2024).

³⁰ *Supra*, note 11.

³¹ See: [Social media watchdog warns of trending denial of October 7 sexual violence](#), **Jerusalem Post** (5/2/2024); Sara Nathan [October 7 rape deniers need to see the truth, says Sheryl Sandberg: 'Only one side to sexual violence'](#) **New York Post** (12/05/2024).

³² See: Hostages and Missing Families Forum and Raoul Wallenberg Centre for Human Rights, [Observations filed pursuant to Rule 103 of the Rules of Procedure and Evidence](#), ICC-01/18-305 (6/6/2024), also arguing investigation of Israeli leaders is not 'in the interest of the victims' according to Art. 53(2)(c) and do not serve the interest of justice.

correspond with the nature, scale and gravity of the crimes³³. Yet, Prosecutor's request for arrest warrants against Palestinian terrorists is unjustly limiting the investigation: **First, in personam**, the warrants leave outside the scope of the investigation key figures responsible for the October 7 massacre and the taking of hostages. For example, the requested warrants should have included Palestinian Islamic Jihad (PIJ) leader Ziyad al-Nakhalah and other JIP leaders – Gaza's second largest terrorist group³⁴. The PIJ - a designated terrorist group both in the EU and in the US - took a central part in the massacre, including in the rapes³⁵, and the taking of hostages, murdering some in captivity,³⁶ and still holding others captive³⁷. The PIJ is an independent terrorist group acting with its own leadership and agenda, holding separate terrorist infrastructure from Hamas and serving as an Iranian Proxy. The PIJ retains its independence and has even initiated large scale attacks against Israel which Hamas did not take part in, such as in May 2023 (operation "Shield and Arrow"³⁸). The PIJ is known for its cruelty, even compared with Hamas: it does not hide torturing and murdering hostages³⁹. Prosecutor's refrainment from acting against key figures, such as al-Nakhalah, is not in the interest of justice and casts a shadow on the true motives behind the arrest warrants against Palestinian terrorists, strengthening the impression that these warrants merely pay lip service to his actions against Israeli officials.

19. **Second, in materia**, Prosecutor is unjustly limiting Hamas' leaders criminal responsibility by two complementary methods: **first**, by asking the court to accept a twisted application of IHL, and accordingly of ICL and the Statute, undermining the principle of belligerent equality, according to which Israel's war against Hamas is both an International Armed Conflict and a Non-International Armed Conflict (NIAC), while Hamas' crimes fit only the NIAC paradigm, dramatically limiting Hamas leaders' scope of criminal responsibility⁴⁰. In this sense, The Prosecutor is even limiting **his own position**, regarding similar crimes attributed to Hamas in his

³³ Carla Ferstman, *Prosecutorial Discretion and Victim's Rights at the International Criminal Court: Demarcating the Battle Lines*, 2016 ACTA JURIDICA 17 (2016) at 35.

³⁴ See about JIP: Reuters, [What is Islamic Jihad? The Hamas ally at war with Israel](#) (18/10/2023)

³⁵ See confession of JIP terrorist of rape: [Terrorist Confesses to Atrocities, Including Rape, in October 7 Attack, IDF Reports The Media Line](#) (29/3/2024)

³⁶ For example, the JIP murdered hostage Elad Katir, whose tape was previously published while alive. See: Fadi Amin, [Palestinian Islamic Jihad Publishes Video of Israeli Held Hostage in Gaza](#), Haaretz (8/1/2024); JP STAFF, Jonah Jeremy Bob, [Hostage Elad Katzir murdered, body returned to Israel](#), Jerusalem Post (6/4/2024); Ministry of Foreign Affairs, [Swords of Iron: Hostages and Missing Persons Report](#).

³⁷ i24 news, [Palestinian Islamic Jihad releases propaganda video of hostage](#) (20/6/2024).

³⁸ <https://www.idf.il/en/mini-sites/operation-shield-and-arrow/summary-of-operation-shield-and-arrow/>

³⁹ Reuters, [PIJ official: 'We will keep treating hostages same way Israel treats our prisoners'](#), in JP (3/7/2024)

⁴⁰ [Observations by ALMA – Association for the Promotion of IHL Pursuant to Rule 103](#), ICC-01/18-273 (5/6/2024).

2020 OTP request, in which Hamas' alleged crimes were referred either under both paradigms (articles 8(2)(b) and 8(2)(c)) or even only under an IAC paradigm, such as the crime using protected persons as shields (article 8(2)(b)(xxiii))⁴¹. The absurdity is thus taken to the extreme, as Israel - a non-member state - is not only dragged into the court but put under a wider criminal responsibility than the conflicting belligerent party belonging to the (wrongfully considered) member state. **Second**, by minimizing and diminishing the scope and severity of Hamas' crimes: for example, many of the crimes the Prosecutor attributes to Hamas are limited to the hostages' context ("in the context of captivity")⁴². While indeed important - the much larger-scale atrocities were perpetrated in the context of the October 7 massacre. Furthermore, the Prosecutor has refrained from attributing to Hamas many other Crimes perpetrated, such as Murder as a Crime Against Humanity, Pillaging as a war crime and many more. In other words, the Prosecutor is simply joining the choir of the October 7 massacre denialists, damaging Victims' rights for justice.

C. Observation 3: Chamber should apply its powers in a manner which does not erode the Accords, endangering the Victims and others

3.1 Further erosion of the Accords may endanger the Victims and others

20. The Victims share the legal opinion, according to which the Palestinian Authority (PA) is not a 'state'⁴³, that it lacks jurisdiction over Israeli nationals⁴⁴, and thus cannot delegate such jurisdiction to the Court⁴⁵. These points have been made in several other observations already following the 2020 OTP request and in recent observations filed in these proceedings⁴⁶. The

⁴¹ OTP 2020 request, para 94, p. 53.

⁴² [Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine](#) (20/5/2024).

⁴³ See: Professor Malcolm N Shaw QC, [Submission of Observations to the Pre-Trial Chamber Pursuant to Rule 103](#), ICC-01/18-75 (16/3/2020); Office of the Attorney General, [The International Criminal Court's Lack of Jurisdiction Over the so Called "Situation in Palestine"](#) (hereinafter: The Memorandum of the Israel Attorney-General).

⁴⁴ See: Art. 1(a)(b) to the Israeli-Palestinian Interim Agreement Annex IV - Protocol Concerning Legal Affairs. The only possible relevant framework for the Court to act against the Palestinian terrorists may be based on their Jordanian citizenship – see ICC-01/18-109-red.

⁴⁵ Bangladesh-Myanmar [Article 15 Decision](#), 14 November 2019, (para. 55 and 60).

⁴⁶ [Amicus Curiae Submissions of the Israel Bar Association](#), ICC-01/18-80 (16/3/2020); [Written Observations by Hungary Pursuant to Rule 103](#), ICC-01/18-89 (16/3/2020); Ambassador Dennis Ross, [Amicus Curiae Observations on Issues Raised by the "Prosecution request pursuant to Article 19\(3\)"](#), ICC-01/18-94 (16/3/2020); Prof. Badinter, Prof. Cotler, Prof. Crane Professor Gaudreault-DesBiens, FRSC, Lord Pannick, Guglielmo Verdirame QC, [Observations on the question of jurisdiction pursuant to Rule 103 of the Rules of Procedure and Evidence](#), ICC-01/18-97 (16/3/2020); [IJL observations on the Prosecution request pursuant to article 19\(3\) for a ruling on the Court's territorial jurisdiction in Palestine](#), ICC-01/18-98 (16/3/2020), P. 25-32. Also see: [The Memorandum of the Israel Attorney-General](#), para 59. European Centre for Law & Justice (ECLJ), [Observations with respect to the Situation in Palestine on behalf of the European Centre for Law & Justice](#), ICC-01/18-260 (31/7/2024), (hereinafter: ECLJ); Prof

Victims also share the opinion, that the Court cannot rely on the 'technical' act of accession to conclude that it holds the required jurisdiction to issue arrest warrants⁴⁷ and that any interpretation of the Statute in contrast to the Accords would violate fundamental principles of treaty interpretation⁴⁸. The Accords are a constitutive framework establishing and setting the PA's scope of criminal jurisdiction and its obligations, which perceives the PA's (baseless) act of accession, both materially and chronologically⁴⁹.

21. **That said, the Victims wish to add their concerns, that the repercussions and the reverberating effects resulting from the *de-facto* erosion of the Accords by the Court may entail further consequences, which far exceed the issue of jurisdiction, *per se*:** the Accords – even flawed – remain the main framework which defines the PA, its powers and even geographical scope of its operation. It is the basis for the regulation of the every-day lives and the mutual relationship between the PA and Israel - in all aspects, including in relation to security issues which directly affect the safety of the victims and other Israelis. A selective interpretation of the parties' obligations under these accords – one that undermines the Accords and provides the PA with the legitimacy to bluntly act against its own obligations - may result in a "domino effect" which may endanger the lives of the Victims and many others.
22. For example, on the issue of jurisdiction, if the PA is to be considered to hold criminal 'perspective' jurisdiction over Israelis, in contrast to the Accords, it may decide to enforce it, arresting and holding Israelis in custody. This will gravely endanger Israelis: my office already represents the families of two Israeli soldiers who were lynched in the custody of the Palestinian police in Ramallah⁵⁰. Riding the waves of success, the PA may also 'expanded' its newly obtained jurisdiction over Israelis or its legitimacy to sign treaties and agreements in contradiction to the Accords. Such actions may further erode the Accords, including the obligations of each contracting party and the witness states.

3.2 The need for a harmonized reading of international treaties and obligations

23. Therefore, even if the Chamber finds, in contrast to this view, that the Accords do not block further investigation, the Chamber should consider the conflicting international agreements and

Sascha Dominik Dov Bachman Dr Deborah Mayersen Prof Gregory Rose Dr Colin Rubenstein AM, [Amicus curiae observations submitted pursuant to Rule 103\(1\) of the Rules of Procedure and Evidence](#), ICC-01/18-279 (6/8/2024).

⁴⁷ See: Yael Vias Gvirsman, [Amicus Brief \(Yael Vias Gvirsman\)](#) ICC-01/18-88 (16/3/2020).

⁴⁸ See: ECLJ, 9-11.

⁴⁹ In this respect, the case is also materially different from the *Afghanistan* case.

⁵⁰ For details, see: [2000 Ramallah lynching](#)

interpret and implement its powers in ways which give effect, as much as possible, to the competing international agreements and frameworks. Applying the same principle of "*principe de l'effet utile*" which the Chamber applied to Article 19(3) of the Statute, according to which it "must avoid rendering it devoid of practical effect"⁵¹, it should treat other competing instruments (the Accords) in a manner which does not "devoid (them) of practical effect".

24. In this regard, the Victims propose that the Chamber adopt the partly dissenting opinion of Judge Kovac in its 2020 decision in this regard⁵², or alternatively – at least give additional weight to adherence with Art. 18 procedures of the principle of complementarity, directing the Prosecutor to conduct a meaningful engagement with Israel and allow Israel to conduct its review and investigations. In fact, considering the Prosecutor's conduct and failures stressed in Observation 1, such directives by the Chamber at this time is both materially required and may also be in line with the Chamber's 2020 ruling, which postponed further deliberations on the issue of Jurisdiction to the point it may indeed be necessary.

V. Conclusion

25. The Victims are of the opinion that the Court lacks jurisdiction over the case, as whole, and over Israeli nationals, specifically. Yet, even if the court rules otherwise, the Chamber should consider the above concerns the Prosecutor has acted negligently and with bias against Israel, at the expense of the Victims' interests. Amongst others, necessary procedures and safeguards under the Statute were ignored and the principle of complementarity diluted, if not abandoned entirely.
26. Adding also the potential outcomes of the further erosion of the Accords and the dangers it may pose to whatever is left of stability in the region, the Victims call on the Chamber to DENY the Prosecutor's request for arrest warrants against Israeli officials and RECOMMEND that the Chamber instructs the Prosecutor to act according to Art. 18.

[Redacted]

Dated: August 11, 2024, Bnei Brak, Israel

⁵¹ Pre Trial Chamber I, [Decision on the 'Prosecution request pursuant to article 19\(3\) for a ruling on the Court's territorial jurisdiction in Palestine'](#) ICC-01/18-143 (5/2/2021) (Decision on Territorial Jurisdiction) p. 36.

⁵² "It follows then...that the Prosecutor may exercise her investigative competences under the same circumstances that would allow Palestine, as a State Party, to assert jurisdiction over such crimes under its legal system, namely by duly taking into account the repartition of competences according to the Oslo Accords" ([ICC-01/18-143-Anx1](#), p. 150).

Annex 1 – Victims' names and stories

[Redacted]