

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/18
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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, REDACTED

Victims' Observations on the Proceedings pursuant to articles 19(3) and 68(3)

Source: Legal Representative of Persecution Victims, Katherine Gallagher

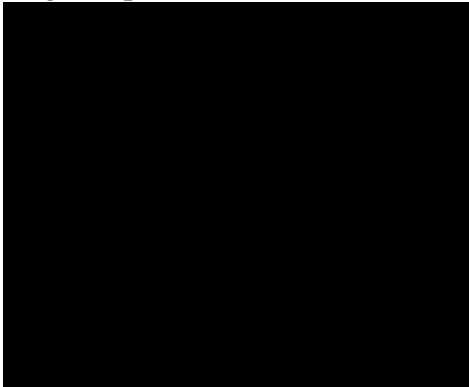
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Other

I. INTRODUCTION

1. Pursuant to articles 19(3) and 68(3) of the Rome Statute, the previously-logged participants, the Persecution Victims, submit the following observations by and through their Legal Representative on the current state of proceedings.¹ This includes observations on the Prosecutor's publicly-announced application for arrest warrants under article 58 and legal issues arising from the 27 June 2024 order of the Pre-Trial Chamber ("Pre-Trial Chamber" or "Chamber") granting the United Kingdom leave to file written observations pursuant to Rule 103 of the Rules of Procedure and Evidence ("RPE") on purported "further questions of jurisdiction" that the United Kingdom claims were left unaddressed in the Pre-Trial Chamber's decision on jurisdiction of 5 February 2021,² in which it found, *inter alia*, that the territorial jurisdiction of the International Criminal Court ("ICC" or "Court") in the Situation of Palestine extends to Gaza and the West Bank, including East Jerusalem.³

2. As victims of an ongoing persecutory campaign (among other crimes falling within Court's jurisdiction) conducted by senior Israeli officials across the occupied Palestinian territory including in the Gaza Strip, the Persecution Victims respectfully request, and indeed urge, the Chamber to issue the requested arrest warrants against Israeli Prime Minister Benjamin Netanyahu and Israeli Defense Minister Yoav

¹ See *supra* paras. 8-11 & Section III (defining the Persecution Victims and detailing their participation in the Situation, including transmission of their powers of attorney). Article 68(3) allows victims' views and concerns to be presented and considered at any stage of ICC proceedings in which their personal interests are affected, so long as this is not prejudicial to, or inconsistent with, the rights of the accused or a fair and impartial trial. As the Pre-Trial Chamber previously explained, article 68 translates into "the *right* [of victims] to be heard" and "the *duty*" of the Court "to effectively enable them to exercise this right." Decision on Information and Outreach for the Victims of the Situation, 13 July 2018, [ICC-01/18-2](#), para. 8 ("Palestine Outreach Decision"). See *id.* para. 10-11.

Should these observations not be accepted as a victims' submission under articles 19 and 68, however, then the undersigned Victims' Legal Representative respectfully requests that these written observations be considered as a request for leave to submit *amicus curiae* observations pursuant to Rule 103 of the RPE in accordance with the 27 June 2024 Order, and accept these written observations as *amicus curiae* observations.

² Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103, 10 June 2024 (27 June 2024), [ICC-01/18-171-Anx](#), ("U.K. Request"), para. 3; 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, 27 June 2024, [ICC-01/18-173-Red](#) ("27 June 2024 Order").

³ Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', 5 Feb. 2021, [ICC-01/18-143](#), ("Jurisdictional Decision").

Gallant without further delay, and in doing so, reaffirm the findings in the Jurisdictional Decision that the Court's territorial jurisdiction in the *Situation in the State of Palestine* extends to the territories occupied by Israel since 1967 such that any person committing a crime on that territory, being the territory of Palestine – a State Party - falls within the Court's jurisdiction under article 12(2)(a) of the Statute.

II. RELEVANT PROCEDURAL HISTORY

3. On 1 January 2015, the Government of Palestine lodged a declaration under Article 12(3) of the Rome Statute accepting the jurisdiction of the Court over alleged crimes committed “in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014.”⁴

4. On 2 January 2015, the State of Palestine acceded to the Rome Statute after depositing its instrument of accession with the U.N. Secretary-General, and on 1 April 2015, the Rome Statute entered into force for the State of Palestine as it became the 123rd State Party to the Rome Statute.⁵

5. On 22 May 2018, the State of Palestine referred the *Situation in the State of Palestine* to the Prosecutor for investigation.⁶

6. On 22 January 2020, after a nearly six year preliminary examination and having concluded that there was a reasonable basis to proceed with an investigation pursuant to article 53(1) of the Statute for crimes that have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip, the Prosecutor requested a ruling pursuant to article 19(3) of the Statute from the Pre-

⁴ Declaration Accepting the Jurisdiction of the International Criminal Court, Mahmoud Abbas, President of the State of Palestine, 31 Dec. 2014, http://www.icc-cpi.int/iccdocs/PIDS/press/Palestine_A_12-3.pdf.

⁵ On 6 January 2015, the United Nations Secretary General accepted Palestine's accession to the Rome Statute. United Nations, Depository Notification, Ref: C.N.13.2015.TREATIES-XVIII.10, 6 Jan. 2015, <https://treaties.un.org/doc/Publication/CN/2015/CN.13.2015-Eng.pdf>. See International Criminal Court, *ICC welcomes Palestine as a new State Party*, 1 April 2015, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1103>.

⁶ See ICC, Statement by ICC Prosecutor, Fatou Bensouda, on the referral submitted by Palestine, 22 May 2018, <https://www.icc-cpi.int/Pages/item.aspx?name=180522-otp-stat>.

Trial Chamber on the territorial scope of the Court's jurisdiction in the Situation of the State of Palestine.⁷

7. On 28 January 2020, the Pre-Trial Chamber issued an order inviting victims in the Situation in the State of Palestine, among others, to submit written observations on the Prosecutor's request before 16 March 2020.⁸

8. On 16 March 2020, pursuant to the Pre-Trial Chamber's order, the undersigned Victims' Legal Representative submitted observations on behalf of individual Persecution Victims to assist the Pre-Trial Chamber's assessment of the scope of the Court's territorial jurisdiction in the Situation of Palestine, while also "placing this technical question in the larger context of the long quest for justice and accountability by Palestinian victims of serious violations of international law," and stating that they stand ready to provide further observations as warranted.⁹

9. On 16 and 19 March 2020, the undersigned Victim's Legal Representative received requests from the Victim Participation and Reparations Section ("VPRS") to submit powers of attorney for the victims represented in the 16 March 2020 written observations, pursuant to an instruction from the Pre-Trial Chamber.

10. On 3 April 2020, the undersigned Legal Representative submitted signed powers of attorneys for each of the Persecution Victims to VPRS via ICC ShareFile.

11. On 9 April 2020, the powers of attorney for the Persecution Victims were transmitted to the Pre-Trial Chamber in Confidential *ex parte* Annex V.¹⁰ The Registry likewise confirmed that the undersigned counsel is on the List of Counsel.

12. On 5 February 2021, having taken into consideration the positions of the Prosecutor, various States including Palestine, the victims and *amici curiae*, the Pre-

⁷ Prosecutor's request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, 22 January 2020, [ICC-01/18-12](#).

⁸ Order setting the procedure and the schedule for the submission of observations, 28 January 2020, [ICC-01/18-14](#) ("28 January 2020 Order"), para. 13.

⁹ Victims' Observations on the Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine (Public Redacted Version), 16 Mar. 2020, [ICC-01/18-110-Red](#), para. 1.

¹⁰ Public redacted version of "Transmission of Powers of Attorney", 9 April 2020, ICC-01/18-129, With 9 Confidential EX PARTE Annexes only available to the Registry, [ICC-01/18-129-Red](#). See *id.* note 6.

Trial Chamber issued the Jurisdictional Decision in which it found that the Court could exercise its criminal jurisdiction in the *Situation in the State of Palestine*, and, by majority, found that the territorial scope of the jurisdiction extends to Gaza and the West Bank, including East Jerusalem.

13. On 3 March 2021, the investigation in the Situation of Palestine was opened.

14. On 20 May 2024, the Prosecutor publicly announced that his Office had filed application for arrest warrants for crimes committed from at least 7-8 October 2023 for two Israeli officials, namely Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant, as well as for three members of Hamas (Yahya Sinwar Mohammed Diab Ibrahim Al-Masri, Ismail Haniyeh).¹¹

15. On 10 June 2024, the United Kingdom filed the U.K. Request (marked “secret”) to provide written *amicus curiae* observations under Rule 103(1) of the RPE.

16. On 27 June 2024, the Pre-Trial Chamber authorized the United Kingdom to file *amicus curiae* submissions by 12 July 2024. In the same order, the Chamber set the same deadline for any other requests for leave to make submissions, while stating that it intends “[t]o limit the impact of this procedure on the expeditiousness of the present stage of the proceedings.”¹²

17. On 2 July 2024, the United Kingdom made a “secret” request to the Pre-Trial Chamber for an extension of the time limit to file *amicus curiae* observations submitting there was good cause to grant an extension of time due to the general election scheduled on 4 July 2024 in the United Kingdom.¹³

18. On 4 July 2024, the Chamber granted the United Kingdom’s request for an extension, authorizing the United Kingdom to file its observations by 26 July 2024.¹⁴

¹¹ Office of the Prosecutor, *Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine*, 20 May 2024 <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state> (“Prosecutor Khan’s Arrest Warrant Application Announcement”).

¹² 27 June 2024 Order, para. 6.

¹³ Request by the United Kingdom for Extension of Time Limit, 2 July 2024, ICC-01/18-176.

¹⁴ Decision on the ‘Request by the United Kingdom for Extension of Time Limit’, 4 July 2024, ICC-01/18-178.

19. Also on 4 July 2024, the United Kingdom general election was held and the governing Conservative Party was defeated by the opposition Labour Party.

III. THE VICTIMS

20. These observations are submitted on behalf of the following victims, collectively referred to as “the Victims”: [REDACTED]; [REDACTED] (deceased, having been killed on [REDACTED] October 2023); [REDACTED] (deceased), along with his surviving widow, [REDACTED]; [REDACTED] (deceased), along with his surviving widow, [REDACTED], and his father [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED], and his deceased son [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Victim A; Victim B; Victim C; Victim D; Victim E; Victim F; and Victim G.

21. The Victims have been recognized in this proceeding, and made submissions on the Prosecutor's article 19(3) proceeding, *see supra* para. 8, following the Pre-Trial Chamber's recognition of their interests being impacted by such the Prosecutor's application in inviting submissions by victims in the 28 January 2020 Order, para. 13.

22. All of the Victims are Palestinian, by nationality and/or ethnicity. Collectively the Victims have suffered crimes specified in article 5 of the Statute in all parts of the territory of the State of Palestine, including persecution, as well as other crimes falling within the jurisdiction of the Court.

23. As previously indicated, a number of Victims at this stage wish to be identified by a pseudonym and wish to provide a description of their case at a high level of generality to avoid possible identification.¹⁵ This decision is due to a well-founded fear of retribution taken against them, their family members and/or community by Israeli authorities for their participation in these proceedings. This fear is grounded in their prior experience with Israeli authorities as well as the well-documented campaign by Israeli officials as well as the United States to discourage

¹⁵ See Victims' Observations, [ICC-01/18-110-Red](#), paras. 5-27.

Palestinian engagement with the ICC and threats of punishment against those who do participate in the ICC proceedings.¹⁶ In light of the current genocidal campaign being waged against Palestinians in Gaza, none of the Victims' names will be made public for fear of retribution.

24. Because of the ongoing assault on Palestinians in Gaza, and the attendant repeated forced displacement, lack of connectedness to the outside world including due lack of electricity, mass starvation, injury or even death (as in the case of [REDACTED] [REDACTED]¹⁷), the undersigned Legal Representative was not able to confirm the current status of each of the Victims and their continued desire to engage with the ICC; the previously granted power of attorney for each Victim permits the undersigned counsel to make this submission in the absence of such contact and confirmation, and she does so based on the previously expressed strong desire of each Victim to see a measure of justice and accountability for the crimes they and other victims in their community have long endured.

IV. Observations and Submissions

A. On the Process and Proceedings on the Applications for Arrest Warrants

i. Prosecutor Khan's Arrest Warrant Application Announcement

¹⁶ See, e.g., N. Landau, [Netanyahu Calls to Impose Sanctions Against International Criminal Court](#), Haaretz, 21 Jan. 2020 (quoting Israeli P.M. Netanyahu: "[t]he U.S. government under President Trump has spoken forcefully against the ICC for this travesty... I urge all your viewers to do the same and ask for concrete actions, sanctions, against the international court. Its officials, its prosecutors, everyone"); [Israel's Retaliatory Seizure of Tax: A War Crime to Punish ICC Membership](#), Al Haq, 1 Apr. 2015; Press Statement, Michael Pompeo, Secretary of State, The International Criminal Court's Illegitimate Prosecutions (May 15, 2020), <https://2017-2021.state.gov/the-international-criminal-courts-illegitimate-prosecutions> (threatening "[i]f the ICC continues down its current course [with Afghanistan and Palestine], we will exact consequences"); Exec. Order No. 13928, 85 Fed. Reg. 36139 (June 11, 2020) (declaring a national emergency and imposing sanctions against ICC officials). See also [Complaint Against the United States of America: Interference with Judicial Proceedings at the International Criminal Court](#), Letter from the Center for Constitutional Rights to U.N. Special Rapporteur on the Independence of Judges and Lawyers, 5 June 2019 (documenting statements made against the ICC and threatened actions if it proceeded with investigations involving U.S. or Israeli citizens).

¹⁷ [REDACTED]

25. The Victims observe that requests for applications for arrest warrants have generally been made under seal, and that decisions on such applications have likewise generally been rendered *ex parte*, under seal, until such time as they are unsealed.¹⁸ Indeed, the Victims note that the Appeal Chamber has previously cited the Prosecutor's considered assessment "the risk that public awareness of the [arrest warrant] proceedings prior to certain arrangements being put in place could cause the suspects to hide, flee or obstruct or endanger the investigation or proceedings" or place victims/witnesses at risk as sufficient grounds for conducting arrest warrant proceedings *ex parte* and under seal/confidentially.¹⁹

26. Accordingly, the Victims query why the Prosecutor deviated from standard practice of not announcing applications for arrest warrants *at least* until such time as they are granted, noting especially the security risks and risks to the integrity of the investigation attendant in such a premature announcement in the context of ongoing criminality that has prompted the International Court of Justice to issue three sets of provisional measures for a plausible genocide against the Palestinian people in Gaza by Israel,²⁰ as well as the risks of prompting a *political* response or debate about the efficacy of at least one set of such warrants (by States Parties, non-States Parties and named suspects alike)²¹ rather than a *legal* assessment based solely on criteria set forth in the Rome Statute in article 58.

¹⁸ See, e.g., *Situation in Uganda*, Decision on the Prosecutor's Application for Warrants of Arrest Under Article 58, *ex parte*, under seal, 8 July 2005, ICC-02/04; *Situation in the Democratic Republic of the Congo in the case of the Prosecutor v. Thomas Lubanga Dyilo*: Decision on the Prosecutor's Application for a warrant of arrest, Article 58 (Under Seal), ICC-01/04-01/06, 10 Feb. 2006, Pursuant to the Decision ICC-01/04-01/06-37 this document is reclassified as public; Decision to Unseal the Warrant of Arrest against Mr Thomas Lubanga Dyilo and Related Documents, ICC-01/04-01/06-37, 17 Mar. 2006. See also *Situation in Ukraine*: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova Belova (only announcing the existence of confidential arrest warrants *after* the issuance of such warrants pursuant to a confidential application).

¹⁹ 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, *Situation in the Democratic Republic of Congo*, 13 July 2006, ICC-01/04, para. 6. ("Appeals Chamber Arrest Warrants Judgment").

²⁰ I.C.J., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel), [Provisional Measures Order](#), 26 Jan. 2024; [Provisional Measures Order](#), 28 March 2024; [Provisional Measures Order](#), 24 May 2024.

²¹ See, e.g., [Statement from President Joe Biden on the Warrant Applications by the International Criminal Court](#), 20 May 2024 (United States); Maroosha Muzaffar, [Netanyahu in furious response to war crimes allegations: 'This is the new antisemitism'](#), The Independent (21 May 2024) (Israel); [Federal Foreign](#)

ii. The Pre-Trial Chamber's Unprecedented Grant of the U.K. Request to Submit Observations at the Application for Arrest Warrants Stage

27. Recalling that applications for arrest warrants are generally considered on an *ex parte*, under seal basis, there is typically no opportunity for any party – let alone a third State – to intervene in the proceedings. As already noted, the Appeals Chamber has emphasized that such review of arrest warrant applications should be conducted on an *ex parte* basis.²² In a prior instance where there was a request to intervene in review of applications for arrest warrants²³ – notably where the existence of arrest warrants against an accused (Omar Bashir, Situation of Sudan) was already public but the Prosecutor sought to amend the arrest warrants – the request was denied.²⁴

28. Respectfully, prior precedents on applications under rule 103 strongly suggest that it was error to grant the U.K. Request. Chambers consider two factors when assessing applications of potential *amicus curiae*: i) whether the submissions ‘would be of indispensable assistance, or would provide information that it could not procure by other means’; and ii) the respective stage of the proceedings in the light of the filings received.²⁵ The United Kingdom’s proposed submission fails both tests for acceptance as an *amicus curiae*, as well as what has emphasized as critical: “the first and foremost factor for leave to be granted pursuant to rule 103 of the Rules is whether the relevant application relates to an issue that is actually before the

[Office on the application for arrest warrants at the International Criminal Court](#), 20 May 2024 (Germany).

²² Appeals Chamber Arrest Warrants Judgment, paras. 21-23 (accepting that proceeding other than through *ex parte*, under seal proceedings on the application for an arrest warrant “posed serious risks to the life and well-being of victims and witnesses, the integrity and efficiency of ongoing investigative efforts, and the prospects of success of any future arrest efforts.”).

²³ The request to intervene was filed by the Sudan Workers Trade Union, which argued that the request for arrest warrant should be denied on multiple grounds, including the negative effect of arrest warrants on peace building or alternative means of transitional justice, and the entrenchment of negative perceptions of the ICC thus contribute to the deterioration of the situation in Sudan. See Application on behalf of Citizens' Organisations of The Sudan in relation to the Prosecutor's Applications for Arrest Warrants of 14 July 2008 and 20 November 2008, 11 Jan. 2009, [ICC-02/05-170](#).

²⁴ Pre-Trial Chamber I, Decision on Application under Rule 103, 4 Feb. 2009, [ICC-02/05-185](#). The Pre-Trial Chamber denied the Trade Union’s application, concluding that it was not within the Chamber’s power or responsibility to assess the implications of the arrest warrant for the “interests of justice”. See also U.K. Request, footnote 25 (listing decisions).

²⁵ See, e.g., Decision on an Amicus Curiae application and on the “Requête tendant à obtenir présentations des témoins DRC-D02-P-0350, DRC-D02-P-0236, DRC-D02-P-0228 aux autorités néerlandaises aux fins d’asile” (arts. 68 and 93(7) of the Statute), 9 June 2011, ICC-01/04-01/07, para. 54.

competent Chamber.”²⁶ With regard to the first, the Pre-Trial Chamber has already received and considered argument on the matter which the U.K. seeks to weigh in, including from the Prosecutor, victims and multiple amicus curiae, during its consideration of the article 19(3) jurisdictional review,²⁷ and already ruled that the Oslo Agreements are not an impediment to the Court’s exercise of jurisdiction.²⁸ With regard to the second, review of applications for arrest warrants – which are generally expected to be considered on a confidential and *ex parte* basis – are not the appropriate juncture to consider the issue proposed for consideration.²⁹ And as for the “foremost” factor identified, the U.K. Request does not seek, and indeed, the U.K. is not suitably positioned, to weigh in on the actual matter before the Pre-Trial Chamber: whether the article 58 factors for issuance of arrest warrants are met.

29. The reasons for keeping the review of applications for arrest warrant *ex parte* and confidential consistently articulated by Pre-Trial Chambers³⁰ and the Appeals Chamber are well-founded. The Victims add to the long list the risk for political

²⁶ Decision on Application under Rule 103, 4 Feb. 2009, para. 8.

²⁷ See, Jurisdictional Decision, notes 321-327.

²⁸ *Id.*, para. 129. Notably, the U.K. Request cites to paragraph 131 as the basis for its purported legal question in need of answering before issuance of arrest warrants, which falls under the “Final Considerations” heading, rather than acknowledging 129, which reflects the Pre-Trial Chamber’s findings in the section headed “The Oslo Accords.”

For prior instances where amicus applications have been rejected because the request was inappropriate at the stage of the proceedings or would not aid the Chamber, see, e.g., Pre-Trial Chamber I, Decision on the Request submitted pursuant to rule 103(1) of the Rules of Procedure and Evidence, 17 August 2007, ICC-01/04, para. 5; Trial Chamber II, Decision on the motion filed by the Queen’s University Belfast Human Rights Centre for leave to submit an amicus curiae brief on the definition of crimes of sexual slavery, 7 April 2011, ICC-01/04-01/07, para. 6.

²⁹ To the extent that matters raised in the U.K. Request could be considered as relevant to admissibility, Pre-Trial Chambers have consistently determined that it is unnecessary to examine the admissibility of a case against a person named in an application for an arrest warrant at the time of issuance of any such arrest warrant. See, e.g., Pre Trial Chamber II, Decision on the Prosecutor’s Application under Article 58, 13 July 2012, ICC-01/04-02/06, ¶ 6 (“The Chamber does not consider it necessary to examine the admissibility of the case at this stage of the proceedings.”); Pre-Trial Chamber II, “Decision on the Prosecutor’s Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang”, 8 March 2011, ICC-01/09-01/11-01, para. 12.

Indeed, the Appeals Chamber has stated unequivocally: “An 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) of the Statute.” Appeals Chamber Arrest Warrants Judgment, para. 1.

³⁰ See, e.g., Pre-Trial Chamber II, Decision on Application for Leave to Submit Amicus Curiae Observations, 18 January 2011, ICC-01/09-35, para. 10 (finding “the proceedings triggered by the Prosecutor’s application for a warrant of arrest or a summons to appear are to be conducted on an *ex parte* basis. The only communication envisaged at the article 58 stage is conducted between the Pre-Trial Chamber and the Prosecutor.”).

interference (rather than legal insight), which, it is suggested, may be what is afoot in the U.K. Request. The Victims recall that the U.K. government at the time the Request was filed met Prosecutor Khan's Arrest Warrant Application Announcement with condemnation.³¹ The fact that the change of government may result in a changed position in any observations that the U.K. *might* now file is, respectfully, evidence that such observations are being offered as *political* opinions rather than *legally*-based arguments, and demonstrates the danger of any Pre-Trial Chamber allowing *political* views to interfere or otherwise influence what must be an independent consideration of facts-to-law under article 58. The Victims respectfully suggest that the Pre-Trial Chamber seek the exit ramp instead of continuing down a slippery slope that can be perceived as impairing the independence of the Court, and reconsider its grant of leave to the U.K. to submit observations under 103 on the Oslo Accords.³²

B. The United Kingdom Lacks Standing to Challenge the ICC's Jurisdiction

30. The U.K. Request is misconceived as the United Kingdom does not have legal standing to challenge the ICC's jurisdiction in relation to the arrest warrant applications. The U.K., as a third-State (and certainly not a named individual suspect or accused in this proceeding), has no standing to raise a jurisdictional challenge under article 19 of the Statute. Although the United Kingdom's submission purports to be based on article 19(1) to support the Court's own determination of jurisdiction, the Chamber has not invoked this provision- and indeed, has already carried out a review of its jurisdiction in the Situation, including the impact on the Oslo Agreements on its territorial jurisdiction.³³

31. The United Kingdom seeks in effect to introduce a challenge that it is not permitted under article 19(2). According to article 19(2), challenges to the jurisdiction of the Court are limited to:

³¹ Alexander Butler, [UK minister slams International Criminal Court seeking arrest warrants as 'repugnant'](#), The Independent (20 May 2024) (United Kingdom).

³² The Victims note, with great concern, reporting that the United States is exerting significant pressure on the U.K. to continue with its pre-election submission rather than reverse or change course. See Patrick Wintour, [US 'pressuring UK to block ICC's Netanyahu arrest warrant'](#), The Guardian, 10 July 2024.

³³ Jurisdictional Decision, paras. 124-129.

- i. An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;
- ii. A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or
- iii. A State from which acceptance of jurisdiction is required under article 12.

32. The United Kingdom satisfies none of those criteria. Moreover, in this matter, the United Kingdom cannot be considered “an interested State.”³⁴ It is therefore improper for the United Kingdom to seek to challenge through the side-door of an *amicus curiae* observation the Court’s jurisdiction over any accused for crimes that took place on territory which this Chamber has already deemed to fall within the Court’s jurisdiction in the Jurisdictional Decision, namely the occupied Palestinian territory, namely Gaza and the West Bank, including East Jerusalem.³⁵ The Pre-Trial Chamber is respectfully requested to deny any effort by the United Kingdom to lodge such a back-door challenge to jurisdiction, and proceed to expeditiously grant the arrest warrants.³⁶

C. The Prosecutor’s Applications under Article 58 for Warrants for Benjamin Netanyahu and Yoav Gallant’s Arrest Should Be Granted.

33. Article 58(1) “stipulates only two substantive prerequisites for the issuance of an arrest: firstly, the Pre-Trial Chamber must be satisfied that there “are reasonable

³⁴ See Appeals Chamber, *Situation in Afghanistan*, Judgment on the appeal against the decision on the authorization of an investigation into the Situation in the Islamic Republic of Afghanistan, 5 March 2020, [ICC-02/17-138](#), para. 44, cited in the Jurisdictional Decision, para. 128.

³⁵ Indeed, the United Kingdom rightly observes that “written observations on article 58 proceedings have previously been rejected, in part on the basis that article 58 proceedings are *ex parte*.” U.K. Request, para. 20, n. 25.

³⁶ In regard to the Victims request that the arrest warrants be granted “expeditiously,” the Victims note that the two sets of arrest warrants in the Situation of Ukraine were granted within one month of the applications being lodged; the Pre-Trial Chamber noted the continuation of crimes as the basis for the expeditious and public announcement of the arrest warrants, to serve a deterrent to the commission of further crimes. See, e.g., Press Release, [Situation in Ukraine: ICC judges issue arrest warrants against Sergei Kuzhugetovich Shoigu and Valery Vasilyevich Gerasimov](#), 25 June 2024 (“mindful that conduct similar to that addressed in the warrants of arrest, which amounts to violations of international humanitarian law, appears to be ongoing, the Chamber considered that public awareness of the warrants may contribute to the prevention of the further commission of crimes pursuant to article 58(1)(b)(iii) of the Rome Statute.”). The same conditions certainly apply in relation to Gaza, where the ICJ has found claims of genocide to be plausible and three sets of provisional measures necessary.

grounds to believe that the person has committed a crime within the jurisdiction of the Court,” and secondly, “the arrest of the person must appear necessary for at least one of the three reasons enumerated in article 58(1)(b) of the Statute.”³⁷

34. The alleged crimes set forth in the Prosecutor’s application against Netanyahu and Gallant fall squarely within the jurisdiction of Court, as set forth in the 5 February 2021 Jurisdictional Decision, in that all alleged crimes come within the subject-matter and temporal scope of the Court’s jurisdiction and have occurred on the territory of a State Party - Palestine, namely in Gaza.

35. As for the application for arrest warrants against Netanyahu and Gallant for war crimes and crimes against humanity, even information available in the public domain – most notably the finding by the International Court of Justice that it is plausible that violations of Palestinians’ right to be free from genocide or the risk of genocide has been violated through *inter alia* the imposition of a “total siege” leading to the denial of basic necessities for life including food, fuel, electricity, water, civilian while decimating the healthcare infrastructure, and a continual military assault and bombardment³⁸ – makes clear that the “reasonable grounds to believe” standard (i.e., “the existence of some facts or information which would satisfy an objective observer that the person concerned may have committed the offence”³⁹) is satisfied.⁴⁰

³⁷ Pre Trial Chamber I, Decision on the Prosecution Application for a Warrant of Arrest, 6 March 2007, ICC-01/04-02/06, para. 10.

Article 58(1)(b) provides: “The arrest of the person appears necessary: (i) To ensure the person’s appearance at trial; (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.”

³⁸ See, e.g., ICJ opinion dated January 26, 2024, at ¶ 30 (finding “acts and omissions complained of ... appear to be capable of falling within the provisions of the Genocide Convention.”). See Provisional Measures Orders, *supra* n. 20.

³⁹ Pre Trial Chamber II, Decision on the Prosecutor’s Application under Article 58, 13 July 2012, ICC-01/04-02/06, para. 16.

⁴⁰ See, e.g., Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, *Detailed Findings on the military operations and attacks carried out in the Occupied Palestinian Territory from 7 October to 31 December 2023*, U.N. Doc. A/HRC/56/CRP.4 (June 10, 2024); Francesca Albanese (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967), *Anatomy of a Genocide*, U.N. Doc. A/HRC/55/73 (March 25, 2024).

36. Notably, after an evidentiary hearing where victim and expert testimony was presented in relation to allegations of failure in the duty to prevent, or complicity in, genocide, a federal court in the United States concluded:

the undisputed evidence before this Court comports with the finding of the ICJ and indicates that **the current treatment of the Palestinians in the Gaza Strip by the Israeli military may plausibly constitute a genocide in violation of international law**. Both the uncontroverted testimony of the Plaintiffs and the expert opinion proffered at the hearing on these motions as well as **statements made by various officers of the Israeli government indicate that the ongoing military siege in Gaza is intended to eradicate a whole people and therefore plausibly falls within the international prohibition against genocide**.⁴¹

37. Of course the Victims note that, pursuant to his independent investigation, the Prosecutor's application is supported by evidence including "interviews with survivors and eyewitnesses, authenticated video, photo and audio material, satellite imagery and statements from the alleged perpetrator group."⁴²

38. The issuance of arrest warrants against Netanyahu and Gallant are necessary to prevent either of the individuals, who remain in the most senior leadership positions in Israel, from committing further crimes within the jurisdiction of the Court. The issuance of such arrest warrants – and the beginning of a break to the cycle of impunity – could forestall further harm to the Victims who remain in Gaza, as well as those Victims who have family, loved ones and members of their community remaining in Gaza facing mass famine and continual bombardment, and indeed those Palestinians who have fled Gaza but continue to suffer severe physical or mental harm and other deprivations of fundamental rights stemming from forced displacement and the endurance of a genocidal campaign, as well as Victims in other parts of the occupied Palestinian territory.

39. The Victims also note that arrest warrants are justified and necessary in light of the clear disregard expressed for the Court and its efforts to prevent the

⁴¹ *Defense for Children International-Palestine et al., v. Biden, et al.*, _F. Supp. 3d._, 2024 WL 390061 at *2 (N.D. Cal. Jan. 30, 2024) (emphasis added).

⁴² Prosecutor Khan's Arrest Warrant Application Announcement.

commission of further war crimes and crimes against humanity through proceedings that can provide some measure of justice and accountability. Not only can the Court expect no cooperation, both Netanyahu and Gallant have attacked the Court and the Prosecutor.⁴³ As has been widely reported, such attacks did not commence with Prosecutor Khan's Arrest Warrant Application Announcement, but include a decade-long Israeli "war" against the ICC, its staff and senior officials including the current and former Prosecutor, as well as civil society organizations and individuals (including lawyers) working to support the advancement of Situation in Palestine to the case-stage.⁴⁴

40. Accordingly, and with respect for the independence of the Pre-Trial Chamber, when considering even the publicly available information about ongoing crimes in Gaza and the scope of the Prosecutor's applications for arrest warrants for Netanyahu and Gallant against the requirements of article 58 and jurisprudence on the review of arrest warrant applications, the Victims request that the Pre-Trial Chamber issue the arrest warrants without further delay.

D. The Oslo Agreements Are No Impediment to the Issuance of Arrest Warrants

41. In this case, the Pre-Trial Chamber has already assured itself of the Court's jurisdiction over the Situation of Palestine. Notably, the issue of the Oslo Agreements was already raised and assessed by the Pre-Trial Chamber as part of its consideration of jurisdiction, and found to be no barrier to the Court's exercise of jurisdiction in the Situation.⁴⁵ The Chamber declared the Oslo Agreements "are not pertinent to the

⁴³ See, e.g., "Hit Job: ICC prosecutor seeking arrest warrants for Israeli leaders is 'absurd,' Netanyahu says," 21 May 2014, Good Morning America ("This guy [Prosecutor Khan] is out to demonize Israel," Netanyahu said. "He's doing a hit job. He's creating a false symmetry between the democratically elected leaders of Israel and the terrorist chieftains."); [Gallant: ICC has no authority after prosecutor seeks warrants for Israeli leaders](#), Reuters, 21 May 2024 ("The attempt by the prosecutor to prevent the state of Israel's right to defend itself and free its hostages, must be rejected off hand.").

⁴⁴ Harry Davies, Bethan McKernan, and Yuval Abraham, [Spying, hacking, and intimidation: Israel's nine-year war on the ICC exposed](#), The Guardian (28 May 2024).

⁴⁵ See Jurisdictional Decision, paras. 124-129.

resolution of ...the scope of the Court's territorial jurisdiction in Palestine"⁴⁶ and went on to hold that jurisdiction was established for the Court, in part because the State of Palestine had effectively conferred jurisdiction on the Court.⁴⁷ There exist **no** cogent reasons for the Pre-Trial Chamber to revisit or reconsider its jurisdictional ruling, and certainly no basis to consider the matter at this stage of the proceedings through an amicus filing by the United Kingdom or any other party as *amicus curiae*.

42. As the Prosecutor argued below, along with numerous *amici*, contrary to the United Kingdom's assertion, ICC jurisdiction is not the result of delegation by States Parties or the transfer of a subset of their sovereign powers.⁴⁸ The Prosecutor recognized that once a state "has conferred jurisdiction" upon the Court, "the resolution of the State's potential conflicting obligations is not a question that affects the Court's jurisdiction [...] . . . but may become an issue of cooperation or complementarity during the investigation and prosecution stages."⁴⁹ Indeed, states "confer upon" or "accept" the jurisdiction of international courts and tribunals, because they need those courts to complement their own enforcement jurisdiction, including acting when the national systems are unable.⁵⁰ This is confirmed by the Rome negotiations and the Statute's complementarity regime, the ICC's independent legal personality, and the Court's own jurisprudence. The Jurisdictional Decision's reasoning also recognized that Palestine's acceptance of the Court's jurisdiction cannot be limited.⁵¹

43. Furthermore, the status of the territory under the Court's jurisdiction (Gaza and the West Bank, including East Jerusalem) as occupied by Israel and provisions of international humanitarian law including article 146(2) of the Fourth Geneva

⁴⁶ Jurisdiction Decision, para. 129.

⁴⁷ Jurisdiction Decision, para. 118.

⁴⁸ See, e.g., *Submission Pursuant to Rule 103: Professors Asem Khalil & Halla Shonibi*, 16 March 2020, ICC-01/18-73; *Submissions Pursuant to Rule 103 (Robert Jeansch & Giulia Pinzauti)*, 16 March 2020, ICC-01/18-107

⁴⁹ Article 19(3) Request, ICC-01/18, para. 185.

⁵⁰ See, e.g., Leila Nadya Sadat, *The Conferred Jurisdiction of the International Criminal Court*, 99 Notre Dame L. Rev. 549 (2024), at 552-53;

⁵¹ Jurisdictional Decision, para. 102 ("it would indeed be contradictory to allow an entity to accede to the Statute and become a State Party, but to limit the Statute's inherent effects over it").

Convention, particularly when read in the light of article 21(3), only confirms that it would be error to find that the Oslo Agreements as a basis for depriving Palestine of prescriptive jurisdiction over its territory.

44. Accordingly, the Oslo Agreements cannot be invoked to deny the Prosecutor's application for arrest warrants, and the Pre-Trial Chamber should proceed on the basis of its findings of territorial jurisdiction in its 5 February 2021 Decision.

V. CONCLUSION

II. For the reasons set out above, the Victims request that the Pre-Trial Chamber:

- (i) Reconsider its decision to grant the United Kingdom's request to submit Written Observations Pursuant to Rule 103;
- (ii) Review the Prosecutor's Applications for Arrest Warrants against Benjamin Netanyahu and Yoav Gallant in light of its jurisdiction findings in its Decision of 5 February 2021;
- (iii) And, finding the requirements of Article 58 are satisfied, issue the arrest warrants without further delay.

Respectfully submitted,



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Legal Representative for Victims of Persecution

At New York, United States ,

Dated this 12th day of July, 2024.