AL-HAQ

Review Paper

Arguments Raised in *Amici Curiae* Submissions in the Situation in the State of Palestine Before the International Criminal Court:

Arrest Warrant Applications August 2024

Al-Haq - 54 Main Street 1st & 2nd Fl. - Opp. Latin Patriarchate
Saint Andrew's Evangelical Church - (Protestant Hall)
P.O.Box: 1413 - Ramallah - West Bank - Palestine
Tel: + 970 2 2954646/7/9
Fax: + 970 2 2954903
www.alhaq.org

ISBN 978-9950-327-99-3

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I. INTRODUCTION

On 21 November 2024, Pre Trial Chamber I of the International Criminal Court (ICC), in a historic decision, issued warrants for the arrest of Israel's Prime Minister Benjamin Netanyahu and former Minister of Defence Yoav Gallant, finding that there was a reasonable basis to believe that both individuals were co-perpetrators with others in committing the war crime of "starvation as a method of warfare, and the crimes against humanity of murder, persecution, and other inhumane acts".[1]

Six months previously, the Office of the Prosecutor (OTP) at the International Criminal Court had announced on 20 May 2024 an application for Arrest Warrants on charges of crimes against humanity and war crimes against Israeli Prime Minister Benjamin Netanyahu and Minister for Defence Yoav Gallant - proceedings which were unexpectedly, and unnecessarily, delayed by the authorisation on 27 June 2024, by the Pre-Trial Chamber, of a Request from the United Kingdom (UK) that it be permitted to submit written observations to the Chamber.[2] The UK, in seeking to delay or derail the Arrest Warrants, sought for the Court to reconsider the applicability of the terms of the Oslo Accords, and specifically Art XVII, para 2(c), of the Oslo II agreement – that the 'territorial and functional jurisdiction of the (Palestinian) Council will apply to all persons, except for Israelis, unless otherwise provided in this Agreement' – in the decision to grant the Arrest Warrant application.

The essence of the UK's position was to challenge 'whether Palestine could delegate criminal jurisdiction over Israeli nationals to the Court, in circumstances where the Oslo Accords themselves make it clear that Palestine itself does not have criminal jurisdiction over Israeli nationals'.[3] The UK's request would not have been possible, had the OTP refrained from publicly announcing its application

1 International Criminal Court, "Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel's challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant" (21 November 2024), <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>.

2 Al-Haq, Al-Mezan Center for Human Rights and the Palestinian Centre for Human Rights Written Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence, ICC-01/18-308, para 13. <https://www.legal-tools.org/doc/fp2u8c7o/pdf>. While it is within the Chamber's discretion to grant *amicus curiae* observations at any stage in proceedings, the present case, where a state has been authorised to submit observations in Article 58 proceedings after the Prosecutor's announcement of applying for arrest warrants, but prior to their issuance, was wholly unprecedented.

3 ICC-01/18-171-Red. Situation in Palestine, Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103, para 18. <https://www.icc-cpi.int/sites/default/files/RelatedRecords/0902ebd180892e1f.pdf>.

for Arrest Warrants, a practice both unusual and contrary to best practice.[4] Despite having triggered the proceedings, the UK then declined to submit any observations to the Chamber.

Usually at this stage in proceedings the Chamber must grant the Arrest Warrant applications if it determines 'the sufficiency of evidence and material presented by the Prosecutor in *establishing reasonable grounds to believe*' that Article 58 conditions have been met. Indeed the Chamber is *bound* to grant the Prosecution's request' if upon examining the supporting materials presented, 'it is satisfied that there are *reasonable grounds to believe* that the relevant person is criminally liable.'[5] Permitting States, and others, to intervene as *amicus curiae* in Article 58 *ex parte* proceedings, which should properly be restricted to communications only between the Pre-Trial Chamber and the Prosecutor, caused further unnecessary and predictable delay, with the effect of creating a form of *de facto* shadow adversarial proceedings (proceedings within proceedings).[6] In the six month delay between the application for arrest warrants on 20 May 2024 and the final issuance of the arrest warrants on 21 November 2024, a minimum of a further 8,494 Palestinians had been killed and 24,616 Palestinians injured in Gaza.[7]

As is apparent from the following review of submissions, many of the observations submitted to the Court by supporters of continued Israeli impunity are inappropriate on at least two grounds: many fail to even refer to the Oslo Accords, the very basis of the question raised by the UK, choosing instead to 'present arguments that are entirely irrelevant to the scope of the proceedings'.[8] Others seek to exploit the procedure as a form of loophole so as to challenge the Court's jurisdiction over the Situation in the State of Palestine. While such challenges may be subsequently made in accordance with the procedure provided for at Article 19 of the Rome

4 Al-Haq et al, para 11. (Office of Public Counsel for the Defence) Rule 103 Observations on Defence Rights at this Stage of the Proceedings, ICC-01/18-342, para 14. <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180939437.pdf>.

5 Al-Haq at al, para 15.

6 Al-Haq et al, para 16.

7 UN OCHA, "Hostilities in the Gaza Strip and Israel - Reported humanitarian impact, 20 May 2024 at 15:00" (20 May 2024), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-reported-humanitarian-impact-20-may-2024-1500> (35,562 Palestinians killed and 79,652 injured in Gaza); Gaza Ministry of Health, Facebook (21 November 2014), <https://www.facebook.com/MOHGaza1994> (44,056 Palestinians killed since 7 October 2023, and 104,268 injured).

8 Submission on behalf of Gaza Victims in the proceedings related to the Situation in the State of Palestine: Raji Sourani, Chantal Meloni, Triestino Mariniello, para 24. <https://www.icc-cpi.int/court-record/icc-01/18-335>.

Statute, the process is restricted, and it is inappropriate that states and others should attempt to do what is otherwise impermissible at the present juncture in the Article 58 Arrest Warrant proceedings.

This review paper will identify and discuss key themes and contributions made in the 75 submissions received by the Pre-Trial Chamber. The majority of state submissions, including those of Palestine, South Africa, Ireland, Norway, Chile and Mexico, and the submissions of international organisations including the Organisation of Islamic Cooperation and the League of Arab States, firmly rejected the UK's proposition. Attention will also be given to the submissions of states intervening in favour of Israel, namely Argentina, the Czech Republic, Democratic Republic of Congo (DRC), Hungary, Germany, and the United States of America (USA). The review will outline how the position made by the State of Palestine, that there was no justification for this process – at this particular juncture and on this particular issue – to have been authorised, has been borne out by the nature and content of many of the submissions advocating for continued Israeli impunity. This is particularly important given that these issues may arise for consideration once again, in future proceedings under Article 19(2)(b) of the Rome Statute.

Acceptance of the vision formulated and advanced by the pro-Israeli impunity camp would have negative repercussions far beyond the Situation in the State of Palestine. It seeks to upend the hierarchy of sources in international law, proposing that the terms of the Rome Statute, an international treaty directed against impunity, be subjugated to the detail of bilateral treaties of uncertain value. Such a vision would signal the end of any possibility for the Court to exist as a coherent institution, by permitting powerful states to extract bilateral agreements from weaker parties so as to ensure impunity for their nationals and allies.

Such strategy had previously been identified in the 2020 amicus submitted by William Schabas to Pre-Trial Chamber I: 'A handful of States Parties are attempting to exploit the Prosecutor's application in order to pursue indirectly what they cannot do directly, and what they do not dare to do in the Assembly of States Parties because they apprehend what the result might be.'[9]

The present proceedings further illustrate that while the fault lines as to how states use international law vis-à-vis Palestine have been long established, they

9 Opinion in Accordance with Article 103 of the Rules of Procedure and Evidence, William Schabas, ICC-01/18-71, para 16. <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_01010.PDF>.

have been rendered ever more visible against the backdrop of Israel's escalation of apartheid and genocide against the Palestinian people and are increasingly being intensified. In light of the issuance of arrest warrants, we approach a moment of impending crisis, where states have to choose between their commitment to the idea of accountability and the international obligations found in the Rome Statute, and their political loyalty to the state of Israel.

II. PROCEDURAL HISTORY

On 22 January 2009 Palestine lodged an article 12(3) declaration accepting the exercise of jurisdiction by the International Criminal Court for 'acts committed on the territory of Palestine since 1 July 2002'.[10] On 3 April 2012 the Office of the Prosecutor issued a Statement to the effect that it would not be proceeding with its Preliminary Investigation in Palestine.[11]

On 2 January 2015 the State of Palestine acceded to the Rome Statute, depositing its instrument of accession with the United Nations Secretary-General. The Rome Statute entered into force for the State of Palestine on 1 April 2015.

Pre-Trial Chamber I's decision of 5 February 2021 affirmed that the Court could exercise its criminal jurisdiction in the Situation in the State of Palestine and that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem:

> 'Palestine acceded to the Statute in accordance with the procedure defined by the Statute and […] Palestine shall thus have the right to exercise its prerogatives under the Statute and be treated as any other State Party would.'[12]

The Chamber specifically held, having received significant numbers of amicus briefs addressing the status and consequence of the Oslo Accords, that the Oslo Accords were not a bar to opening the Court's investigation, though the Chamber did acknowledge that the Oslo Accords could have a possible relevance should issues of cooperation and complementarity arise subsequent to the issuance of Arrest Warrants.

10 <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/74EEE201-0FED-4481-95D4-C8071087102C/279777/20090122PalestinianDeclaration2.pdf>.

11 The Office of the Prosecutor 'Situation in Palestine' 3 April 2012. <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf>.

12 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, 05 February 2021, para 112. <https://www.legal-tools.org/doc/haitp3/>.

On 20 May 2024, the Office of the Prosecutor at the International Criminal Court publicly announced its intention to apply under Article 58 of the Rome Statute for the arrest of five persons in the Situation in the State of Palestine, including Israel's Prime Minister Benjamin Netanyahu and Minister of Defence, Yoav Gallant.[13]

On 10 June 2024, the United Kingdom requested leave from Pre-Trial Chamber I of the Court to provide observations under rule 103 of the Rules of Procedure and Evidence of the International Criminal Court on 'Whether the Court can exercise jurisdiction over Israeli nationals, in circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords'.[14] Rule 103 providing for '*Amicus curiae* and other forms of submission', allows for the Court, where 'desirable for the proper determination of the case', to invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.

On 27 June 2024, the Chamber granted the United Kingdom's request to file observations. It also invited any further requests under rule 103 to be submitted by 12 July 2024.[15]

On 4 July 2024, the Chamber granted a request from the United Kingdom for an extension of time to provide its observations.[16]

On 22 July 2024, having received over 70 applications from individuals, organisations, and States to submit observations, the Chamber granted leave to 62 applicants to provide observations by 6 August 2024.[17]

The Chamber also directed legal representatives of potential victims to rely on article 68(3) of the Rome Statute if they wished to provide observations.[18]

The Chamber allowed the Office of Public Counsel for the Defence (OPCD) to file observations by 16 August 2024. It further authorised the Prosecution to file a consolidated response of no more than 53 pages by 26 August 2024. In this

13 Prosecutor Public Statement, 20 May 2024. <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>.

14 ICC-01/18-171-Red, para 27. <https://www.icc-cpi.int/court-record/icc-01/18-171-anx>.

15 ICC-01/18-173-Red ("First Order"), para. 6. <https://www.icc-cpi.int/court-record/icc-01/18-173-red>.

16 ICC-01/18-178 ("Decision on UK Request"). <https://www.icc-cpi.int/court-record/icc-01/18-178>.

17 ICC-01/18-249 ("Second Amicus Order"), para 11. <https://www.icc-cpi.int/court-record/icc-01/18-249>.

18 ICC-01/18-249 ("Second Amicus Order"), para 14.

Response the Office of the Prosecutor noted that:

> 'In total, the Chamber has received submissions from some ten groups of victims (including OPCV), OPCD, 40 States Parties (from 18 States Parties directly and from two international organisations which represent an additional 22 States Parties, alongside more than 30 other non-States Parties), 41 academics and non-governmental organisations (individually or in groups), and three individuals.'[19]

19 Office of the Prosecutor, Prosecution's consolidated response to observations by interveners pursuant to article 68(3) of the Rome Statute and rule 103 of the Rules of Procedure and Evidence, 23 August 2024, para 31. <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180949087.pdf>.

III. APPROPRIATENESS OF THE PROCEDURE

Challenging the basis of the process triggered by the UK's Request, and its authorisation by the Chamber, the **State of Palestine** observed that 'With the exception of the State of Palestine, no State, organization or person that has sought leave from the Court to file observations under Rule 103 satisfies the provisions of Article 19(2), unless, in the case of a State, it can demonstrate that it is actually investigating' the cases against Netanyahu or Gallant as outlined in the prosecutor's application.

Palestine further noted that 'the Court must promptly reject the bad faith arguments advanced by parties that have no standing under Article 19',[20] and that submissions seeking to challenge the Court's jurisdiction over Israeli nationals in the context of the Situation in the State of Palestine: 'must be disregarded for lack of standing and acknowledged as an impermissible attempt to circumvent Article 19 and politicize a judicial process.'[21]

The joint submission of **South Africa, Bangladesh, Bolivia, Comoros, and Djibouti,** emphasising that the Court had already determined in its 5 February 2021 Decision that it has jurisdiction over the Situation in the State of Palestine, that it may exercise its criminal jurisdiction in the Situation, and that the territorial scope of this jurisdiction extends to territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem, also questioned the validity of the process:

> 'challenges to the Court's jurisdiction may only be brought in accordance with the Rome Statute, namely by the accused once the arrest warrants have been issued (article 19(2)) or by a State with standing (19(2)(b) and (c)).'[22]

The submission of **Chile and Mexico,** noting regret that the 'debate' prompted by the UK's Request delayed the decision on the Prosecutor's application for arrest

20 Observations by the State of Palestine to the Pre-Trial Chamber I pursuant to Rule 103 of the Rules of Procedures and Evidence, ICC-01/18-291, p 3. <https://www.icc-cpi.int/court-record/icc-01/18-291>.

21 State of Palestine, pp 4-5.

22 Written observations by South Africa, Bangladesh, Bolivia, Comoros, and Djibouti pursuant to Rule 103 ICC-01/18-309, para 4. <https://www.icc-cpi.int/court-record/icc-01/18-309>.

warrants, affirmed that the question raised 'was already resolved by the Court by its 5 February 2021 decision.'[23] **Colombia** stated as a preliminary point:

> 'that Rule 103 is not to be deemed as the appropriate route to submit under consideration of the Court allegations such as those made by the United Kingdom. The Rome Statute and the Court's Rules of Procedure duly provide for the possibility that the Court's jurisdiction or the admissibility of an individual case are questioned, and this normally would be made in the fashion of formal objections raised by a party with a direct legal interest, such as the State involved or the suspect, under Article l9 (2) of the Statute.'[24]

Similar points were made in several submissions:

> 'Rule 103 has been invoked in the current case by United Kingdom representatives in order to challenge the jurisdiction of the Court. This is an eventuality that had not been forecast by the authors of the Rome Statute, and that appears inconsistent with its provisions.'[25]
>
> The UK's request made pursuant to Rule 103 of the RPE 'constitutes a *prima facie* challenge to the jurisdiction of the court improperly initiated outside of Article 19 by a State without standing under Article 19 to initiate such a challenge to the jurisdiction of the Court.'[26]
>
> 'The fact that the Prosecutor decided to make public the applications for arrest warrants, should not be interpreted as an invitation to submit jurisdiction challenges, nor as creating a leeway allowing states to interfere in *ex parte* proceedings.'[27]

23 Written observations of Chile and Mexico pursuant to Rule 103(1) of the Rules of Procedure and Evidence, ICC-01/18-284, Para 8. <https://www.icc-cpi.int/court-record/icc-01/18-284>.

24 Written Observations by Colombia Pursuant to Rule 103, ICC-01/18-299, Para 10. <https://www.icc-cpi.int/court-record/icc-01/18-299>.

25 Amended Victims' Observations regarding the jurisdiction of the ICC towards Israeli Citizens in the situation of Palestine - Juan Branco, ICC-01/18-322, paras 9-10. <https://www.icc-cpi.int/court-record/icc-01/18-322>.

26 LRV Submissions on behalf of child victims and their families pursuant to articles 19(3) and 68(3) of the statute, Bradley Parker; Khaled Quzmar, para 33. <https://www.legal-tools.org/doc/pp58szxz/pdf>.

27 Written observations Pursuant to Rule 103 (Halla Shoaibi & Asem Khalil) ICC-01/18-314, Para 3. <https://www.icc-cpi.int/court-record/icc-01/18-314>.

The **Office of Public Counsel for the Defence** requested that the Chamber 'disregard any argument by *amici curiae* and victims representatives that fall outside the narrow scope of the initial issue for which leave was granted under Rule 103',[28] while **Law For Palestine** noted that:

> 'Article 19(2) does not grant any of the states, organisations, or individuals challenging the jurisdiction of the Court the right to submit such challenges. The Government of the United Kingdom (UK) and other states have instead sought to challenge the Court's jurisdiction prematurely under Rule 103(1) through *amicus curiae* submissions, thereby bypassing Article 19 of the Statute. It is, in view of this, unclear why the PTC has permitted such interventions at this stage of the proceedings. Despite reports that the UK has withdrawn its request to file an *amicus curiae* submission, if the PTC were to accept jurisdictional challenges at the arrest warrants stage, it would set a precedent that encourages states to use procedural tactics to delay or obstruct the Court's work.'[29]

Given the 'extraordinary nature' of Rule 103, the joint submission of **Open Society Justice Initiative, European Center for Constitutional and Human Rights, REDRESS Trust, Human Rights Watch, and Amnesty International** noted that the consequence of the UK's withdrawal from the process it had triggered should be the closure of proceedings:

> 'Permission for others to file did not grant a standalone right to take over proceedings initiated by the UK. However, if the Chamber remains inclined to maintain the current rule 103 proceedings, the *Amici* note that the UK Request was narrowly focused on issues arising from the Oslo Accords. The current proceedings should therefore be similarly narrowly focused and not lead to reconsideration of other issues that had been decided by the Chamber in its 'Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine' (the 'Jurisdiction Decision')'.[30]

28 OPCD Rule 103 Observations on Defence Rights at this Stage of the Proceedings, <https://www.legal-tools.org/doc/0rlz07op/, para 29>.

29 *Amicus Curiae* Observations by Law For Palestine Pursuant to Rule 103, ICC-01/18-287, Para 9. <https://www.icc-cpi.int/court-record/icc-01/18-287>.

30 *Amicus Curiae* Observations by Civil Society Organizations Pursuant to Rule 103, ICC-01/18-317, para 2. <https://www.icc-cpi.int/court-record/icc-01/18-317>.

Recalling that Article 19(2) of the Rome Statute provides that only the accused and 'interested states' have legal standing to raise jurisdictional or admissibility challenges, **Open Society et al** stressed 'that states or other entities should not be permitted to inappropriately [re-]litigate or [re-]submit observations pursuant to rule 103(1) where such matters have already been resolved by the Jurisdiction Decision.[31]

31 Open Society Justice Initiative et al, para 12.

IV. THE SUBSTANCE OF SUBMISSIONS

Ireland's submission noted that its observations 'are limited to what in the UK Request is referred to as the 'Oslo Accords issue', i.e., whether, in the context of the application of the Prosecutor for warrants for the arrest of Israeli nationals, 'the Court can exercise jurisdiction over Israeli nationals, in circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords.'[32] **Norway** affirmed that its observations 'focus on jurisdictional questions relating to the Oslo Accords and whether the Court can exercise jurisdiction over Israeli nationals for crimes committed on the territory of Palestine',[33] while the submission of the **Organisation of Islamic Cooperation** asserts that it: 'will not entertain the irrelevant arguments that have been put forward by those opposed to accountability for perpetrators of international crimes against the Palestinian people.'[34]

It is clear however that many submissions attempted, inappropriately, to relitigate matters already concluded by the Pre-Trial Chamber, and to shift and blur the focus of the Chamber far beyond the particular question that had been raised in the UK's Request.

Several submissions, for example that of **Germany** and of the **Israel Bar Association**, make zero reference to the Oslo Accords,[35] acting instead to 'present arguments that are entirely irrelevant to the scope of the proceedings' in a manner 'clearly designed to reopen settled matters and needlessly extend the duration of the proceedings' with the 'aim to distort and shift the focus from legal principles to political grounds, undermining the integrity of the proceedings.' [36]

32 Written Observations of Ireland Pursuant to Rule 103, ICC-01/18-306, para 9. <https://www.icc-cpi.int/court-record/icc-01/18-306>.

33 Written observations by Norway pursuant to Rule 103 of the Rules of Procedure and Evidence, ICC-01/18-264, para 4. <https://www.icc-cpi.int/court-record/icc-01/18-264>.

34 Observations by the Organization of Islamic Cooperation to Pre-Trial Chamber I pursuant to Rule 103 of the Rules of Procedure and Evidence, ICC-01/18-268, para 9. <https://www.icc-cpi.int/court-record/icc-01/18-268>.

35 Observations Pursuant to Rule 103(1) of the Rules of Procedure and Evidence, [Germany] ICC-01/18-307. <https://www.icc-cpi.int/court-record/icc-01/18-307>. Written observations of the Israel Bar Association, ICC-01/18-313. https://www.icc-cpi.int/court-record/icc-01/18-313. Also: *Amicus Curiae* observation of High Level Military Group pursuant of Rule 103, ICC-01/18-267. <https://www.icc-cpi.int/court-record/icc-01/18-267>; Observations filed pursuant to Rule 103 of the Rules of Procedure and Evidence, Canadian Union of Jewish Students (CUJS) World Union of Jewish Students (WUJS), ICC-01/18-295. <https://www.legal-tools.org/doc/paqudiwo/pdf>; Professor Chilstein's Observations as *Amicus Curiae* pursuant to Rule 103(1) of the Rules of Procedure and Evidence, ICC-01/18-285. <https://www.icc-cpi.int/court-record/icc-01/18-285>.

36 Gaza Victims: Sourani et al, paras 24-6.

V. THE STATEHOOD OF PALESTINE

In arriving at its 2021 decision confirming the Court's territorial jurisdiction over the State of Palestine, the Chamber had received and considered a range of amicus briefs challenging and denying the existence of the State of Palestine and its ability to ratify the Rome Statute.[37] Rejecting such positions, the Chamber had confirmed that Palestine is a state party due the same treatment as any other. Nevertheless, common to many of the pro-Israel analyses in this round of submissions, and the thesis upon which their analysis appears to be based, lies the denial and rejection of the existence of the State of Palestine. The intention here is clearly to reassert the scenario by which Palestine is excluded from the state based framework of the UN system and of international law generally, so as to facilitate continued Israeli impunity.

Both the UK and Germany, despite preambular exhortations of their deep commitment to the Court and to justice, reveal the political hostility inherent in their interventions by refusing to correctly label their documents as submitted to the Court. Rather than use the correct title, the 'Situation in the State of Palestine', they each chose to submit documents referring only to the 'Situation in Palestine'.[38] While shorthand references to the titles of Situations are to be expected in casual commentary, this does not extend to the labelling of formal documents. As noted in the joint submission of **Al-Haq, Al Mezan and PCHR**:

> 'In both requests, the UK titled its filing as 'The Situation in Palestine' instead of this situation's official name at the ICC 'The Situation in *the State of* Palestine'. While addressing the Chamber, the UK is obliged to respect its practices and standard procedure. The UK does not have the discretion to substitute domestic political rhetoric for accurate labelling of ICC situations. We respectfully submit that the Chamber consider instructing all participants in the current proceedings to apply the official name of this Situation in their filings, as well as instructing the Registrar to request modification of previous filings to the same effect.'[39]

37 Al-Haq 'Review Paper: Arguments Raised in *Amici Curiae* Submissions in the Situation in the State of Palestine Before the International Criminal Court' 2020. <https://www.alhaq.org/cached_uploads/download/2020/04/29/print-response-to-amici-curiae-submissions-interactive-1588152722.pdf>.

38 Similarly, UK Lawyers for Israel et al titled their submission 'Situation in the Alleged State of Palestine': Observations on (1) Jurisdiction and Complementarity and (2) Inaccuracies and Omissions in the Prosecutor's Applications for Arrest Warrants pursuant to Rule 103(1) of the Rules of Procedure on behalf of the Non-Governmental Organisations UK Lawyers for I, ICC-01/18-272. <https://www.icc-cpi.int/court-record/icc-01/18-272>.

39 Al-Haq et al, para 7. On 7 October 2024, it was reported that at the request of the Court Germany's observations were corrected, with the reference in the original filing changed to 'Situation in the State of Palestine' instead of 'Situation in Palestine'.

While Germany's submission does not explicitly address Palestine's statehood, the **Hungary**[40] and **Czech**[41] submissions deny the existence of the State of Palestine. Various pro-Israeli commentators similarly repeat assertions such as 'Under international law 'Palestine' is not a State, so it has no territory on which crimes within the jurisdiction of the Court could have been committed.'[42]

This position, previously dismissed by the Chamber, is widely rejected in submissions. As stated by **Colombia**:

> 'Palestine is a sovereign State that has been recognized as such by a large number of States. The UN Security Council has failed to recognize this situation and has refrained from exercising its responsibilities under the UN Charter in a manner that allows Palestine to become a full-fledged member of the Organization. Nevertheless, under UNGA Resolutions 67/19 and 58/292, Palestine has unequivocally been recognized as a State and has been granted virtually the same prerogatives that other Member States possess.'[43]

Ireland, reiterating its recognition of the State of Palestine as a 'sovereign, independent State', emphasised its recognition of: 'Palestine's jurisdiction to prescribe and enforce laws in and for its own territory as an exercise of sovereign power.'[44] Observing that on 18 April 2024, twelve Members of the UN Security Council voted to recommend that the State of Palestine be admitted to UN membership, William **Schabas** noted:

40 Amicus curiae observations of Hungary pursuant to Rule 103, ICC-01/18-296, para 20. <https://www.icc-cpi.int/court-record/icc-01/18-296>.

41 Written observations as *amicus curiae* under rule 103 - Czech Republic, ICC-01/18-294, para 3. <https://www.icc-cpi.int/court-record/icc-01/18-294>.

42 *Amicus Curiae* Observations by the Jerusalem Institute of Justice, ICC-01/18-310 ('None of the widely accepted requirements for statehood are found with regards to Palestine') para 19. <https://www.icc-cpi.int/court-record/icc-01/18-310>. Application for Leave to Submit Observations on the Prosecutor's Request in accordance with the Chamber's Order of 27 June 2024 on behalf of the Non-Governmental Organisations: The Jerusalem Center for Public Affairs, the Institute for NGO Research, ICC-01/18-281 ' ('In this case, "The State of Palestine," does not and has never existed as a sovereign state and therefore has never possessed the inherent power to exercise criminal jurisdiction.') Para 5. <https://www.icc-cpi.int/court-record/icc-01/18-281>. Written Observations Pursuant to Rule 103 of United States Senator Lindsey O. Graham, ICC-01/18-304 ('the Palestinian territory is not a State') para 13. <https://www.icc-cpi.int/court-record/icc-01/18-304>.

43 Colombia, para 12.

44 Ireland, para 14.

> 'Currently, the only obstacle to United Nations membership of the State of Palestine is the Security Council veto of the United States, a country distinguished by its hostility to the International Criminal Court in general and to the investigation in the *Situation in Palestine* in particular.'[45]

Adil **Haque** notes that 'By its unchallenged accession to the Statute and its acceptance by the Assembly of States Parties, Palestine became a State Party and accepted the jurisdiction of the Court over crimes committed on its territory. As the Chamber emphasized, '[t]hese issues have been settled by Palestine's accession to the Statute'.[46] The **International Commission of Jurists**, noting that the Oslo Accords are interim agreements by their very nature and in their plain wording, stress that:

> 'They were not and cannot be construed as to determine the scope of the jurisdiction of the Palestinian State. Since their adoption and the breakdown of the Oslo process, the State of Palestine, as a State, has acted on its prerogative and demonstrated its capacity to enter into relations with other sovereign States and exercise treaty-making powers.'[47]

As summarised by **Al Quds Human Rights Clinic**: 'Israel and a number of other countries continue to reject recognizing the State of Palestine. However, it cannot be concluded that Palestine is not a full state only because the state that occupies its territory and its allies refuse to recognize it.'[48]

45 *Amicus curiae* observations of Prof. William Schabas pursuant to Rule 103, ICC-01/18-257, para 3. <https://www.legal-tools.org/doc/udlc0r6p/>.

46 *Amicus curiae* observations of Professor Adil Ahmad Haque submitted pursuant to the 'Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence' of 22 July 2024 (ICC-01/18-249), ICC-01/18-303, para 20. <https://www.icc-cpi.int/court-record/icc-01/18-303>.

47 *Amicus Curiae* Observations by the International Commission of Jurists (Pursuant to Rule 103 of the Rules), ICC-01/18-311, para 19. <https://www.icc-cpi.int/court-record/icc-01/18-311>.

48 Written Observations Pursuant to Rule 103 by the Al-Quds Human Rights Clinic- Al-Quds University, ICC-01/18-290, para 16. <https://www.icc-cpi.int/court-record/icc-01/18-290>.

VI LEGAL STATUS OF THE OSLO ACCORDS

Article 21 of the Rome Statute provides that the Court shall apply the terms of the Statue, and only where there are gaps can it turn to other, subsidiary sources of international law, including relevant and applicable treaties. As was summarised in the **United Nations Mandate Holders of the Human Rights Council** submission, it is not necessary nor appropriate that the Chamber treat the Oslo Accords as applicable law in the immediate circumstances:

> 'Under Article 21(1)(a) of the Rome Statute, the Court shall primarily apply the Statute, Elements of Crimes and its Rules of Procedure and Evidence. It is only when those sources leave a lacuna, meaning an objective under the Rome Statute which is not fulfilled, that resort can be made to subsidiary sources of law. That is not the case in the present circumstances. Article 12(2)(a) clearly provides the Court with jurisdiction over the named Israeli officials, as their alleged crimes all occurred on the territory of the State of Palestine.'[49]

1. Arguments that the Oslo Accords Limit the State of Palestine's Criminal Jurisdiction

Israel's supporters, in a radical effort to reconfigure the hierarchy of international law's sources, seek to claim that the terms of the Oslo Accords – bilateral agreements between an Occupying Power and the representatives of an occupied people – are to take priority over the terms of the Rome Statute and fundamental norms of international law binding upon all states. The **State of Palestine's** submission rejected such a proposition, demonstrating, by reference to the Court's own jurisprudence, that:

> 'It is clear from the text that the Rome Statute does not provide, explicitly or otherwise, for any obligation or right to assess the national legislation and bilateral agreements of a State Party in determining whether the Court may exercise its own international jurisdiction.'[50]

49 *Amicus Curiae* Submission by the United Nations Mandate Holders of the Human Rights Council ICC-01/18-320, para 8. <https://www.icc-cpi.int/court-record/icc-01/18-320>.

50 Palestine, pp 6-7.

Varied understandings of the status of the Oslo Accords are to be found throughout submissions. Pro-Israel submissions argue – even though they may not recognise Palestine as a state capable of contracting an international treaty – that the Chamber's previous findings were utterly mistaken, and the Oslo Accords must be considered as a treaty of such weight that Israelis are exempt from the jurisdiction of the International Criminal Court.

The interpretation advanced by pro-Israel groups, that 'the sole origin of the powers accorded to the PA is the Oslo framework and that alone',[51] and hence Palestine's jurisdiction is not merely limited, but completely absent, is shared by the **USA**, which denies the State of Palestine's existence, proposing in the alternative that the Oslo Accords 'create and define Palestinian governance'.[52] The **Democratic Republic of the Congo** also suggests that any Palestinian agency solely derives from, and is limited to, the grant of Oslo:

> '*L'un des principes fondamentaux des accords est que les fonctions législatives, exécutives et judiciaires de l'Autorité palestinienne sont uniquement celles qui sont expressément prévues par les accords; En corollaire, Israël conserve tous les pouvoirs et responsabilités qui n'ont pas été spécifiquement et expressément transférés à l'Autorité palestinienne*.'[53]

The submission of the **League of Arab States** explains why such claims are without foundation:

> 'the Palestinian people and their representatives, and the State of Palestine, do not depend on Oslo for their legal entitlement to exercise the prerogatives provided for therein. They enjoy this entitlement anyway, as part of a much broader, general right to exercise exclusive, plenary self-administration, operating throughout the entirety of the

51 Observations with respect to the Situation in Palestine on behalf of the European Centre for Law & Justice, ICC-01/18-260, para 10. <https://www.icc-cpi.int/court-record/icc-01/18-260>.

52 Written Observations by the United States of America Pursuant to Rule 103, ICC-01/18-300, para 13. <https://www.icc-cpi.int/court-record/icc-01/18-300>.

53 Observations écrites de la République démocratique du Congo en vertu de l'ordonnance du 27 juin 2024 fixant les délais pour les demandes d'autorisation de déposer des observations écrites. ICC-01/18-326, Democratic Republic of the Congo, para 25. <https://www.icc-cpi.int/court-record/icc-01/18-326>. Unofficial Translation: 'One of the fundamental principles of the agreements is that the legislative, executive and judicial functions of the Palestinian Authority are only those expressly provided for in the agreements; as a corollary, Israel retains all powers and responsibilities that have not been specifically and expressly transferred to the Palestinian Authority.'

> Palestinian territory, based on the right of the Palestinian people to self-determination, and the related sovereign entitlements of the State of Palestine, in international law. This right of self-administration includes plenary criminal jurisdiction over all individuals, regardless of nationality.'[54]

Hungary's proposition, that the Chamber need draw on the Oslo Accords since the Rome statute in itself does not suffice in terms of the applicable law, develops the view of Judge Kovács, that 'the Interim Agreement and its Annexes are the governing instruments in the relation between the parties, which are applicable in the present case as well.' [55] Such analyses constitute a radical reimagining of what international law is, and are without any foundation. As noted by **Schabas**, Judge Kovács' contention that the Oslo Accords should be treated as an 'applicable treaty' by the Pre-Trial Chamber has no basis. The suggestion that the meaning of 'applicable treaties' under Article 21(1)(b) of the Rome Statute goes beyond 'widely ratified multilateral' human rights and humanitarian law treaties: 'and includes highly contested bilateral instruments is novel, to say the least. It is unsupported by the Court's case law and by academic commentary.'[56] As was emphasised in the **Al-Haq, Al Mezan and PCHR** joint submission:

> 'as a bilateral 'special agreement' concluded under the ambit of the safeguards provided under the Fourth Geneva Convention (GC IV) and the law of occupation, the Oslo Accords cannot be interpreted or applied in contravention of international law. As such their terms are not pertinent to the resolution of the issue under consideration, namely the Chamber's determination of its jurisdiction to approve the arrest warrants.'[57]

54 League of Arab States - Written Observations Pursuant to Rule 103, ICC-01/18-282, para 3. <https://www.icc-cpi.int/court-record/icc-01/18-282>.

55 Hungary, paras 18-19.

56 Schabas, para 18.

57 Al-Haq et al, para 5.

South Africa et al's submission outlines that:

> 'Whilst the Oslo Accords may be binding on the parties thereto, they are not treaties as defined in the Vienna Convention on the Law of Treaties, and therefore they should not be considered as falling within the ambit of 'applicable law' to be applied by the Court as stipulated in Article 21(1)(b) of the Rome Statute.' [58]

Addameer Prisoner Support and Human Rights Association submitted that even if Oslo II were to be recognised as a treaty that binds Palestine, it would operate only on a bilateral basis as against Israel and would not be opposable to third party subjects of international law, including the Court.[59] John **Quigley**, in a thorough analysis of the Oslo Accords, submits that Israel did not view Oslo as a treaty, and did not consider itself as contracting with a state: 'Agreements depend for their validity on either international law or the law of some domestic jurisdiction. Israel did not recognize any system of law under which the Interim Agreement might fall for its validity.'[60] Likewise, **ICJ Norway and Defend International Law** note that the expression used in the Accords themselves, i.e., 'interim agreement', is ambiguous:

> 'This seems to imply that the parties, or Israel, did not consider the Oslo Accords to be legally binding and governed by international law. This is supported by the fact that Israel, a State party to the United Nations Charter, did not register the agreement as a 'treaty' or' international agreement' with the UN Secretariat accordance with the UN Charter Article102.'[61]

Robert **Heinsch and** Giulia **Pinzauti**, explain that 'bilateral agreements such as the Oslo Accords, do not form part of the applicable law under article 21(1)(b). They

58 South Africa et al, para 22.

59 Written observations pursuant to Rule 103 (Addameer), ICC-01/18-288, para 12. <https://www.icc-cpi.int/court-record/icc-01/18-288>.

60 Written Observations Pursuant to Rule 103 (John Quigley), ICC-01/18-254, para 6. <https://www.icc-cpi.int/court-record/icc-01/18-254>.

61 Written Observations by ICJ Norway and Defend International Law pursuant to Rule 103 ICC-01/18-276, para 20. <https://www.icc-cpi.int/court-record/icc-01/18-276>.

are also not relevant to interpreting article 12 of the Statute.'[62] Former UN Special Rapporteur's Michael **Lynk** and Richard **Falk** similarly conclude that the Oslo Accords as – 'special agreements under the Fourth Geneva Convention, which provides the law applicable in armed conflict and occupation, and therefore takes precedence as the *lex specialis derogat generali*'[63] – do not fall for consideration under Article 21(1)(b) of the ICC Statute, observing that ICC jurisprudence demonstrates that:

> 'only well-established and widely ratified multilateral treaties (such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the European Convention on Human Rights) found application through this provision, and in the appropriate circumstances. A bilateral special agreement such as the Oslo Accords, in contrast, finds no application.'[64]

62 Observations Pursuant to Rule 103 (Robert Heinsch and Giulia Pinzauti), ICC-01/18-262, para 7. <https://www.icc-cpi.int/court-record/icc-01/18-262>.

63 *Amicus Curiae* Observations of Prof. Michael Lynk and Prof. Richard Falk Pursuant to Rule 103, ICC-01/18-278, para 45. <https://www.icc-cpi.int/court-record/icc-01/18-278>.

64 *Amicus Curiae* Observations of Prof. Michael Lynk and Prof. Richard Falk Pursuant to Rule 103, ICC-01/18-278, para 13. <https://www.icc-cpi.int/court-record/icc-01/18-278>.

2. The Oslo Accords cannot Trump Peremptory Norms of International Law

Many submissions demonstrate overwhelming support for the fundamental principle that the terms of a bilateral agreement such as the Oslo Accords could not be interpreted as trumping peremptory norms of international law. As noted by Neve **Gordon** for example: 'Nowhere in the Vienna Convention does it say that a Treaty, Special Agreement, or any part of a Special Agreement can trump peremptory norms',[65] while **Open Society et al** warn that 'Accepting that the Court's jurisdiction can be limited by national laws or bilateral accords would be to misconceive the nature of Rome Statute basis for jurisdiction and would set a dangerous precedent whereby states could conclude bilateral agreements to trump the Court's jurisdiction.'[66]

The **State of Palestine** emphasises that:

> 'in situations where jurisdictional requirements have been fulfilled, no State individually or collectively, can validly renounce – by treaty or otherwise – such obligations, and no State can relieve perpetrators of genocide, war crimes, crimes against humanity, and aggression. As a consequence of that normative status, neither the Court nor any State can release a State from its obligation to comply with a peremptory norm.'[67]

The **League of Arab States** posit that '(1) the conclusion of the Oslo Accords was brought about through an illegal use of force, and (2) the provisions of the Accords purporting to permit Israel to maintain certain forms of authority over the Palestinian territory and restrict Palestinian self-administration, including exercising criminal jurisdiction, conflict with peremptory norms of international law'.[68]

65 Written Observations Pursuant to Rule 103 from Professor Neve Gordon in relation to ICC-01/18, ICC-01/18-275, para 6. <https://www.icc-cpi.int/court-record/icc-01/18-275>.

66 Open Society et al, para 15.

67 Palestine, p 11.

68 League of Arab States, para 17.

Chile and Mexico emphasise that Oslo cannot be interpreted as contravening peremptory norms of international law, including the right to self-determination, emphasising that the right to self-determination 'necessarily entails Palestine's right to accept, at the international level, the jurisdiction of the Court over crimes committed in its entire territory'.[69] Their submission further states that Oslo cannot be read such as to exclude 'Palestine's obligations under the IV Geneva Convention, including its obligations to exercise jurisdiction over war crimes. This further confirms that the Court may also exercise jurisdiction over those offences.'[70]

69 Chile and Mexico, para 21.

70 Chile and Mexico, para 25.

3. Interpreting the Oslo Accords in light of Article 47 of the Fourth Geneva Convention

Article 47 of the Fourth Geneva Convention 'Inviolability of rights', provides that: 'Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.' The Official Commentary to the Convention observes that Article 47's positioning at the start of 'Section III: Occupied territories' underlines the cardinal importance of the safeguards it proclaims:

> 'During the Second World War whole populations were excluded from the application of the laws governing occupation and were thus denied the safeguards provided by those laws and left at the mercy of the Occupying Power. In order to avoid a repetition of this state of affairs, the authors of the Convention made a point of giving these rules an absolute character.'[71]

Norway affirmed that the provisions of the Oslo Accords must be interpreted by reference to the relevant rules of international law, including the Geneva Conventions, emphasising that this had been confirmed by the International Court of Justice in its Advisory Opinion concerning the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, rendered on l9 July 2024, which advised that:

> "in interpreting the Oslo Accords, it is necessary to take into account Article 47 of the Fourth Geneva Convention, which provides that the protected population 'shall not be deprived' of the benefits of the Convention 'by any agreement concluded between the authorities of the occupied territories and the Occupying Power'."[72]

71 Jean Pictet, The Geneva Conventions of 12 August 1949 Commentary - IV Geneva Convention relative to the Protection of Civilian Persons in Time of War, p 273. <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-47/commentary/1958>.

72 Norway, para 41.

Colombia emphasised that since, 'without a doubt', international norms governing accountability for war crimes, crimes against humanity, and genocide, embody peremptory norms of international law accepted as such by the international community as a whole: 'States cannot be dispensed from the obligation to comply with these norms based on a bilateral agreement',[73] and also stressed that the ICJ's Advisory Opinion had ruled that 'the Oslo Accords cannot be understood to detract from Israel's obligations under the pertinent rules of international law applicable in the Occupied Palestinian Territory'.[74]

Such understanding was also included in the submission of the **International Centre of Justice for Palestinians and the Centre for Human Rights Law, SOAS**, noting that Article 47 of the Fourth Geneva Convention 'bars an interpretation of Oslo II which would deprive protected persons of this right, or the right to prescriptive jurisdiction allowing Palestine to meet its obligation under Article 146 by designation of jurisdiction to the ICC.'[75] The UN **Mandate Holders** observed that Palestinians are a protected population under the law of occupation, which prohibits Israel as the Occupying Power from depriving Palestinians of their rights regardless of 'any agreement concluded between the authorities of the occupied territories and the Occupying Power', and reaffirmed that: 'Agreements such as the Accords cannot override the fundamental rights of the protected person—this would violate international humanitarian law and render that part of the agreement invalid.'[76]

This position was aptly summarised by the statement of the **International Commission of Jurists**:

> 'Contending that Palestine's *erga omnes partes* obligations under the Geneva Conventions, the Convention against Torture or the Rome Statute itself may be trumped by an interim political agreement that was signed by the PLO some 20 years before Palestine's accession to these treaties runs counter to logic and the letter and spirit of international law and of the Statute, which is grounded on "the *duty* of every State to

73 Colombia, para 21.

74 Colombia, para 23.

75 *Amicus Curiae* Observations from the International Centre of Justice for Palestinians and the Centre for Human Rights Law, SOAS University of London, ICC-01/18-283, para 15. <https://www.icc-cpi.int/court-record/icc-01/18-283>.

76 Mandate Holders of the Human Rights Council, para 18.

> exercise its criminal jurisdiction over those responsible for international crimes". The Court should thus dismiss any such submissions.'[77]

Professor **Quigley's** submission focused the analysis of this particular element of observations on the actual situation in Gaza:

> 'One of the "benefits" of the Geneva Convention is that "protected persons" have national courts to protect them from crime. Under Article 64 of the Geneva Convention, "The penal laws of the occupied territory shall remain in force," and "the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws." Inhabitants of Gaza are thus entitled, as "protected persons," to the continued functioning of the courts of Palestine. The cession of adjudicatory authority to Israel for crimes was thus inconsistent with humanitarian law. Israel, moreover, has impeded the operation of the courts of Gaza, in particular, by destroying, in a controlled demolition, the Justice Palace, which housed the Supreme Court in Gaza. This demolition was carried out by the Israel Defense Force, which operates under the authority of the two nationals of Israel who are the subject of the instant requests for arrest warrants. Any reading of Annex IV that would prevent Palestine from carrying out its obligations under the Geneva Convention is invalid. Annex IV cannot be read to nullify Geneva Convention obligations.'[78]

77 International Commission of Jurists, para 24.

78 Quigley, para 17.

And as was stressed by the submission of the **Organisation of Islamic Cooperation** (and following also from those submissions which had emphasised the ICJ's conclusions in the Chagos Islands Advisory Opinion, that 'it is not possible to talk of an international agreement, when one of the parties to it [...] was under the authority of the [other],' cautioning that 'heightened scrutiny' is needed in situations of proclaimed 'international agreements' with non-self-governing territories.'[79]):

> 'The ICJ ruling of 19 May 2024, is a clear expression of the fact that Israel's illegal occupation has no bearing or effect upon the sovereignty or sovereign rights of the State of Palestine. It is also a clear affirmation of the fact that the ability of the occupying Power to exercise or limit any form of authority in the occupied territory is subject to the limitations set by international law, and not by an interim agreement.'[80]

79 Al-Haq et al, para 25. Written Observations Pursuant to Rule 103, (University Network for Human Rights, International Human Rights Clinic, Boston University School of Law, International Human Rights Clinic, Cornell Law School, Yale Law School Lowenstein Human Rights Project) ICC-01/18-277, para 8. <https://www.legal-tools.org/doc/u4xhyd0c/pdf>. Addameer, para 12. Gordon, para 16. League of Arab States, para 10.

80 OIC, para 25.

4. The Oslo Accords as a 'Reservation' to the Rome Statute

Several submissions also note that to permit the terms of Oslo to trump the Rome Statute would have the effect of entering a *de facto*, and unlawful, reservation to the Statute. The Submission of **Chile and Mexico** for example recalls that the Rome Statute does not allow for reservations, and that any interpretation of Oslo allowing Palestine to accept the Court's jurisdiction with respect to crimes committed by Palestinian nationals 'but not with respect to crimes committed by nationals of third-states [including Israel] in the territory of Palestine, would be equivalent to a reservation to Article 12 of the Rome Statute, which is inadmissible.'[81] **Spain's** submission recalls that the acceptance by the States Parties of the jurisdiction of the Court is full and:

> 'does not allow for any reservation, since this option is expressly prohibited by Article 120 of the Statute. This applies both to the crimes within the jurisdiction of the Court (which cannot be excluded or limited by the will of a State Party) and to the persons who may be investigated and tried (which include both nationals of a State Party - wherever they may have committed the crime - and any person of another nationality who has committed a crime within the jurisdiction of the Court on the territory of a State Party).'[82]

Adil **Haque** notes that the Pre-Trial Chamber's decision on territorial jurisdiction explained that 'denying the automatic entry into force for a particular acceding State Party would be tantamount to a reservation in contravention of article 120 of the Statute',[83] while **Gaza Victims: Sourani et al** assert that 'it is clear that enabling States to restrain the scope of their accession to the Rome Statute via bilateral/other agreement would effectively constitute an impermissible reservation, going against the clear objects of the Statute'.[84] Finally, **Guernica 37 Chambers** observed that: 'The reality, therefore, is that the necessary preconditions for the ICC's jurisdiction over Palestinian territory are met, in full, and the Chamber has no jurisdiction to challenge or otherwise interfere with, or imply reservations to this.'[85]

81 Chile and Mexico, para 14.

82 Spain, para 10.

83 Haque, para 5.

84 Gaza Victims: Sourani et al, para 22.

85 *Amicus Curiae* Observations of Guernica 37 Chambers Pursuant to Rule 103, ICC-01/18-292, para 5. <https://www.icc-cpi.int/court-record/icc-01/18-292>.

VII. COMPLEMENTARITY

Having failed to make any reference to the Oslo Accords in its submission, **Germany** seeks to turn the Chamber's attention to the different issue of complementarity.[86] Although not relevant at this stage in proceedings, since neither any suspect nor state with jurisdiction has properly sought an attempt to challenge the Court's jurisdiction, the principle of complementarity, as provided for at Article 17 Rome statute, refers to a case potentially being determined as inadmissible before the Court because it is already being investigated or prosecuted by a state which has jurisdiction over it. The tests for determining such circumstances include establishing that 'the national investigation must cover the same individual and substantially the same conduct as alleged in the proceedings before the Court',[87] and that any such investigation be characterised by 'tangible, concrete and progressive' actions.[88]

In the present circumstances, no state, and certainly not Israel, has taken any steps towards any investigative action that would remotely qualify to prevent the ICC from prosecuting Netanyahu or Gallant. Several state submissions explain that the issue of complementarity, and the question as to whether the Oslo Accords may impact on issues of cooperation or complementarity, may only be of some relevance in the future, but are not of relevance in the present proceedings. **Norway** emphasised, having had reference to the Appeals Chamber's authorization of the investigation into the Situation in the Islamic Republic of Afghanistan, and the Appeals Chamber decision in the Al Bashir case, that:

> 'Any conflicting obligations a State Party might have due to bilateral agreements, becomes an issue of complementarity and cooperation. In its Jurisdiction Decision the Chamber noted that articles 97 and 98 of

86 Observations Pursuant to Rule 103(1) of the Rules of Procedure and Evidence, [Germany] ICC-01/18-307. <https://www.icc-cpi.int/court-record/icc-01/18-307>.

87 Situation in the Republic of Kenya, The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled 'Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute' ICC-01/09-02/11 O A, 30 August 2011, para 39. <https://www.legal-tools.org/doc/c21f06>.

88 Situation in the Republic of Côte d'Ivoire, In the Case of The Prosecutor v. Simone Gbagbo, Decision on Côte d'Ivoire's challenge to the admissibility of the case against Simone Gbagbo, ICC-02/11-01/12-47-Red, 11 December 2014, para 65. <https://www.icc-cpi.int/court-record/icc-02/11-01/12-47-red>.

> the Statute "indicate that the drafters expressly sought to accommodate any obligations of a State Party under international law that may conflict with its obligations under the Statute".'[89]

South Africa et al also note that:

> 'The limitation by a State of its jurisdiction through the conclusion of a treaty (as is often done, for example, in Status of Forces Agreements) does not amount to a relinquishment of that fundamental right, rather it is an undertaking merely not to exercise that right. At most, therefore, the impact of the Oslo Accords would arise in relation to Palestine's cooperation with the Court in terms of article 98 of the Rome Statute. A factor that has not yet come into play.'[90]

This element of submissions, as evidenced in **Brazil's** observations, concerns the question of the distinction between states' prescriptive and enforcement jurisdiction, which was another recurring point of analysis in the observations submitted to the Chamber:

> 'When Article 98 of the Statute provides that the Court cannot compel a State Party to act inconsistently with its obligations under international law, it draws a distinction between the prescriptive jurisdiction of the Court and the enforcement jurisdiction of its State Parties. The hypothesis of this norm – that is, a situation in which a State Party may not exercise its enforcement jurisdiction over a person – rests on the premise that the Court *does* have jurisdiction over said person according to the preconditions laid out in Article 12, and is only prevented from enforcing this jurisdiction because the State Party in whose territory this individual is located cannot surrender them without breaching other obligations under international law. In this hypothesis, a State Party may not exercise its jurisdiction over a person but the Court still may.'[91]

89 Norway, para 25.

90 South Africa et al, paras 29 and 30.

91 Brazil, para 65.

The German effort at diverting the Chamber's focus pivots on procedurally and substantially irrelevant claims that Arrest Warrant applications are premature because Germany categorises Israel as a 'democracy' with a functioning legal system. Germany's submission departs even further from the subject of Oslo, suggesting that the Court refrain from exercising its mandate since, it claims, Israel is subject to an ongoing 'armed attack'.[92] The **Democratic Republic of the Congo** makes similar claims and requests, referring also to the existence of ongoing armed hostilities and the need for Israel's legal system to be given additional time to investigate allegations.[93]

The concept of an 'armed attack' refers to a situation by which, under Article 51 of the UN Charter, Israel would have the right to exercise a right of self-defence. Such a scenario, and indeed legal analysis, is immaterial for the purposes of the Arrest Warrant applications, it being a fundamental principle of international criminal law that criminalised conduct remains criminal regardless as to whether or not a state has a right to use force in self-defence. This specific German claim illustrates an effort to politicise the analysis of the Pre-Trial Chamber, particularly given the International Court of Justice, with respect to Israel's violations of international law in the occupied Palestinian territory, has clearly held that 'Article 51 of the Charter has no relevance': Since Israel exercises control in the Occupied Palestinian Territory and the threat which Israel regards as justifying conduct claimed to be in self-defence 'originates within, and not outside, that territory', Article 51 does not apply.[94]

The Rome Statute clearly prescribes that situations of occupation are categorised as international armed conflict, and it is the very *raison d'etre* of a war crimes court such as the ICC that its mandate to confront and challenge impunity be applicable during actually existing armed conflicts. As presciently noted by **Colombia**: 'the existence or non-existence of an armed conflict is not prescribed as valid grounds for inadmissibility or more generally as a bar for the ICC to be able to act over a specific situation.'[95]

92 Germany, para 10.

93 Democratic Republic of the Congo, para 22.

94 ICJ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004, para 139. <https://www.icj-cij.org/case/131/advisory-opinions>.

95 Colombia, para 18.

VIII. 'DELEGATED' JURISDICTION

Al-Haq, Al Mezan and PCHR's joint submission recalled that a state party exercising its prerogative to accept the jurisdiction of the ICC is a manifestation of its capacity to make law (prescriptive jurisdiction), not its ability to enforce it (enforcement jurisdiction). The submission further recalled that the OTP had correctly observed that if a State has conferred jurisdiction to the Court, notwithstanding a previous bilateral arrangement limiting the enforcement of that jurisdiction domestically, the resolution of the State's potential conflicting obligations is not a question that affects the Court's jurisdiction. As the Pre-Trial Chamber has previously concluded: '[i]t 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.'[96]

The claim at the core of the UK's Request that it be granted leave to submit its observations to the Chamber was that since the Oslo Accords placed restrictions on the ability of Palestine to enforce criminal jurisdiction over Israelis, Palestine was thereby prevented from 'delegating' to the ICC any jurisdiction for the Court to exercise over Israelis responsible for war crimes, crimes against humanity, or the crime of genocide perpetrated in Palestine.

Supporting the UK's propositions, **Argentina** repeats the claim that while the Court has jurisdiction to prosecute Palestinians for conduct on the territory of Palestine, it cannot prosecute Israelis for their crimes:

> 'Even though some jurisdictional powers could be delegated by Palestine to the ICC, the provisions regarding criminal jurisdiction in which Israeli citizen[s] are involved cannot be delegated. If Palestine has no criminal jurisdiction with respect to Israeli nationals, it is therefore legally impossible for it to delegate any such jurisdiction to the Court, in accordance with the principle "*nemo plus iuris transferre potest quam ipse habet*"'[97]

96 Situation in the State of Palestine, Decision on the "Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine", ICC-01/18, 5 February 2021, para 102. <https://www.icc-cpi.int/court-record/icc-01/18-143>.

97 Argentina, para 10. 'No one can transfer a greater right than he himself has.'

The submission of **Democratic Republic of the Congo** claims that as the 'Palestinian entity' does not enforce criminal competence against Israelis, it cannot delegate such competence to the ICC:

> '*L'entité palestinienne n'ayant aucune compétence pénale sur les ressortissants israéliens, il était et demeure juridiquement impossible pour elle de déléguer à la Cour une telle compétence : nemo plus iuris transferre potest quam ipse habet (on ne peut transférer un droit plus grand que celui que l'on possède soi-même*).'[98]

Many of the submissions placed significant emphasis on refuting and rejecting the supposed logic behind the UK position that states parties to the Rome Statute 'delegate', rather than 'accept', the Court's jurisdiction. A clear riposte to the UK's proposal is explicit in the UN **Mandate Holders of the Human Rights Council** submission:

> 'The main argument raised by the UK is the principle of *nemo dat quod non habet:* the State of Palestine does not have—or cannot exercise—jurisdiction over Israeli nationals because the [Oslo] Accords do not confer on the State of Palestine criminal jurisdiction over Israeli nationals. Hence Palestine, it is suggested, cannot 'delegate' to the Court the jurisdiction that it does not have. However, the UK fails to show the applicability of *nemo dat quod non habet* to present circumstances. […] Under the Statute, States Parties neither delegate nor transfer their own jurisdiction to the Court; they merely *accept* the Court's jurisdiction over international crimes committed over their territory or by their nationals.'[99]

Chile and Mexico clarify that 'contrary to the UK's assertion, the Court's jurisdiction is not based on a delegation by States Parties. Article 12 of the Rome Statute clearly establishes that State parties ''accept''-not ''delegate''-the jurisdiction of the Court'.[100] **South Africa et al** affirm that 'By becoming

98 Democratic Republic of the Congo, para 27. Unofficial Translation: 'The Palestinian entity has no criminal competence on Israeli nationals, and it remains legally impossible for it to delegate to the Court one such competence: *nemo plus iuris transferre potest quam ipse habet* (one cannot transfer a right greater than the one one possesses oneself).'

99 Mandate Holders of the Human Rights Council, para 8-9.

100 Chile and Mexico, para 11.

Parties to the Rome Statute, States *accept* the Court's jurisdiction over the most serious crimes; jurisdiction which had already been conferred upon the Court when it was established.[101] **Spain's** submission notes that the UK's approach to 'delegation' of jurisdiction:

> 'shows a serious misconception of the nature and scope of the jurisdiction of the ICC under the Rome Statute. The ICC jurisdiction is not merely the result of a "delegation" by States Parties of their own national systems of criminal jurisdiction (which, on the other hand, may be quite different from each other in many instances). On the contrary it must be understood as the collective endowment by States Parties of jurisdictional powers, as defined in the Statute, to investigate and try "the most serious crimes of serious concern to the International community".'[102]

The submission of the **Organisation of Islamic Cooperation** note that:

> 'Palestine's acceptance of the ICC's jurisdiction was an acknowledgment of that fact and an expression of its sovereign commitment to protect the rights of its citizens and to see to the punishment of those responsible for international crimes committed against them.' Palestine, before and after the Oslo Accords, continued to prescribe criminal law and retained prescriptive powers, in accordance with Article 64 of the Fourth Geneva Convention and to peruse accountability for crimes against its citizens and its territory through all available international avenues.'[103]

These points are reinforced in the submission of **Brazil**, noting that 'when State Parties delegate their criminal jurisdiction to the ICC, they do so in the *prescriptive* aspect of it. No such delegation occurs, however, on the *enforcement* side […] limits to the domestic jurisdiction of a State inside its own territory do not automatically limit the jurisdiction of the ICC',[104] and of **Ireland**, which stressed that as a matter of international law Oslo II cannot extinguish Palestine's criminal jurisdiction over

101 South Africa et al, para 23.

102 Spain, para 8.

103 OIC, para 16.

104 Brazil, para 12.

its territory, even if it seeks to limit its exercise by Palestine:

> 'an agreement by the authorities of occupied Palestine not to exercise criminal jurisdiction over Israelis does not preclude the exercise by the Court, in accordance with the Rome Statute, of its complementary jurisdiction over crimes enumerated in the Statute ('ICC crimes') committed within the territory of Palestine in circumstances where the Chamber has already determined that the State of Palestine has duly acceded to that Statute and thereby accepted the jurisdiction of the Court. That jurisdiction extends to ICC crimes committed by any person on the territory of a State Party to the Statute, regardless of nationality, and by the nationals of that State Party in any place. The fact of military occupation does not alter this – indeed the Statute expressly contemplates the exercise of the Court's jurisdiction over territory of a State Party under military occupation.'[105]

Ireland further emphasised that the concept of 'delegation of jurisdiction' by states to the ICC mischaracterises the nature of the jurisdiction exercised by the Court:

> 'States do not delegate their jurisdiction to the Court – rather, they have *endowed* the Court with sufficient jurisdiction to achieve its purpose which they *accept* by becoming parties to the Statute: the question of whether Palestine is competent to 'delegate' to the Court jurisdiction over acts committed by Israelis on the territory of Palestine does not therefore arise.'[106]

105 Ireland, para 17.

106 Ireland, para 23.

Norway similarly stresses that states parties do not delegate, transfer, or give their jurisdiction to the Court: 'States Parties instead accept the jurisdiction of the Court, which is governed by the provisions of its Statute. The authority of the ICC to exercise jurisdiction does not depend on corresponding domestic jurisdictional title of the State Party.'[107] Many submissions from other actors reinforced such points:

- The **International Commission of Jurists** submit that any contention that the Court's jurisdiction may be modified by any "delegation" or transfer of the same by States Parties is plainly, or at least presumptively, inconsistent with the express terms of the Statute – and contrary to its object and purpose: 'Pursuant to the clear terms of the Statute, States, including the State of Palestine, do not "delegate" their jurisdiction to the Court, rather they "accept" its jurisdiction. Under article 12 of the Statute, such "acceptance" may be effected either by becoming a Party to the Statute or by "accepting" the Court's jurisdiction under article 12(3). The Statute makes no reference to any additional requirements for the Court to exercise its jurisdiction, such as a formal "delegation" of jurisdiction by the concerned States or a formal determination of the scope of, and parameters for the exercise of such a "delegation".'[108]
- **Gaza Victims: Sourani et al**, observe that if the jurisdiction conferred to the Court was a mere delegation of domestic criminal jurisdiction, the ICC would not be able to prosecute State officials that enjoy immunity under international customary law, a proposition rejected in the *Al-Bashir* case in light of the "different character of an international court when compared with domestic jurisdictions".[109]
- The **Arab Organisation for Human Rights** submitted that: 'Given that the erroneous nature of the 'delegation' approach is so manifest, it can be speculated that those who have sought to advance the approach are doing so for a reason other than its merit: their objective is precisely to achieve what the adoption of it would bring about—the absurd situation, which risks threatening the continued existence of the Court. Although they may be motivated by a desire to frustrate the Court in addressing the Situation in

107 Norway, para 21.

108 International Commission of Jurists, para 7.

109 Gaza Victims: Sourani et al, para 20.

Palestine in particular, their arguments are of general application.'[110]

- **Addameer** states that 'the Court does not exercise States' delegated jurisdiction; it exercises *international* criminal jurisdiction accepted by the States Parties'.[111]
- **Al Quds Human Rights Clinic** stress that 'The use of the term "delegation" is both problematic and in fact dangerous. If the jurisdiction of the Court was derived from delegations by State Parties, this means that these States are amending and rewriting the Rome Statute without adhering to the followed procedures.'[112]
- The **Palestine Independent Commission for Human Rights** submit that 'Given that the erroneous nature of the 'delegation' approach is so manifest, it can be speculated that those who have sought to advance the approach are doing so for a reason other than its merit: their objective is to achieve what the adoption of it would bring about-the absurd situation, which risks threatening the continued existence of the Court, outlined above.'[113]
- **Guernica 37 Chambers** state that: 'The Oslo Accords (which are effectively domestic in nature) may therefore have restricted the way in which Palestine interprets domestic jurisdictional rights and entitlements, but they do not affect its ability to delegate those rights and entitlements, in full, to the Court.'[114]
- **Heinsch** and **Pinzauti** notes that the Court's function and independence would be seriously undermined: 'If the Court's jurisdiction was conditional on the existence of a parallel domestic jurisdictional title, the Court's jurisdiction would vary depending on the domestic law of its member states, creating much volatility as domestic laws change over time.'[115]

110 Arab Organisation for Human Rights, para 15.

111 Addameer, para 6.

112 Al Quds Human Rights Clinic, para 30.

113 Palestine Independent Commission for Human Rights, para 13.

114 Guernica 37 Chambers, para 11.

115 Heinsch and Pinzauti, para 18.

IX. NEW NOTICE REQUIRED - COMPLEMENTARITY

An additional procedural obstacle to the issuance of Arrest Warrants raised in Germany's submission, and echoed in several others,[116] suggests that an additional notification under Article 18 of the Rome Statute was required: 'Germany is of the view that the attack by Hamas brought about such a fundamental change in the situation that a new notification was required, which would have given the State concerned the procedural opportunity to request that the Prosecutor defer to the State's investigation.'[117]

The initial Article 18 notification,[118] properly made by the Office of the Prosecutor in 2021, giving Israel and all states parties adequate notice of investigations, remains valid for the present Arrest Warrant application. The crimes of which Netanyahu and Gallant are presently accused represent but a fraction of criminal conduct for which each, in their role as commanders of the illegal occupation are responsible, and such conduct is inherently bound up in patterns and policies of criminality that have been allowed to accumulate over decades of escalatory violent impunity. As much was identified in the submission of **Gaza Victims: Sourani et al**:

> 'the situation clearly did not start on 7 October 2023. On the contrary, this is precisely the result of decades of impunity that has been granted at the highest levels to the Israeli officials, notwithstanding their commission of unspeakable crimes against the Palestinian people.'[119]

The ICC Appeals Chamber has recently confirmed the contours required of an Article 18 notification:

116 Argentina, para 16; Democratic Republic of the Congo, para 31; Chilstein, para 32; USA, para 19; Observations (*amicus curiae* observations) from the Centre for Israel and Jewish Affairs Pursuant to Rule 103 of the Rules of Procedure and Evidence, para 26; Written observations on the question of jurisdiction pursuant to Rule 103 of the Rules of Procedure and Evidence, Prof. Yuval Shany, Prof. Amichai Cohen, ICC-01/18-265, para 23; IJL observations submitted pursuant to "Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence" issued by Pre-Trial Chamber I on 22 July 2024, ICC-01/18-298, para 6; Graham, para 30.

117 Germany, para 14.

118 Office of the Prosecutor, Article 18 Notification, 9 March 2021, ICC-01/18-300-AnxB.

119 Gaza Victims: Sourani et al, para 2.

> 'there is no expectation at this stage of the proceedings that the Prosecutor should notify States of every act he or she intends to investigate, especially in those situations referred to the Court which cover a large number of alleged criminal acts. Indeed, in such situations, the Prosecutor may be in no position to identify all potential cases that fall within the scope of a broad referral and commit, so early in the process, to investigating them.'[120]

Any alleged Rome Statute crimes committed in Palestine fall within the parameters of the investigation notified to states by the Prosecutor in 2021, an obvious conclusion given the correlation between the actors/groups allegedly involved, the groups of victims, and the types and patterns of crimes committed. German,[121] and other interpretations by Israel and its allies,[122] which seek to erase history by determining that 'everything changed' on 7 October 2023, neglect that the Prosecutor's Article 18 notification was explicitly without prejudice to additional related crimes within the Situation in the State of Palestine, and is inherently bound up with the continued existence of the unlawful occupation, as an ongoing international armed conflict that has unlawfully persisted since 1967.

120 Judgment on the appeal of the Bolivarian Republic of Venezuela against Pre-Trial Chamber I's "Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute" No. ICC-02/18 OA,1 March 2024, para 110. <https://www.legal-tools.org/doc/v0jtm4/>.

121 Germany, para 14.

122 Argentina, para 16; Democratic Republic of the Congo, para 31; Chilstein, para 32; USA, para 19; Observations (*amicus curiae* observations) from the Centre for Israel and Jewish Affairs Pursuant to Rule 103 of the Rules of Procedure and Evidence, para 26; Written observations on the question of jurisdiction pursuant to Rule 103 of the Rules of Procedure and Evidence, Prof. Yuval Shany, Prof. Amichai Cohen, ICC-01/18-265, para 23; IJL observations submitted pursuant to "Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence" issued by Pre-Trial Chamber I on 22 July 2024, ICC-01/18-298, para 6; Graham, para 30.

X. OTP CONSOLIDATED RESPONSE

The Office of the Prosecutor issued its consolidated response to submissions on 23 August 2024.[123] The Prosecutor asserts that the UK Request 'misinterpreted the reasoning in the Article 19(3) Decision on the Oslo Accords, and appears to have erroneously taken into account in this regard a concluding and unrelated paragraph',[124] emphasising that they wrongly seek 'to treat the State of Palestine differently from every other State Party'.[125] The response notes that:

> 'many interveners provided observations on topics unrelated to the Oslo Accords, including on the merits of the Applications, even if they are not publicly available. Accordingly, the Prosecution respectfully requests dismissal *in limine* of such observations.'[126]

The Prosecutor's statement recalling that the ICC Appeals Chamber in its *Lubanga* decision emphasised that 'Human rights underpin the Statute; every aspect of it, including the exercise of the jurisdiction of the Court', made the following key points:

- 'Whatever their status and validity' (para 70) the Oslo Accords are not relevant to the Court's jurisdiction which is exclusively and exhaustively governed by article 12 of the Rome Statute (para 7), which establishes a unitary scheme of territorial jurisdiction with no exceptions, applying in the same manner to all State Parties, and applying to every person who commits a crime within the jurisdiction of the Court on the territory of the State Party (para 62);
- That occupation does not and cannot transfer title of sovereignty to the Occupying Power, and that jurisdictional competence—as an aspect of sovereignty—rests in the Palestinian people as a group entitled by international law to exercise the right of self-determination (para 73);

123 Prosecution's consolidated response to observations by interveners pursuant to article 68(3) of the Rome Statute and rule 103 of the Rules of Procedure and Evidence, 23 August 2024, ICC-01/18-346. <https://www.legal-tools.org/doc/07w12n5s/>.

124 Prosecution's consolidated response, para 49.

125 Prosecution's consolidated response, para 51.

126 Prosecution's consolidated response, para 36.

- That the argument that the Oslo Accords bar jurisdiction is premised on a misunderstanding of foundational concepts of jurisdiction under international law, including under the law of occupation (para 51);
- That the situation in the occupied Palestinian territory, including Gaza, is catastrophic, and that the arrest of Israel's Prime Minister Netanyahu and Minister of Defence Gallant is necessary to prevent them from continuing with the commission of international crimes (para 11);
- That the cases identified by the Prosecution are admissible before the Court and Israel is not investigating the same persons for substantially the same conduct as alleged in the arrest warrant Applications (para 32); and
- That the ICC must ensure there is no delay in the pursuit of criminal accountability in the *Situation in the State of Palestine*, (para 11) and that Pre-Trial Chamber I must 'decide with the utmost urgency' the Prosecution's Applications of May 2024 for the issuance of arrest warrants which could avert further harm to the victims in Gaza and those forced to leave who continue to suffer physical and mental harm (para 11).

XI. SUBSEQUENT DEVELOPMENTS

On 21 November 2024, Pre-Trial Chamber I of the International Criminal Court unanimously issued two decisions rejecting challenges by the State of Israel brought under articles 18 and 19 of the Rome Statute, and issued warrants of arrest for Benjamin Netanyahu and Yoav Gallant (no longer a Minister) on charges of war crimes and crimes against humanity.

On 23 September 2024 Israel submitted a Challenge to the Court's Jurisdiction over the Situation in the State of Palestine, to a large extent aiming to revisit arguments as to the relevance and applicability of the Oslo Accords.[127] This Challenge was critiqued in a submission made by Legal Representatives of Victims, which observed that 'arguments presented by Israel in its challenge are both procedurally and substantively unfounded and should be rejected forthwith.'[128] Rejecting the Challenge, the Pre-Trial Chamber recalled that states 'are not entitled under the Statute to challenge jurisdiction of the Court on the basis of Article 19 prior to the issuance of a warrant of arrest or a summons. Indeed, the Prosecution typically conducts the entire application process under Article 58 of the Statute *ex parte*.'[129] The Chamber further noted that Israel would be able to challenge the Court's jurisdiction and/or admissibility of any particular case if and when the Chamber issues any arrest warrants or summonses against its nationals.[130] On 27 November 2024 Israel filed an appeal against the Chamber's Decision.[131]

Israel's second challenge, brought under Article 18 of the Statute, was also rejected by the Pre-Trial Chamber. This Challenge claimed that the Office of the Prosecutor had failed to notify Israel of the initiation of an investigation in 2021, a

127 Public Redacted Version of "Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute" 23 September 2024, ICC-01/18-354-AnxII-Corr <https://www.icc-cpi.int/court-record/icc-01/18-354-anxii-corr>.

128 Submission on behalf of victims in Article 19 proceedings related to the Situation in the State of Palestine, 28 October 2024, para 30. <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1809da34b.pdf>.

129 Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute, ICC-01/18-374, 21 November 2024 para 17. <https://www.icc-cpi.int/court-record/icc-01/18-374>.

130 Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute, para 18.

131 Notice of 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) ICC-01/18-386, 27 November 2024. <https://www.icc-cpi.int/court-record/icc-01/18-386>.

proposition rejected by the Chamber. Israel also sought to claim that events since October 2023 were completely divorced from the Situation prior to that date, that in any event a new notification was warranted. The Chamber also rejected this proposition, concluding that:

> '[…] Israel's position would effectively mean that the Prosecution's investigation in every situation would be limited to the incidents and crimes addressed during the preliminary examination and described in the article 18 notification. Such interpretation has already been rejected by the Appeals Chamber. There was, and is, therefore, no obligation for the Prosecution to provide a new notification to the relevant States pursuant to article 18(1) of the Statute, and as such to provide a new one-month timeline for requests for deferral.'[132]

On 27 November 2024 Israel filed an appeal against the Chamber's Decision.[133]

132 Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice, ICC-01/18-375, 21 November 2024, para 15. <https://www.icc-cpi.int/court-record/icc-01/18-375>.

133 Notice of Appeal of "Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice" (ICC-01/18-375) ICC-01/18-385, 27 November 2024. <https://www.icc-cpi.int/court-record/icc-01/18-385>.

XII. CONCLUSION

The present process, seeking to relitigate issues related to the Oslo Accords, already the subject of significant attention in round one, has been an unwarranted exercise, one exacerbated by submissions directed at additional matters.

In essence, the impetus behind the UK's Request, as endorsed by those state parties to the Rome Statute intervening so as to support continued Israeli impunity, is the view that Palestine, and Palestinians, are not entitled to the human rights protections guaranteed to all other states and peoples which are members of the International Criminal Court.

The response of senior Israeli political figures and government officials to the issuance of arrest warrants has been predictably aggressive, threatening further illegal annexation, and accusing the Court of antisemitism. For Israel's allies, this development must be taken as a further sign that business cannot go on as usual. It underscores the imperative to reassess diplomatic, economic, and military relations to ensure they align with the principles of international law.

The wide range of states in particular, and of submissions in general received by the Court, which made bona fide observations seeking to uphold the rigorous legal principles underpinning the Court's object and purpose has been a positive and welcome development. However, prevarication and undue delay since Palestine first approached the Court in 2009 has been a constant feature of the struggle against impunity. It remains imperative, in the face of escalating genocidal violence that the Arrest Warrants issued against Netanyahu and Gallant be enforced, and that states parties, regardless of previously stated legal positions, commit to supporting the Court's independence, and cooperate in ensuring their adherence to the rule of law.

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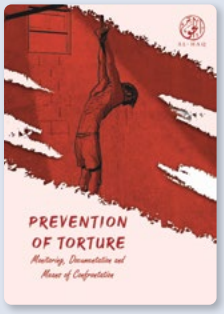

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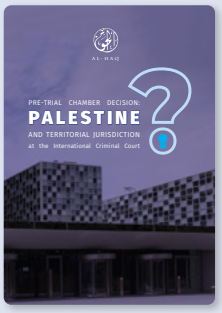

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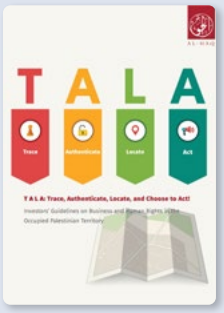

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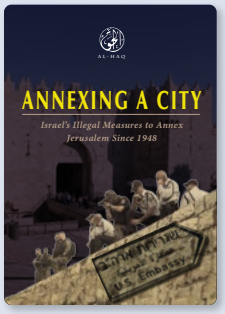

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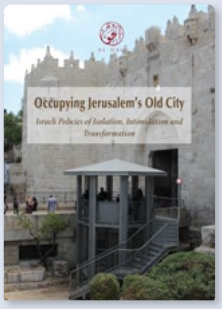

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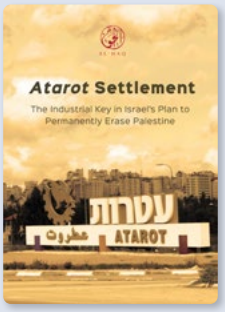

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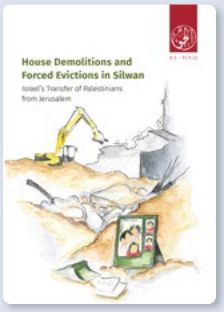

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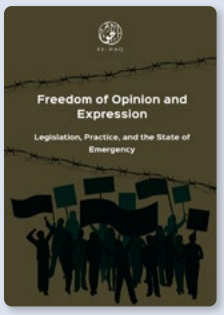

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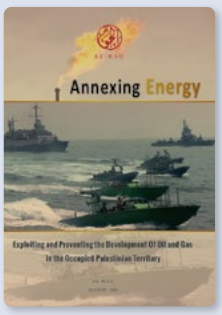

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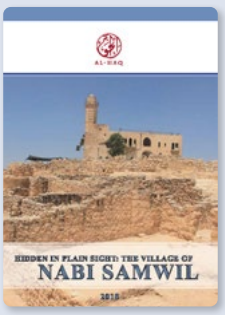

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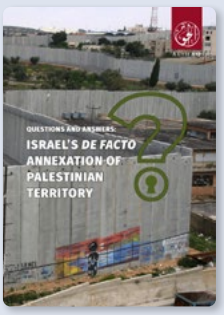

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AL-Haq - 54 Main Street 1st & 2nd Fl. - Opp. Latin Patriarchate

Saint Andrew's Evangelical Church - (Protestant Hall)

P.O.Box: 1413 - Ramallah - West Bank - Palestine

Tel: + 970 2 2954646/7/9

Fax: + 970 2 2954903

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About Al-Haq

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah in the Occupied Palestinian Territory (OPT). Established in 1979 to protect and promote human rights and the rule of law in the OPT, the organisation has special consultative status with the United Nations Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, irrespective of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. Al-Haq conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. Al-Haq has a specialised international law library for the use of its staff and the local community.

Al-Haq is the West Bank affiliate of the International Commission of Jurists - Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), ESCR-Net – The International Network for Economic, Social and Cultural Rights, the Palestinian Human Rights Organizations Council (PHROC), and the Palestinian NGO Network (PNGO). In 2018, Al-Haq was a co-recipient of the French Republic Human Rights Award, whereas in 2019, Al-Haq was the recipient of the Human Rights and Business Award. In 2020, Al-Haq received the Gwynne Skinner Human Rights Award presented by the International Corporate Accountability Roundtable (ICAR) for its outstanding work in the field of corporate accountability. Al-Haq was awarded the prestigious Bruno Kreisky Prize and the MESA Academic Freedom Award in 2022.

ISBN 978-9950-327-99-3
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