

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

*No.: ICC-01/18*  
**Date: 6 August 2024**

**PRE-TRIAL CHAMBER I**

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

**SITUATION IN THE STATE OF PALESTINE**

**Public**

**Written Observations by the Czech Republic Pursant to Rule 103**

**Source: Czech Republic**

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

**The Office of the Prosecutor**  
 Karim A. A. Khan KC  
 Nazhat Shameen Khan

**Counsel for the Defence**

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
 (Participation/Reparation)**

**The Office of Public Counsel for  
 Victims**

**The Office of Public Counsel for the  
 Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
 Section**

**Other**

## I. INTRODUCTION

1. The Czech Republic requested permission to submit written observations as *amicus curiae* pursuant to the Rule 103 of the Rules of Procedure and Evidence (“Rules”) and in accordance with the Order deciding on the United Kingdom’s request to provide observations pursuant to Rule 103(1) of the Rules, and setting deadlines for any other requests for leave to file *amicus curiae* observations <sup>1</sup>. The Request for leave to submit written observations was granted by the Decision on requests for leave to file observations pursuant to rule 103 of the Rules <sup>2</sup>. The Czech Republic submits its observations with the aim to facilitate the Chamber’s consideration on the issuance of warrants of arrests with respect to the situation in Palestine.
2. The Czech Republic uses this opportunity to refer to its written observations of 12 March 2020, <sup>3</sup> in which it addressed the question of the Palestinian statehood, the question of relevance of depositary’s acceptance of the Palestinian instrument of accession to the Rome Statute, and the issue of criminal jurisdiction on the occupied Palestinian territories.
3. In its decision of 5 February 2021 <sup>4</sup>, the Pre-Trial Chamber I stated that it “finds that Palestine is a State Party to the Statute, and, finds, by majority, that, as a consequence, Palestine qualifies as ‘[t]he State on the territory of which the conduct in question occurred’ for the purposes of article

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<sup>1</sup> ICC-01/18-173-Red, Pre-Trial Chamber I, Public redacted version of ‘Order deciding on the United Kingdom’s request to provide observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence, and setting deadlines for any other requests for leave to file *amicus curiae* observations, 27 June 2024.

<sup>2</sup> ICC-01/18-249, Pre-Trial Chamber I, Decision on requests for leave to file observations pursuant to rule 103 of the Rules, 22 July 2024.

<sup>3</sup> ICC-01/18-69, Submission of Observations Pursuant to Rule 103 (Czech Republic), 12 March 2020.

<sup>4</sup> ICC-01/18-143, Pre-Trial Chamber I, Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’, 5 February 2021.

12(2)(a) of the Statute". The following observations are submitted within this framework and are without prejudice to the long-standing position of the Czech Republic on the Palestinian statehood under general international law, as well as its continuous support for negotiated two-states solution.

## II. OBSERVATIONS

4. In its observations, the Czech Republic will address the following issues:

- (a) The question of criminal jurisdiction on the occupied Palestinian territories, in particular the applicability of the Oslo Accords;
- (b) The issue of cooperation with the Court as a result of applicability of the Oslo Accords.

**(a) The question of criminal jurisdiction on the occupied Palestinian territories, in particular the applicability of the Oslo Accords**

5. The Czech Republic wishes to recall the principles in article 12 of the Rome Statute, which in its paragraph (2) sets forth the territorial jurisdiction (letter a) and the principle of jurisdiction over nationals of a State Party (letter b). With respect to the territorial jurisdiction the Commentary to the Rome Statute of the International Criminal Court states the following: "It is not a case of a non-State Party being bound and the ICC overreaching its jurisdiction, but rather the individual being amenable to the jurisdiction of the ICC where crimes are committed in the territory of a State Party. There is no rule of international law

prohibiting the territorial State from voluntarily delegating to the ICC its sovereign ability to prosecute”<sup>5</sup>.

6. While the above-mentioned (last sentence) is indisputably true for States, the decision on the “Prosecution request pursuant to article 19(3) of the Rome Statute for a ruling on the Court’s territorial jurisdiction in Palestine” of 5 February 2021<sup>6</sup> must be duly taken into account. It confirmed that: “Indeed, the creation of a new state pursuant to international law, as stated by numerous *amici curiae*, is a political process of high complexity far detached from this Court’s mission”. Consequently, the situation in question requires a thorough examination of the ability of Palestine to voluntarily delegate to the ICC its sovereign powers to prosecute.
7. The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed in Washington, D. C., 28 September 1995 (Oslo II), in its Chapter 3 - Legal Affairs refers to the Declaration of Principles on Interim Self-Government Arrangements signed in Washington, D. C., 13 September 1993 (Oslo I), and provides for the jurisdiction of the Palestinian Interim Self-Government Council (“the Council”) to cover West Bank and Gaza Strip territory as a single territorial unit, except for *inter alia* Israelis (as one of the issues to be negotiated in the permanent status negotiations)<sup>7</sup>. The Oslo II simultaneously stated that the “Council has, within its authority, legislative, executive and judicial powers and responsibilities, as provided for in this Agreement”<sup>8</sup> and recalled the continuous applicability of Israel’s applicable legislation over Israelis *in*

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<sup>5</sup> William A. Schabas/Giulia Pecorella, *Rome Statute of the International Criminal Court, A Commentary*, ed. by Otto Triffterer and Kai Ambos, Third Edition, C. H. Beck, Hart, Nomos, 2016, p. 682.

<sup>6</sup> ICC-01/18-143, Pre-Trial Chamber I, Decision on the „Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, 5 February 2021 (Pre-Trial Chamber I Decision of 2021), para. 54.

<sup>7</sup> The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed in Washington, D. C., 28 September 1995, article XVII.1.a.

<sup>8</sup> *Ibid*, article XVII.3.

*personam* <sup>9</sup>. The Protocol Concerning Legal Affairs to the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (28 September 1995) in its article 1 further stated that it was the State of Israel that has the exclusive criminal jurisdiction over offences committed in the occupied Palestinian territories by the Israelis.

8. At the same time, the State of Israel as an occupying power has, in accordance with article 43 of the Hague Regulations of 1907 constituting customary international law, “the duty to secure respect for the applicable rules of international human rights law and international humanitarian law”. <sup>10</sup> As underlined by the International Court of Justice (ICJ) in its recent Advisory Opinion in Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem: “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”. <sup>11</sup> This would clearly suggest that the provisions contained in Oslo Accords did not intend to create impunity for criminal conduct.
9. The Oslo Accords should be, in the given context, considered applicable treaty for the purpose of article 21 paragraph 1 letter b) of the Rome Statute. While it is stated in the Commentary to the Rome Statute of the ICC that “the Court should avoid following the practice of the *ad hoc* tribunals, which have applied international agreements that are binding on the states that would normally have jurisdiction over the offence. Given the ICC’s wide-ranging jurisdiction, this approach would

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<sup>9</sup> Ibid, article XVII.4 b.

<sup>10</sup> Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgement of the International Court of Justice, 19 December 2005, ICJ Reports 2005, para. 178.

<sup>11</sup> Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, 19 July 2024, Advisory Opinion of the International Court of Justice, para. 102.

contribute to the fragmentation of international criminal law”<sup>12</sup>, it is less obvious whether this conceptual approach could be generally applicable, including in a situation when the avoidance of fragmentation of international law would lead to serious limitation for the ICC in terms of applicable law, amounting to exclusion of certain legally binding arrangements.

10. Based on the above, the ability of Palestine to voluntarily delegate to the ICC its sovereign powers to prosecute appears to be severely limited.

**(b) The issue of cooperation with the Court as a result of applicability of the Oslo Accords**

11. The applications for the issuance of the warrants of arrest constitute an important procedural development in the current investigation. Should the warrants of arrest be issued, they would have serious legal and practical implications, including in the area of the obligatory cooperation of States Parties in accordance with the Rome Statute.
12. The Pre-Trial Chamber I was mindful of these consequences when it, in its Decision of February 2021, noted that: “article 97 of the Statute enjoins a State Party that identifies a problem possibly impeding or preventing the execution of a request pertaining to international cooperation or judicial assistance to consult with the Court, including in relation to the fact that execution of the request in its current form would require the requested State to breach a pre-existing treaty obligation undertaken with respect to another State.”<sup>13</sup>

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<sup>12</sup> Margaret M. deGuznam, *Rome Statute of the International Criminal Court, A Commentary*, ed. by Otto Triffterer and Kai Ambos, Third Edition, C. H. Beck, Hart, Nomos, 2016, p. 936.

<sup>13</sup> ICC-01/18-143, Pre-Trial Chamber I, Decision on the „Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, 5 February 2021 (Pre-Trial Chamber I Decision of 2021), para. 127.

13. At the same time, the Chamber considered that the arguments regarding the Oslo Accords “may be raised by interested States based on article 19 of the Statute”<sup>14</sup>.
14. In any event, the Court would need to provide its comprehensive legal assessment with respect to applicability of the content of Oslo Accords to the case in question. In line with the judicial and procedural economy, the Chamber is better placed to dedicate its legal expertise on the issue at the present stage.
15. While in its article 58 paragraph 1 the Rome Statute “lists the substantive prerequisites for the issuance of warrant of arrest exhaustively”<sup>15</sup>, and also “article 19 paragraph 1, second sentence, of the Statute cannot be invoked to make the admissibility of the case a third substantive prerequisite for the issuance of a warrant of arrest”<sup>16</sup>, the Appeals Chamber concluded that the Pre-Trial Chamber has the discretion pursuant to article 19 paragraph 1, second sentence, of the Statute to address the admissibility of a case, “but should exercise such discretion only when it is appropriate in the circumstances of the case, bearing in mind the interests of the suspects”<sup>17</sup>. Given the particular circumstances of the present case, the discretion regarding admissibility should be exercised.
16. It is therefore suggested that the question of criminal jurisdiction on the occupied Palestinian territories, in particular the applicability of the Oslo Accords, including the reasoning contained in these observations, forms part of the legal consideration of the Pre-Trial Chamber in accordance with article 19 paragraph 1.

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<sup>14</sup> Ibid, para. 129.

<sup>15</sup> ICC-01/04-169, Appeals Chamber, Judgement on the Prosecutor’s appeal against the decision of the Pre-Trial Chamber I entitled “Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58”, 13 July 2006, para. 40.

<sup>16</sup> Ibid., para. 44.

<sup>17</sup> Ibid., para 2.



### III. CONCLUSION

17. Based on the Oslo Accords, the ability of Palestine to voluntarily delegate to the ICC its sovereign powers to prosecute has been severely limited.
18. The Court, when deciding on the issuance of warrants of arrest, should take this significant legal fact, limiting its jurisdiction, into consideration.



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Dated this 6<sup>th</sup> August 2024

At Prague, Czech Republic

