

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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No: ICC-01/18  
Date: 05 August 2024

**PRE-TRIAL CHAMBER I**

**Before:**

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

**SITUATION IN THE STATE OF PALESTINE**

**Public Document**

**Observations by the Organization of Islamic Cooperation to Pre-Trial Chamber I  
pursuant to Rule 103 of the Rules of Procedure and Evidence**

**Source: The Organization of Islamic Cooperation**

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

*Court to:*

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Mr. Karim A.A. Khan KC  
Ms. Nazhat Shameem Khan  
Mr. Mame Mandiaye Niang

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  
Organization of Islamic Cooperation

## REGISTRY

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Detention Section

Victims Participation and Reparations  
Section

Other

## I. Procedural history

1. On 10 June 2024, the United Kingdom ('the UK') filed a request to provide written *amicus curiae* observations under Rule 103(1) of the Rules of Procedure and Evidence ('the Rules') on the International Criminal Court's ('the ICC') jurisdiction in relation to the ongoing investigation in the *Situation in the State of Palestine*.<sup>1</sup>
2. On 27 June 2024, the Pre-Trial Chamber I (the 'PTC') decided to authorize the United Kingdom and others to file written observations.<sup>2</sup>
3. The Organization of Islamic Cooperation (the 'OIC'), in accordance with its commitment to the Palestinian cause and previous engagement with the ICC,<sup>3</sup> applied for leave to file written observations as *amicus curiae* in accordance with Rule 103 of the Rules and requests its submission be made public.
4. On 22 July 2024, the PTC granted the OIC permission to submit observations to be filed public.<sup>4</sup>

## II. Background

5. The OIC is the second largest intergovernmental organization, after the United Nations, with a membership of 57 states, including the State of Palestine as a full-fledged member. Its membership is spread over four continents. Twenty Five Member States are Parties to the Rome Statute of the ICC.<sup>5</sup>

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<sup>1</sup> Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103, 10 June 2024, ICC-01/18-171-SECRET-Exp. Reclassified as Public, No. ICC-01/18-171-Anx.

<sup>2</sup> 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, ICC-01/18-174-RED.

<sup>3</sup> Observations of the Organisation of Islamic Cooperation in relation to the proceedings in the Situation in Palestine, 16 March 2020, ICC-01/18-84.

<sup>4</sup> Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence, 22 July 2024, ICC-01/18-249.

<sup>5</sup> The entire list of OIC Members available here: <https://www.oic-oci.org/states/?lan=en>.

6. The OIC aims to exert every effort to achieve a peaceful solution to the Question of Palestine through implementation of United Nations Resolutions that call on Israel to end its occupation of the Palestinian territory occupied since 1967, which comprises the West Bank, including East Jerusalem, and the Gaza Strip, and extending active support for the Palestinian people's right to self-determination and to achieve their independence from occupation.
  
7. On 5 May 2024, the 15<sup>th</sup> Session of the OIC adopted the Banjul Declaration, 'Enhancing Unity and Solidarity through Dialogue for Sustainable Development'. The Members reaffirmed their commitment to the principles enshrined in the United Nations Charter and to International Law and underscored the importance of an inclusive and balanced multilateralism to contribute to international peace, security, justice and sustainable development, and to promote dialogue among civilizations, cultures and religions, friendly relations and good neighbourliness, mutual respect and cooperation. The Members confirmed full solidarity with the Palestinian People in their struggle to free themselves from foreign occupation and colonization and warned of the danger of continuing the crime of genocide and ethnic cleansing, including starvation, deprivation of water, and preventing entry of fuel, which has led to a genuine disaster for all health and humanitarian sectors.<sup>6</sup>
  
8. Moreover, in the Resolution on "The issue of Palestine and Al-Quds Ash-Sharif", Members reaffirmed the centrality of the Palestine Cause, denounced Israeli crimes against the defenseless Palestinian people, condemned Israel's genocide against the Palestinian people, and stressed the responsibility of the international community to hold Israel accountable for its crimes. The Resolution explicitly endorsed the State of Palestine's recourse to the ICC:

Supports the legal measures taken by the State of Palestine, supported by the Member States, in confronting the policies of the Israeli colonial occupation, affirms its right to confront the intransigence of the Israeli occupation and the continuation of its crimes against the Palestinian people, including turning to international courts, including the ICC,

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<sup>6</sup> Banjul Declaration, Adopted by the 15 Session of the Islamic Summit Conference (Session of "Enhancing Unity and Solidarity Through Dialogue for Sustainable Development"), Banjul, 4 & 5 May 2024, [OIC/SUM-15/2024/DEC.FINAL](#).

to decide on the illegality of the existence of occupation on the land of the State of Palestine, and calls on the OIC Member States and the General Secretariat to support these actions by all possible means. Urges the ICC Prosecutor for the speedy completion of the criminal investigation into war crimes and crimes against humanity being committed by officials of the Israeli colonial occupation government against the defenseless Palestinian people and to bring the criminals to international justice and calls on the OIC Member States and the General Secretariat to provide the necessary technical and financial support to the State of Palestine in this field, and Thanks South Africa, Comoros, Djibouti, Bolivia, Bangladesh, Chile and Mexico for referring the situation in the State of Palestine to the International Criminal Court.<sup>7</sup>

9. For these reasons, the OIC argues that no justification arises for the Court to forgo issuance of arrest warrants for Israeli officials for crimes committed in the State of Palestine. The OIC 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. As stated by former U.S. Ambassador for War Crimes Issues, David Scheffer, "I used to make this theoretical international law argument, grounded in the Vienna Convention on the Law of Treaties, on behalf of the U.S. Government many years ago. Today it holds very little credibility because of the character of the crimes at issue, the evolution of international criminal law, and the longstanding principle of criminal jurisdiction over one's own territory."<sup>8</sup>
10. Instead, the OIC will highlight some of the fundamental principles of international law that should guide the ICC.

### **III. The Oslo Accords are interim agreements and have no bearing on or relevance to the ICC's adjudicative jurisdiction**

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<sup>7</sup> Resolution on the issue of Palestine and Al-Quds Ash-Sharif, Adopted by the 15 Session of the Islamic Summit Conference, Banjul, 5 May 2024, [NO. 1/15-\(PAL\(1S\)\)](#), Paras 18 & 19.

<sup>8</sup> The Self-Defeating Executive Order Against the International Criminal Court, David Scheffer, [Just Security](#), 12 June 2020.

11. In its submission in 2020, the OIC demonstrated that the territory of the State of Palestine comprised of the entirety of the West Bank, including East Jerusalem, and the Gaza Strip and that the State of Palestine has complete sovereignty over the entirety of the territory. Accordingly, the OIC argued that the sovereignty and sovereign rights of the State of Palestine, including the ability to accept and confer jurisdiction to the Court, in accordance with Article 12 of the Rome Statute, cannot be contested.<sup>9</sup>
12. The OIC also argued that the Oslo Accords do not present an obstacle to Palestine's competence to confer jurisdiction to the Court. The Oslo Accords neither changed the status of Israel as an occupying Power nor recognized Israel's sovereignty over any part of the State of Palestine or gave sovereign rights to Israel, including criminal jurisdiction.<sup>10</sup>
13. Indeed, special interim agreements between an occupied people and an occupying Power cannot diminish or prejudice the rights of those under occupation, in accordance with the provisions of the Fourth Geneva Convention which make it clear that no special arrangement entered into between the occupying Power and the occupied territory shall prevail over the provisions of the Fourth Geneva Convention affecting the situation of protected persons.<sup>11</sup>
14. Moreover, among the most elementary rights and benefits secured by the Fourth Geneva Convention is the right of the population of an occupied territory to the protection of the rule of law, without any exceptions. The ICRC commentary on Article 47 of the Fourth Geneva Convention states that, "the regime set out in this provision not only protects the inhabitants of the occupied territory but also 'protects the separate existence of the State, its institutions and its laws.'"<sup>12</sup>

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<sup>9</sup> Observations of the Organisation of Islamic Cooperation in relation to the proceedings in the Situation in Palestine, 16 March 2020, ICC-01/18-84.

<sup>10</sup> Observations of the Organisation of Islamic Cooperation in relation to the proceedings in the Situation in Palestine, 16 March 2020, ICC-01/18-84.

<sup>11</sup> Geneva Convention (IV) of 1949 relative to the Protection of Civilian Persons in Time of War, 12 August 1949, Article 47.

<sup>12</sup> Geneva Convention (IV) of 1949 relative to the Protection of Civilian Persons in Time of War, 12 August 1949, ICRC Commentary of 1958, Article 47-Inviolability of Rights.

15. Any other interpretation of the Oslo Accords would effectively recognize the transfer of a sovereign title to an occupying Power, in violation of the prohibition of acquisition of territory by force and the prohibition of the threat of use of force. Similarly, and recently the ICJ warned that, “Israel’s policies and practices amount to annexation of large parts of the Occupied Palestinian Territory”<sup>13</sup> and confirmed that “Israel is not entitled to sovereignty over or to exercise sovereign powers in any part of the Occupied Palestinian Territory on account of its occupation. Nor can Israel’s security concerns override the principle of the prohibition of acquisition of territory by force.”<sup>14</sup>
16. Therefore, 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.<sup>15</sup> 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<sup>16</sup> and to peruse accountability for crimes against its citizens and its territory through all available international avenues.
17. In this regard, the OIC agrees with the Appeals Chamber of the ICC when it said that “...there may be merit in the argument that the sovereign decision of a State to relinquish its jurisdiction in favour of the Court may well be seen as complying with the ‘duty to exercise [its] criminal jurisdiction’, as envisaged in the sixth paragraph of the Preamble.”<sup>17</sup>
18. Likewise, the classification of certain parts of an occupied territory for administrative purposes has no bearing on the territorial integrity of the State concerned over those areas nor over the jurisdiction of the ICC. Indeed, the ICJ held that none of the events since 1967 – including the

<sup>13</sup> International Court of Justice, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, Para 173.

<sup>14</sup> International Court of Justice, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, Para 254.

<sup>15</sup> See, The State of Palestine, Declaration accepting jurisdiction of International Criminal Court (‘Declaration’), 31 December 2014.

<sup>16</sup> Article 64 of IV GC states that “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.”<sup>16</sup>

<sup>17</sup> Appeals Chamber, Katanga and Ngudjolo, Judgment on the Appeal of Mr Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, 25 September 2009, ICC-01/04-01/07-1497, para. 85.

Oslo Accords – have altered Palestine’s status as occupied territory or Israel’s status as the occupying Power.<sup>18</sup> Any claim to the contrary is inconsistent with international law and can be considered as an attempt to interfere with the territorial integrity of Palestine. Such claims amount to a violation of the Preamble of the Rome Statute and has the practical consequence of providing immunity to persons accused of having committed international crimes and violations of international humanitarian law in occupied territory.

19. Moreover, the Statute of the ICC constitutes a self-contained instrument. No other legal instrument can restrict or qualify the jurisdiction of the ICC over the crimes listed in the Statute, including Article 8(2)(b)(viii) which gives the ICC jurisdiction over acts of transfer of population committed by an occupying Power to or from occupied territory.<sup>19</sup> This reflects continuing jurisdiction for international crimes with due recognition for the general principle that the territory and sovereignty of a State Party is unaffected by the occupation of its territory and that the ICC’s jurisdiction over Rome Statute crimes is likewise unaffected by such an occupation.
20. Finally, the Rome Statute contains a number of expressed references to international law not interim agreements, that are intended to ensure that the ICC’s jurisdiction is interpreted and enforced in a manner consistent with international law, in particular, international humanitarian law and human rights law, and with the purpose of ensuring accountability for crimes.<sup>20</sup> This has also been addressed in several key decisions to date, including the Afghanistan situation,<sup>21</sup> the decisions in the Bangladesh/Myanmar situation,<sup>22</sup> and in the Situation in the State of

<sup>18</sup>International Court of Justice, Legal Consequences for the Construction of a Wall in the Occupied Palestinian Territory, *Advisory Opinion*, 09 July 2004, Para.78; International Court of Justice, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, *Advisory Opinion*, 19 July 2024, Para 87.

<sup>19</sup> Rome Statute, Article 8(2)(b)(viii) which reads: “The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.”

<sup>20</sup> Including most famously, Article 21 “Applicable Law.”

<sup>21</sup> Situation in the Islamic Republic of Afghanistan, Decision Pursuant to Article 15 of the Rome Statute on the authorisation of an investigation into the Situation in the Islamic Republic of Afghanistan, *ICC-02/17-33*, 12 April 2019.

<sup>22</sup> Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Decision on the Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute, *ICC-RoC46(3)-01/18-37*, 06 September 2018, para. 30.



Palestine.<sup>23</sup>

#### IV. Israel's presence in the State of Palestine is illegal which impacted the efficacy of the Oslo Accords

21. The OIC concurs with the ICJ ruling of 19 May 2024 that Israel's presence in the State of Palestine is illegal and that under no circumstance can the Oslo Accords be invoked to perpetuate this illegal situation. The OIC further contends that since the ICJ ruling confirmed that Israel's practices systematically violates the basic fundamental principles of international law, the prohibition of acquisition of territory by force, the prohibition of the use of force, the prohibition of racial discrimination and apartheid, and the right to self-determination, invoking the Oslo Accords is thus irrelevant.
22. In its advisory opinion on Israel's policies and practices in Palestine, the ICJ concluded that Israel's presence and that of its forces and settlers throughout the entirety of the State of Palestine is illegal and must rapidly come to an end. Similarly, the ICJ also characterized Israel's presence as "sustained abuse ... of its position as an occupying Power"<sup>24</sup> and concluded that "Israel has exercised its regulatory authority as an occupying Power in a manner that is inconsistent with the rule reflected in Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention."<sup>25</sup>
23. The ICJ also concluded that "in interpreting the Oslo Accords, it is necessary to take into account Article 47 of the Fourth Geneva Convention"<sup>26</sup> and 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."<sup>27</sup> The ICJ was very clear when it stated that

<sup>23</sup> 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-01/18-143, 05 February 2021, para. 99.

<sup>24</sup> International Court of Justice, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, Para 261

<sup>25</sup> International Court of Justice, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, Para 141.

<sup>26</sup> International Court of Justice, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, Para 102.

<sup>27</sup> International Court of Justice, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, Para 102.

“Israel may not rely on the Oslo Accords to exercise its jurisdiction in the Occupied Palestinian Territory in a manner that is at variance with its obligations under the law of occupation.”<sup>28</sup>

24. Indeed, the Oslo Accords were intended to last for five years and to complement the applicable rules and laws of occupation as they pertain to public order, on grounds that are already recognized and established under the law of occupation as a permissible basis for regulation by the occupying Power. The Parties then agreed to “exercise their powers and responsibilities... with due regard to internationally-accepted norms and principles of human rights and the rule of law.”<sup>29</sup> As such, the Oslo Accords did not confer to Israel any powers beyond those it already has as an occupying Power under international law.

25. 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.

26. Furthermore, any attempt to apply or give effect to an agreement in a manner inconsistent with norms of *jus cogens* would have no legal effect. A peremptory or *jus cogens* norm enjoys a higher rank in the international hierarchy than treaty law.<sup>30</sup> Such norms are non-derogable and have overriding character. As a consequence, neither another State nor an international Court, can dispense Palestine from the obligation to comply with a peremptory norm and its *erga omnes* obligations: to investigate, prosecute, and punish or extradite individuals accused of such acts.

<sup>28</sup> International Court of Justice, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, Para 140.

<sup>29</sup> Article XIX, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Washington D.C., 28 September 1995.

<sup>30</sup> International Law Commission, Fourth report on peremptory norms of general international law (*jus cogens*) by Dire Tladi, Special Rapporteur, 31 January 2019, A/CN.4/727 and ICRC, 2016 Commentary, Geneva Convention I, Article 6, para. 163; See also T. Meron, ‘The Humanization of Humanitarian Law’, *American Journal of International Law*, Vol. 94, No. 2, 2000, pp. 239–278, 252.

27. Thus, any attempt to claim that the Oslo Accords have relieved Israel from its obligations under international law, or have granted it the powers not sanctioned by international law, or have altered the status of the Palestinian Territory occupied in 1967 or the sovereign rights within that territory, could be interpreted as providing immunity for perpetrators of crimes.
28. As for arguments that full effective control, including exercise of criminal jurisdiction, of a State Party over its territory is a prerequisite for the Court's jurisdiction, the OIC reiterates that such arguments run counter and undermine the principle of complementarity, which already limits the ICC to seizing its jurisdiction only when States are unwilling or unable to do so, and exclude the Court's jurisdiction over crimes committed in cases of occupation or aggression, particularly illegal occupations as is the case in the *Situation in the State of Palestine*.<sup>31</sup>
29. Indeed, Palestine needs the jurisdictional assistance of the ICC in order to bring to justice crimes committed on its territory resulting from Israel's illegal occupation of its territory. The fact of the matter is that as long as Israel's illegal occupation of Palestine continues, Palestine will be unable to many of its sovereign rights, including exercise full criminal jurisdiction, or carrying out its duty to prosecute international crimes. This further proves the need of the ICC to deliver justice inferred from Palestine's transfer of its power and authority to the Court. This is in line with the previous conclusion of the Pre-Trial Chamber III, "when States delegate authority to an international organisation they transfer all the powers necessary to achieve the purposes for which the authority was granted to the organisation... the Court may thus exercise territorial jurisdiction within the limits prescribed by customary international law."<sup>32</sup>

## V. Conclusion

30. The State of Palestine is a Party to the Rome Statute which contains provisions authorizing the ICC to prosecute the crimes of genocide, crimes against humanity, war crimes, and the crime of aggression. Palestinian victims should not be the exception to the Rome Statute and

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<sup>31</sup> Rome Statute, Article 17.

<sup>32</sup> Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19-27, 14 November 2019, para. 60.

its protection and Israeli perpetrators are not above the law.

31. The OIC deplors the positions of some states that apply double standards and support the brutal aggression against the Palestinian people, granting the Israeli occupation immunity and providing it with impunity. The OIC affirms that these positions are inconsistent with international law and will only increase the cycle of violence and destruction, fuel extremism, and escalate the conflict in the region, further exposing the Palestinian people to international crimes that fall under the jurisdiction of the ICC.
32. The OIC reiterates its position that the ICC must be able to play its role in ensuring justice for all victims of international crimes under the jurisdiction of the Rome Statute, without fear or favor, and equally across all situations. To argue otherwise is to resign to the saying that legal responsibility should not extend to the powerful or to the allies of the powerful. To deny Palestinian victims justice in order to serve selfish interests of perpetrators of worst crimes is nothing short of dehumanization and racism.
33. The OIC also regrets the continued attacks against and targeting of the ICC, its officials, and those cooperating with it and calls for respect for the impartiality and independence of the Court. The OIC reminds that the responsibility of the ICC and that of its States Parties is towards the victims of international crimes, not the perpetrators of the most serious crimes of concern to the international community as a whole; towards ending impunity, not perpetuating immunity; towards accountability, not complicity.



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Samir Diab  
Assistant Secretary-General for Palestine and Al-Quds Affairs  
Organisation of Islamic Cooperation

Signed on 05 August 2024  
At Jeddah, Kingdom of Saudi Arabia