

**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 Document

Written Observations of Ireland Pursuant to Rule 103

Source: Ireland

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

Registrar

M. Zavala Giler, Osvaldo

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. On 20 May 2024 the Prosecutor announced that he had filed applications for warrants of arrest before Pre-Trial Chamber I ('the Chamber') of the International Criminal Court ('the Court') in the Situation in the State of Palestine, pursuant to Article 58 of the Statute of the International Criminal Court ('the Statute').¹
2. Rule 103(1) of the Court's Rules of Procedure and Evidence (the 'Rules') provides, in the relevant part, that '[a]t any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case ... grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.'
3. On 10 June 2024, the United Kingdom filed a request to provide written *amicus curiae* observations on the question of '[w]hether the Court can exercise jurisdiction over Israeli nationals, in circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords'² ('the UK Request').
4. By Order dated 27 June 2024³ (the 'Order'), the Chamber authorised the United Kingdom to file written observations pursuant to Rule 103 of the Rules by 12 July 2024 (subsequently extended to 26 July 2024). In the Order the Chamber also anticipated that the UK Request 'may result in other requests to submit observations' and therefore indicated 'that any such requests pursuant to rule 103(1) of the Rules must also be received by 12 July 2024.'⁴

¹ Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine (Prosecutor's Statement'), 20 May 2024, available at <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>

² 10 June 2024, ICC-01/18-171, para. 27.

³ 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.

⁴ ICC-01/18-173-Red, para 6.

5. On 12 July 2024 Ireland filed a request for leave to submit observations pursuant to Rule 103.⁵
6. On 22 July 2024 the Chamber issued its Decision on Requests for Leave to file Observations pursuant to Rule 103 of the Rules of Procedure and Evidence (the 'Leave Decision'⁶). By its Leave Decision the Chamber permitted Ireland to provide *amicus curiae* observations.
7. Ireland welcomes the opportunity to provide *amicus curiae* observations. Ireland has consistently promoted accountability for the most serious crimes under international law, took an active part in the negotiations on elaboration of the Statute and has strongly supported respect for the independence and impartiality of the Court since it was established.
8. Ireland offers the following observations to assist the Chamber in its assessment of the 'potential relevance'⁷ of the issue raised in the UK Request. In submitting these observations Ireland does not seek to influence the consideration by the Chamber of the application for a warrant of arrest of any person, which is entirely a matter for the Chamber to determine on its merits in accordance with the relevant provisions of the Statute.

Scope of Observations

9. Ireland's 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.'⁸

⁵ ICC-01/18-240-SECRETExp-Anx.

⁶ ICC-01/18-249

⁷ ICC-01/18-173-Red, para 5

⁸ UK Request, para 27.

Background

10. Ireland recalls that in its Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’ of 5 February 2021, a differently constituted Pre-Trial Chamber I found that ‘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.’⁹ It further determined that ‘the Court’s territorial jurisdiction in the Situation in Palestine extends to the territories occupied by Israel since 1967.’¹⁰ As regards the Oslo Accords issue, the Chamber found that it was ‘not pertinent to the resolution of the issue under consideration, namely the scope of the Court’s territorial jurisdiction in Palestine’ in connection with the initiation of an investigation by the Prosecutor.¹¹ It did note however that when ‘the Prosecutor submits an application for the issuance of a warrant of arrest or summons to appear under article 58 of the Statute, or if a State or a suspect submits a challenge under article 19(2) of the Statute, the Chamber will be in a position to examine further questions of jurisdiction which may arise at that point in time.’¹²

Oslo II cannot extinguish Palestine’s jurisdiction

11. Ireland wishes to make two brief observations in respect of the Oslo Accords issue. Firstly, the UK Request questions the capacity of Palestine to ‘delegate’ criminal jurisdiction over Israeli nationals to the Court when the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (‘Oslo II’) provides that the ‘territorial and functional jurisdiction of the (Palestinian) Council will apply to all persons, except for Israelis, unless otherwise provided in this Agreement.’¹³

⁹ ICC-01/18-143, para 112

¹⁰ *Ibid*, para 123

¹¹ *Ibid*, para 129

¹² *Ibid*, para 131

¹³ Oslo II, Art XVII, para 2(c)

12. Oslo II regulates the 'transfer' of authority from Israel to the Palestinian Council. Article 1, paragraph 1 provides that 'Israel shall transfer powers and responsibilities as specified in this Agreement from the Israeli military government and its Civil Administration to the Council in accordance with this Agreement. Israel shall continue to exercise powers and responsibilities not so transferred.'
13. It is a matter for the parties to Oslo II to state whether and to what extent Oslo II remains in force and whether it constitutes an agreement governed by international law. Notwithstanding these questions, in Ireland's view Article XVII of Oslo II, as well as Annex IV of Oslo II (Protocol concerning Legal Affairs), regulates the *exercise* of jurisdiction over criminal acts committed by Israeli nationals in the Occupied Palestinian Territory *as between Israel and the Palestine Liberation Organisation only*. As a matter of international law Oslo II cannot extinguish Palestine's criminal jurisdiction over its territory, even if it seeks to limit its exercise by Palestine. Such jurisdiction is an essential incident of a State's sovereignty.
14. Ireland recognises the State of Palestine as a sovereign, independent State. Accordingly, Ireland also recognises Palestine's jurisdiction to prescribe and enforce laws in and for its own territory as an exercise of sovereign power.
15. Ireland wishes to recall that the law of military occupation does not provide any legal basis for an occupying party to an armed conflict to extinguish the sovereign powers of the occupied party, or to acquire those powers for itself. Those sovereign powers include the jurisdiction of any State to prescribe and enforce laws in and for its own territory.
16. While the practical effect of a military occupation may be to limit or suppress the *exercise* of this jurisdiction by the authorities of the occupied territory, sovereign powers cannot thereby be extinguished, nor can effective control of

the territory concerned be converted into permanent jurisdiction over it. As the International Court of Justice noted in its recent Advisory Opinion on the legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, '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.'¹⁴ The Court further found '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.'¹⁵

17. Moreover, 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.¹⁶

States do not 'delegate' jurisdiction to the Court

18. Secondly, in Ireland's opinion the concept of 'delegation of jurisdiction' by States to the Court mischaracterises the nature of the jurisdiction exercised by

¹⁴ Advisory Opinion of 19 July 2024, para 140

¹⁵ *Ibid*, para 254

¹⁶ *cf.* Articles 8(2)(b)(viii) and 8bis(2)(a).

the Court and, accordingly, the question ‘whether Palestine could delegate criminal jurisdiction over Israeli nationals to the Court’¹⁷ does not arise.

19. In establishing an international criminal court or tribunal States are not required to restrict its jurisdiction to only so much jurisdiction as each of them domestically has asserted or chosen to exercise. Rather, States *endow* the court or tribunal with jurisdiction to the extent which, by agreement, they consider necessary to achieve its objective. The extent of this jurisdiction is subject only to the limits imposed upon it by the constitutional instrument of the court or tribunal and by general international law. In adhering to that instrument the States concerned *accept* the jurisdiction of the new international criminal court or tribunal. Indeed, this is the term used by Article 12 of the Statute.¹⁸

20. In the case of the International Criminal Court, except in cases of Security Council referrals its jurisdiction is limited to investigation and prosecution of ICC crimes committed on the territory of States Parties (or of States otherwise accepting the Court’s jurisdiction), and by nationals of those States, and it is a complementary, not primary, jurisdiction.

21. In becoming parties to the Statute of the Court each State does not individually determine how much jurisdiction the Court may exercise with respect to it or its nationals. Rather, it accepts the jurisdiction of the Court as set out in the Statute. If the Court were limited to exercising in respect of each State Party only so much jurisdiction as that State itself asserts or has chosen to exercise domestically, the Court’s jurisdictional regime would be highly confused and unworkable, endangering achievement of the object and purpose of the Statute. Rather, States Parties have decided that the Court should exercise the same

¹⁷ UK Request, para 18.

¹⁸ Article 12(1) provides that ‘A State which becomes a Party to this Statute thereby *accepts* the jurisdiction of the Court with respect to the crimes referred to in article 5.’

jurisdiction in respect of all of them, under the same conditions. No reservations to the Statute are permissible.¹⁹

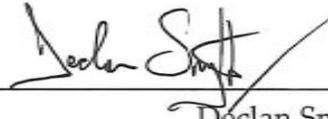
22. Accordingly, in Ireland's view the question whether Palestine is competent to 'delegate' to the Court jurisdiction over acts committed by Israelis on the territory of Palestine does not arise. Rather, in adhering to the Statute the State of Palestine has accepted the same jurisdiction of the Court as all other States Parties.

23. In summary:

- Oslo II, to the extent that it remains in operation, regulates the exercise of criminal jurisdiction over Israeli nationals in occupied Palestine *as between Israel and the Palestinian Council*: it cannot extinguish Palestinian jurisdiction nor can it prevent acceptance by the State of Palestine of the Court's jurisdiction;
- 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.

24. Ireland respectfully submits the foregoing observations for the consideration of the Chamber in its assessment of the 'potential relevance' of the Oslo Accords issue raised in the UK Request.

¹⁹ Statute, Article 120



Declan Smyth

Legal Adviser, Department of Foreign Affairs

Dated 6 August 2024

At Dublin, Ireland