

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/18
Date: 5 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 by Norway pursuant to Rule 103

Source: Norway

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

The Office of the Prosecutor
Mr Karim A. A. Khan KC
Ms Nazhat Shameem 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
All Amici Curiae

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Pursuant to Rule 103(1) of the Rules of Procedure and Evidence (the “Rules”) and the Decision of 22 July 2024 by the Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”), the Kingdom of Norway hereby submits its *amicus curiae* observations in relation to the Prosecutor’s applications for arrest warrants in the situation in the State of Palestine (the “request”).
2. Norway’s role in relation to the Oslo Accords¹ is well-known. As will be known to the Chamber, the Exchange of Letters between Prime Minister Yitzhak Rabin and Chairman Yasser Arafat — the Letters of Mutual Recognition — was conducted under the auspices of Foreign Minister Johan Jørgen Holst of Norway, to whom one of the letters was addressed. That exchange of letters formed the basis of the Oslo Accords.²
3. Norway is a long-standing State Party to the Rome Statute, which it signed on 28 August 1998 and ratified on 16 February 2000. Norway has been a strong and steadfast supporter of the Court since its inception. Norway has recognized the State of Israel and the State of Palestine.
4. As indicated in its request for leave to submit written observations, Norway will in 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.
5. The balance of the present written observations set forth:
 - a. in Part II, the procedural history of these proceedings;
 - b. in Part III, the submission that the ICC has jurisdiction under the Rome Statute;
 - c. in Part IV, the submission that the Oslo Accords are irrelevant to the determination of the Court’s jurisdiction in these proceedings;
 - d. in Part V, the submission that, first, Palestine has not, through the Oslo Accords, *abandoned* any aspects of its sovereignty and thus no aspect of its powers of jurisdiction, and, second, that any limitations in the Oslo Accords concern only Palestine’s *enforcement jurisdiction*, not its prescriptive jurisdiction, which it has remained free to confer on the Court; and
 - e. in Part VI, the conclusion of Norway’s submissions.

II. PROCEDURAL HISTORY

6. On 1 January 2015, the Government of Palestine lodged a declaration under article 12(3) of the Rome Statute accepting the jurisdiction of the ICC over alleged crimes committed “in the

¹ Declaration of Principles on Interim Self-Government Arrangements, 13 September 1993 (Oslo I) [IL PS_930913_DeclarationPrinciplesInterimSelf-Government\(Oslo Accords\).pdf \(un.org\)](#). Israeli–Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995 (Oslo II) [Microsoft Word-Agreement pl.rtf \(un.org\)](#).

² Israel–PLO recognition— Exchange of letters between PM Rabin and Chairman Arafat/Arafat letter to Norwegian FM (non UN documents), <https://www.un.org/unispa/document/auto-insert-205528/>.

occupied Palestinian territory, including East Jerusalem, since June 13, 2014³. Palestine acceded to the Rome Statute on 2 January 2015, by depositing its instrument of accession with the UN Secretary-General; the Statute entered into force for Palestine on 1 April 2015.

7. Pre-Trial Chamber I decided on 5 February 2021 that the Court can exercise its criminal jurisdiction in the Situation in Palestine and that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem (“Jurisdiction Decision”).³
8. On 3 March 2021, the Prosecutor announced the opening of an investigation into the Situation in Palestine.
9. The Office of the Prosecutor received referrals of the Situation in Palestine, from South Africa, Bangladesh, Bolivia, Comoros and Djibouti on 17 November 2023,⁴ and from the Republic of Chile and the United Mexican States on 18 January 2024.⁵
10. On 20 May 2024, the Prosecutor announced that he had, pursuant to article 58 of the Statute, made applications for arrest warrants in the Situation in Palestine.⁶

III. THE COURT HAS JURISDICTION UNDER THE ROME STATUTE

11. Norway submits that, since Palestine has acceded to the Rome Statute, the Court can exercise jurisdiction over Israeli nationals for crimes committed on the territory of Palestine, according to the Statute.
12. Article 58 of the Rome Statute stipulates on what grounds the Court shall issue a warrant of arrest, following an application by the Prosecutor. This includes assessing whether “[t]here are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court”.
13. In considering the relevance, if any, of the Oslo Accords, the Court shall apply, “[in] the first place, [the] Statute”: article 21. As in the Chamber’s previous ruling, Norway contends that “the issues under consideration primarily rest on, and are resolved by, a proper construction of the relevant provisions of the Statute”.⁷ Norway submits that, since Palestine has acceded to the Rome Statute, the Court must exercise its jurisdiction in the Situation in Palestine in accordance with the Statute. As is evident from its wording, the Statute establishes that the Court has jurisdiction over crimes committed by Israeli nationals in the territory of Palestine.

³ICC-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.

⁴ Referral by South Africa, Bangladesh, Bolivia, Comoros and Djibouti, 17 November 2023, [ICC-Referral-Palestine-Final-17-November-2023.pdf \(icc-cpi.int\)](#).

⁵ Referral by the Republic of Chile and the United Mexican States, 18 January 2024, [2024-01-18-Referral Chile Mexico.pdf \(icc-cpi.int\)](#).

⁶ Statement of ICC Prosecutor Karim A. A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine, 20 May 2024, [Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine | International Criminal Court \(icc-cpi.int\)](#).

⁷ Jurisdiction Decision, para. 88.

14. It is true that the Court, like any other international court, must not exceed the jurisdiction conferred upon it; but, as the International Court of Justice has observed, it is no less true that it “must also exercise that jurisdiction *to its full extent*”.⁸
15. The preconditions to the Court’s exercise of jurisdiction are defined by article 12 of the Rome Statute. According to article 12(1) a State that becomes a Party to the Statute pursuant to Article 125(3) “thereby accepts the jurisdiction of the Court”. The Court is then automatically entitled to exercise jurisdiction over article 5 crimes.⁹ Any other status than full accession would not be consistent with the Rome Statute and would create uncertainty incompatible with the proper exercise of criminal jurisdiction.¹⁰
16. In accordance with article 12(2) of the Rome Statute, the Court has jurisdiction over crimes committed by nationals of States Parties and by the nationals of non-States Parties on the territory of a State Party.
17. The Court has already established that it can exercise its criminal jurisdiction in the Situation in Palestine and that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem.¹¹
18. The preconditions to the exercise of the Court’s jurisdiction are met, as the alleged conduct in question occurred on the territory of a State Party: Palestine.
19. In Norway’s submission, the Statute, according to its clear wording, is to the effect that the Court has jurisdiction in these proceedings. There is, as will be set out further below, nothing in the Statute to suggest that agreements such as the Oslo Accords are of any relevance to the determination of the Court’s jurisdiction. Norway submits that since Palestine has acceded to the Rome Statute, the Court should exercise its jurisdiction over Palestine according to the Statute.

IV. THE OSLO ACCORDS ARE NOT RELEVANT FOR THE DETERMINATION OF THE COURT’S JURISDICTION

20. In its decision on the Court’s territorial jurisdiction in Palestine, the Chamber briefly addressed arguments that Palestine, in accordance with the Oslo Accords, could not have delegated part of its jurisdiction to the Court.¹² The Chamber correctly found that the arguments were not pertinent to the scope of the Court’s territorial jurisdiction in Palestine. The Court should reach

⁸ *Continental Shelf Libyan Arab Jamahiriya v. Malta*, *I.C.J. Reports 1985*, p. 23, para. 19 (emphasis added); *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *I.C.J. Reports 2012*, p. 671, para. 136; R. Kolb, *The International Court of Justice* (Hart 2013) p. 920.

⁹ With exception for the crime of aggression, where the exercise of jurisdiction may be subject to additional preconditions.

¹⁰ See also ICC-01/18-131, Prosecution Response to the Observations of *Amici Curiae*, Legal Representatives of Victims, and States, 30 April 2020, para. 24.

¹¹ Jurisdiction Decision.

¹² Jurisdiction Decision, paras. 124–129. See also 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 (“UK Request”).

the same conclusion in the present proceedings. The Court's jurisdiction is not barred by the Oslo Accords.

21. As set out above, once a State has acceded to the Rome Statute, the Court has jurisdiction according to the Statute. 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. The Statute contains no requirement of symmetry, let alone exact symmetry, between the Court's jurisdiction and domestic jurisdiction. This understanding of "automatic jurisdiction" was accepted by States during the Rome Statute negotiation.¹³ Any other understanding of the jurisdictional scheme of the Rome Statute would create uncertainty and has no support in the wording, nor in any other means of interpretation, of the Rome Statute.
22. Furthermore, there is no requirement of corresponding legislation at the domestic level, nor criminalization of a certain crime, for the Court to have jurisdiction over it. For example, the Court is not barred from handling a case where a national court is unable to try a person on account of legislative impediments, such as an amnesty law, or a statute of limitations.¹⁴
23. In the Appeals Chamber's authorization of the investigation into the *Situation in the Islamic Republic of Afghanistan* the Appeals Chamber noted that:

"[a]rguments were also advanced during the hearing that certain agreements entered into between the United States and Afghanistan affect the jurisdiction of the Court and should be a factor in assessing the authorisation of the investigation. The Appeals Chamber is of the view that the effect of these agreements is not a matter for consideration in relation to the authorisation of an investigation under the statutory scheme. As highlighted by the Prosecutor and LRV 1, article 19 allows States to raise challenges to the jurisdiction of the Court, while articles 97 and 98 include safeguards with respect to pre-existing treaty obligations and other international obligations that may affect the execution of requests under Part 9 of the Statute. Thus, these issues may be raised by interested States should the circumstances require, but the arguments are not pertinent to the issue of the authorisation of an investigation."¹⁵

24. This is also in line with object and purpose of the Rome Statute in establishing the Court.¹⁶ As the Appeals Chamber in the *Al Bashir* case held:

"While [domestic jurisdictions] are essentially an expression of a State's sovereign power, which is necessarily limited by the sovereign power of the other States, [international courts], when adjudicating international crimes, do not act on behalf of a

¹³ W. Schabas, "Article 12: Preconditions to the Exercise of Jurisdiction", in *The International Criminal Court: A Commentary on the Rome Statute* (W. Schabas ed., 2010), pp. 280–282.

¹⁴ A. Cassese, *International Criminal Law* (2008), p. 344.

¹⁵ ICC-02/17-138, Judgement on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, para. 44.

¹⁶ Rome Statute of the International Criminal Court, preamble.

particular State or States. Rather, *international courts act on behalf of the international community as a whole.*¹⁷

25. This understanding also corresponds with the system of the Rome Statute as a whole. 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 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.”¹⁸

26. Norway therefore submits that the Oslo Accords are not relevant for the determination of the Court’s jurisdiction over the Situation in Palestine.

V. THE OSLO ACCORDS CANNOT IN ANY CASE BE INTERPRETED TO LIMIT THE COURT’S JURISDICTION

27. In the event that the Court should find that its jurisdiction depends on “delegation” from a State Party, contrary to the wording of the Rome Statute, Norway submits that the Oslo Accords cannot be interpreted to imply that Palestine has abandoned its sovereign jurisdiction or its right to delegate any aspects of that jurisdiction to the Court.
28. The Oslo Accords refer to the series of documents and interim agreements between Israel and the Palestine Liberation Organization (PLO), as representatives of the Palestinian people, with the aim of reaching a just, lasting and comprehensive peace settlement. Oslo I specified that the parties would negotiate an “Interim Agreement”. This agreement was known as Oslo II and became the main framework for regulating the relationship between the parties in the five-year transitional period of the peace process. More than 30 years after the signing of Oslo I, the peace settlement envisioned, has not materialized. The Oslo Accords still constitute key documents which regulate aspects of relations between Israel and Palestine.
29. In Article XIX the parties undertook to “exercise their powers and responsibilities pursuant to” the Accords “with due regard to internationally-accepted norms and principles of human rights and the rule of law”.¹⁹ The International Court of Justice advised in *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* 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”.²⁰

¹⁷ ICC-02/05-01/09-397, *Judgment in the Jordan Referral re Al-Bashir Appeal*, para. 115. See also ICC-02/05-01/09-397-Anx1-Corr, *Al Bashir Jordan Referral AD* (Joint Concurring Opinion of Judges Eboe-Osuji, Morrison, Hofmański and Bossa), paras. 53–54.

¹⁸ Jurisdiction Decision, para. 127.

¹⁹ *Cf. Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, para. 102.

²⁰ *Ibidem*.

30. Oslo II contains a number of provisions relating to jurisdiction. Article XVII(2)(c) stipulates *inter alia* that:

“[t]he territorial and functional jurisdiction of the [Palestinian Interim Self-Government Authority] will apply to all persons, except for Israelis, unless otherwise provided in this Agreement.”

31. Article I(1)(a) of Annex IV, titled “Protocol Concerning Legal Affairs”, specifically regulates criminal jurisdiction. It provides that:

“[t]he criminal jurisdiction of the [Palestinian Interim Self-Government Authority] covers all offenses committed by Palestinians and/or non-Israelis in the Territory, subject to the provisions of this article.”

32. Norway makes two submission in this regard: one general and one more specific.

33. First, Palestine cannot be deemed, through its adherence to the Oslo Accords, to have *abandoned* any aspects of its sovereignty, including any of its powers of jurisdiction, such that it should be unable to confer this jurisdiction on the Court.

34. The Court should decline to see in the conclusion of the Oslo Accords, in which the parties undertook to perform and refrain from performing particular acts, an abandonment of the sovereignty of the parties.²¹ In *The Wimbledon*, the Permanent Court of International Justice observed that “[t]he Court declines to see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty.” Instead, a convention creating an obligation of this kind “places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way”.²² In *Jurisdiction of the European Commission of the Danube between Galatz and Braila*, the Permanent Court held that “restrictions on the exercise of sovereign rights accepted by treaty by the State concerned cannot be considered as an infringement of sovereignty”.²³ Rousseau summarized this constant jurisprudence in the following way:

“les tribunaux internationaux estiment, en effet, que la souveraineté étatique n'est en rien affectée par les traités que l'État est amené à conclure”.²⁴

35. Palestine has not through the Oslo Accords abandoned any aspect of its sovereignty and therefore has not abandoned any aspect of its powers of jurisdiction. Any *restrictions* on the exercise of aspects of its jurisdiction are no more than that: an undertaking, within the context of the Oslo Accords, not to exercise aspects of its jurisdiction vis-à-vis Israel. But none of those sovereign rights have thereby been abandoned by Palestine; they can therefore be conferred by Palestine on the Court.

²¹ *The Wimbledon*, 1923, P.C.I.J., Series A, No. 1, p. 25.

²² *Ibidem*.

²³ *Jurisdiction of the European Commission of the Danube between Galatz and Braila*, 1927, P.C.I.J., Series B, No. 14, 36.

²⁴ C. Rousseau, “L'indépendance de l'État dans l'ordre international” (1948), vol 73 *Recueil des Cours*, p. 205.

36. Second, in any event, any limitations in the Oslo Accords concern only Palestine's *enforcement jurisdiction*, not its prescriptive jurisdiction, which it has remained free to confer on the Court.
37. Norway agrees in this respect with the Prosecutor's argument in the Prosecution request pursuant to Article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine ("Prosecution Request") that

"the provisions of Oslo II regulating the PA's exercise of criminal jurisdiction relate to the PA's *enforcement jurisdiction*, namely its prerogative to enforce or ensure compliance with its legislation and to punish non-compliance with respect to certain issues and persons. Enforcement jurisdiction is different from *prescriptive jurisdiction*, which is the capacity to make the law, including the ability to vest the ICC with jurisdiction."²⁵

38. Referring to the provisions in the Oslo Accords, the International Court of Justice has stated that:

"There is nothing in these provisions to suggest that they add to the enumerated powers invested in Israel under the law of occupation. On the contrary, by stipulating that Israel shall 'continue' to carry duties and shall 'retain' some powers, these provisions are clearly intended to preserve some of the powers conferred on Israel under the law of occupation, rather than to increase them."²⁶

39. The wording of the Oslo Accords must be interpreted in light of their object and purpose.²⁷ According to Article XIX of Oslo II, the parties agree to apply the Accords "with due regard to internationally-accepted norms and principles of human rights and the rule of law." Furthermore, Article XXXI(6) stipulates that "[n]either Party shall be deemed, by virtue of having entered into this Agreement, to have renounced or waived any of its existing rights, claims or positions." It is well established that this includes the Palestinian people's right to self-determination.²⁸ Accordingly, the Oslo Accords should be interpreted to respect the right to self-determination, which in the present context "constitutes a peremptory norm of international law";²⁹ as Palestine's delegation only of enforcement jurisdiction, without relinquishing its inherent entitlement to such jurisdiction.
40. The fact that the Oslo Accords were meant to be temporary supports this interpretation. The International Court of Justice has concluded that Israel's continued presence in the Occupied Palestinian Territory is unlawful;³⁰ in light of this, too, Article XVII of Oslo II cannot be interpreted as a permanent waiver of criminal jurisdiction.

²⁵ Prosecution Request para. 184; see also R. O'Keefe, "Universal Jurisdiction: Clarifying the Basic Concept", (2004), vol. 2, *Journal of International Criminal Justice*, pp. 736–737.

²⁶ *Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, para. 140.

²⁷ Cf. Vienna Convention on the Law of Treaties, Article 31(1).

²⁸ *Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, para. 102. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 182–183, para. 118.

²⁹ *Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, para. 233.

³⁰ *Ibid.*, para. 285.

41. The provisions of the Oslo Accords must also be interpreted in light of other relevant rules of international law applicable in the relations between the parties, including the Geneva Conventions.³¹ The International Court of Justice confirmed this in its recent Advisory Opinion, where it 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’.”³²

42. Furthermore, Article 64(2) of the Fourth Geneva Convention allows an occupying power regulatory powers only on an exceptional basis.³³ This is also reflected in the use of the wording “necessary” in Article XVII(4)b of Oslo II.³⁴ The International Court of Justice concluded that

“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”³⁵

43. The presumption is that the Oslo Accords never intended to prejudice the inherent rights of the Palestinians as “protected persons” under occupation.³⁶ This supports the interpretation that the Oslo Accords limit only Palestine’s enforcement jurisdiction.

44. This interpretation of the Oslo Accords also coheres with the overarching aim of ensuring accountability for serious crimes of concern to the international community as a whole. It is precisely in situations like this that the Court, through its system of complementarity, can ensure justice, despite practical and legal limitations on Palestine’s enforcement jurisdiction.

45. In conclusion, the Oslo Accords can only be interpreted as limiting Palestine’s enforcement jurisdiction.

VI. CONCLUSION

46. Norway submits that, since Palestine has acceded to the Rome Statute, the Court should accordingly exercise its jurisdiction over Palestine according to the Statute. The Oslo Accords are not relevant for the determination of the Court’s jurisdiction.

47. Should the Court not find that the question of jurisdiction is solved on the basis of the clear wording of the Rome Statute, Norway submits that the Oslo Accords cannot be interpreted to limit the Court’s jurisdiction over the Situation in Palestine.

³¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestine Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, paras. 89, 91, 96, 137, 149.

³² *Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, para. 102.

³³ *Ibid.*, para. 134.

³⁴ It is in these terms: “the Israeli military government shall retain the necessary legislative, judicial and executive powers and responsibilities, in accordance with international law.”

³⁵ *Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, para. 140.

³⁶ Prosecution Request, paras. 186–188; *Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, para. 102.

Respectfully submitted,

Monica Furnes

Monica Furnes

Acting Director General, Legal Department, Norwegian Ministry of Foreign Affairs
on behalf of
Norway

Dated this 5 August 2024

At Oslo, Norway