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Pénale
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**International
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PRE-TRIAL CHAMBER I

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

SITUATION IN THE STATE OF PALESTINE

Public Document

**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**

**Source Al-Haq Law in the Service of Mankind (Al-Haq)
Al-Mezan Center for Human Rights (Al-Mezan)
Palestinian Centre for Human Rights (PCHR)**

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I. INTRODUCTION

1. Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Centre for Human Rights hereby respectfully file joint written observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence (RPE) of the International Criminal Court (the ‘ICC’ or the ‘Court’), in accordance with the decision of the Pre-Trial Chamber I (the ‘PTC I’ or the ‘Chamber’).¹
2. The question posed in the United Kingdom’s request to submit written observations pursuant to rule 103 (UK Request)², though formulated in various ways, is ‘[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’.³ The UK Request claims that ‘[t]he Oslo Accords issue necessarily forms part’ of the Chamber’s ‘initial determination of jurisdiction in resolving the application for arrest warrants.’⁴ Consequently, we submit our observations to assist the Chamber in its determination and respectfully submit that the Chamber does not entertain observations overreaching beyond the scope of the current question.
3. At the outset, we recall Article 21(3) of the Rome Statute (the ‘Statute’) stating that *‘[t]he application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction’*. We recall the Chamber’s decision on territorial jurisdiction in this situation (the ‘Jurisdiction Decision’) emphasising the Appeals Chamber (AC) assertion that *‘[h]uman rights underpin the Statute; every aspect of it including the exercise of jurisdiction of the Court’* and that *‘[i]ts provisions must be interpreted and more importantly applied in accordance with internationally recognized human rights.’*⁵ The Chamber concluded that the Palestinian people’s ‘right to self-determination amounts to an ‘internationally recognized human [right]’ within the meaning of article 21(3)’, confirming that its decision is consistent with it.⁶ The Chamber’s determination in the case at hand must equally be consistent with the Palestinian people’s right to self-determination.

¹ Decision on requests pursuant to rule 103 of the RPE, PTC I, [ICC-01/18-249](#), 22 July 2024, para. 11.

² UK Request, PTC I, [ICC-01/18-171-Anx](#), 10 June 2024.

³ *Ibid*, para. 27.

⁴ Decision on UK Request, PTC, [ICC-01/18-173-Red](#), 27 June 2024, para. 4.

⁵ Decision on the Prosecution article 19(3) request, PTC I, [ICC-01/18-143](#), 05 February 2021.

⁶ *Ibid*, paras. 122-123; ICJ, AO, [Israel’s Policies and Practices in the oPt](#), 19 July 2024, paras. 230-243.

4. The UK has suggested that *amici* observations addressing Oslo submitted to this Chamber in 2020 are insufficient ‘since the factual position has moved on.’⁷ We submit that while the legal position —that the Oslo Accords do not affect the Court’s jurisdiction or limit it by excluding Israeli nationals— remains unchanged, the factual position has indeed changed. The shift in the factual position in the unlawfully occupied Palestinian territory (oPt) is the ever-escalating perpetuation of Rome Statute crimes, including genocide,⁸ with a prevailing climate of total impunity. While Israel’s colonial settlement project continues unabated, the International Court of Justice (ICJ) has determined that Israel is plausibly committing genocide against the Palestinians in the Gaza Strip.⁹ Further, in concluding, in its latest Advisory Opinion (AO), that Israel’s presence in the Palestinian territory is unlawful, the ICJ recognised the ‘sustained abuse by Israel of its position as an Occupying Power.’¹⁰ Israel’s unprecedented and remorseless genocidal assault on Gaza, along with its aggravated settlement expansion, its institutionalised regime of apartheid, and annexation of Palestinian territory is indeed a factual position which should urge this Court towards the immediate issuance of arrest warrants. It should be noted that two of the three senior Palestinian leaders, including a former Prime Minister for whom arrest warrants were also sought, have reportedly since been killed by Israeli forces.¹¹
5. Recurring appeals by Israel’s apologists to the terms of the Oslo Accords illustrate, not least by the UK’s inability to stand by the Request granted to it by this Chamber, a futile attempt to find some legalistic basis by which to shield Israel’s conduct in the oPt. Notably, 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.¹² 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.

⁷ UK Request, PTC I, [ICC-01/18-171-Anx](#), 10 June 2024, para. 23.

⁸ Shawan Jabarin and Ahmed Abofoul, ‘[We are Witnessing a Genocide Unfolding in Gaza: To Stop it, the ICC Prosecutor Must Apply the Law Without Fear or Favour](#),’ *Opinio Juris Blog*, 24 November 2023.

⁹ ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip ([South Africa v. Israel](#)), [Order of 26 January 2024](#), para. 54.

¹⁰ ICJ, AO, [Israel’s Policies and Practices in the oPt](#), 19 July 2024, para. 261.

¹¹ CNN, ‘[Israeli military says it killed Hamas chief Mohammed Deif in Gaza last month](#)’, 1 August 2024.

¹² Articles 7, 8, 47, [Geneva Convention \(IV\)](#), 12 August 1949.

II. OBSERVATIONS

6. The UK's Request has had an unwelcome, unnecessary, and unwarranted delaying effect on the current Article 58 *ex parte* proceeding.¹³ The matter of the Oslo Accords had been raised in numerous submissions during the Chamber's determination on territorial jurisdiction,¹⁴ at which stage the UK chose not to engage. The UK's recent indication that it will not, after all, file observations in the proceedings it has initiated, signifies the lack of legal merit to its stated propositions.
7. 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.

A. The United Kingdom Misrepresents the Chamber's Jurisdiction Decision

8. The UK erroneously claims that the Chamber's Jurisdiction Decision implied that 'outstanding further questions of jurisdiction' were being reserved for arrest warrants proceedings.¹⁵ Addressing the Oslo Accords, the Chamber only referred to Articles 97 and 98 concerning issues of cooperation or judicial assistance noting 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'.¹⁶ Thus, the Chamber reaffirmed the position of the Office of the Prosecutor (OTP) that 'the resolution of the State's potential conflicting obligations is not a question that affects the Court's jurisdiction. Rather, it *may* become an issue of cooperation or complementarity.'¹⁷
9. The UK's claim that the Chamber 'did not determine the jurisdictional issues relating to the Oslo Accords [...] *instead* holding that [it] will be in a position to examine further questions of jurisdiction which may arise [in article 58 arrest warrants proceedings] or

¹³ UK Request, PTC I, [ICC-01/18-171-Anx](#), 10 June 2024.

¹⁴ Al-Haq, '[Review Paper: Arguments Raised in Amici Curiae Submissions Before the ICC](#)', 2020, paras. 38-44.

¹⁵ UK's Request, PTC I, [ICC-01/18-171-Anx](#), 10 June 2024, para.3.

¹⁶ Decision on Prosecution article 19(3) request, PTC I, [ICC-01/18-143](#), 05 February 2021, para. 127.

¹⁷ OTP article 19(3) request, PTC I, [ICC-01/18-12](#), 22 January 2020, para. 185.

if a State or a suspect submits a challenge under article 19(2)', misrepresents the Chamber's Jurisdiction Decision by referring to two different parts as one.¹⁸ The first addresses the 'Oslo Accords', concluding that the Chamber will not address arguments about the Oslo Accords as they 'may be raised by *interested States based on article 19 of the Statute*, rather than in relation to a question of jurisdiction in connection with the initiation of an investigation by the Prosecutor.'¹⁹ The second addressed the decision's 'Final Considerations', emphasising that the Chamber's conclusions only pertain to the current stage of the proceedings, and that '[w]hen 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.'²⁰

10. The Chamber's Jurisdiction Decision, in the section addressing the Oslo Accords, rightly never mentioned the possibility of raising this issue in Article 58 *ex parte* proceedings. Rather, it only stated that 'these issues may be raised by *interested States based on article 19*.'²¹ As the UK does not qualify as an 'interested State' under Article 19, it requested to submit observations pursuant to Rule 103 of the RPE after the Prosecutor publicly announced the application for arrest warrants before their issuance by the Chamber.²²

B. The Prosecutor's Noncompliance with the Chamber's Practice and Instructions

11. The Chambers Practice Manual states that 'the application of the Prosecutor under Article 58 of the Statute and the decision of the [PTC] are submitted and issued *ex parte*,' recommending that such Proceedings are not made public.²³ According to the Registry, the Chamber has 'stipulated that *all* filings in [this situation] must be classified as secret,'²⁴ entailing that participants are not authorised to disclose their filing or that they filed it before it is reclassified as public. It is evident, therefore, that the Prosecutor's announcement²⁵ of the application for arrest warrants before their

¹⁸ Decision on Prosecution article 19(3) request, PTC I, [ICC-01/18-143](#), 05 February 2021, para. 127 and 129, under the subheading 'The Oslo Accords' and para. 131, under the subheading 'Final Considerations'.

¹⁹ Territorial Jurisdiction Decision, PTC I, [ICC-01/18-143](#), para. 129 under the subheading 'The Oslo Accords'.

²⁰ See *ibid*, para. 131 under the subheading "Final Considerations."

²¹ PTC I, [ICC-01/18-143](#), 05 February 2021, para. 129 under the subheading "The Oslo Accords".

²² OTP Statement, [Applications for arrest warrants in the situation in the State of Palestine](#), 20 May 2024.

²³ [The Chambers Practice Manual](#), Sixth edition, adopted following the judicial retreat of 2021.

²⁴ UK's Request, [ICC-01/18-171-Anx](#), 10 June 2024, para.29; Organisations' communication with the Registry.

²⁵ OTP Statement, [Applications for arrest warrants in the situation in the State of Palestine](#), 20 May 2024.

issuance by the PTC was not only unusual but also contradicts the Chamber's practice and its instructions in the current proceedings. The UK's request would not have been possible without the Prosecutor's statement.²⁶ Whether intentionally or unintentionally, this shifted political pressure onto the judges by opening the door for States to submit observations pursuant to Rule 103 in Article 58 *ex parte* proceedings.

12. In light of ICC practice, this Chamber must ensure that the Prosecutor consistently complies with its instructions, especially when his 'actions have the potential to affect the administration of justice and the integrity of the [proceedings before its determination] pursuant to article 58 of the Statute has even been made.'²⁷ This is in line with the Chamber's indispensable role in 'scrutinizing and monitoring the action of the Prosecutor, in particular for the purpose of safeguarding [*inter alia*, the] *correct conduct of business by the Prosecutor*.'²⁸ Indeed, one of the roles of the PTC is to act as a *judicial guarantee* of full respect for the law by the prosecuting authorities.'²⁹ We respectfully submit that this Chamber, as the *judicial guarantor*³⁰ of the administration of justice and the integrity of the proceedings, consider addressing the Prosecutor's noncompliance with its instructions: 'in order that the courts may inspire in the public the confidence which is indispensable, account must also be taken of questions of internal organisation.'³¹

C. Article 58 *ex parte* Proceedings

13. 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, is unprecedented. The Court's jurisprudence has been consistent that Article 58 proceedings triggered by the Prosecutor's application 'are to be conducted on an *ex parte* basis' and that '[t]he only communication envisaged at the article 58 [...] stage is conducted between the Pre-Trial Chamber and the Prosecutor.'³² As noted by PTC II, 'the ratio behind the right of

²⁶ UK's Request, [ICC-01/18-171-Anx](#), 10 June 2024, para. 21.

²⁷ Situation in the Republic of Kenya, PTC II, [ICC-01/09-42](#), 11 February 2011, para. 22.

²⁸ K. Ambos, 'Rome Statute of the ICC: Article-by-Article Commentary,' 4th Edition, 2022, p. 3618, fn. 6.

²⁹ *Ibid*, 'Article 57: Functions and powers of the Pre-Trial Chamber', p. 3618 and fn. 6.

³⁰ Although PTC establishment stemmed from the Civil Law tradition 'where prosecutorial and investigative activities frequently undergo judicial scrutiny,' it plays a role that is 'entrusted to a judge, who however is not the 'investigating judge' of civil law systems,' acts as a judicial guarantee of full respect for law by the prosecuting authorities.' See *Ibid*, fn. 8.

³¹ *Ghulyan v. Armenia*, European Court of Human Rights, [Application no. 35443/13](#), 24 January 2019, para. 47.

³² Situation in the Republic of Kenya, PTC II, [ICC-01/09-35](#), 19 January 2011, para. 10.

participation granted to victims and *amici curiae* by the [AC] cannot be applied to the current proceedings due to the *intrinsic difference* with respect to the subject matter and the nature of the two proceedings.’³³

14. Allowing States, and others, to intervene as *amicus curiae* in Article 58 *ex parte* proceedings, causes unnecessary delay and effectively creates a form of *de facto* shadow adversarial proceedings (proceedings within proceedings). As PTC II emphasised, ‘under the statutory framework of the Court, *there is no legal basis* which would support the reading of the proceedings under article 58 of the Statute as adversarial proceedings’.³⁴ This is further evident from the RPE where the reference to Article 58 is scarce and strictly confined to after arrest warrants have been issued.³⁵
15. The PTC’s evaluation of the Prosecutor’s application determines ‘the sufficiency of evidence and material presented by the Prosecutor in *establishing reasonable grounds to believe*’ that Article 58 conditions have been met.³⁶ Further, 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.’³⁷ Notably, in discussing whether the Chamber is convinced that the ‘*reasonable grounds to believe*’ standard or other article 58(1) requirement, the Chamber will ‘often refer to the materials provided’ in the Prosecution’s application.’³⁸ The Court carries out a thorough examination of its jurisdiction at later stages of the proceedings, upon confirmation of the charges (*substantial grounds to believe*) or at the trial stage (*beyond reasonable doubt*).³⁹
16. We respectfully submit that authorising the UK’s request, as well as other subsequent requests, at this particular juncture in Article 58 *ex parte* proceedings was unnecessary, on the basis that it is not justified by reference to exceptional circumstances,⁴⁰ and has prompted an unwarranted delay in proceedings.

³³ Situation in the Republic of Kenya, PTC II, [ICC-01/09-42](#), 11 February 2011, para. 10.

³⁴ Situation in the Republic of Kenya, PTC II, [ICC-01/09-42](#), 11 February 2011, para. 6.

³⁵ See [RPE](#), Rules 112, 117, 119, 121 and 123.

³⁶ Situation in the Republic of Kenya, PTC II, [ICC-01/09-42](#), 11 February 2011, para. 10.

³⁷ Situation in Darfur, Sudan, [ICC-02/05-185](#), 04 February 2009, para. 24.

³⁸ Situation in Darfur, Sudan, [ICC-02/05-01/09](#), 04 March 2009, para 33.

³⁹ See [Rome Statute of the ICC](#), Articles 61(5) and 66(3).

⁴⁰ Decision on Redress *Amicus Curiae* application, PTC II, [ICC-01/04-02/06-259](#), 18 February 2014, para. 3.

D. Article 19(1) Statutory Duty

17. The UK claims that ‘[t]he Oslo Accords issue necessarily forms part’ of the Chamber’s Article 19(1) statutory duty to satisfy itself that it has jurisdiction, is erroneous and misleading. The PTC’s jurisprudence,⁴¹ makes it clear that consideration of the Oslo Accords is not part of the criteria the PTC is required to examine, all of which, have been met; First, the crimes in question (war crimes and crimes against humanity) are undoubtedly within the ICC’s jurisdiction *ratione materiae*;⁴² Second, they are within the Court’s jurisdiction *ratione temporis* covering crimes committed ‘since 13 June 2014’;⁴³ Third, these crimes have been committed on the territory of a State Party (State of Palestine) pursuant to article 12 of the Statute and the Chamber’s own Jurisdiction Decision.⁴⁴ Notably, ‘[t]he Chamber's findings on these three conditions *are based on the Application and the evidence or other information submitted by the Prosecutor.*’⁴⁵

18. We respectfully submit that the Chamber expeditiously issue these arrest warrants as the Oslo Accords are irrelevant to the Chamber’s Article 19(1) determination. We further caution that an examination exceeding what is statutorily required from the Chamber to satisfy itself that it has jurisdiction could be viewed as a result of the UK’s request, risking the appearance of unwarranted political pressure.⁴⁶

E. The Oslo Accords do not Bar or Limit the Exercise of the Court’s Jurisdiction

19. The Court’s consistent approach in fulfilling its clear mandate has been to avoid impunity gaps. This includes the AC assertion that arguments concerning bilateral agreements were ‘not pertinent to the issue of the authorisation of an investigation’, clarifying that such matters could yet be raised by states under Article 19.⁴⁷

20. The UK argument appears to be built on the legal rule (*nemo dat quod non habet*) which means that no one can give what he does not already have. The error of such an argument in this situation emanates from its disregard for the effect of the law of occupation, and its assumption that as a result of the Oslo Accords, the occupying

⁴¹ Decision on OTP Article 58 Application, PTC II, [ICC-01/04-01/12-1-Red](#), 13 July 2012, para. 10; Decision on OTP Arrest Warrant Application for Bemba, PTC III, [ICC-01/05-01/08-14-tENG](#), 12 June 2008, para. 12.

⁴² OTP Statement “[Applications for arrest warrants in the situation in the State of Palestine](#)”, 20 May 2024.

⁴³ [State of Palestine Referral Pursuant to Articles 13\(a\) and 14 of the Rome Statute](#), 15 May 2018.

⁴⁴ Territorial Jurisdiction Decision, PTC I, [ICC-01/18-143](#), 05 February 2021.

⁴⁵ See supra fn. 41, [ICC-01/04-01/12-1-Red](#), para. 10; [ICC-01/05-01/08-14-tENG](#), 12 June 2008, para. 12.

⁴⁶ When it comes to tribunals ‘even appearances may be of a certain importance.’ See *Ghulyan v. Armenia*, European Court of Human Rights, [Application no. 35443/13](#), 24 January 2019, para. 46.

⁴⁷ Situation in Afghanistan, Appeals Judgement, AC, [ICC-02/17-138](#), 05 March 2020. para 44.

power (Israel) necessarily deprived the occupied State (Palestine) of its sovereign rights, including its plenary prescriptive jurisdiction.⁴⁸ A main principle underpinning the law of belligerent occupation is that the occupation does not transfer any sovereign title to the Occupying Power⁴⁹ which only exercises temporary *de facto* authority.⁵⁰ Thus, the occupied State retains *de jure* jurisdiction over its territory.⁵¹

21. It is important here to differentiate between two types of State jurisdiction under customary international law; (i) Prescriptive jurisdiction, which entails the capacity of a State to ‘make its law applicable to the activities, relations, or status of persons, or the interests of persons in things’⁵² (ii) Enforcement jurisdiction, which regulates the State’s power to ‘enforce or compel compliance or to punish noncompliance with its laws or regulations.’⁵³ As regards a State conferring jurisdiction to the ICC, one must distinguish ‘sovereignty’ from the ‘exercise of sovereign rights’, as a ‘State may continue to be sovereign even though important governmental functions are carried out on its behalf by another State or by an international organization,’⁵⁴ or the military administration of an Occupying Power. A state’s right to confer jurisdiction is ‘reflective of an internationally recognized legal authority,’ rather than ‘the material ability of actually exercising jurisdiction over either the territory in question or over certain individuals within or outside that territory.’⁵⁵ Such was evidenced in the practice of exiled sovereigns in World War II, continuing to legislate remotely over their occupied territories.⁵⁶ Thus, the capacity of a State to confer its jurisdiction to the ICC is a manifestation of its capacity to make law (prescriptive jurisdiction), not its ability to enforce it (enforcement jurisdiction).

22. As the OTP rightly observed: ‘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.’⁵⁷ This Chamber rightly concluded that ‘[i]t would indeed be contradictory to allow an entity to accede to the Statute and

⁴⁸ Ahmed Abofoul, ‘[The Oslo Accords and the ICC’s Jurisdiction in Palestine](#)’, *Opinio Juris Blog*, 28 July 2020.

⁴⁹ Bouttruche and Sassòli, *Expert Opinion on the Occupier’s Legislative Power Under IHL (NRC 2017)* 4.

⁵⁰ Article 43, Hague Regulation (1907); M. Jacques, *Armed Conflict and Displacement (CUP 2012)* 83.

⁵¹ Draft Article 6 in ILC, *Articles on the Effects of Armed Conflicts on Treaties with commentary (2011) Doc. A/66/10*; S.A.G. Talmon, ‘*Recognition of Governments in International Law*’ (Clarendon Press, 1998) 117–131.

⁵² Y. Shany, ‘*In Defence of Functional Interpretation of Article 12(3)*’ [2010] 8 JICJ, 339-340.

⁵³ J. Houck, ‘*Restatement of the Foreign Relations Law of the US*’ [1987] ALI, 1367.

⁵⁴ J. Crawford, *The Creation of States in International Law (OUP 2006)* 33.

⁵⁵ Y. Shany, ‘*In Defence of Functional Interpretation of Article 12(3)*’ [2010] 8 JICJ, 339-340.

⁵⁶ Situation in the State of Palestine, [Al-Haq et al. Amicus Curiae Submission Pursuant to Rule 103](#), paras.54-55.

⁵⁷ OTP article 19(3) request, PTC I, [ICC-01/18-12](#), 22 January 2020, para. 185.

become a State Party, but to limit the Statute's inherent effects over it.'⁵⁸ Moreover, 'when adjudicating international crimes, [international courts], do not act on behalf of a particular State or States. Rather, international courts act on behalf of the international community as a whole.'⁵⁹

23. During 1993 and 1995, the Oslo Accords, an *interim* agreement, were signed between Israel, as the Occupying Power, and the Palestine Liberation Organisation. Our organisations consider that agreements which were temporal in scope and premised on the condition of a permanent settlement by 1999, have since fallen into desuetude.⁶⁰ Notwithstanding, the provisions of Oslo II regulating the exercise of criminal jurisdiction only relate to the enforcement jurisdiction of the then-newly created Palestinian Authority and do not constrain the prescriptive jurisdiction of the State of Palestine. Consequently, they 'have not precluded Palestine from acceding to numerous multilateral treaties'⁶¹ including the Rome Statute itself,⁶² since the capacity to conclude treaties remains vested in the occupied State under international law.
24. Most importantly, the Oslo Accords constitute a 'special agreement' within the meaning of the GC IV.⁶³ As the drafters of these Conventions foresaw the risks of the conclusion of an agreement between the occupied State and the Occupying Power, Articles 7, 8 and 47 of the GC IV entail that 'special agreements' cannot deprive or deny 'protected persons' of their rights under the Geneva Conventions.⁶⁴ As the ICC Prosecutor noted, '[t]his principle of 'non-renunciation' of rights reflects the view that protected persons under the law of occupation are not in a sufficiently independent and objective state of mind to fully appreciate the implications of a renunciation of their rights under the Convention.'⁶⁵
25. The ICJ, in a distinct, yet relevant case, emphasised 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

⁵⁸ Decision on Prosecution article 19(3) request, PTC I, [ICC-01/18-143](#), 05 February 2021, para. 102.

⁵⁹ Situation in Darfur, Sudan, Judgment in the Jordan Referral re Al-Bashir Appeal, AC, [ICC-02/05-01/09-397](#), para. 115; Joint Concurring Opinion of Judges Eboe-Osuji, Morrison, Hofmanski and Bossa, [ICC-02/05-01/09-397-Anx1](#), 06 May 2019, paras. 53-54.

⁶⁰ Situation in the State of Palestine, [Al-Haq et al. Amicus Curiae Submission Pursuant to Rule 103](#), para. 49.

⁶¹ OTP article 19(3) request, PTC I, [ICC-01/18-12](#), 22 January 2020, para. 184.

⁶² ICC, '[The State of Palestine accedes to the Rome Statute](#)', 7 January 2015.

⁶³ See e.g. Articles 7, 14, 15, 17, 108, [Geneva Convention \(IV\), 12 August 1949](#).

⁶⁴ Article 8 and 47 [Geneva Convention \(IV\), 12 August 1949](#).

⁶⁵ OTP article 19(3) request, PTC I, [ICC-01/18-12](#), 22 January 2020, para. 188.

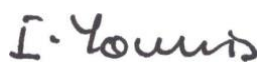
‘international agreements’ with non-self-governing territories.⁶⁶ Moreover, the ICJ confirmed in relation to Israel’s unlawful presence in Palestine that ‘Israel may not rely on the Oslo Accords to exercise its jurisdiction in the [oPt] in a manner that is at variance with its obligations under the law of occupation’⁶⁷ Further, the ICJ held that ‘the extension of Israel’s law to [parts of the oPt]’ is contrary to Article 43 of the Hague Regulations and Article 64 of the GC IV.⁶⁸ This is a clear assertion by the ICJ, that the very practice at the core of the UK’s request —i.e., the exclusion of Israeli nationals from Palestine’s jurisdiction— itself constitutes a violation of international law, prompting reconsideration of the maxim *ex turpi causa non oritur action*.

III. CONCLUSION

26. The Oslo Accords do not bar or limit the Court from exercising its jurisdiction, including over Israeli nationals, for crimes within its jurisdiction committed on the territory of the State of Palestine, nor do they form part of the Chamber’s determination on the Prosecutor’s application for the issuance of warrants of arrest. The rules of the Rome Statute cannot be rewritten by the terms of a bilateral agreement, especially those between an Occupying Power and the representatives of an occupied people, in such a manner inconsistent with the fundamental tenets and purposes of the establishment of the Court, as well as, with the protected Palestinian people’s right to self-determination. We finally note that the present arrest warrant application is unjustifiably restricted in its scope. We call for the inclusion of the Rome Statute crimes of genocide, apartheid and crimes related to settlements, including direct or indirect transfer of settlers into occupied territory to the charges against Israeli Prime Minister Netanyahu, and Minister of Defence, Gallant. The crime of genocide is being perpetrated without pause or remorse.



Mr. Shawan Jabarin
Al-Haq



Mr. Issam Younis
Al-Mezan



Mr. Raji Sourani
PCHR

Dated this 6 August 2024
At Ramallah, Palestine

Dated this 6 August 2024
At Cairo, Egypt

Dated this 6 August 2024
At Cairo, Egypt

⁶⁶ ICJ, AO, ‘[Separation of the Chagos Archipelago from Mauritius in 1965](#)’, 25 February 2019, para. 172.

⁶⁷ ICJ, AO, [Israel’s Policies and Practices in the oPt](#) 19 July 2024, para. 102.

⁶⁸ ICJ, AO, [Israel’s Policies and Practices in the oPt](#), 19 July 2024, para 140.