



**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**

**Application for Leave to Submit Observations on the Prosecutor's Request  
in accordance with the Chamber's Order of 27 June 2024  
on behalf of the Non-Governmental Organisations:  
The Jerusalem Center for Public Affairs, the Institute for NGO Research**

**Source:** The Jerusalem Center for Public Affairs  
The Institute for NGO Research

**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

**Counsel for the Defence**

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants**

**The Office of Public Counsel for Victims**

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

**States' Representatives**  
United Kingdom

**Amicus Curiae**  
**All Amicus 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. In accordance with the Chamber's Order of 22 July 2024, granting the undersigned organisations leave to submit Observations on the question of whether the Court can exercise jurisdiction over Israeli nationals, in circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords, the undersigned organisations respectfully present their observations.

2. The Rome Statute is predicated on the delegated powers of its States Parties.<sup>1</sup> In other words, the Court may only exercise its jurisdiction where a State Party holds and can exercise its own criminal jurisdiction and has the legal capacity to transfer such powers to the Court.<sup>2</sup>

3. As the Observations will demonstrate, "The State of Palestine" does not exist as a sovereign state and has never held the criminal jurisdiction it would have needed in order to delegate such jurisdiction to the Court. In reality, the only Palestinian entity that has ever held any jurisdiction – the Palestinian Authority (PA) - was a creation of the Oslo Accords and its powers to act in any capacity are prescribed solely by those agreements.

4. Since the Palestinian Authority never held legal capacity to exercise criminal jurisdiction over Israelis, it could not have the power to delegate any such jurisdiction to the Court. Accordingly, the Court lacks jurisdiction under Article 12 of the Rome Statute to proceed, and must therefore reject the Prosecutor's request to issue arrest warrants against any Israeli nationals.

## II. Observations

5. As noted, the Rome Statute is predicated on the delegated powers of States Parties and a State Party can only transfer such powers to the Court which it holds and can exercise. In this case, "The State of Palestine," does not and has never existed as a sovereign state and therefore has never possessed the inherent power to exercise criminal jurisdiction. Any powers flowing to "The State of Palestine" are a result of those granted to the Palestinian Authority under the Oslo Accords that were responsible for its creation. Under the Accords, it was barred from exercising any and all criminal jurisdiction pertaining to Israelis, whether prescriptive, enforcement, or otherwise.<sup>3</sup>

---

<sup>1</sup> Rod Rastan, *Jurisdiction, in THE LAW AND PRACTICE OF THE INTERNATIONAL CRIMINAL COURT* 141, 155 (Carsten Stahn ed., 2015).

<sup>2</sup> See e.g., Michael Newton, "How the ICC Threatens Treaty Norms," 49 *Vanderbilt Journal of Transnational Law* 2016, 371, 374-75; Dan Sarooshi, "Some Preliminary Remarks on the Conferral by States of Powers on International Organizations," *Jean Monnet Working Paper NYU School of Law* 4/03 n4 (2003).

<sup>3</sup> It is simply false to claim that the Accords were limited to enforcement jurisdiction as some amici are now claiming. This revisionist history is not supported anywhere in the negotiations of the Accords nor in the agreement.

## **A. Historical Background**

6. In 1922, following World War One, the League of Nations adopted the Mandate for Palestine.<sup>4</sup> The Mandate recognised the “historical connection of the Jewish people with Palestine” and “the grounds for reconstituting their national home in that country.” Accordingly, the Mandate placed the entire area from the Jordan River to the Mediterranean Sea, from Lebanon to the Red Sea, under the control of Great Britain, for the sole purpose of establishing the Jewish national homeland.

7. While the League of Nations was disbanded and replaced by United Nations (UN), the provisions of the Mandate for Palestine and other similar mandates were maintained and reaffirmed, without change, in Article 80 of the UN Charter.

8. While the UN General Assembly’s 1947 Partition Plan<sup>5</sup> recommended the establishment inter alia of an “Arab State,” that could, in due course have called itself the “State of Palestine,” that Partition Plan was never implemented inasmuch as it was rejected by the Arab League states<sup>6</sup> that chose instead to initiate a war to eradicate the new state of Israel.

9. From 1948 through 1967, Egypt held the Gaza Strip and the Hashemite Kingdom of Jordan held the area referred to in the Partition Plan as the “hill country of Samaria and Judea,”<sup>7</sup> could have established the “Arab state” envisaged by the Partition Plan, but they did not.

10. During the period between 1948 through 1967, no UN resolution of either the General Assembly nor of the Security Council called on either Egypt or Jordan to end their respective “occupations” of the “Arab State” that could have been established.

11. Since it is untenable to argue that a “State of Palestine” was only established following the liberation by Israel of the Gaza Strip from the Egyptian occupation and Judea and Samaria from the Jordanian occupation, it is then necessary to consider the nature of “The State of Palestine” and assess what powers and jurisdiction that entity held when it ostensibly joined the Rome Statute.

## **B. The Oslo Accords and the Creation of the Palestinian Authority**

---

<sup>4</sup> Between 1517-1917, this area was part of the Ottoman Empire. <https://www.gov.il/en/pages/the-mandate-for-palestine>

<sup>5</sup> UNGA Resolution 181 - <https://documents.un.org/doc/resolution/gen/nr0/038/88/pdf/nr003888.pdf?token=WJnFEgk7sWP6TKXR7q&fe=true>

<sup>6</sup> <https://www.jewishvirtuallibrary.org/arab-league-declaration-on-the-invasion-of-palestine-may-1948>

<sup>7</sup> The Jordanians subsequently renamed the area calling it the “West Bank”

12. The Palestinian Authority (PA) - that would later unilaterally call itself “The State of Palestine” - was created pursuant to the Oslo Accords. The “Oslo Accords” is a generic name for several agreements between Israel and the Palestine Liberation Organization (PLO) from September 1993 through September 1995, and includes four primary documents: The Declaration of Principles,<sup>8</sup> signed September 1993; The Protocol on Economic Relations,<sup>9</sup> signed April 1994; The Agreement on the Gaza Strip and Jericho Area,<sup>10</sup> signed May 1994; and the Interim Agreement<sup>11</sup> on the West Bank and the Gaza Strip that was signed in September 1995. The Accords were witnessed by the United States and the Russian Federation, as well as by Egypt, Jordan, Norway and the European Union, and were transmitted to the UN Secretary General.<sup>12</sup> Similarly, since their adoption, the Accords and its framework have been endorsed and reaffirmed by both the UN Security Council and the UNGA.<sup>13</sup>

13. The Palestinian Authority, therefore, is purely a creation, by agreement between the Israeli government and the PLO pursuant to the Oslo Accords to function as an agreed-upon managing body to implement the Accords pending the outcome of the permanent status negotiations between the parties. As stipulated in the accords, the PA possesses no powers above and beyond those conferred by the Oslo Accords.

14. Having established for the first time ever, a Palestinian entity that would be responsible for governing the daily lives of the Palestinians, the Oslo Accords constitute a mutually agreed, internationally witnessed and guaranteed, *lex specialis*, between Israel and the PLO as well as the sole source of legal authority for the existence of the PA and for its functionaries.

### **C. The Oslo Accords denied the PA Any Criminal Jurisdiction Over Israelis**

15. One of the most fundamental and **agreed upon** provisions of all of the Oslo Accords and the implementing ordinances that were required to give them effect, was that the PA

---

<sup>8</sup> <https://www.gov.il/en/Departments/General/declaration-of-principles>

<sup>9</sup> [https://unctad.org/system/files/information-document/ParisProtocol\\_en.pdf](https://unctad.org/system/files/information-document/ParisProtocol_en.pdf)

<sup>10</sup>

[https://peacemaker.un.org/sites/peacemaker.un.org/files/IL%20PS\\_940504\\_Agreement%20on%20the%20Gaza%20Strip%20and%20the%20Jericho%20Area%20%28Cairo%20Agreement%29.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/IL%20PS_940504_Agreement%20on%20the%20Gaza%20Strip%20and%20the%20Jericho%20Area%20%28Cairo%20Agreement%29.pdf)

<sup>11</sup> <https://www.gov.il/en/Departments/General/the-israeli-palestinian-interim-agreement>

<sup>12</sup> <https://www.un.org/unispal/document/auto-insert-180015/>

<sup>13</sup> See, e.g. UNSC Resolution 1850 (“lasting peace can only be based on an enduring commitment to ... previous agreements and obligations”); UNSC Resolution 2334 (“calls upon both parties to act on the basis of ... their previous agreements and obligations”); UNGA 77/25 (“Recalling the mutual recognition 30 years ago between the Government of the State of Israel and the Palestine Liberation Organization ... and stressing the urgent need for efforts to ensure full compliance with the agreements concluded between the two sides ... advancing and accelerating the conclusion of a peace treaty ... resolving all outstanding issues, including all final status issues, without exception, for a just, lasting and peaceful settlement of the Israeli-Palestinian conflict”).

would be devoid of any criminal jurisdiction regarding Israelis. The Accords further provided that the PA would have no legal capacity to transfer any of its powers conferred by the Accords to international bodies such as the Court.<sup>14</sup>

16. This principle was first set down in Article VIII of the Declaration of Principles, which provided that “Israel will continue to carry the responsibility for defending against external threats, **as well as the responsibility for overall security of Israelis** for the purpose of safeguarding their internal security and public order.” (Emphasis added)

17. The Agreed Minutes<sup>15</sup> to the Declaration of Principles on the Interim Self-government arrangements added:

“1. Jurisdiction of the Council will cover West Bank and Gaza Strip territory, **except** for issues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, military locations, **and Israelis**.

2. The Council's jurisdiction will apply with regard to the agreed powers, responsibilities, spheres and authorities transferred to it.” (Emphasis added)

18. Articles V(1)(b) and (c) of the Agreement on the Gaza Strip and the Jericho Area continued:

“The functional jurisdiction [of the PA] encompasses all powers and responsibilities as specified in this Agreement. **This jurisdiction does not include** foreign relations, internal security and public order of Settlements and the Military Installation Area and **Israelis**, and external security.

“**The personal jurisdiction extends to all persons** within the territorial jurisdiction referred to above, **except for Israelis**, unless otherwise provided in this Agreement.” (Emphasis added)

19. Article V(3)(a) further added: “**Israel has authority over** the Settlements, the Military Installation Area, **Israelis**, external security, internal security and public order of Settlements, the Military Installation Area and Israelis, and those agreed powers and responsibilities specified in this Agreement.” (Emphasis added)

20. Article VIII(1) added: “In order to guarantee public order and internal security for the Palestinians of the Gaza Strip and the Jericho Area, the Palestinian Authority shall establish a strong police force, as set out in Article IX below. **Israel shall continue to carry** the responsibility for defense against external threats, including the responsibility for protecting the Egyptian border and the Jordanian line, and for defense against external threats from the

---

<sup>14</sup> Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Article IX(5)

<sup>15</sup> <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20principles.aspx>

sea and from the air, as well as **the responsibility for overall security of Israelis and Settlements, for the purpose of safeguarding their internal security and public order,** and will have all the powers to take the steps necessary to meet this responsibility”. (Emphasis added).

21. The Interim Agreement further clarified and entrenched the principle that the PA is **devoid of any criminal jurisdiction** over Israelis.

22. Article XVII(1)(a) of the Interim Agreement clearly provided that the jurisdiction of the PA **would not** include “issues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and **Israelis**”. (Emphasis added).

23. Paragraph (2)(c) added: “The territorial and functional jurisdiction of the Council will apply to all persons, **except for Israelis**, unless otherwise provided in this Agreement”. (Emphasis added)

24. Ensuring that this principle was airtight, Article I(2) of Annex IV of the Interim Agreement added further clarification: “**Israel has sole criminal jurisdiction over the following offenses:** a. offenses committed outside the Territory,<sup>16</sup> except for the offenses detailed in subparagraph 1. b above; and b. **offenses committed in the Territory by Israelis**”. (Emphasis added).

25. Article II(2)(c) added that, “**The Palestinian authorities shall not arrest Israelis** or place them in custody.” (Emphasis added)

26. The Oslo Accords also ensured that Israel would continue to hold most powers and jurisdiction in the maritime area adjacent to the Gaza Strip.<sup>17</sup>

27. The Oslo Accords did not have automatic application to the Gaza Strip, Judea and Samaria. Rather they required legislation to apply their provisions.

---

<sup>16</sup> The term “territory” is defined in Article I(1)(a) as follows: “For the purposes of this Annex, “Territory” means West Bank territory except for Area C which, except for the Settlements and the military locations, will be gradually transferred to the Palestinian side in accordance with this Agreement, and Gaza Strip territory except for the Settlements and the Military Installation Area”.

<sup>17</sup> Article XIV(1)(b)(4) of the Interim Agreement provided that, “As part of Israel’s responsibilities for safety and security within the three Maritime Activity Zones, Israel Navy vessels may sail throughout these zones, as necessary and without limitations, and may take any measures necessary against vessels suspected of being used for terrorist activities or for smuggling arms, ammunition, drugs, goods, or for any other illegal activity”. This provision was a copy of Article XI of Annex I of the Agreement on the Gaza Strip and the Jericho Area. Article XIV(2)(g) further provided that “Boats belonging to Israelis are solely subject to the control, authority and jurisdiction of Israel and the Israel Navy”. These provisions were additional to other limitations, including size, travel speed, areas in which the PA registered boats could operate, the size of the PA Coastal Police (up to 10 boats) and the weapons they could carry. Similar provisions also appeared in Article XI of Annex I of the Agreement on the Gaza Strip and the Jericho Area. 1. In addition to the limitations on the PA, Article XIV(a)(iv) further made clear that the PA would have no jurisdiction to allow foreign vessels to approach the Gaza Strip closer than 12 nautical miles.

28. In the Gaza Strip and in Judea and Samaria, the accords were adopted using Ordinances<sup>18</sup> issued by the Military Commander.

29. Of critical importance to the current proceedings, paragraph 6 of Ordinance No. 7<sup>19</sup> that implemented the provisions of the Interim Agreement, specifically provided that Israel would continue to hold all powers and jurisdictions regarding:

"1) The settlements and the Military installations; 2) Area C; 3) **Israelis**; 4) Every issue related to the external security of the area, the security and the public order of the settlements and the Israeli military installations; 5) Security and public order in areas that are under Israeli security control; 6) Other powers and fields of responsibility that remain in the hands of the IDF OC in the area according to the Interim Agreement, including powers and fields of responsibility that were not transferred to the Council in this agreement". (Emphasis added)

30. Consequently, the PA has never independently possessed and was never granted, at any stage, criminal jurisdiction over Israelis, nor the ability to delegate any such jurisdiction to any other body, including the Court.<sup>20</sup>

#### **D. The Binding Force of the Accords**

31. While some of the Palestinian leadership have belittled the importance<sup>21</sup> of the Accords, Mahmoud Abbas, the same Palestinian leader that purported to accede to the Rome Statue in the name of the "State of Palestine,"<sup>22</sup> and others have repeatedly stressed<sup>23</sup> that the

---

<sup>18</sup> **Ordinance No. 1** declared that the areas were now under IDF Military control

(<https://www.idf.il/media/30901/%D7%A7%D7%9E%D7%A6%D7%9D-%D7%97%D7%95%D7%91%D7%A8%D7%AA-1-%D7%A6%D7%95-1-8-07061967-09061967.pdf>);

**Ordinance No. 2** provided that the law previously applied in the area, would remain in force, inasmuch as it did not contradict new legislation. (<https://www.idf.il/media/30901/%D7%A7%D7%9E%D7%A6%D7%9D-%D7%97%D7%95%D7%91%D7%A8%D7%AA-1-%D7%A6%D7%95-1-8-07061967-09061967.pdf>);

**Ordinances No. 4** (<https://www.idf.il/media/57080/%D7%97%D7%95%D7%91%D7%A8%D7%AA-154.pdf>

(May 15, 1994)) and **5** (<https://www.idf.il/media/57084/%D7%97%D7%95%D7%91%D7%A8%D7%AA-159.pdf> (Dec. 11, 1994)) focused on the implementation of the first agreements, including, inter alia, the Agreement on the Gaza Strip and the Jericho Area, May 4, 1994

(<https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/agreement%20on%20gaza%20strip%20and%20jericho%20area.aspx>) and two additional agreements of Aug. 29, 1994

(<https://mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/Agreement%20on%20Preparatory%20Transfer%20of%20Powers%20and%20Re.aspx>) and Oct. 9 1994.

**Ordinance No. 6** (<https://www.idf.il/media/57087/%D7%97%D7%95%D7%91%D7%A8%D7%AA-164.pdf> (Sept. 10, 1995)) implemented the Aug. 27, 1995 Agreement;

<sup>19</sup> <https://www.idf.il/media/57087/%D7%97%D7%95%D7%91%D7%A8%D7%AA-164.pdf> (Nov. 23, 1995)

<sup>20</sup> On this and other subjects pertinent to the deliberations of the Court, see "The International Criminal Court's Lack of Jurisdiction Over the So-Called 'Situation in Palestine,'" State of Israel, Office of the Attorney General, 20 Dec. 2019, available at: <https://www.gov.il/BlobFolder/news/1-hebrew/he/memorandum.pdf>

<sup>21</sup> The Oslo Deception – New Evidence (<https://palwatch.org/page/34572>)

<sup>22</sup> [https://www.icc-cpi.int/sites/default/files/Palestine\\_A\\_12-3.pdf](https://www.icc-cpi.int/sites/default/files/Palestine_A_12-3.pdf)

<sup>23</sup> <https://palwatch.org/page/34713>; <https://palwatch.org/page/29185>; <https://palwatch.org/page/28113>; <https://palwatch.org/page/32103>; <https://palwatch.org/page/20729>



Palestinians are “committed to ... **the signed agreements.**” Even within the context of the proceedings before the Court, the PA refrained from declaring the demise of the Oslo Accords.

32. After the Pre Trial Chamber (PTC) of the Court received the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine,’<sup>24</sup> and after the receiving the comments of the Palestinian leadership,<sup>25</sup> the PTC then became aware of a statement made by PA Chairman, Mahmoud Abbas, made on 19 May 2020, in which he declared inter alia that “the Palestine Liberation Organization and the State of Palestine are absolved, as of today, of all the agreements and understandings with the American and Israeli governments and of all the commitments based on these understandings and agreements, including the security ones.”

33. Responding to the statement, the PTC ordered<sup>26</sup> the Palestinian Authority to “provide additional information on this statement, including on the question whether it pertains to any of the Oslo agreements between Palestine and Israel...”

34. In its response to the court,<sup>27</sup> the Palestinian Authority explicitly refrained from declaring that the Oslo Accords were defunct.

35. Back-tracking on what appeared to be a very clear statement by Abbas, the document submitted by the Palestinian Authority to the Court was a revamped version of the statement.

36. Paragraph 7 of the Palestinian submission to the PTC clarified that “The Statement was made by President Mahmoud Abbas in response to Israel’s declared plan, as reflected in the Israeli government’s coalition agreement and repeated statements by Israeli officials, including the Prime Minister, to carry out the unlawful annexation of Palestinian territory under Israeli occupation.”

37. Paragraph 13 of the Palestinian submission added, that “Substantively, the Statement declares that if Israel proceeds with annexation, a material breach of the agreements between the two sides, then it will have annulled any remnants of the Oslo Accords and all other agreements concluded between them. It also declares that Israel’s persistent violations of these agreements, and its announced plans and measures for annexation, absolve the Palestine Liberation Organization (‘PLO’) and the State of Palestine from any obligation arising from these agreements, including security agreements.”

---

<sup>24</sup> <https://www.icc-cpi.int/court-record/icc-01/18-12>

<sup>25</sup> <https://www.icc-cpi.int/court-record/icc-01/18-82>

<sup>26</sup> [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020\\_02105.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_02105.PDF)

<sup>27</sup> [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020\\_02277.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_02277.PDF)

38. In other words, when the PTC gave the Palestinian Authority the express opportunity to declare the demise of the Oslo Accords and to clearly state that it was operating in a manner detached from the Accords, the PA went to great lengths<sup>28</sup> to clarify that the Accords were still in force and that it was committed to them.

39. In 2023, both Israel and the PA reiterated their commitment to the Accords. In a 26 February and a 19 March 2023 communique, the parties “reaffirmed ...their unwavering commitment to all previous agreements between them” and to “work towards a just and lasting peace.”<sup>29</sup>

#### **E. Semantic UN Name Changes Do Not Grant Criminal Jurisdiction to the PA**

40. In 2012, Palestinian representation was upgraded by the UN General Assembly to that of a “non-member observer state” and the PA began unilaterally denominating itself as the “State of Palestine”. These changes were semantic, and its effects were confined to within the UN system. They did not establish State sovereignty, nor define State borders, and they did not and cannot alter the clear and binding provisions of the Oslo Accords, including those that bar the PA’s exercise and delegation of criminal jurisdiction.

41. Proof of this clear factual situation was provided recently, when the Palestinian Authority renewed its request<sup>30</sup> for UN acceptance as a member State.

42. Considering the request prior to the discussion in the UN Security Council, the UN Committee on the Admission of New Members, noted,<sup>31</sup> on April 17, 2024, that “Regarding the issue of whether the application met all the criteria for membership set out in Article 4 of the Charter, ... the Chair stated that the Committee was **unable to make a unanimous recommendation to the Council.**”

43. On April 18, 2024, the UN Security Council again denied<sup>32</sup> the request of the Palestinian Authority for statehood.

44. In the current context it is worth noting, that one of the reasons the UN Committee on the Admission of New Members was unable, in 2011 to recommend admitting “Palestine” as a fully-fledged state was because “ Hamas was in control of 40 per cent of the population

---

<sup>28</sup> It bears noting, that in order to mitigate the potential damage that could have been caused by Abbas’ statement, the Palestinian Authority even went as far as to **submit a falsified document** to the PTC – see <https://palwatch.org/page/17971>

<sup>29</sup> <https://www.state.gov/joint-communique-from-the-march-19-meeting-in-sharm-el-sheikh/>;  
<https://www.state.gov/qaqaba-joint-communique/>.

<sup>30</sup> <https://documents.un.org/doc/undoc/gen/n24/093/22/pdf/n2409322.pdf?token=LKb9KOroYXtp6Tgeab&fe=true>

<sup>31</sup> <https://www.un.org/unispal/wp-content/uploads/2024/04/n2410445.pdf>

<sup>32</sup> <https://press.un.org/en/2024/sc15670.doc.htm>

of Palestine; therefore the Palestinian Authority could not be considered to have effective government control over the claimed territory.’<sup>33</sup>

45. Unless the Palestinian Authority is willing to falsely concede that it did indeed have effective control over the Gaza Strip and that the PA and its entire leadership bear direct responsibility for the genocidal atrocities committed on October 7, 2023, it is clear that no state exists, nor that it can exercise sovereign capacities.

46. Similarly, the recent decision to further upgrade the status of the Palestinian Authority, did not confer any sovereign powers nor abrogate the Oslo Accords, but rather was limited to providing the PA with additional procedural rights at the UN.

47. The analysis of the nature of the Palestinian Authority/“The State of Palestine” herein are in addition to the extensive analysis submitted by the undersigned, as part of the original discussion in the PTC regarding the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine.’ Those submissions<sup>34</sup> are an integral and undivided part of these pleadings.

48. Regardless of the moniker and status of the Palestinian Authority at the UN, it is not a sovereign state, it does not possess the independent powers of a sovereign state, and it is confined to the terms of the Oslo Accords which bar the exercise of jurisdiction by the Court.

### **Conclusion**

49. No fully-fledged independent “State of Palestine” has ever existed, nor does it exist today. The Palestinian Authority, regardless of whether it today calls itself “The State of Palestine” or operates under another name. is not a state, nor does it possess the powers of a sovereign state. Rather, it is a creation of the Oslo Accords to serve as a vehicle for Palestinian self-government within the confines of those Accords.

50. The Oslo Accords specifically, and repeatedly stipulate that the Palestinian Authority – the body created by the Accords – is devoid of any jurisdiction, **most particularly criminal jurisdiction**, over Israelis, and has no legal capacity to delegate any such jurisdiction to any other body, including this Court.<sup>35</sup>

---

<sup>33</sup>

<https://documents.un.org/doc/undoc/gen/n11/585/55/pdf/n1158555.pdf?token=6pcF9VQqaQbuAj2YiV&fe=true>

<sup>34</sup> [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020\\_01023.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_01023.PDF); <https://www.icc-cpi.int/court-record/icc-01/18-101>

<sup>35</sup> Attempts by the OTP to distinguish between “prescriptive” and “enforcement” jurisdiction is similarly not persuasive. The Accords clearly barred the PA from exercising of any and all criminal jurisdiction over Israelis. See Article XVIII(4)(a) of the Interim Agreement (Legislative Powers of the Council): “Legislation, including legislation which amends or abrogates existing laws or military orders, which exceeds the jurisdiction of the Council or which is otherwise inconsistent with the provisions of the DOP, this Agreement, or of any other agreement that may be reached between the two sides during the interim period, shall have no effect and shall be void ab initio”.

51. The manner in which the UNGA refers to the Palestinian Authority, including the internal procedural benefits conferred by that body, does not allow it to invent a state that does not exist, nor does it have the ability to confer the powers of criminal jurisdiction. To this day, the Palestinian leadership acts in accordance with and reaffirms that the Palestinians are committed to the Oslo Accords.

52. Given that Israel is not a State Party to the Court and the “State of Palestine” does not have the power itself to exercise criminal jurisdiction over Israelis, nor to delegate any such power to any other body, including the Court, the Court does not possess jurisdiction over Israelis in this Situation and must dismiss the Prosecutor’s request with respect to any Israeli nationals.

Respectfully submitted,

Ambassador Alan Baker and Lt. Col. (res) Maurice Hirsch, on behalf of The Jerusalem Center for Public Affairs



Ambassador (ret’) Alan Baker



Lt. Col. (res) Maurice Hirsch

Anne Herzberg, on behalf of The Institute for NGO Research



Dated this 6<sup>th</sup> day of August 2024  
At Jerusalem, Israel