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Date: **27 June 2025**

Pre-Trial Chamber I

Before: **Judge Nicolas Guillou, Presiding Judge**
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Beti Hohler

SITUATION IN THE STATE OF PALESTINE

PUBLIC
The State of Palestine's Observations on Israel's Request (ICC-01/18-354-AnxII-Corr)

Source: **The State of Palestine**

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I. INTRODUCTION

1. The State of Palestine's ability to accept the Court's jurisdiction has been addressed by States Parties, *amici curiae*, and determined by the Court itself. At each stage, care was taken to ensure the Court's actions remained firmly grounded in its treaty-based mandate. These were not academic inquiries, but legal proceedings with binding consequences. Jurisdiction was fully litigated under article 19(3) of the Statute, culminating in a reasoned and final determination that the Court may exercise territorial jurisdiction in relation to the Situation in the State of Palestine.
2. That settled legal foundation cannot now be undone absent compelling reason. To attempt otherwise - implicitly or explicitly - suggests that these judicially sanctioned steps can be reversed on political grounds. Meanwhile, the crimes that triggered the referral continue. The Court's legitimacy depends, in part, on its ability to maintain its rulings, including on jurisdiction, once properly established.
3. Israel's attempt to re-litigate the Court's jurisdiction is procedurally inadmissible, legally baseless, and politically motivated. It seeks not to clarify the Court's mandate, but to obstruct it and delay accountability. Israel fails to meet the threshold for standing under article 19(2)(c), presents no new facts or arguments warranting reconsideration under article 19(3), misrepresents the interim agreements between the State of Palestine and the occupying power, and inverts the consequences of its own internationally wrongful acts. Its position is untenable, incompatible with the Statute, and contrary to the principles the Court was established to uphold. The Court should dismiss this latest effort to delay its work - promptly and unequivocally in order to send the clear message that justice will not be stopped, regardless of the identity of perpetrators.

II. PROCEDURAL HISTORY

4. The procedural history of this litigation reflects both its protracted nature and the breadth of submissions presented to and considered by this Court, all in relation to the specific issue now before the Chamber: the exercise of the Court's jurisdiction over the continued and systematic commission of crimes on Palestinian territory.

5. On 31 December 2014, following Israel's catastrophic 2014 Gaza assault, the President of the State of Palestine issued a declaration accepting the jurisdiction of the Court for crimes 'committed in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014'.[1] The State of Palestine deposited its instruments of accession on 2 January 2015.[2]

6. On 16 January 2015, the Prosecution, noting that 'the UNGA Resolution 67/19 is […] determinative of Palestine's ability to accede to the Statute pursuant to article 125, and equally, its ability to lodge an article 12(3) declaration', found that Palestine 'must be considered a 'State' for the purposes of accession to the Rome Statute (and in accordance with the 'all States' formula)'; and opened a preliminary examination in the *Situation in the State of Palestine*.[3]

7. On 22 May 2018, the State of Palestine again referred the *Situation in the State of Palestine* to the Court pursuant to articles 13(a) and 14 of the Statute; requesting the Prosecution to investigate 'past, ongoing and future crimes within the court's jurisdiction, committed in all parts of the territory of the State of Palestine'.[4]

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[1] State of Palestine, President, Declaration Accepting the Jurisdiction of the International Criminal Court, 31 December 2014 [https://www.icc-cpi.int/sites/default/files/iccdocs/PIDS/press/Palestine_A_12-3.pdf]
[2] C.N.13.2015.TREATIES-XVIII.10 (Depository Notification), 6 January 2015.
[3] ICC Press Release, The Prosecutor of the International Criminal Court Fatou Bensouda opens a preliminary examination of the situation in Palestine, 16 January 2015 [https://www.icc-cpi.int/news/prosecutor-international-criminal-court-fatou-bensouda-opens-preliminary-examination-situation]
[4] ICC/01-19-1-AnxI, Notification I Referral from the State of Palestine pursuant to articles 13(a) and 14 of the Rome Statute, 22 May 2018, para. 9.

8. On 20 December 2019 the Prosecution concluded the preliminary examination in the *Situation in the State of Palestine*, finding a 'reasonable basis to proceed with an investigation into the situation in Palestine, pursuant to article 53(1) of the Statute'; and being *inter alia* 'satisfied that (i) war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip […]'. In 2019, the Prosecution 'deemed it necessary to rely on article 19(3) of the Statute to resolve this specific issue' and 'requested from Pre-Trial Chamber I, a jurisdictional ruling on the scope of the territorial jurisdiction of the International Criminal Court under article 12(2)(a) of the Rome Statute in Palestine'.[5] The Prosecution filed its request pursuant to article 19(3) on 22 January 2020'.[6]
9. On the same day, Israel's Attorney-General publicly circulated a legal memorandum entitled 'The International Criminal Court's Lack of Jurisdiction over the so-called 'Situation in Palestine'' setting out Israel's objections in full.[7]
10. On 28 January 2020, the Chamber invited the States of Palestine, Israel and victims to submit written observations on the question of jurisdiction as of right. Other States, organisations and/or persons were invited to file requests pursuant to rule 103(1) of the Rules.[8]
11. Between 3 and 19 March 2020, the Chamber received observations from 11 victim groups; and 33 observations submitted by *amici curiae* authorised to participate in the proceedings, including the submissions of seven States and two International Organisations representing 57 States between them — all

[5] ICC Press Release, Statement of ICC Prosecutor Fatou Bensouda on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court's territorial jurisdiction, 20 December 2019 [https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-conclusion-preliminary-examination-situation-palestine]
[6] ICC-01/18-12, Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, 22 January 2020 ('Article 19(3) Request'), para. 220.
[7] State of Israel Office of the Attorney General, The International Criminal Court's Lack of Jurisdiction over the so-called 'Situation in Palestine', 20 December 2019 ('Israel's Attorney General Legal Memorandum').
[8] ICC-01/18-14, Order setting the procedure and the schedule for the submission of observations, 28 January 2020.

together representing 31 State Parties and more than 30 non-State Parties.[9] The State of Palestine filed its observations on 16 March 2020.[10] Israel did not formally provide the Chamber with its observations.

12. On 5 February 2021, Pre-Trial Chamber I issued its decision on jurisdiction pursuant to article 19(3) of the Statute, finding unanimously 'that Palestine is a State Party to the Statute'; that 'by majority, Judge Kovács dissenting, …Palestine qualifies as '[t]he State on the territory of which the conduct in question occurred' for the purposes of article 12(2)(a) of the Statute'; and 'by majority, Judge Kovács dissenting, that the Court's territorial jurisdiction in the Situation in Palestine extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem'.[11]
13. On 3 March 2021 the Prosecution subsequently confirmed the initiation of an investigation in the *Situation in the State of Palestine* for crimes committed since 13 June 2014.[12]
14. On 20 May 2024, the Prosecution issued a public statement announcing that it had applied for arrest warrants under article 58 in the *Situation in the State of Palestine* for, *inter alia*, Messrs. Netanyahu and Gallant, for war crimes and crimes against humanity committed on the territory of the State of Palestine.[13]
15. On 10 June 2024, the United Kingdom (under previous government leadership) filed a request to provide written *amicus curiae* observations under rule 103(1)

[9] For a full list see ICC-01/18-143, Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', 5 February 2021, ('Article 19(3) Decision'), paras. 11 – 13.
[10] ICC-01/18-82, The State of Palestine's observations in relation to the request for a ruling on the Court's territorial jurisdiction in Palestine, 16 March 2020 ('State of Palestine Article 19(3) Observations'). The State of Palestine further provided additional information in response to the Chamber's order on 4 June 2020 see ICC-01/18-134, Order requesting additional information, 26 May 2020 and ICC-01/18-135, The State of Palestine's response to the Pre-Trial Chamber's Order requesting additional information, 4 June 2020 ('State of Palestine's Additional Information'). The Prosecution provided its response on 8 June 2020 see ICC-01/18-136, Prosecution Response to 'The State of Palestine's response to the Pre-Trial Chamber's Order requesting additional information', 8 June 2020. Israel did not file any response despite an invitation to do so from the Chamber.
[11] Article 19(3) Decision, p. 60.
[12] ICC Press Release, Statement of ICC Prosecutor Fatou Bensouda respecting an investigation of the Situation in Palestine, 3 March 2021.
[13] ICC Press Release, Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine, 20 May 2024.

on 'the effect of the Oslo Accords on the jurisdiction of the Court',[14] opening another round of litigation. The Chamber granted leave to the United Kingdom,[15] and further granted leave in relation to over sixty requests for leave to file *amici curiae* from: (i) eighteen States and two international organisations representing fifty-seven States between them;[16] (ii) the Office of Public Counsel for Victims and several groups of legal representatives of victims; and the Office of Public Counsel for the Defence.[17] The Prosecution provided its consolidated response on 23 August 2024.[18]

16. On 23 September 2024, Israel submitted its challenge to the jurisdiction of the Court pursuant to article 19(2)(c) of the Statute.[19] On 21 November 2024, the Pre-Trial Chamber rejected Israel's Jurisdiction Challenge,[20] and further announced the issuance of arrest warrants for Mr. Netanyahu and Mr. Gallant.[21]

17. Following Israel's appeal,[22] on 24 April 2025, the Appeals Chamber remanded the Initial Article 19(2) Decision back to the Pre-Trial Chamber.[23]

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[14] ICC-01/18-171-Anx, Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103, 10 June 2024 ('R103 Request by the United Kingdom'), para. 27.
[15] ICC-01/18-173-Red, 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.
[16] ICC-01/18-249, Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence, 22 July 2024 ('Decision on requests R103 of 2024').
[17] ICC-01/18-325, Order in relation to the OPCD's submissions on amicus curiae observations and the Prosecution's request to file a consolidated response, 9 August 2024.
[18] ICC-01/18-346, Prosecution's consolidated response to observations by interveners pursuant to article 68(3) of the Rome Statute and rule 103 of the Rules of Procedure and Evidence, 23 August 2024 ('Prosecution 2024 Consolidated Response to R103'), para. 31.
[19] ICC-01/18-354-AnxII-Corr, Public Redacted Version of 'Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute', 23 September 2024 ('Jurisdiction Challenge').
[20] ICC-01/18-374, Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute, 21 November 2024 ('Initial Article 19(2) Decision)'.
[21] ICC Press Release Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel's challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant, 21 November 2024.
[22] ICC-01/18-386, Notice of Appeal of 'Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute' (ICC-01/18-374), 27 November 2024; ICC-01/18-388, Request for leave to appeal 'Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute', 27 November 2024; ICC-01/18-402, Appeal of 'Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute' (ICC-01/18-374), 13 December 2024.
[23] ICC-01/18-422, Judgment on the appeal of the State of Israel against Pre-Trial Chamber I's 'Decision on

III. PRELIMINARY REMARKS

A. Scope of Observations

18. The State of Palestine recalls that Israel's Jurisdiction Challenge — as filed on 23 September 2024 and premised on article 19(2)(c) — encompassed three distinct requests: (i) a request for the Prosecution's investigation of Mr. Netanyahu and Mr. Gallant to be suspended pursuant to articles 19(7) and 19(8) of the Statute and rule 58 of the ICC Rules ('Suspension Request'); (ii) a determination that the application for the arrest warrant concerning Mr. Netanyahu and Mr. Gallant, and any investigative action on the same jurisdictional basis, are not within the Court's jurisdiction ('Jurisdiction Request Challenge'); and (iii) the dismissal of the Prosecutor's application for the arrest warrants concerning Mr. Netanyahu and Mr. Gallant ('Request for Dismissal of Arrest Warrants').[24] Israel subsequently reiterated both its Suspension Request and Request for Dismissal of Arrest warrants following the Appeal Chamber's Article 19(2) Decision.[25]

19. In its Decision on the Conduct of Proceedings, the Pre-Trial Chamber instructed the State of Palestine to provide its observations with respect to '(i) the applicable legal basis under article 19(2) of the Statute; and (ii) the substance of Israel's contentions as set out in Israel's Request'.[26] The Pre-Trial Chamber further directed that it would 'separately address Israel's Additional Requests'

Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute', 24 April 2025 ('AC Article 19(2) Judgment').

[24] Jurisdiction Challenge, paras. 11, 128.

[25] ICC-01/18-426, Request to have arrest warrants withdrawn or vacated and response to Prosecution observations dated 5 May 2025, 9 May 2025 ('Request to Vacate Arrest Warrants').

[26] ICC-01/18-435, Decision on the conduct of proceedings and other procedural matters related to 'Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute', 28 May 2025 ('Decision on the Conduct of Proceedings'), para. 16.

and that '[t]hese issues should therefore not be addressed in the abovementioned observations'.[27]

20. The State of Palestine therefore provides its observations in accordance with the Chamber's instruction and limits these submissions to the applicable legal basis under article 19(2)(c) and any residual remarks concerning Israel's jurisdictional challenge. In doing so, the State of Palestine reserves and requests the right to be heard in relation to Israel's additional Suspension Request and its Request for Dismissal of Arrest Warrants as and when the Chamber addresses each in turn. As the referral and territorial State on which the crimes are committed, the State of Palestine has a legitimate interest in the outcome of the additional requests as well as the impact, if any, on its continuing cooperation and support of the Prosecution's investigation of crimes arising from the Situation. In this regard, the State of Palestine's submissions would provide the necessary factual context in which to determine the legality or viability of Israel's additional requests.

B. Context of Observations

21. It is necessary to recall that despite being a referral State for the purposes of article 19(3) of the Statute, the State of Palestine was not invited to provide its observations following the submission of Israel's Jurisdiction Challenge in September 2024.[28] Accordingly, this is the first opportunity in which Palestine is able to directly address Israel's Jurisdiction Challenge. To assist the Pre-Trial Chamber, the State of Palestine highlights key judicial developments directly bearing on the context of these Observations.

[27] Decision on the Conduct of Proceedings, para. 17.
[28] Israel's Jurisdiction Challenge was initially filed on a 'SECRET Ex Parte basis' on 23 September 2024 and according to filing records, reclassified on 4 October 2024. See also Decision on the Conduct of Proceedings, para. 14 ('As the Chamber considered Israel's Request to be premature, it did not invite further submissions from the Prosecution or other entities').

22. First, it is recalled that the Pre-Trial Chamber issued its decision on the arrest warrants for both Mr. Netanyahu and Mr. Gallant on 21 November 2024.[29] Accordingly, the State of Palestine does not address Israel's submissions with regard to its purported ability to submit an article 19 challenge in the absence of any 'case' and pending the issuance of any arrest warrant.[30] However, consistent with the Court's procedural framework and practice, following the issuance of the arrest warrants, Israel's Jurisdiction Challenge should, if not already done, be re-filed as part of the case record for both Mr. Netanyahu and Mr. Gallant.[31]

23. Second, following the Pre-Trial Chamber's initial rejection of Israel's premature Jurisdiction Challenge,[32] the Appeals Chamber has since remanded the matter to the Pre-Trial Chamber for it to rule on the substance of the challenge. Notably, as detailed below, the Appeals Chamber did not find that the Court lacks jurisdiction in the Situation,[33] and the legal errors found by the Chamber related to the fact that the Pre-Trial Chamber had 'insufficiently address[ed]

[29] See ICC Press Release, Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel's challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant, 21 November 2024.

[30] *Contra* Israel's Jurisdiction Challenge, paras. 46-57. Noting further academic commentary which would suggest a State may only invoke article 19(2)(c) following confirmation of stages see in particular Nsereko/Ventura, in Ambos, Rome Statute of the ICC, 4th ed. 2022 ('Nsereko/Ventura'), Art. 19 mn. 40 ('It must be noted that article 12(2)(b) refers to an 'accused' person who is a national of a State Party or of that State that has lodged an Article 12(3) declaration. Since, as discussed in the context of Article 19(2)(a), a suspect does not become an accused until the charges are confirmed, this suggests that a State can only challenge admissibility or jurisdiction under Article 19(2)(c) upon that eventuality'). As discussed further below, it is Palestine's submission that Israel is procedurally barred from invoking article 19(2)(c) as a State whose acceptance of jurisdiction is not required. As such, Palestine does not further intend to discuss the timing of such an application.

[31] In accordance with regulation 20(2) of the Regulations of the Registry, case records have been opened in relation to article 19 proceedings prior to the apprehension or transfer of the suspect, and the corresponding article 19 challenge submitted by a State was filed on the case record see e.g. ICC-02/11-01/12-11-Red, *Prosecutor v. Simone Gbagbo*, Requête de la République de Côte d'Ivoire sur la recevabilité de l'affaire le Procureur c. Simone Gbagbo, et demande de sursis à exécution en vertu des articles 17, 19 et 95 du Statut de Rome, 30 September 2013 ('Côte d'Ivoire Article 19 Request') concerning an article 19(2)(b) and 19(2)(c) challenge filed by Côte d'Ivoire; see also ICC-01/11-01/11-130-Red, *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Application on behalf of the Government of Libya pursuant to Article 19 of the ICC Statute, 3 May 2012 ('Libya 2012 Article 19 Request') concerning an article 19(2)(b) challenge submitted by Libya.

[32] Initial Article 19(2) Decision.

[33] The filing of a challenge or appeal of a decision does not *per se* negate its validity as per article 82(3). See also AC Article 19(2) Judgment, para. 66.

Israel's contention that article 19(2) of the Statute permits it to challenge the jurisdiction of the Court'.[34]

IV. SUBMISSIONS

A. The requirements for a jurisdictional challenge under article 19(2)(c) have not been met

i. Background

24. Israel's Jurisdiction Challenge is framed under article 19(2)(c) of the Statute,[35] which permits a challenge to the jurisdiction of the Court to be made by '[a] State from which acceptance of jurisdiction is required under article 12'. In doing so, Israel asserts that it has 'two independent grounds' to challenge jurisdiction under article 19(2)(c) namely: '(i) as a 'State of which the person accused of the crime is a national' under Article 12(2)(b) ('First Ground'); and (ii) as a 'State which is not Party to this Statute' in respect of which a declaration accepting the exercise of jurisdiction of the Court is required under Article 12(3) ('Second Ground')'.[36]

25. In its Initial Article 19(2) Decision rejecting Israel's Jurisdiction Challenge on the basis that it was prematurely filed prior to the issuance of any arrest warrant,[37] the Pre-Trial Chamber rejected both 'independent grounds' in light of the fact that:

[34] AC Article 19(2) Judgment, para. 61 and paras. 57-59. This is distinct from a finding that the Pre-Trial Chamber had not satisfied itself of the Court's jurisdiction *contra* Israel's contention see Request to Vacate Arrest Warrants', paras. 2, 24.
[35] With exception of paragraphs 10 and 127 which concern admissibility-related issues see *infra*., paragraphs 47 – 51 in relation to the merits of Israel's challenge under article 19(2)(b).
[36] Jurisdiction Challenge, para. 39.
[37] Initial Article 19(2) Decision, para. 17.

a) Israel's First Ground was 'incorrect as a matter of law' as Israel's acceptance of the Court's jurisdiction was not required 'as the Court can exercise its jurisdiction on the basis of the territorial jurisdiction of Palestine' noting that '[a]s soon as there is one jurisdictional basis pursuant to article 12(2)(a) or (b) of the Statute, there is no need for an additional one'.[38]

b) Israel's Second Ground was based on a 'claim that Palestine could not have delegated jurisdiction to the Court' and as such, incorrectly required the Chamber 'to ignore its previous decision (rendered in a different composition) which ha[d] become *res judicata*'.[39]

26. In doing so, the Pre-Trial Chamber emphasised that Israel 'clearly would have standing to bring a challenge as the State of nationality under article 19(2)(b) *juncto* article 12(2)(b) of the Statute if the Chamber decides to issue any warrants of arrest for Israeli nationals.'[40]

27. The Appeals Chamber remanded Israel's Jurisdiction Challenge on the basis that the Pre-Trial Chamber had 'insufficiently address[ed] Israel's central contention that article 19(2)(c) of the Statute permits it to challenge the jurisdiction of the Court'.[41] In particular, with respect to Israel's 'two independent grounds', the Appeals Chamber found:

a) with respect to the First Ground, that 'the Pre-Trial Chamber did not further elaborate as to how the existence of a basis for the exercise of the Court's jurisdiction under article 12(2) relates, as such, to Israel's central contention that it has standing to challenge the jurisdiction of the Court pursuant to article 19(2)(c) of the Statute',[42] and

[38] Initial Article 19(2) Decision, para. 13.
[39] Initial Article 19(2) Decision, para. 14.
[40] Initial Article 19(2) Decision, para. 16.
[41] AC Article 19(2) Judgment, para. 61.
[42] AC Article 19(2) Judgment, para. 57.

b) with respect to the Second Ground, and '[i]n view of the particularities of the preceding stages of the proceedings in the Situation in Palestine, the Pre-Trial Chamber should have more specifically addressed the applicability of the notion of *res judicata*'.[43]

28. Moreover, the Appeals Chamber further noted that whilst the Pre-Trial Chamber had left the door open for a future application under article 19(2)(b) of the Statute, 'the Pre-Trial Chamber did not actually consider the merits of Israel's challenge under article 19(2)(b) of the Statute, the provision it indicated Israel should have invoked. Neither did the Pre- Trial Chamber specify why it altered the legal basis to article 19(2)(b) of the Statute'.[44]

29. There remains a sound legal and factual basis to affirm that Israel is barred from invoking article 19(2)(c) of the Statute to challenge the Court's jurisdiction, as correctly identified by the Pre-Trial Chamber. Accordingly, the merits, if any, of Israel's jurisdictional challenge must now be assessed exclusively under article 19(2)(b) of the Statute, following the issuance of arrest warrants for Mr. Netanyahu and Mr. Gallant.

ii. Article 19(2)(c) of the Statute narrowly defines which States may challenge the Court's jurisdiction

30. Israel's principal argument is that it retains the right to challenge the Court's jurisdiction under article 19(2)(c) solely by virtue of possessing nationality jurisdiction under article 12(2)(b), even where it has not consented to the exercise of the Court's jurisdiction and where the preconditions to the Court's jurisdiction have already been satisfied by another State that has accepted the Court's jurisdiction. In other words, under Israel's position, as a non-State

[43] AC Article 19(2) Judgment, para. 59.
[44] AC Article 19(2) Judgment, para. 60.

Party that has not consented to the Rome Statute, it would nonetheless always be entitled to challenge jurisdiction under article 19(2)(c) whenever an accused is an Israeli national. This interpretation lacks any sound legal basis and is directly contradicted by the drafting history of article 19(2)(c), the plain text of article 12(2), the object and purpose of the Statute and the relevant jurisprudence of this Court.

1. Proposals to grant non-party States an automatic right to challenge jurisdiction based on nationality were rejected at the Rome Conference

31. Article 19 of the Rome Statute establishes the procedural framework for challenging the jurisdiction of the Court or the admissibility of a case. It specifies who may raise such challenges, the stages at which they may be brought, and the procedure to be followed, thereby operationalising the Statute's complementarity regime and ensuring judicial control over the Court's exercise of jurisdiction.

32. In this regard, article 19(2) – which enumerates who may raise such challenges – is a carefully calibrated provision, that emerged from protracted negotiations between States during both the preparatory stage and the Rome Conference.[45] In particular, it is the negotiation history which informs the narrow scope in which article 19(2)(c) is to be applied and refutes Israel's assertion that it has standing to challenge the jurisdiction under article 19(2)(c) despite being a non-State Party that has never consented to the exercise of the Court's jurisdiction.

[45] See also Holmes, The Principle of Complementarity in The International Criminal Court in The Making of the Rome Statute (ed. R Lee), 1999 ('Holmes'), pp. 60-65. See also A/51/22 Vol. I, Report of the Preparatory Committee on the Establishment of an International Criminal Court. Volume 1, Proceedings of the Preparatory Committee during March-April and August 1996 ('Preparatory Committee Vol I'), paras. 247-25 and A/51/22 Vol. II, Report of the Preparatory Committee on the Establishment of an International Criminal Court. Volume 2, Compilation of proposals, 1996 ('Preparatory Committee Vol II'), pp. 152 – 155.

33. It is apparent from early draft versions of article 19 of the Statute (then article 34 ILC Draft Statute 1994), that there was widespread consensus amongst delegations that an accused should be permitted to challenge the jurisdiction of the Court or the admissibility of the case.[46] There was also significant support amongst delegations that there should be a possibility for the Prosecutor to seek a ruling on jurisdiction or admissibility to avoid or prevent scenarios where any such defect could be ascertained earlier rather than later.[47] In contrast however, whilst delegations accepted that States should also be granted an opportunity to challenge jurisdiction or admissibility, they sharply diverged as to which States should be included.[48]

34. Delegations broadly divided into two camps: (i) a minority bloc which advocated for broader standing under article 19(2) which would extend to non-State Parties which were directly implicated by a case,[49] and (ii) a majority bloc which favoured a narrow approach whereby only States genuinely involved in the case through national proceedings or treaty obligations should have standing.[50] Most notably, efforts by the minority bloc to include express

[46] This reflected in text of article 19(2)(a) of the Statute see also Preparatory Committee Vol II, pp. 152 – 155; Holmes, p. 61; Nsereko/Ventura, Art.19 mn. 15 and cites therein.
[47] Holmes, p. 61.
[48] Preparatory Committee Vol I, para. 248; A/CONF.183/C.1/SR.11, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court, Summary Record of the 11th Meeting, 15 -17 June 1998 ('A/CONF.183/C.1/SR.11'), para. 21 (remarks of Amb. Holmes (Canadian delegation) providing a summary of proposals concerning challenges to the Court's jurisdiction and admissibility. See also Holmes, p. 62 (describing the three questions on which discussions were centered i.e. (a) whether a non-state party should have right to make challenges, (b) whether possibility of challenge should exist only for States investigating or prosecuting a case, or (c) whether the State of nationality of the accused or suspect should have an explicit right to challenge).
[49] The minority bloc was concerned about scenarios where the ICC might assert jurisdiction over their nationals without their consent, arguing that a non-Party State 'directly and materially affected' by an ICC case ought to have the right to challenge the Court's jurisdiction. The minority bloc therefore pushed for procedures allowing non-State Parties to contest jurisdiction as a safeguard. See e.g. Holmes, p. 66; see also A/CONF.183/C.1/SR.11, para. 31 (remarks of Amb. Scheffer (US delegation) proposing that 'the challenge should be permissible by any State which met the criteria set forth in that subparagraph, as it would be inconsistent with the principle of complementarity not to recognize the interests of States that were not parties') and A/CONF.183/C.1/SR.11, para. 42 (remarks of Judge Nathan (Israeli delegation) proposing that 'the right of challenge should be conferred on all States and not solely on States parties; and paragraph 6 should be retained as presently drafted').
[50] The majority bloc was reluctant to give non-member States a tool that could be misused to obstruct justice see e.g. A/CONF.183/C.1/SR.11, para. 39 (remarks of Mr. Zimmermann (Germany delegation) proposing that 'only the accused and any State which had jurisdiction over the crime on the ground that it was investigating or prosecuted the case, should be able to challenge the jurisdiction of the Court'. See also Kaul, The International

language within article 19(2) (draft article 34 ILC Draft Statute) that would entitle non-party States to contest the exercise of the Court's jurisdiction as of right on the basis that it was entitled to exercise national jurisdiction was explicitly rejected and is not reflected in the final text of article 19(2).[51] In other words – the very position advocated by Israel in its Jurisdiction Challenge was debated, rejected, and deliberately excluded from the Statute.[52]

35. The final text of article 19(2) reflects this negotiated outcome. It provides for standing in two limited scenarios: (i) under article 19(2)(b), to a State that is investigating or prosecuting the case or has done so; and (ii) under article 19(2)(c), to a State from which acceptance of jurisdiction is required under article 12. This structure ensures that both State Parties and non-State Parties may participate in challenges, but only under clearly defined conditions: either where they have previously conferred jurisdiction on the Court, or, in the case of admissibility challenges, where they are actively engaged in investigating or prosecuting the case domestically.[53]

2. <u>The requirement for a State's acceptance in article 19(2)(c) is based on the necessity of prior consent under article 12(2)</u>

Criminal Court – Its Relationship to Domestic Jurisdictions in Stahn/Slüiter, The Emerging Practice of the International Criminal Court, 2009, pp. 31-39 at 33 (in relation to certain forces with a continued interest to represent the ICC as a threat to sovereignty).

[51] *Supra*., footnote 49. This is also reflected by the minority bloc's efforts to expand the language in the draft version of article 19 (then article 34) which referred to 'an interested state' to be clarified and expanded to include specifically any State entitled to exercise jurisdiction, including the State of nationality of the accused, irrespective of whether it was a State party or not see e.g. Preparatory Committee Vol I, para. 248. See also Holmes, p. 62 ('there was no consensus on the right of non-party States or an 'interested' State to challenge').

[52] See also in relation to article 12, Kaul, Preconditions to the Exercise of Jurisdiction in Cassese, The Rome Statute of the International Criminal Court – A Commentary, 2002 ('Kaul'), pp. 583- 616 at p. 608 and cites therein ('At the same time, the argument that giving the Court jurisdiction over a crime committed in the territory of a State Party by a suspected national of a non-State Party would conflict irreconcilably with the fundamental principle of treaty law that only States that are parties to a treaty are bound by its terms, has been examined intensively and generally been rejected') .

[53] In relation to challenges by non-State parties see e.g. Libya as a UNSC referral (Libya 2012 Article 19 Request); Côte d'Ivoire as an article 12(3) declaration (Côte d'Ivoire Article 19 Request); and most recently Central African Republic as an article 12(3) referral (ICC-01/14-194-AnxI, *Situation in the Central African Republic II*, Requête de la République Centrafricaine en irrecevabilité de l'affaire contre M. Edmond Beina (22 October 2024 ICC-01/14-189-US-Exp-AnxII), 14 November 2024.

36. The plain text of article 19(2)(c) makes clear that it is inextricably linked to article 12.[54] As such, the drafting history of article 12 is equally informative to the question of standing under article 19(2)(c). It is recalled in this regard that negotiations were protracted and intense,[55] with the final compromise encapsulated in article 12(2), which provides that, in non-Security Council referral cases, the Court may only exercise jurisdiction where at least one relevant State has accepted that jurisdiction—either the State on whose territory the conduct occurred or the State of nationality of the accused. This disjunctive formulation (discussed in more detail below) was the product of sustained negotiation and was designed to ensure that the Court's jurisdiction could be triggered by a single consenting State while preserving the principle of State sovereignty.[56]
37. It is article 19(2)(c) which gives procedural effect to that jurisdictional arrangement and must be interpreted in strict conformity with the consent-based model in article 12. In other words, the standing conferred in article 19(2)(c) is contingent upon the prior acceptance of jurisdiction by a State pursuant to article 12(2). This interpretation is perfectly in line with the text of the provision, and the only one that is supported both by the wording of the provision and the intention of its drafters. A State cannot use article 19(2)(c) to argue that article 12 should have required consent from a different State. As set

[54] Noting article 19(2)(c) in the French text provides: 'L'État qui doit avoir accepté la compétence de la Cour selon l'article 12' i.e. the State 'must have accepted' the competence of the Court in accordance with article 12 of the Statute. In accordance with article 128, the French text is equally authoritative as the English text.
[55] See e.g. Kaul, p. 584 and cites therein ('Given this crucial centrepiece function of Article 12, it is hardly surprising that jurisdiction appears to have been the most important, politically the most difficult and therefore the most controversial question of the negotiations as a whole, in short, the 'question of questions of the entire project'. Therefore it is not surprising either that 'it is on this issue that the differences proved irreconcilable and consensus eventually broke down, leading to a vote at the end of the conference') and pp. 585 - 586. See also Wilmhurst, E, Jurisdiction of the Court in Lee, R, The International Criminal Court - The Making of the Rome Statute, 1999 ('Wilmhurst'), p. 127 - 141; and Kirsch and Robinson, Reaching Agreement at the Rome Conference in Cassese, Rome Statute of the International Criminal Court, 2002, p. 83.
[56] See e.g. Kaul, pp. 604 – 605. Schabas, The International Criminal Court: A Commentary on the Rome Statute (2nd ed.), 2016, pp. 343 – 345 (explaining that article 12(2) requires either territorial or personal jurisdiction – not both – as a result of a negotiated compromise at the Rome Conference).

out above, this issue was already resolved at the Rome Conference through the rejection of proposals from the minority bloc seeking to grant non-States Parties an automatic right to challenge jurisdiction,[57] and most recently affirmed in the *Situation in the Islamic Republic of Afghanistan* which envisaged any future non-State Party challenge to arise under article 19(2)(b), with no reference to article 19(2)(c).[58]

38. This position finds further support by analogy with the situation of non-State Parties which are the subject of a UNSC referral. Having never accepted the Court's jurisdiction under article 12, such States are categorically excluded from invoking article 19(2)(c).[59] Instead, the only procedural avenue available to such States is an admissibility challenge under article 19(2)(b), provided they are investigating or prosecuting the case.[60]

39. This structural limitation confirms the Statute's logic: article 19(2)(c) applies only to States that have accepted jurisdiction, either through ratification or by lodging a declaration under article 12(3).[61] In both instances the State in

[57] See in particular US Department of State, Remarks of David J Scheffer Ambassador-at-Large for War Crimes Issues and Head of the US Delegation to the UN Diplomatic Conference on the Establishment of a Permanent International Criminal Court US Department of State Testimony before the Senate Foreign Relations Committee, 23 July 1998 ('while we successfully defeated initiatives to empower the court with universal jurisdiction, a form of jurisdiction over non-party states was adopted by the conference despite our strenuous objections. In particular, the treaty specifies that, as a precondition to the jurisdiction of the court over a crime, either the state of territory where the crime was committed or the state of nationality of the perpetrator of the crime must be a party to the treaty or have granted its voluntary consent to the jurisdiction of the court. We sought an amendment to the text that would have required both of these countries to be party to the treaty or, at a minimum, would have required that only the consent of the state of nationality of the perpetrator be obtained before the court could exercise jurisdiction. We asked for a vote on our proposal, but a motion to take no action was overwhelmingly carried by the vote of participating governments in the conference').

[58] ICC-02/17-138 OA4, *Situation in the Islamic Republic of Afghanistan*, Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, 5 March 2020 ('Afghanistan Article 15 Appeals Judgment'), para. 44 with explicit reference to the submissions of the Prosecution and LRV1 see in particular ICC-02/17-T-003-ENG ET, p. 39, lines 19-21 ('Afghanistan or the United States can challenge the admissibility of the case or the jurisdiction of the case under Article 19(2)(b). The procedure is open to non-parties (emphasis added)) *contra* Jurisdiction Challenge, para. 42 which relies on the judgment to assert Israel has standing under article 19(2)(c).

[59] The chapeau of article 12(3) refers to 'article 13, paragraph (a) or (c)'. The Court's exercise of jurisdiction following a UNSC referral is governed by article 13 (b) i.e. excluded from the chapeau of article 12(2) as referenced in article 19(2)(c).

[60] See e.g. Libya 2012 Article 19 Request.

[61] See in particular Côte d'Ivoire Article 19 Request, which concerned an admissibility challenge by the Republic of Côte d'Ivoire pursuant to article 19(2)(b) and 19(2)(c). The challenge concerned the Situation in the Republic

question has assumed the reciprocal legal rights and obligations under the Statute. By definition, a non-State Party that has never done so cannot logically be considered a 'State from which acceptance of jurisdiction is required' and therefore lacks procedural standing to challenge the Court's jurisdiction under this provision. In the present circumstances, Israel has made it clear that it has not and will not accept the Court's jurisdiction under article 12.[62] Accordingly, its acceptance of the Court's jurisdiction cannot be deemed to be 'required' as a precondition of the Court's jurisdiction, thereby negating Israel's standing under article 19(2)(c). Israel's Jurisdiction Challenge must be dismissed on this basis alone.

3. Article 19(2)(c) must be interpreted in light of the disjunctive nature of article 12(2)

of Côte d'Ivoire which was self-referred by the Republic of Côte d'Ivoire, see declarations lodged on 18 April 2003 and 14 December 2010.

[62] See e.g. C.N.894.2002.TREATIES-35 of 28 August 2002 ('In a communication received on 28 August 2002, the Government of Israel informed the Secretary General of the following: '[…] in connection with the Rome Statute of the International Criminal Court adopted on 17 July 1998, [...] Israel does not intend to become a party to the treaty. Accordingly, Israel has no legal obligations arising from its signature on 31 December 2000. Israel requests that its intention not to become a party, as expressed in this letter, be reflected in the depositary's status lists relating to this treaty'). This was reiterated in Israel's Attorney General Legal Memorandum, fn. 8 ('Israel is not a party to the Rome Statute. On 31 December 2000, Israel signed the Rome Statute as an expression of moral support for the basic idea underlying the establishment of the Court, while expressing its concerns over the risk of politicization and rejecting any attempt to interpret provisions of the Statute in a politically motivated manner against Israel and its citizens. On 28 August 2002, Israel informed the UN Secretary-General that 'Israel does not intend to become a party to the treaty'). See further public objections made by Israeli officials at each stage of proceedings in the situation: (i) following the opening of the preliminary examination *e.g.* see NYT, Court to look into possible Israeli war crimes in Palestinian Territories, 16 January 2015 ('Israel's foreign minister, Avigdor Lieberman, said he would recommend that his government not cooperate with the inquiry. He also said Israel would seek to disband the court'); (ii) following the Article 19(3) Decision e.g. see Ministry of Foreign Affairs, Statement by Minister of Foreign Affairs Gabi Ashkenazi regarding the ICC decision, 6 February 2021 ('call[ing] upon all nations that value the international legal system, and object to its political exploitation, to respect the sovereign rights of states not to be subjected to the Court's jurisdiction'); (iii) following article 18(1) notice see e.g. Reuters, Israel to tell ICC it does not recognise court's authority, 8 April 2021 ('Netanyahu, after meeting with senior ministers and government officials ahead of a Friday deadline to respond to an ICC notification letter, said Israel would not cooperate with the inquiry'); (iv) following issuance of arrest warrants see e.g. Embassy of Israel (Zaghreb), Statement by Foreign Minister Gideon Sa'ar, 21 November 2024 [https://new.embassies.gov.il/croatia/en/news/gideon-saar-statement-2024] (alleging that the Court had 'lost all legitimacy for its existence and activity'). The citations are given by way of example and do not represent the frequency in which such statements were publicly reiterated (all articles last accessed 27 June 2025).

40. As Israel's acceptance of the Court's jurisdiction cannot be deemed a 'requirement' for its exercise, any assertion that Israel may nonetheless invoke article 19(2)(c) on the basis of its status as the State of nationality is further refuted by the disjunctive nature of article 12(2) and the ensuing impact on article 19(2)(c).
41. As correctly held by the Pre-Trial Chamber, 'as soon as there is one jurisdictional basis pursuant to article 12(2)(a) or (b) or the Statute, there is no need for an additional one'.[63] This is clear from the plain text of article 12(2) which permits the Court to exercise its jurisdiction where the crime was committed either on the territory or by the national of 'one or more' of the States which have accepted the Court's jurisdiction (as a State Party or pursuant to article 12(3)).
42. The disjunctive framework is further evidenced by the consistent practice of the Court. For example, in accordance with article 19(1), the Court must satisfy itself of its jurisdiction over the case irrespective of any challenge to its jurisdiction. As repeatedly held, this is a mandatory assessment whereby the Chamber which is seized of a case must determine that the crime meets the subject matter jurisdiction requirements under article 5 of the Statute (in accordance with article 12(1)), the temporal jurisdiction requirements under article 11 of the Statute, and more pertinently, that 'the crime must satisfy one of the other two criteria laid down in Article 12 of the Statute, namely, it must either have been committed on the territory of a State Party or by a national of that State, or have been committed on the territory of a State which has made a declaration under Article 12(3) of the Statute or by nationals of that State (emphasis added)'.[64]

[63] Initial Article 19(2) Decision, para. 13.
[64] ICC-01/05-01/08-14-tENG, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the Prosecutor's Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo, 12 June 2008, para. 12. This is consistently the practice of the Court see Nsereko/Ventura, Art. 19 mn. 8 and fn. 16.

43. Moreover, the Court has not required all of the criteria in article 12(2) to be met as a further jurisdictional basis or that all States which hold either a territorial or nationality link to the alleged crime must have also accepted the Court's jurisdiction. As cited by this Pre-Trial Chamber,[65] in the *Situation in the Islamic Republic of Afghanistan*, Pre-Trial Chamber II emphasised that, as most of the alleged crimes took place on the territory of Afghanistan, which was a State Party, it was unnecessary to further address whether there the alleged perpetrators were also nationals of a State Party.[66] Similarly, in the *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, Pre-Trial Chamber I held that the article 12(2)(a) pre-condition was fulfilled 'if at least one legal element of a crime within the jurisdiction of the Court or part of such a crime is committed on the territory of a State Party'.[67] In other words, a single territorial link where only part of the crime is committed on the territory of a State Party satisfies article 12(2)(a), without any need for the alleged perpetrators' State of nationality (in that case Myanmar) to also consent.
44. The approach undertaken by the Court is not only reflective of the plain text of article 12(2)(a),[68] but also aligns with the jurisdictional framework and practice of other international criminal institutions which do not require both a territorial *and* a national link for its jurisdiction. For example, pursuant to article 7 of the ICTR Statute, the ICTR could exercise its jurisdiction either in relation

[65] Initial Article 19(2) Decision, fn. 15.
[66] ICC-02/17-33, *Situation in the Islamic Republic of Afghanistan*, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, 12 April 2019 ('Afghanistan Article 15 Decision'), para. 58 ('The fact that most of the alleged conducts took place within the territory of Afghanistan, a State Party, makes it also unnecessary at this stage to further address the issue of the alleged individual responsibility for the crimes with a view to determining whether there is a reasonable basis to believe that the alleged perpetrators, as identified by the Prosecutor, are nationals of a State Party').
[67] ICC-RoC46(3)-01/18-37, *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute', 6 September 2018, para. 64.
[68] See in particular, US tabled amendment during Rome Conference which demanded that the Court's jurisdiction over non-party States was conditional on its acceptance ('With respect to States not party to the Statute the Court shall have jurisdiction over acts committed in the territory of a State not party, or committed by officials or agents of a State not party in the course of official duties and acknowledged by the State as such, only if the State has accepted jurisdiction in accordance with this article'). This amendment was rejected see Kaul, p. 604.

to crimes committed on the territory of Rwanda *or* where the crime was committed in neighbouring countries by a Rwandan national.[69] In this respect, the ICTR did not require the presence of both territorial *and* nationality links; a single jurisdictional connection was sufficient.[70]

45. Israel's assertion that 'there may be situations where more than one State is entitled to challenge the jurisdiction of the Court under Article 19(2)(c)' does not mean that the present challenge is one of those situations.[71] This argument misrepresents the legal framework of the Statute by conflating article 12, which sets out the substantive conditions for the exercise of jurisdiction, with article 19(2)(c), which serves a distinct procedural function. While the criteria under article 12(2)(a) or (b) may apply to multiple States, this does not equate to granting each of these States a right to invoke article 19(2)(c). The Statute requires only a single jurisdictional link for the Court to act; it does not grant

[69] Statute of the International Criminal Tribunal for Rwanda 1994 (as amended), Article 7 ('The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994').
[70] See also SCSL-03-01-T, *Prosecutor v. Charles Taylor*, Trial Judgment, 18 May 2012. Charles Taylor is a Liberian national convicted before the SCSL for crimes committed in Sierra Leone in accordance with article 1 SCSL Statute ('The Special Court shall, except as provided in subparagraph (2), have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone'). See further ICTY which only required a territorial link e.g. Statute of the International Criminal Tribunal for the former Yugoslavia 1993 (as amended), Article 1 ('The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute').
[71] Jurisdiction Challenge, para. 41. The theoretical example referenced by Israel also ignores the fact that questions of jurisdiction or admissibility must be resolved based on the facts as they exist at the time of the determination, rather than on past circumstances or speculative future events see e.g. ICC-01/04-01/07-1497 OA8, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Judgment on the appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the admissibility of the case, 25 September 2009 ('Katanga OA8 Appeal'), para. 80 (with respect to an admissibility challenge). Regarding Israel's argument concerning dual nationals, this ignores the established principle which supports the right of any state of which the accused is a national to prosecute the crime as set out in article 5 of the Harvard Draft Convention on Jurisdiction with Respect to Crime see e.g. Wolman, Dual Nationality and International Criminal Court Jurisdiction, JICJ (2020) 1081–1102 at 1087 ('the Harvard Draft Convention on Jurisdiction with Respect to Crime states that in case of double or multiple nationality, nationality in the prosecuting state 'is a question to be determined by reference to such principles of international law as govern nationality. If international law permits the State to regard the accused as its national, its competence is not impaired or limited by the fact that he is also a national of another State').

every State that could satisfy article 12 a right to challenge jurisdiction under article 19(2)(c).

46. There is also no logical or legally coherent basis to suggest that a State may invoke article 19(2)(c) to challenge the Court's jurisdiction where jurisdiction is properly grounded in another State's acceptance under article 12. Endorsing such a position would unjustifiably curtail the rights of States Parties (or of States that have lodged a declaration under article 12(3)) to invoke the jurisdiction of the Court. It would also subvert the core object and purpose of the Statute: to end impunity and ensure accountability for the most serious crimes of concern to the international community.[72] This risk is far from theoretical, given the nature and scope of the crimes before the Court which frequently involve multiple territories and nationalities. It would add uncertainty and would project potential inconsistencies in the activities of the Court, thereby undermining confidence in the Court's proceedings.

B. Israel's challenge must be framed and considered under article 19(2)(b)

47. Whilst Israel does not have any right to invoke article 19(2)(c) of the Statute, it retains the right as a non-State Party to challenge the admissibility of the case under article 19(2)(b). As set out above, article 19(2)(b) is a key component of the Court's complementarity regime and, as demonstrated by the Court's jurisprudence, is available to State Parties and non-party States alike.[73]

48. Indeed, as set out in the Pre-Trial Chamber's Initial Article 19(2) Decision, Israel 'would have standing to bring a challenge as the State of nationality under article 19(2)(b) […] if the Chamber decides to issue any warrants of arrest for

[72] Rome Statute, Preamble.
[73] See *Supra*., footnote 53. See also Nsereko/Ventura, Art 19, mn. 36 and cites therein ('It would thus appear that any State – so long as it has jurisdiction over the relevant case – can file challenges under Article 19(2)(b), including those States that are not State Parties to the Rome Statute').

Israeli nationals'.[74] This procedural condition has since been met on 24 November 2024.[75]

49. Despite being on notice of the need to re-frame its challenge under article 19(2)(b) following the issuance of the arrest warrants, Israel continues in its (erroneous) attempt to invoke article 19(2)(c). It expressly refuted the opportunity to re-file its challenge,[76] or to further substantiate its purported ability to prosecute the 'alleged wrongdoing by Israeli nationals in the context of the Israel-Palestinian conflict'.[77]

50. The reality is that Israel is unable to substantiate any admissibility challenge because it fails to meet the criteria under article 17 as required by article 19(2)(b).[78] There is no evidence in its submissions,[79] or in the public sphere,[80]

[74] Initial Article 19(2) Decision, para. 16.
[75] ICC Press Release, Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel's challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant, 21 November 2024.
[76] Request to Vacate Arrest Warrants, paras. 33-39.
[77] Jurisdiction Challenge, paras. 10 and 27. Both paragraphs are framed in the context of article 17 and are not material to Israel's challenge.
[78] The admissibility criteria as set out in article 17 in the context of an article 19(2) challenge has been well developed before the Court see e.g. ICC-02/11-01/12-75-Red, *Prosecutor v. Simone Gbagbo*, Judgment on the appeal of Côte d'Ivoire against the decision of Pre-Trial Chamber I of 11 December 2014 entitled 'Decision on Côte d'Ivoire's challenge to the admissibility of the case against Simone Gbagbo', 27 May 2015.
[79] Israel concedes that it is not currently investigating/prosecuting or has not investigated/prosecuted either Mr. Netanyahu or Mr. Gallant see Jurisdiction Challenge, para. 10 (i.e. Israel 'will not hesitate, where and when necessary'). It is well-established that in the context of article 19 challenges, the burden of proof remains with the challenging party see e.g. ICC-01/11-01/11-547-Red OA4, *Prosecutor v. Saif Al-Islam Gaddafi*, Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013 entitled 'Decision on the admissibility of the case against Saif Al-Islam Gaddafi', 21 May 2014, paras. 178, 205. This equally applies in relation to article 18 challenges see e.g. most recently, ICC-02/18-89 OA, *Situation in the Bolivarian Republic of Venezuela I*, Judgment on the appeal of the Bolivarian Republic of Venezuela against Pre-Trial Chamber I's 'Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute', 1 March 2024, paras. 72 – 77.
[80] Whilst by no means exhaustive, Palestine directs the Chamber to comprehensive evidence of Israel's pattern of State-policy failures to investigate and punish international crimes committed by Israeli citizens and agents as addressed to the United Nations by South Africa see S/2025/130, Letter dated 27 February 2025 from the Permanent Representative of South Africa to the United Nations addressed to the President of the Security Council (Annex to the letter dated 27 February 2025 from the Permanent Representative of South Africa to the United Nations addressed to the President of the Security Council - PUBLIC DOSSIER OF OPENLY AVAILABLE EVIDENCE ON THE STATE OF ISRAEL'S ACTS OF GENOCIDE AGAINST THE PALESTINIANS IN GAZA AS AT 4 FEBRUARY 2025), 28 February 2025 ('South Africa 2025 Public Dossier'), paras. 102 – 109. See also Prosecution 2024 Consolidated Response to R103, para. 8 ('as is evident from the public record, there are no domestic proceedings at present which deal with substantially the same conduct and the same persons as the cases presented to the Chamber pursuant to article 58 of the Statute. There is no information indicating that Benjamin NETANYAHU or Yoav GALLANT, Israel's Prime Minister and Minister of Defence, respectively,

that Israel is investigating or prosecuting either Mr. Netanyahu or Mr. Gallant for the same serious crimes before the Court. Instead there is ample and corroborating evidence of an attempt by the State of Israel to prevent these acts from being investigated and prosecuted.[81]

51. Israel cannot be permitted to misuse the procedural framework in an attempt to prolong proceedings and shield Mr. Netanyahu and Mr. Gallant from facing prosecution. As suggested by the Appeals Chamber,[82] and in accordance with the Pre-Trial Chamber's *proprio motu* powers under article 19(1) to consider the admissibility of the case, it is appropriate for the Pre-Trial Chamber to determine the merits of Israel's Jurisdiction Challenge under article 19(2)(b).[83]

C. The Article 19(3) Decision is authoritative and binding

52. Even assuming, *arguendo*, that Israel has standing under article 19(2)(c) of the Statute, its challenge would nonetheless require the Pre-Trial Chamber to disregard the Court's prior and binding determination that the precondition for the exercise of jurisdiction under article 12(2)(a) has been satisfied—namely, that Palestine, as a State Party, has validly accepted the Court's jurisdiction. This conclusion was expressly affirmed in the **Article 19(3) Decision**, which

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are being criminally investigated or prosecuted, and indeed the core allegations against them have simply been rejected by Israeli authorities'), see also paras. 91-96.

[81] In relation to efforts to resist and obstruct international efforts to investigate Israel's actions see e.g. South African 2025 Public Dossier, paras. 110 – 112 and Annex IV, pp. 210 – 227 and in particular, in relation to Israel attacks on the ICC see pp. 224 – 227.

[82] AC Article 19(2) Judgment, para. 60.

[83] ICC-01/04-169, *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision on the Prosecutor's Application for Warrants of Arrest, Article 58', 12 July 2006 ('the Pre-Trial Chamber should exercise its discretion only when it is appropriate in the circumstances of the case, bearing in mind the interests of the suspect. Such circumstances may include instances where a case is based on the established jurisprudence of the Court, uncontested facts that render a case clearly inadmissible or an ostensible cause impelling the exercise of proprio motu review. In these circumstances it is also imperative that the exercise of this discretion take place bearing in mind the rights of other participants'). It is submitted these conditions are met with respect to Israel's challenge noting Israel's public rebuke of the Court's intention to prosecute Mr. Netanyahu and Mr. Gallant and the no further evidence that there are any on-going domestic proceedings. This is of course distinct from an accused's right to challenge the jurisdiction of the Court or the admissibility of a case under article 19(2)(a).

confirmed the Court's territorial jurisdiction over the *Situation in the State of Palestine*.

53. Palestine's status as a State Party has been unequivocally confirmed by the Court following consideration of an extensive record of submissions by the parties, relevant States, and *amici curiae* all addressing the legal implications of the State of Palestine's accession and the scope of its delegated jurisdiction. This includes arguments made by Israeli officials and in the course of litigation that Israel had notice of and to which it was invited to intervene.
54. The Article 19(3) Decision represents the culmination of this review and constitutes a final and authoritative determination of the Court's jurisdiction over the territory of Palestine, including the West Bank including East Jerusalem, and the Gaza strip. Israel offers no legal basis, compelling authority, or new factual development that would justify revisiting this conclusion or render the Article 19(3) Decision inapplicable.

i. The Article 19(3) Decision is dispositive

55. In its Jurisdiction Challenge, Israel asserts that the Article 19(3) Decision does not bar it from raising a challenge 'under article 19' on the basis that: (i) the Article 19(3) Decision 'constitutes a preliminary decision, in an *ex parte* context', (ii) the inapplicability of *res judicata*, and (iii) the Majority in the Article 19(3) Decision had intended for the issue to be further examined at a subsequent stage of proceedings.[84] All three assertions are equally flawed.
56. First, Israel mischaracterises the context in which the Article 19(3) Decision was rendered. The proceedings were not, *stricto sensu*, *ex parte*. As acknowledged by the Prosecution, during the course of its preliminary examination (i.e. as of 2015), it had interacted 'with both the Palestinians and the Israelis' and sought

[84] Jurisdiction Challenge, paras. 58 – 61.

to reflect their detailed views on the matter within its Article 19(3) Request.[85] Moreover, Israel waived its right to intervene despite being on notice of the proceedings and having been invited to submit observations.[86] Further, Israel's official legal position as set out in a memorandum publicly circulated by the Israeli Attorney General was exceptionally considered in full by the Pre-Trial Chamber and expressly referenced in the Article 19(3) Decision.[87]

57. The fact that the Article 19(3) Decision was issued at an early stage of the proceedings does not diminish its continuing legal effect.[88] It was sought by the Prosecution to obtain judicial certainty as to the legal foundation of its activities in a precise situation.[89] This is in accordance with the very purpose of article 19(3) as intended by the drafters of the Statute,[90] in order to strengthen the procedural integrity of the Court's actions at an early stage.[91]

58. In this regard, Israel's assertion that the Article 19(3) Decision is merely a 'preliminary' determination — given the possibility of subsequent challenges

[85] ICC-01/18-12, Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, 22 January 2020 ('Article 19(3) Request'), para. 39. See also Annex A to the Prosecution Request, p. 34, 'Xi. Israel Legal Texts and Documents'.

[86] ICC-01/18-14, Order setting the procedure and the schedule for the submission of observations, 28 January 2020, para. 16 ('The Chamber notes that Israel has an interest in the adjudication of the Prosecutor's Request and, accordingly, invites Israel to submit written observations of no more than 30 pages by no later than 16 March 2020'). See also the Prosecution's request noting that the submissions of Israel during the article 19(3) litigation would 'effectively advance the proceedings' see Article 19(3) Request, para. 39.

[87] See Article 19(3) Decision, paras. 26 – 30 and cites therein. Israel's Attorney General Legal Memorandum was also referenced and relied upon in submissions filed by other States, victims and *amici* see e.g. Article 19(3) Decision, para. 42. Palestine further notes that Israel's Attorney General had expressly drafted the memorandum for the attention of the ICC in light of the Prosecutor's public remarks ('the Prosecutor's recent statement, in the context of her annual report on preliminary examinations (5 December 2019), noting her intention to reach a decision in the matter') see Israel Ministry of Justice, Israel's Attorney General is publishing today his legal opinion regarding the ICC's lack of jurisdiction, 20 December 2019.

[88] For the binding nature of preliminary rulings under article 19(3) see Kovacs, The Jurisprudential Practice of the International Criminal Court – As I Saw It, 2025, pp. 336 – 337 ('It is well known that some international courts have an advisory capacity beside their dispute settling jurisdictional competence […] International criminal tribunals in general are not vested with this capacity, which has often been explained by the special nature of international criminal law and the hierarchical structure of trial chambers and appeal chamber […] Contrary to the nature of an 'opinion', a 'ruling' is a binding decision in common law and the commentaries of the Rome Statute follow the same direction when they highlight the judicial economy of settling important legal questions in advance').

[89] Article 19(3) Request, para. 36. See also ICC-01/18-143-Anx2, Partly Separate Opinion of Judge Perrin de Brichambaut, 5 February 2021.

[90] *Supra*, paragraph 33.

[91] This is reinforced by the involvement of referral States and victims in accordance with rule 59 of the Rules of Procedure and Evidence.

under article 19(2) — is a red herring. Under the statutory framework, the Court is required to satisfy itself that it has jurisdiction.[92] In such instances, the Court's established practice is to refer back to its prior jurisdictional determination at later stages of the proceedings.[93] As with other preliminary decisions that may be subject to appeal or challenge, the mere availability of a challenge under article 19(2) does not undermine the dispositive nature of a decision rendered pursuant to article 19(3) absent changed conditions.

59. Second, the legal requirements for invoking estoppel under the doctrine of *res judicata* are neither definitive nor uniform across legal systems.[94] For example, the first 'essential condition' identified by Israel – 'same parties'- has historically been applied flexibly. Courts have extended the doctrine to cover, *inter alia*, parties in privity, parties whose interests were represented, and entities that were not formally parties to the original proceedings but had notice of the action and a meaningful opportunity to intervene and protect their interests.[95]

[92] In accordance with article 19(1). See also ICC-RoC46(3), *Request under regulation 46(3) of the Regulations of the Court*, Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute', 6 September 2018, paras. 30-33 ('There is no question that this Court is equally endowed with the power to determine the limits of its own jurisdiction. Indeed, Chambers of this Court have consistently upheld the principle of la compétence de la compétence').

[93] Nsereko/Ventura, Art 19, mn. 19 and cites therein ('It should also be noted that in some instances when PTCs or TCs have applied Article 19(1) at the confirmation of charges, or in the course of final judgments, they simply referred back to their prior determinations in earlier proceedings and found that conditions had not changed'). See also ICC-01/09-01/11-313, *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the 'Request by the Government of Kenya in respect of the Confirmation of Charges Proceedings', 1 September 2021, para. 8 (re determination under article 19(2) can bind future phases of proceedings).

[94] ICC-01/04-01/06-568, *Prosecutor v. Thomas Lubanga Dyilo,* Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence', 12 October 2006, Dissenting Opinion of Judge Pikas ('Judge Pikas Dissenting Opinion'), paras. 16-18. See also BIICL, Comparative Report – The Effect in the European Community of Judgments in Civil and Commercial Matters: Recognition, Res Judicata and Abuse of Process, 2008 for comparative study of application of doctrine in England and Wales, France, Germany, The Netherlands, Romania, Spain, Sweden, Switzerland and the United States.

[95] See e.g. von Moschzisker, Res Judicata, Yale Law Journal Vol. 38, No. 3 (1929), pp. 299-334 ('von Moschzisker') at p. 305 (in relation to a negligence claim, 'it is apparently well settled that, if [the defendant] had notice of the action […] and an opportunity to intervene and defend, he is concluded by the judgment'). See also *Taylor v. Sturgell*, 553 U.S. 880, 894–895, 2008 (where the US Supreme Court identified at least six recognised exceptions to the rule against non-party preclusion based on: (i) consent or agreement, (ii) legal privity, (iii) interests adequately represented, (iv) assumption of control/directing or financing the litigation, (v) relitigation through proxy or agent, and (vi) special statutory schemes).

60. The flexible application of the *res judicata* components serve to advance the doctrine's two core objectives: (i) the public interest in judicial economy, by preventing the re-litigation of matters already decided, and (ii) the individual interest in legal certainty, by ensuring that rights and obligations are definitively resolved.[96] These same objectives apply with equal force to the Article 19(3) Decision — irrespective of whether the doctrine itself is formally engaged — and particularly in light of the context in which it was rendered — including the breadth of submissions received, among them Israel's public position, and in the absence of any material change in the relevant circumstances since that determination.[97]

61. This position reflects the settled practice of other international criminal tribunals, including the ICTY, ICTR, SCSL, and IRMCT. A salient example is the ICTY Appeals Chamber's decision in the *Tadić case*, which upheld the Tribunal's jurisdiction in its seminal 1995 interlocutory appeal.[98] That decision became a cornerstone of the ICTY's jurisprudence, and subsequent accused who raised identical or substantially similar jurisdictional objections saw their arguments dismissed in reliance on the *Tadić* ruling (absent any materially novel legal basis or distinct factual matrix).[99] The ICTR adopted the same

[96] ICJ, *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment of 17 March 2016, para. 58 ('The Court recalls that the principle of *res judicata* […] is a general principle of law which protects, at the same time, the judicial function of a court or tribunal and the parties to a case which has led to a judgment that is final and without appeal'). See also Judge Pikas Dissenting Opinion, para. 16 ; von Moschzisker, pp. 299-300.

[97] *Infra*., paragraphs 66 – 69 and Section D. See also Article 19(3) Request, para. 24 and cites therein ('Moreover, while 'admissibility is an 'ambulatory' process'' and complementarity assessments might vary, the territorial scope of the Court's jurisdiction within any given situation is generally static').

[98] IT-94-1-AR72, *Prosecutor v. Duško Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ICTY Appeals Chamber, 2 October 1995.

[99] See e.g. T-96-21-A, *Prosecutor v. Mucić et al.,* Trial Judgment, 20 February 2001, para. 122 ('This Appeals Chamber is of the view that there is no reason why interlocutory decisions of the Appeals Chamber should be considered, as a matter of principle, as having any lesser status than a final decision on appeal. The purpose of an appeal, whether on an interlocutory or on a final basis, is to determine the issues raised with finality. There is therefore no basis in the interlocutory status of the Tadić Jurisdiction Decision to consider it as having been made *per incuriam*'). See also IT-95-5/18-T, *Prosecutor v. Radovan Karadžić*, Decision on the Accused's Motion Challenging the Legal Validity and Legitimacy of the Tribunal, 7 December 2009, paras. 11-15 ('Whether the UNSC legally established the Tribunal is an issue that was unambiguously settled in 1995 in the Tadić case').

approach in *Kanyabashi*,[100] *Bizimumgu*,[101] and *Karemera*;[102] and the SCSL followed suit in *Fofana*, dismissing a jurisdictional challenge on the basis that it had already been determined in the *Gbao* case.[103] At the IRMCT, prior appellate rulings — especially those inherited from the ICTY — have been consistently treated as authoritative in the absence of a clear departure in law or fact.[104]

62. Importantly, in each of these institutions, the governing Statutes and Rules did not expressly codify a rule of *res judicata* applicable to interlocutory matters. Nor did the Chambers in these cases explicitly invoke the doctrine by name. Instead, the underlying objectives of *res judicata*—avoiding repetitive litigation, promoting legal certainty, and safeguarding the integrity of judicial proceedings—were applied in substance. Earlier rulings on jurisdiction and admissibility were treated as binding precedent within the same proceedings

[100] ICTR-96-15-T, *Prosecutor v. Kanyabashi*, Decision on the Defence Motion on Jurisdiction, 18 June 1997, see in particular, para. 8 ('The Prosecutor responded that the basic arguments in the Defence Counsel's motion were addressed by the Trial Chamber and, in particular, by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia in the Tadić-case. The Trial Chamber notes that, in terms of Article 12(2) of the Statute, the two Tribunals share the same Judges of their Appeals Chambers and have adopted largely similar Rules of Procedure and Evidence for the purpose of providing uniformity in the jurisprudence of the two tribunals. The Trial Chamber respects the persuasive authority of the decision of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia and has taken careful note of the decision rendered by the Appeals Chamber in the Tadić case').

[101] ICTR-99-50-T, *Prosecutor v. Bizimungu et al*., Decision on Prosper Mugiraneza's Second Motion to Dismiss for Deprivation of His Right to Trial Without Undue Delay, 29 May 2007, para. 6.

[102] ICTR-98-44-T, *Prosecutor v. Karemera et al.,* Decision on Joseph Nzirorera's Motion to Strike Allegation of Conspiracy with Juvenal Kejelijeli on the Basis of Collateral Estoppel, Rules 73 of the Rules of Procedure and Evidence, 16 July 2008, paras. 2 and 4.

[103] SCSL-2004-14-AR72(E), *Prosecutor v. Fofana*, Decision on Preliminary Motion on Lack of Jurisdiction: Illegal Delegation of Jurisdiction by Sierra Leone, 25 May 2004, paras. 3-4 ('The issue raised by the Defence has already been decided upon by this Chamber. In our Decision on the Invalidity of the Agreement on the Establishment of the Special Court in the Gbao case on 25 May 2004, we found that 'the establishment of the Special Court did not involve a transfer of jurisdiction or sovereignty by Sierra Leone').

[104] See e.g. MICT-13-56-A, *Prosecutor v. Mladić*, Appeals Judgment, 8 June 2021, para. 14 and cites therein ('While not bound by the jurisprudence of the ICTR or the ICTY, the Appeals Chamber is guided by the principle that, in the interests of legal certainty and predictability, it should follow previous decisions of the ICTR and the ICTY Appeals Chambers and depart from them only for cogent reasons in the interest of justice, that is, where a previous decision has been decided on the basis of a wrong legal principle or has been 'wrongly decided, usually because the judge or judges were ill-informed about the applicable law'. It is for the party submitting that the Appeals Chamber should depart from such jurisprudence to demonstrate that there are cogent reasons in the interest of justice that justify such departure'). See also MICT-13-55-A, *Prosecutor v. Radovan Karadžić*, Appeals Judgment, 20 March 2019, paras. 116-119.

unless a party demonstrated a material change in legal or factual circumstances. This consistent practice underscores that the functional logic of *res judicata* has long informed international criminal procedure, even in the absence of formal codification or express invocation.

63. Third, Israel's attempt to limit the effects of the Article 19(3) Decision to the investigative stage overstates and misconstrues the Majority's position. In fact, Israel's argument relies on two passages found under the sub-heading 'Final Considerations',[105] which do not constitute judicial conclusions or operative determinations of the Chamber.[106]

64. Moreover, it is a considerable overstatement to suggest that the 'Final Considerations' section of the Article 19(3) Decision should be read as an open invitation to re-examine jurisdictional issues to the extent now asserted by Israel. That section must be understood in the context in which it was written i.e. at the time, no arrest warrants or summonses to appear had been issued. It was therefore reasonable for the Chamber to acknowledge the possibility of future challenges under article 19(2), including by Palestinian nationals or by the State of Palestine itself—that is, the State whose acceptance of jurisdiction under article 12(2) formed the basis for the Court's competence and which is expressly entitled to bring a challenge under article 19(2)(c).[107] Furthermore, the Chamber's general reference to article 19 in that section also encompasses the admissibility limb of the provision, which may be subject to future litigation. The language relied upon by Israel cannot plausibly be interpreted as casting doubt on the Court's jurisdiction as already confirmed in the operative part of the Decision. This approach reflects established ICC jurisprudence confirming

[105] Article 19(3) Decision, paras. 130-131.
[106] Article 19(3) Decision, paras. 130.
[107] *Supra*., paragraphs 36 - 39. See also Article 19(3) Decision, para. 85.

that observations made in the 'Final Considerations' or concluding sections of a decision do not carry the same legal weight as the dispositive findings.[108]

65. Nor does such an approach support the very purpose of a ruling under article 19(3) which is intended to provide legal certainty at an early stage of proceedings.[109] In this regard, there is no reasonable basis by which the Pre-Trial Chamber intended for its decision to have such a temporary shelf life given that the jurisdictional basis for the investigative stage would equally apply to the prosecution of such crimes.[110]

ii. Israel raises no compelling reason to depart from the Article 19(3) Decision

66. Chambers have consistently emphasised that settled legal determinations should not be revisited absent a compelling justification.[111] Judicial consistency is critical to fairness, predictability, and the integrity of proceedings. The jurisprudence reflects a clear principle: once a legal standard is established, it must be followed unless a material change in fact or law demands reconsideration.

[108] Katanga OA8 Appeal, para. 38 and cites therein. See also ICC-01/11-01/11-695 OA8, *Prosecutor v. Saif Al-Islam Gaddafi*, Judgment on the appeal of Mr Saif Al-Islam Gaddafi against the decision of Pre-Trial Chamber I entitled 'Decision on the 'Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute" of 5 April 2019, 9 March 2020 ('Gaddafi 2020 Appeals Judgment'), paras. 76, 96.
[109] With reference to the principle of effectiveness see e.g. ICC-01/04-01/07-3436-tENG, *Prosecutor v. Germain Katanga*, Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 46 ('The principle of effectiveness of a provision also forms an integral part of the General Rule as that Rule mandates good faith in interpretation. Thus, in interpreting a provision of the founding texts, the bench must dismiss any solution that could result in the violation or nullity of any of its other provisions'). See also Scalia/Garner, Reading Law: The Interpretation of Legal Texts, 2012, p. 56; Gardiner, Treaty Interpretation (2nd ed.), 2015, p. 210.
[110] Article 19(3) Request, para. 6 ('And it would be contrary to judicial economy to carry out an investigation in the judicially untested jurisdictional context of this situation only to find out subsequently that relevant legal bases were lacking').
[111] *Supra*., paragraphs 59 – 62.

67. This principle is well entrenched.[112] In *Katanga*, Pre-Trial Chamber I refused to depart from the evidentiary standard 'substantial grounds to believe' as set in *Lubanga*, citing 'no compelling reason to depart'.[113] Similarly, Trial Chamber VII in *Bemba et al.* reaffirmed earlier decisions issued by other Chambers on Rule 68, again stating that it saw 'no compelling reason to deviate'.[114] The Appeals Chamber has also followed the same approach: in *Gbagbo and Blé Goudé*, it declined to revise the no-case-to-answer standard as developed in other proceedings, expressly finding 'no compelling reason to depart' from established jurisprudence.[115] Likewise, in the *Gaddafi* admissibility decision, it confirmed that prior rulings would not be revisited 'in the absence of new facts or circumstances'.[116]

68. In the present context, Israel offers no new fact, circumstance or compelling justification warranting a departure from the findings in the Article 19(3) Decision. By its very nature, and the context in which the litigation played out,[117] the Article 19(3) Decision squarely addressed the same situation and underlying factual context that Israel now seeks to contest in relation to the arrest warrants issued for Mr. Netanyahu and Mr. Gallant. It concerned the same armed conflict, the same patterns and forms of criminality, the same territorial scope and the same category of actors.[118]

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[112] See deGuzman in Ambos, Rome Statute of the ICC, 4th ed. 2022, Art. 21 ('deGuzman'), mnn. 53 – 55 and cites therein providing further examples of the Court's consistent practice in this regard.
[113] ICC-01/04-01/07-717, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the confirmation of charges, 30 September 2008, para. 65.
[114] ICC-01/05-01/13-1478-Red-Corr, *Prosecutor v. Bemba et al.,* Decision on Prosecution Rule 68(2) and (3) Requests, 12 November 2015, para. 31 ('The Chamber agrees with this finding and sees no compelling reason to deviate from this prior jurisprudence').
[115] ICC-02/11-01/15-1400 A, *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment in the appeal of the Prosecutor against Trial Chamber I's decision on the no case to answer motions, 31 March 2021, para. 264.
[116] ICC-01/11-01/11-574 0A4, *Prosecutor v. Saif Al-Islam Gaddafi*, Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013 entitled 'Decision on the admissibility of the case against Saif Al-Islam Gaddafi', 21 May 2014, para. 44.
[117] *Supra*., paragraph 56. See also Decision on the Conduct of Proceedings, para. 23.
[118] See most recently, ICC-01/18-440, Prosecution Response to Israel's 'Appeal of 'Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice' (ICC-01/18-375)', 9 June 2025, see in particular paras. 2 and 26.

69. Nor does Israel advance any new legal argument that was not already presented to the Pre-Trial Chamber and addressed in the Article 19(3) Decision. A review of the Jurisdiction Challenge confirms that each substantive argument raised is recycled – often *verbatim* — from submissions included in the Israeli Attorney General's publicly circulated memorandum,[119] or submissions made by various States and *amici*.[120] The current challenge thus

[119] Noting that the Jurisdiction Challenge cites to the Attorney General Legal Memorandum on at least six occasions see Jurisdiction Challenge, fn. 5, 73, 96, 120, 121, 140. Moreover, with respect to verbatim or near-match text recycled from the Attorney General Legal Memorandum compare for example: (i) Jurisdiction Challenge, para. 5/ Attorney General Legal Memorandum, para. 3; (ii) Jurisdiction Challenge, para. 10/ Attorney General Legal Memorandum, para. 9; (iii) Jurisdiction Challenge, para. 69/ Attorney General Legal Memorandum, para. 8; (iv) Jurisdiction Challenge, para. 76/ Attorney General Legal Memorandum, para. 8; (v) Jurisdiction Challenge, para. 71/ Attorney General Legal Memorandum, para. 9; (vi) Jurisdiction Challenge, para. 72/ Attorney General Legal Memorandum, para. 12; (vii) Jurisdiction Challenge, paras. 80 - 83 / Attorney General Legal Memorandum, paras 27 -29; (viii) Jurisdiction Challenge, paras. 87 - 88 / Attorney General Legal Memorandum, para. 34; (ix) Jurisdiction Challenge, paras. 88 - 92 / Attorney General Legal Memorandum, paras. 56 – 60; (x) Jurisdiction Challenge, paras. 100 - 102 / Attorney General Legal Memorandum, para. 36; (xi) Jurisdiction Challenge, para.109 / Attorney General Legal Memorandum, para. 40; (xii) Jurisdiction Challenge, paras. 17-118 / Attorney General Legal Memorandum, para. 41.

[120] Compare e.g. (i) **Article 12(2)(a) is predicated on existence of territorial sovereignty under public international law** see e.g. Observations with respect to the Situation of Palestine on behalf of the European Centre for Law and Justice, 13 March 2020 ('ECLJ Brief'), paras. 4 - 15; ICC-01/18-86, Observations of Australia, 16 March 2020, paras. 9 – 28; ICC-01/18-75, Submission of Observations to the Pre-Trial Chamber Pursuant to Rule 103 (Prf. Malcolm Shaw KC), 16 March 2020 ('Shaw Brief'), paras. 4 – 24, 34, 40 – 42; ICC-01/18-81, Observations on the Prosecutor's Request on behalf of the Non-Governmental Organisations: The Lawfare Project, the Institute for NGO Research, Palestinian Media Watch, and the Jerusalem Center for Public Affairs, 16 March 2020 ('Lawfare Brief'), paras. 3 – 7, 22 – 50; Attorney General Legal Memorandum, paras. 7 – 16, 19 -20; (ii) **The existence and scope of a territory for the purposes of Article 12(2) of the Rome Statute cannot be established** see e.g. Lawfare Brief paras. 8 – 18; ECLJ Brief, paras. 46 – 54; ICC-01/18-93, Amicus Curiae Observations of Prof. Laurie Blank, Dr. Matthijs de Blois, Prof. Geoffrey Corn, Dr. Daphné Richemond-Barak, Prof. Gregory Rose, Prof. Robbie Sabel, Prof. Gil Troy and Mr. Andrew Tucker, 16 March 2020, paras. 52 – 82, 18 – 52; ICC-01/18-94, Amicus Curiae Observations on Issues Raised by the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine' (Amb. Dennis Ross), 16 March 2020 ('Ross Brief'), paras. 19-21, 28-33; Attorney General Legal Memorandum, paras. 26 – 32; (iii) **The Oslo Accords are the only potential source for Palestinian jurisdiction** see e.g. ICC-01/18-103, Observations by the Federal Republic of Germany, 16 March 2020, paras. 26 – 29; ICC-01/18-80, Amicus Curiae Submissions of the Israel Bar Association, 16 March 2020, paras. 15 – 19; ICC-01/18-83, Submission Pursuant to Rule 103 (Todd F. Buchwald and Steven J. Rapp), 16 March 2020, pp. 24 -26; Attorney General Legal Memorandum, paras. 33 – 35, 55- 60; **(iv) The Oslo Accords do not merely place a limit on the Palestinians' enforcement jurisdiction** see e.g. ICC-01/18-69, Submission of Observations Pursuant to Rule 103 (Czech Republic), 12 March 2020, paras. 10 – 13; ICC-01/18-108, Submissions Pursuant to Rule 103 (The Israel Forever Foundation), 16 March 2020, paras. 26 – 35; ICC-01/18-97, Observations on the question of jurisdiction pursuant to Rule 103 of the Rules of Procedure and Evidence, 16 March 2020 (Professor Robert Badinter et al.), paras. 49 – 56; Attorney-General Legal Memorandum, paras. 45 – 48; (**v) The continuing binding nature of the Oslo Accords is not in dispute between the Parties** see e.g. Shaw Brief, para. 36; (**vi) The right to self-determination does not provide an alternative source of authority to exercise plenary jurisdiction and delegate such authority to the Court** see e.g. Ross Brief, paras. 16 – 21; ICC-01/18-88, Amicus Brief (Yael Vias Gvirsman), 16 March 2020, paras. 79 – 82; ICC-01/18-92, Observations on the Prosecutor's Request for a Ruling on the Court's Territorial Jurisdiction in accordance with paragraph c) of the Chamber's Order of 20 February 2020 on behalf of the Non-Governmental Organisations UK Lawyers for Israel (UKLFI), B'nai B'rith UK (BBUK), the International Legal Forum (ILF), the Jerusalem Initiative (JI) and the Simon Wiesenthal Centre (SWC), 16 March 2020 ('Israeli NGO Brief'),

merely reiterates points that were already fully ventilated and adjudicated. The fact that these arguments are now being formally raised by Israel under article 19(2) of the Statute does not render them any more persuasive. Nor do these arguments amount to a compelling justification for relitigating issues that have already been thoroughly scrutinised. Permitting such a challenge would not only risk undermining the authority and legal certainty of the Court's prior determinations but would also threaten to disrupt the coherence of its jurisprudence and needlessly consume institutional resources that have been dedicated to this situation for over five years.

D. The Legal Conclusions in the Article 19(3) Decision Remain Correct

70. As recognised by the Pre-Trial Chamber, it has been extensively briefed on the same substantive issues raised in the Israel Jurisdiction Challenge and has received a vast number of submissions filed by States, individuals, organisations and representatives of victims in this respect.[121]

71. Palestine maintains its position in full and as filed before the Pre-Trial Chamber with respect to the Court's jurisdiction over the entirety of the State of Palestine.[122] In particular, it maintains that the Court's jurisdiction derives from Palestine's status as a State Party and that the continued occupation of its territory does not diminish its sovereignty. These submissions were originally

paras. 78 – 83; ECJL Brief, paras. 18, 29; ICC-01/18-101, Observations on behalf of The Touro Institute on Human Rights and the Holocaust on 'a ruling on the Court's territorial jurisdiction in Palestine', 16 March 2020, paras. 1 – 32, 52 – 55; Attorney-General Legal Memorandum, paras 39 – 41; **(vii) The laws of occupation are not relevant to Palestinian plenary jurisdictional competence see** e.g. ECJL Brief, paras. 30 – 34; Israeli NGO Brief, paras. 38-41, 47-50; Shaw Brief, paras. 36 - 38; ICC-01/18-79, Written Observation of Shurat HaDin on the Issue of Affected Communities, 16 March 2020, paras. 8 – 22; and (viii) The jurisdictional regime established by the Oslo Accords is compatible with the Geneva Conventions which cannot create separate criminal powers for the Palestinian Authority see e.g. ECJL Brief, paras. 56 – 59; ICC-01/18-98, IJL observations on the "Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine" (ICC-01/18-12), 16 March 2020, paras. 67-70.

[121] Decision on the Conduct of Proceedings, para. 23; Article 19(3) Decision paras. 10-12.

[122] State of Palestine Article 19(3) Observations; State of Palestine's Additional Information; and ICC-01/18-291, Observations by the State of Palestine to the Pre-Trial Chamber I pursuant to Rule 103 of the Rules of Procedure and Evidence, 6 August 2024 ('State of Palestine Rule 103 Observations').

filed in full support of the Prosecution's extensive submissions on the same issues,[123] and are to be read in the context of the numerous *amici* and victims observations which adopt and further develop arguments in support of the Court's territorial jurisdiction,[124] and as subsequently upheld in the Article 19(3) Decision.

72. Accordingly, these observations — filed in response to the substantive contentions raised in Israel's Jurisdiction Challenge — focus on developments

[123] Article 19(3) Request; ICC-01/18-131, Prosecution Response to the Observations of Amici Curiae, Legal Representatives of Victims, and States, 30 April 2020; Prosecution 2024 Consolidated Response to R103; ICC-01/18-357, Prosecution Response to 'Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute' — ICC-01/18-354-SECRET-Exp-AnxI-Corr, 27 September 2024; ICC-01/18-406, Prosecution response to the 'Appeal of 'Decision on Israel's Challenge to the Jurisdiction of the Court pursuant to article 19(2) of the Rome Statute' (ICC-01/18-374)', 13 January 2025.

[124] See e.g. ICC-01/18-66, Submissions Pursuant to Rule 103 (John Quigley), ICC-01/18-66, 3 March 2020, ('Quigley 2020 Brief'); ICC-01/18-68, The Khan al-Ahmar Victim's Observations, 12 March 2020; ICC-01/18-72, Borders of the State of Palestine under International Law for the purpose of ICC territorial jurisdiction - Observations pursuant to Rule 103 of the Rules of Procedure and Evidence, 15 March 2020; ICC-01/18-71, Opinion in Accordance with Article 103 of the Rules of Procedure and Evidence, 15 March 2020; ICC-01/18-73, Submissions Pursuant to Rule 103, 16 March 2020; ICC-01/18-74, Submissions Pursuant to Rule 103 (Professor Hatem Bazian), 16 March 2020; ICC-01/18-77, *Amicus Curiae* Submissions Pursuant to Rule 103, 16 March 2020; ICC-01/18-78, Submission of Observations by MyAQSA Foundation (MyAQSA) (Pursuant to Rule 103 of the Rules), 16 March 2020; ICC-01/18-84, Observations of the Organisation of Islamic Cooperation in relation to the proceedings in the Situation in Palestine, 16 March 2020; ICC-01/18-85, Amicus Curiae Observations Submitted by The International Federation for Human Rights (FIDH); No Peace Without Justice (NPWJ); Women's Initiatives for Gender Justice (WIGJ) and REDRESS pursuant to Rule 103, 16 March 2020; ICC-01/18-91, Amicus Curiae Observations by Guernica 37 International Justice Chambers and Professor Kevin Jon Heller (pursuant to Rule 103 of the Rules), 15 March 2020; ICC-01/18-96, Palestinian Centre for Human Rights, Al-Haq, Al Mezan Center for Human Rights, Al-Dameer Association for Human Rights, Submission Pursuant to Rule 103, 16 March 2020; ICC-01/18-99, Victims' observations on the Prosecutor's request for a ruling on the Court's territorial jurisdiction in Palestine, 16 March 2020; ICC-01/18-102, Submissions on behalf of child victims and their families pursuant to article 19(3) of the statute, 16 March 2020; ICC-01/18-104, Amicus Curiae Observations Pursuant to Rule 103 on of the Rules of Procedure and Evidence, 16 March 2020; ICC-01/18-105, Observations on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine' on behalf of unrepresented victims, 16 March 2020; ICC-01/18-107, Submissions Pursuant to Rule 103 (Robert Heinsch & Giulia Pinzauti), 16 March 2020, ('Heinsch/Pinzauti 2020 Brief')'; ICC-01/18-110-Red, Victims' Observations on the Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, 16 March 2020; ICC-01/18-112, Submission on Behalf of Palestinian Victims Residents of the Gaza Strip with confidential Annex, 16 March 2020ICC-01/18-113, Observations écrites sur la question de compétence énoncée au paragraphe 220 de la Demande du Procureur, 16 March 2020; ICC-01/18-115, Court's Territorial Jurisdiction in Palestine, [Frank Romano] 16 March 2020; ICC-01/18-117, Amicus Curiae Observations by the International Commission of Jurists (Pursuant to Rule 103 of the Rules), 16 March 2020; ICC-01/18-118, International Association of Democratic Lawyers Submission Pursuant to Rule 103, 16 March 2020; ICC-01/18-120, Observations au nom des victimes palestiniennes sur la Demande du Procureur, 16 March 2020; ICC-01/18-122, Submissions of the observations of League of Arab States relative to the Situation in Palestine, 16 March 2020, ('League of Arab States 2020 Brief'); ICC-01/18-123, Observations on behalf of the victims, 16 March 2020; ICC-01/18-126-Red, Public redacted version: Submission pursuant to article 19(3) of the Rome Statute in accordance with paragraph 220 of the Prosecution Request for a ruling on the Court's territorial jurisdiction in Palestine, 15 March 2020.

since the Article 19(3) Decision that have further reinforced the Court's territorial jurisdiction in relation to the State of Palestine.

i. Palestine was, is and remains a State Party that has accepted the Court's jurisdiction

73. The Article 19(3) Decision correctly held that for the purposes of article 12 of the Statute, the preconditions to the exercise of its jurisdiction would be met in relation to State Parties to the Statute in accordance with the plain text of article 12(1).[125] In doing so, the Pre-Trial Chamber correctly interpreted the term 'State Party' with reference to articles 125 and 126 of the Statute, noting that the chapeau of article 12(2) did not require any additional determination as to whether a state party fulfils the prerequisites of statehood under 'general international law' in order to assess territorial or national jurisdiction under article 12(2)(a) or (b).[126]
74. The Pre-Trial Chamber underscored the process by which Palestine acceded to the Rome Statute,[127] and expressly noted that Palestine effectively became a State Party to the ICC on 1 April 2015, following the entry into force of the Statute in its territory.[128] More pertinently, the Pre-Trial Chamber recognised the absence of any formal dispute raised under article 119 with respect to Palestine's membership to the Rome Statute,[129] as well as the significant contributions made by Palestine in the exercise of its rights and obligations as

[125] Article 19(3) Decision, paras. 109 – 113.
[126] Article 19(3) Decision, para. 111.
[127] Article 19(3) Decision, paras. 96 – 98, 100 – 103.
[128] Article 19 (3) Decision, para. 100.
[129] Article 19(3) Decision, paras. 95, 101, 102, 111 and 112 ('The Chamber notes that, in the context of the present proceedings, seven States Parties submitted observations on the Prosecutor's Request as *amici curiae* thereby arguing that Palestine cannot be considered a State for the purposes of article 12(2)(a) of the Statute, namely the Czech Republic, Austria, Australia, Hungary, Germany, Brazil and Uganda. However, it should be noted that these States remained silent during the accession process and that none of them challenged Palestine's accession before the Assembly of State Parties at that time or later').

a State Party.[130] In doing so, the Pre- Trial Chamber underscored the prejudicial impact of holding the State of Palestine to a different standard to other State Parties, noting that Palestine had agreed to subject itself to the terms of the Statute and that it would be contradictory to allow an entity to accede to the Statute and become a State Party, but to limit the Statute's inherent effects over it.[131]

75. As stated above, there is no cogent or compelling basis to deviate from the Article 19(3) Decision and the underlying reasons therein. The Article 19(3) Decision gives proper effect to the term 'State Party' as included in article 12,[132] and in the context of the Statute as a whole.[133]

76. In this regard, the Article 19(3) Decision recognises that the Court operates within a self-contained regime, the parameters of which are defined by the statutory framework of the Court within which its jurisdictional reach is applicable.[134] As such, the Court is not mandated to determine matters of statehood — a concept which itself is not defined within customary international law[135]- which would bind the international community,[136] and nor does the Article 19(3) Decision seek to do so.[137] As stated in the Article 19(3)

[130] Article 19(3) Decision, para. 100.
[131] Article 19(3) Decision, para. 102.
[132] *Supra*., footnote 109.
[133] See also O'Connell. International Law. Vol. 1 (2nd ed.), 1970, p. 283 (' the sense in which [the term State] is used will depend upon the context, the inclusion or exclusion of a particular entity from the category of 'State' cannot be presumed from any *a priori* notion of the qualifications of statehood'.
[134] See e.g. S/2005/60, Report of the International Commission of Inquiry on Darfur to the Secretary-General (pursuant to Security Council resolution 1564 (2004), 25 January 2005, para. 580 ('the ICC constitutes a self-contained regime, with a set of detailed rules on both substantive and procedural law that are fully attuned to respect for the fundamental human rights all those involved in criminal proceedings before the Court').
[135] See e.g. Article 19(3) Decision, para. 62 and cites therein ('[t]he territoriality of criminal law […] is not an absolute principle of international law and by no means coincides with territorial sovereignty').
[136] Article 19(3) Decision, para. 108 ('The Court is not constitutionally competent to determine matters of statehood that would bind the international community').
[137] Article 19(3), Decision, para. 113 ('In particular, by ruling on the territorial scope of its jurisdiction, the Chamber is neither adjudicating a border dispute under international law nor prejudging the question of any future borders'). See also ICC-01/15-12-Anx-Corr, *Situation in Georgia*, Separate Opinion of Judge Kovács, 27 January 2016 recognising that the Court's findings are confined to the judicial context and do not carry automatic implications for the broader legal status of non-recognized entities beyond the proceedings at hand ('I cannot exclude, therefore, that if a *de facto* regime passed a proper sentence following the principles of due process of law against an accused person for one or more of the crimes falling within the jurisdiction of the Court, this could

Decision, Chambers do not have the authority to adjudicate on legislative issues which are matters for the ASP or more broadly the UNGA.[138]

77. Such a position is further consistent with the Court's practice which confirms that, for the purposes of article 12(2), it does not undertake a dual assessment of whether the relevant State is both a State Party and a State under general international law. In this regard, Israel's reliance on the *Situation in Georgia* is inapposite.[139] In the *Situation in Georgia*, Pre-Trial Chamber I had determined that it could exercise territorial jurisdiction by virtue of Georgia's status as a State Party in accordance with article 12(2)(a).[140] In other words, it was not considering South Ossetia's statehood 'under general international law' as a separate consideration as to whether it had territorial jurisdiction by virtue of South Ossetia's acceptance of the Court's jurisdiction either as a State Party or in pursuant to an article 12(3) declaration.

78. Further, as a State Party, Palestine has continued to meet its obligations under the Rome Statute and has remained fully committed to safeguarding the Court since the Article 19(3) Decision. Palestine has continued to meet its financial

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furnish a sufficient basis for an admissibility challenge under article 19(2)(a) together with articles 17(1)(c) and 20(3) of the Statute. I consider that this matter requires a case-by-case assessment without having an automatic effect on the legal status of the non-recognized entity (emphasis added)').

[138] Article 19(3), para. 99 ('the Chamber is neither endowed with the authority to challenge the validity of Resolution 67/19 that admitted Palestine as a non-member observer State and granted its eligibility to accede to the Statute'). This is consistent with the practice of the Court, whereby Chambers have routinely declined to rule on legislative matters e.g. ICC-01/09-01/20-61, *Prosecutor v. Paul Gicheru*, Decision on the Applicability of Provisional Rule 165 of the Rules of Procedure and Evidence, 10 December 2020 (PTC refused to rule on the applicability of provision rule 165 RPE, stating that fell under the exclusive authority of ASP to adopt, amend, or reject provisional rules as per article 51(3)). See also ICC-01/05-01/08-3694, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Mr Bemba's claim for compensation and damages, 18 May 2020, para. 69 (PTC II finding that the statutory constraints made it impossible for the Chamber to compensate Mr. Bemba despite merits of claim and that it was 'urgent for the States Parties to embark on a review of the Statute so as to consider addressing those limitations').

[139] Jurisdiction Challenge, para. 77.

[140] ICC-01/15-12, *Situation in Georgia*, Decision on the Prosecutor's request for authorization of an investigation, 27 January 2016, para. 6 ('[The crimes] are alleged to have occurred after 1 December 2003, the date of entry into force of the Statute for Georgia (jurisdiction ratione temporis); and (iii) are alleged to have been committed on Georgian territory (jurisdiction ratione loci)'). See also paragraph 40, where the Chamber's findings concerning South Ossetia's statehood were limited to the context of whether the investigations and prosecutions conducted by domestic courts in South Ossetia met the admissibility requirements under article 17 of the Statute ('The Chamber agrees with the Prosecutor's submission at paragraph 322 of the Request, that any proceedings undertaken by the *de facto* authorities of South Ossetia are not capable of meeting the requirements of article 17 of the Statute, due to South Ossetia not being a recognized State').

obligations, exercised its voting rights and cooperated with requests for assistance issued by the Office of the Prosecutor.[141] More specifically, the State of Palestine's votes were counted in relation to the election of the two deputy prosecutors in December 2021, and the election of six new judges in December 2023. Palestine was also elected to serve on the ASP Bureau (for the period 2021-2023) during which it assumed various coordinating responsibilities including in relation to the ASP's omnibus resolution.[142] It has actively facilitated resolutions and contributed to the Hague and New York Working Groups which concern strategic matters to the work of the Court,[143] as well as the Bureau's review mechanism discussions following the Independent Expert Review.[144]

79. Palestine's status as a State Party – as well as the Court's exercise of territorial jurisdiction flowing from this status – has also been continued to be recognised by other State Parties. This is most aptly demonstrated by the 17 November 2023 referral submitted by the Republic of South Africa, the People's Republic

[141] See also State of Palestine Article 19(3) Observations, para. 6 ('Having been recognized as a State Party, the State of Palestine has fulfilled all of its obligations under the Statute. It has paid its financial contributions despite the severe hardship caused by Israel's occupation of its territory, participated constructively in the work of the Court and ASP and in that latter context exercised its right to vote as a State Party and had its votes counted, was admitted unanimously to the Bureau, and was the 30th State to ratify the Kampala amendments thereby enabling attainment of the required threshold of ratifications to activate the Court's jurisdiction over the crime of aggression'). See also Article 19(3) Decision, para. 100.

[142] ICC-ASP/21/20, Assembly of States Parties to the Rome Statute of the International Criminal Court Twenty-First Session The Hague, 5-10 December 2022 Official Records Volume I, Statement by the State of Palestine after adoption ('We have been working closely with all States Parties to ensure that there is an adequate language in the omnibus resolution to describe the gravity and urgency of the ongoing attacks and threats against the Court and those cooperating with it, including civil society and human rights defenders [...] This year the State of Palestine also worked with States Parties in the inclusion of the preamble paragraph 1 bis on affirming that the crime of genocide, crimes against humanity, war crimes and the crime of aggression, must not go unpunished […] The State of Palestine remains committed to the Court, its personnel and those cooperating with it and remains committed to a budget that ensures all victims have access to justice'). See also ICC-ASP/20/20, Assembly of States Parties to the Rome Statute of the International Criminal Court Twenty-Third Session The Hague, 6 — 11 December 2021 Official Records Volume I; ICC-ASP/22/20, Assembly of States Parties to the Rome Statute of the International Criminal Court Twenty-Third Session The Hague, 4 — 14 December 2023 Official Records Volume I' ICC-ASP/23/20, Assembly of States Parties to the Rome Statute of the International Criminal Court Twenty-Third Session The Hague, 2 — 7 December 2024 Official Records Volume I

[143] Including *inter alia*, Working Group on Suspects at Large, Working Group on Amendments and Working Group on the Programme Budget.

[144] Plenary session on cooperation at the 23rd session of the Assembly of States Parties**, Statement by State of Palestine, 5 December 2024 (**ASP23-COOP-plenary-SEGI-PSE-ENG)

of Bangladesh, the Plurinational State of Bolivia, the Union of Comoros and the Republic of Djibouti, the 18 January 2024 referral submitted by the United Mexican State and the Republic of Chile,[145] and the various State Parties whom filed submissions acknowledging Palestine's status as a State Party.[146]

ii. Agreements between the State of Palestine and the occupying power remain irrelevant to the exercise of the Court's territorial jurisdiction

80. In the Article 19(3) Decision, the Pre-Trial Chamber considered the range of submissions on the interim Oslo Accords and expressly found that they 'are not pertinent to the resolution of the issue under consideration, namely the scope of the Court's territorial jurisdiction in Palestine'.[147] Accordingly, the Chamber held that the Court's territorial jurisdiction in the Situation in Palestine extends to the territory occupied by Israel since 1967, namely the Gaza Strip and the West Bank, including East Jerusalem.[148] Whilst the arrest warrants

[145] Both referrals explicitly refer to the State of Palestine's status as a State Party and to the Court's jurisdiction over the Situation in the State of Palestine see ICC-Referral-Palestine-Final-17-November-2023, Referral addressed to Prosecutor Karim Khan KC from H.E Vusi Madonsela, Ambassador of the Republic of South Africa to the Kingdom of the Netherlands, 17 November 2023 [https://www.icc-cpi.int/sites/default/files/2023-11/ICC-Referral-Palestine-Final-17-November-2023.pdf]; and 2024-01-18-Referral_Chile__Mexico, Referral addressed to Prosecutor of the ICC from Governments of the Republic of Chile and the United Mexican States, 18 January 2024 [https://www.icc-cpi.int/sites/default/files/2024-01/2024-01-18-Referral_Chile__Mexico.pdf]

[146] ICC-01/18-316, Written observations by Brazil pursuant to Rule 103, 6 August 2024, paras. 18-20; ICC-01/18-284, Written Observations of Chile and Mexico pursuant to Rule 103(1) of the Rules of Procedure and Evidence, ('Chile/Mexico 2024 Brief'), paras. 4 and 8; ICC-01/18-299, Written Observations Colombia Pursuant to Rule 103, ('Colombia 2024 Brief'), para. 12 (2); ICC-01/18-306, Written Observations of Ireland pursuant to Rule 103, 6 August 2024, ('Ireland 2024 Brief'), para. 14; ICC-01/18-264, Written observations by Norway pursuant to Rule 103, 5 August 2024, ('Norway 2024 Brief'), paras. 3 and 11; ICC-01/18-268, Observations by the Organization of Islamic Cooperation to Pre-Trial Chamber I pursuant to Rule 103 of the Rules of Procedure and Evidence, 5 August 2024, ('OIC 2024 Brief'), paras. 11, 12, 16, and 30 (representing 24 State Parties, in addition to the State of Palestine); ICC-01/18-309, Written observations by South Africa, Bangladesh, Bolivia, Comoros, and Djibouti pursuant to Rule 103, 6 August 2024, ('South Africa/Bangladesh/Bolivia/Comoros/Djibouti 2024 Brief'), para. 24; ICC-01/18-318, Amicus Curiae Observations of the Kingdom of Spain Pursuant to Rule 103 of the Rules of Procedure and Evidence, 6 August 2024 ('Spain 2024 Brief'), para. 10.

[147] Article 19(3) Decision, para. 124.

[148] Article 19(3) Decision, p. 60.

for Mr. Netanyahu and Mr. Gallant are not public, it is understood that the alleged crimes were committed within the territory of the State of Palestine.[149]

81. Following the Article 19(3) Decision, the Pre-Trial Chamber has received over sixty submissions filed by relevant States, including from the State of Palestine, and other *amici*, in relation to the applicability of the interim Oslo Accords.[150] These observations are not therefore intended to repeat arguments that the Chamber is already seized of in relation to the irrelevance of interim agreements between the State of Palestine and the occupying power. Rather, Palestine provides limited observations, which are in direct response to specific arguments raised in Israel's Jurisdiction Challenge which was submitted after the State of Palestine Rule 103 Observations were filed on 6 August 2024.

82. At the outset, Palestine firmly rejects Israel's insinuation that 'the Palestinian authorities have not argued against the continued validity of the [Oslo] Agreements in their submissions to the Court' as part of an improper effort to invoke the interim Oslo Accords to limit the State of Palestine's rights before the Court.[151] This is a serious mischaracterisation that ignores the intended temporary nature of the interim Oslo Accords as well as Israel's repeated and flagrant violations of the terms of the agreement.[152] The State of Palestine has

[149] ICC Press Release, 'Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel's challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant', 21 November 2024. See also State of Palestine Article 19(3) Observations, paras. 28 – 43.

[150] See Decision on requests R103 of 2024, paras. 11 – 14. This followed the United Kingdom's request to file written observations to examine 'further questions of jurisdiction, specifically regarding the effect of the Oslo Accords on the jurisdiction of the International Criminal Court' see R103 Request by the United Kingdom. The United Kingdom subsequently withdrew its position and did not file any written observations.

[151] Jurisdiction Challenge, para. 100.

[152] See further ICC-01/18-308, 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, 6 August 2024, ('Al-Haq/Al-Mezan 2024 Brief'), para. 23; ICC-01/18-290, Written Observations Pursuant to Rule 103 by the Al-Quds Human Rights Clinic Al-Quds University, 6 August 2024 ('Al-Quds 2024 Brief') paras. 34, 37; ICC-01/18-276, Written Observations by ICJ Norway and Defend International Law pursuant to Rule 103, 5 August 2024 ('ICJ Norway/Defend International Law 2024 Brief'), paras. 11-13; ICC-01/18-283, Amicus Curiae Observations from the International Centre of Justice for Palestinians and the Centre for Human Rights Law, SOAS University of London, 6 August 2024 ('ICJ for Palestinians/Centre for Human Rights Law 2024 Brief'), para. 11; ICC-01/18-254, Written Observations Pursuant to Rule 103 (John Quigley), 29 July 2024 ('Quigley 2024 Brief'), paras. 7-8; ICC-01/18-289, Submissions under Rule 103 concerning the implementation of the Oslo Accords (Lawyers for Palestinian Human Rights), 6 August 2024; ICC-01/18-278, Amicus Curiae Observations of Prof. Michael Lynk

not made submissions on the validity of the interim agreements between the Palestine and the occupying power for the simple reason that they are irrelevant to the exercise of the Court's jurisdiction and serve only to prejudicially obfuscate and obstruct proceedings in the *Situation in the State of Palestine*.[153]

83. Moreover, Israel intentionally ignores Palestine's recent references to the ICJ 2024 Advisory Opinion, which rejected Israel's reliance on the interim Oslo Accords to object to the ICJ's jurisdiction and competence over Israeli violations in the State of Palestine.[154] Israel's politicised contentions are recycled in the Jurisdiction Challenge and are equally irrelevant in the context of the ICC.

84. First, the relevance, or lack thereof, of the interim Oslo Accords must be assessed in light of Article 47 of the Fourth Geneva Convention, which provides that a protected population shall not be deprived of the Convention's benefits by 'any agreement concluded between the authorities of the occupied territories and the Occupying Power'. The ICJ has affirmed that this provision supports the conclusion that the interim Oslo Accords cannot be interpreted to relieve Israel of its obligations under international law in the Occupied Palestinian Territory.[155]

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and Prof. Richard Falk Pursuant to Rule 103, 6 August 2024 ('Lynk/Falk 2024 Brief'), para. 11; ICC-01/18-315, Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence (Shahd Hammouri), 6 August 2024, paras. 3 – 6; ICC-01/18-277, Written Observations Pursuant to Rule 103 (University Network for Human Rights et al.), 5 August 2024, paras. 14-16.

[153] The State of Palestine had first raised the irrelevance of the interim agreements between the State of Palestine and the occupying power during the article 19(3) litigation see State of Palestine Article 19(3) Observations, paras. 64 – 67; see further State of Palestine Rule 103 Observations, pp. 7 – 11.

[154] State of Palestine Rule 103 Observations.

[155] ICJ General List No. 186., *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory Including East Jerusalem*, Advisory Opinion, 19 July 2024 ('Israel's Unlawful Presence Advisory Opinion'), para. 102 ('The Court observes 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'. For all these reasons, the Court considers 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. With these points in mind, the Court will take the Oslo Accords into account as appropriate'). See further, ICJ, *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian*

85. Moreover, the Palestinian people — and the State of Palestine — cannot be deprived, through the interim Oslo Accords or any other agreement with Israel as the occupying power, of the right and obligation to ensure accountability for grave breaches of the Fourth Geneva Convention, as reflected in Article 146.[156] The pursuit of accountability for such breaches — including through international criminal tribunals — constitutes a lawful means for the State of Palestine to discharge that obligation. The interim Oslo Accords cannot be interpreted to override this fundamental protection afforded to the Palestinian people as a protected population under international humanitarian law.[157]
86. Second, the ICJ further confirmed that the interim Oslo Accords did not and cannot limit Palestine's prescriptive authority,[158] noting that prescriptive jurisdiction is plenary and unqualified under customary international law.[159] In fact, far from undermining Palestine's prescriptive jurisdiction, the terms of the

Territory, Request for an Advisory Opinion, ('Presence and Activities of the United Nations, Advisory Opinion Request'), Written Statement of the United Nations Secretary General, 27 February 2025, para. 13.

[156] Article 46 GCIV ('In so far as they have not been previously withdrawn, restrictive measures taken regarding protected persons shall be cancelled as soon as possible after the close of hostilities. Restrictive measures affecting their property shall be cancelled, in accordance with the law of the Detaining Power, as soon as possible after the close of hostilities').

[157] Israel's Unlawful Presence Advisory Opinion, para. 140 ('Finally, the terms of Article XVII, paragraph 4 (b), of the Oslo II Accord expressly state that Israel only retains the powers 'necessary', and at any rate 'in accordance with international law', including the law of occupation. It follows 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').

[158] Israel's Unlawful Presence Advisory Opinion, paras. 105 – 108. This is further demonstrated by the number of international conventions and treaties to which Palestine has acceded to, as well as the numerous international and regional bodies to which it enjoys full membership see e.g. Article 19(3) Request, paras. 127 – 129. See also, ICC-01/18-314, Norway 2024 Brief, paras. 33 – 37; Written observations pursuant to Rule 103 (Halla Shoaibi & Asem Khalil), 6 August 2024 ('Shoaibi/Khalil 2024 Brief'), paras. 8, 10; ICJ for Palestinians/Centre for Human Rights Law 2024 Brief, paras. 13-14; Quigley 2024 Brief, paras. 14, 15; ICC-01/18-330, Victims' Observations pursuant to Article 68(3) of the Rome Statute, 12 August 2024 ('LRV 2024 Brief'), para. 17; ICC-01/18-275, Written Observations Pursuant to Rule 103 (Neve Gordon), 5 August 2024, ('Neve Gorden 2024 Brief'), para. 14.

[159] See P.C.I.J. (ser. A) No 1, *The S.S Wimbledon (United Kingdom & Ors v. Germany*), 1923, p. 25 ('The Court declines to see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act on abandonment of its sovereignty'); see also P.C.I.J. (ser. A) No. 10, C*ase of the S.S Lotus (France v. Turkey)*, 1927, p. 27. See further, O'Keefe, Response to 'Quid, Not Quantam: A comment on 'How the International Criminal Court Threatens Treaty Norms', 2016 (49 Vanderbilt Journal of Transnational Law) 433, 436; ICC-01/18-262, Observations Pursuant to Rule 103 (Robert Heinsch and Giulia Pinzauti), 2 August 2024 ('Heinsch/Pinzauti 2024 Brief'), para. 14; Chile/Mexico 2024 Brief, para. 15; ICC-01/18-270, Amicus Curiae Observations Pursuant to Rule 103, 6 August 2024 ('MACROCRIMES 2024 Brief'), para. 11; see further Israel's Unlawful Presence Advisory Opinion, para. 140. See also Geneva Convention IV relative to the Protection of Civilian Persons in Time of War (1949), ('Geneva Convention IV'), Articles 7 and 47.

interim Oslo Accords presupposes it;[160] in other words the ability to delegate enforcement powers through an agreement such as the interim Oslo Accords necessarily implies the pre-existing possession of such powers.[161]

87. Third, any limits to Palestine's enforcement jurisdiction are irrelevant to the exercise of the Court's jurisdiction. The Statute's jurisdictional framework is grounded in the acceptance of the Court's jurisdiction by States Parties and not — as averred by Israel — the delegation or transfer of their own domestic jurisdiction.[162] This is clear from the plain text of article 12(1), which refers to State Parties acceptance of the Court's jurisdiction, with no such indication in the Statute that such acceptance equates to a delegation of plenary jurisdiction. It is also apparent from the fact that the Court did not verify, in any of the cases that came before it, whether the State concerned had the legal authority to delegate its jurisdictional competence to the Court. Such a requirement would contravene the clear terms of the Statute and constitute an undue interference with the constitutional sovereignty of that State.

88. As such, the Court's authority to exercise jurisdiction does not depend on a corresponding domestic jurisdictional title, nor is there any requirement for

[160] Article 19(3) Decision, para. 125. See also ICC-01/18-257, Amicus curiae observations of Prof. William Schabas pursuant to Rule 103, 30 July 2024 ('Schabas 2024 Brief'), paras. 6.
[161] See also Heinsch/Pinzauti 2024 Brief, para. 16; Lynk/Falk 2024 Brief, para. 6; Quigley 2024 Brief, para. 16.
[162] *Contra* Jurisdiction Challenge, para. 91. For support see further, Kaul, p. 606 ('First, in cases where, pursuant to Article 13(a) or (c), a situation is referred to the Prosecutor by a State Party, or where the Prosecutor has initiated an investigation proprio motu, then State acceptance of the jurisdiction of the Court is required. Second, with regard to the decisive question, which States must have accepted the jurisdiction of the Court, it lays down that State acceptance is necessary from either the territorial State or the State of the nationality of the accused or both. These, in essence, are the preconditions which must be fulfilled for the Court to be able to exercise jurisdiction'). See also Heinsch/ Pinzauti 2024 Brief, para. 9; ICC-01/18-303, Amicus curiae observations of Professor Adil Ahmad Haque submitted pursuant to the 'Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence' of 22 July 2024 (ICC-01/18-249), 6 August 2024 ('Haque 2024 Brief'), para. 14; Chile/Mexico 2024 Brief, para. 11; Shoaibi/Khalil 2024 Brief, para. 4; ICC-01/18-317, Amicus Curiae Observations by Civil Society Organizations Pursuant to Rule 103, 6 August 2024 ('CSO 2024 Brief'), para. 15; ICC-01/18-331, Palestine Independent Commission for Human Rights (ICHR) Written Observations Pursuant to Rule 103, 6 August 2024 ('ICHR 2024 Brief'), paras. 7-9; ICJ Norway/Defend International Law 2024 Brief, para. 17; Ireland 2024 Brief, para. 19, 21; Quigley 2024 Brief, paras. 13; Lynk/Falk 2024 Brief, para.3; Neve Gorden 2024 Brief, para. 12; ICC-01/18-335, Submission on behalf of Gaza Victims in the proceedings related to the Situation in the State of Palestine, 12 August 2024, paras. 20 – 23; MACROCRIMES 2024 Brief', paras. 3-5.

symmetry between the Court's jurisdiction and that of national authorities.[163] This interpretation was accepted during the Rome Statute's negotiation and reflects the principle of 'automatic jurisdiction' under the Statute. The State of Palestine's acceptance of the Court's jurisdiction is not therefore restricted or 'prescribed' by the terms of the interim Oslo Accords.

89. This understanding is further enforced by the fact that the Court's jurisdiction is not contingent on the existence of domestic criminal legislation or the capacity to prosecute.[164] The Court's exercise of jurisdiction in this context reflects the collective right of the international community to address core international crimes, which entail *erga omnes* obligations. Its mandate is not derived from state delegation, but from the *ius puniendi* of the international community.[165] This principle was affirmed by the Appeals Chamber in the *Al Bashir* proceedings, which underscored that international courts do not act on behalf of individual States, but rather in the interests of the international community as a whole.[166]

[163] Norway 2024 Brief, para. 21; Heinsch/ Pinzauti 2024 Brief, para. 12; Schabas 2024 Brief, para. 9; CSO 2024 Brief, para. 17.

[164] See in particular in relation to treatment of amnesties see e.g. Afghanistan Article 15 Decision, paras. 74-75; Gaddafi 2020 Appeals Judgment; ICC-02/04-01/05-377, *Prosecutor v. Joseph Kony and Vincent Otti*, Decision on the admissibility of the case under article 19(1) of the Statute, 11 March 2019. See also Chile/Mexico 2024 Brief, para. 13. See also ICC-01/18-288, Written observations pursuant to Rule 103 (Addameer), 6 August 2024, ('Addameer 2020 Brief') para. 6(b) and (e); ICC-01/18-311, Amicus Curiae Observations by the International Commission of Jurists (Pursuant to Rule 103 of the Rules), 6 August 2024, ('ICJ 2024 Brief'), para. 25.

[165] Kreß in Ambos, Rome Statute of the ICC, 4th ed., 2022, Art. 98 mn. 127 ('the ICC has not been established to exercise delegated national jurisdiction but to exercise the *ius puniendi* of the international community with respect to crimes under CIL'). See also Robert/Pinzauti 2024 Brief, para. 8; CSO 2024 Brief, para. 16.

[166] ICC-02/05-01/09-139, *Prosecutor v. Omar Hassan Ahmad Al Bashir*, Decision Pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir, 12 December 2011, para. 46 ('it is the view of the Chamber that when cooperating with this Court and therefore acting on its behalf. States Parties are instruments for the enforcement of the *jus puniendi* of the international community whose exercise has been entrusted to this Court when States have failed to prosecute those responsible for the crimes within its jurisdiction'). See also ICC-01/11-01/11-695-AnxI OA8, *Prosecutor v. Saif Al-Islam Gaddafi*, Separate and Concurring Opinion of Judge Luz del Carmen Ibáñez Carranza on the Judgment on the appeal of Mr Saif Al-Islam Gaddafi against the decision of Pre-Trial Chamber I entitled 'Decision on the 'Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute'', 22 April 2020, para. 129 ('In the field of international criminal law, the Rome Statute is the first treaty that consolidates permanently the international *ius puniendi* for core crimes'). See also Spain 2024 Brief, para. 8; CSO 2024 Brief, para. 18.

90. Further still, considering the *erga omnes* nature of the prohibition in question, a State could ever only agree not to exercise its competence in relation to them if and where another competent party (such as the ICC) is able and willing to investigate and prosecute those crimes in good faith and effectively.[167] No agreement could result in such crimes remaining unpunished (which Israel is determined to ensure). The *jus cogens* nature of the associated obligations to punish those crimes also means that, as norms and international obligations of superior standing, they could not be subject to or qualified by norms of a lesser normative status, even if one such norm had been operative here.

91. Fourth, and relatedly, the exercise of a Court's jurisdiction cannot be constrained or conditioned upon the terms of bilateral arrangements concluded between State Parties and third States such as the interim Oslo Accords.[168] Any alternative interpretation would result in an untenable patchwork of obligations and carve-outs, eroding the fundamental principle that core international crimes are subject to universal concern and consistent treatment.[169] This is mostly clearly reflected within article 120 of the Statute, which prohibits reservations to the Statute,[170] and further reinforced by the

[167] In this regard, it is Palestine's prescriptive authority which obliges it to address *jus cogens* crimes see e.g. State of Palestine Article 19(3) Observations, paras. 68 -70 and cites therein ('an agreement that would purportedly qualify or diminish the obligations under the Statute of a State Party to investigate and prosecute crimes within the jurisdiction of the Court would be null and void as the Statute reflects *jus cogens* prohibitions that would prevail over any competing legal obligations not of the same rank'); State of Palestine R103 Observations, pp. 10-11 and cites therein. See further, Schabas 2024 Brief, para. 7; CSO 2024 Brief, para. 25; ICC-01/18-286, Arab Organisation for Human Rights UK (AOHR UK) Written Observations Pursuant to Rule 103, 6 August 2024 ('AOHR UK 2024 Brief'), para. 11; Chile/Mexico 2024 Brief, paras. 15, 17-20; Colombia 2024 Brief, paras. 21-24; ICJ for Palestinians/Centre for Human Rights Law 2024 Brief, para. 16; Lynk/Falk 2024 Brief, paras. 18-19; Neve Gorden 2024 Brief, paras. 5-7; OIC 2024 Brief, paras. 19-20.

[168] See also State of Palestine 2024 Observations, pp. 6 – 8.

[169] *Contra* article 41 VCLT. See also State of Palestine Rule 103 Observations, p. 8 citing to Sadat, The Conferred Jurisdiction of the International Criminal Court, 99 Notre Dame Law Review 549 (2023). See also deGuzman, Art.21., mn. 26; Heinsch/ Pinzauti 2024 Brief, para. 10. Haque 2024 Brief, para. 18; Al-Quds 2024 Brief, para. 30 ; AOHR UK 2024 Brief, para. 13; ICHR 2024 Brief, para. 10; LRV 2024 Brief, para. 22.

[170] See e.g. number of declarations deposited in response to Uruguay's ratification the Statute with an open-ended declaration that its ICC obligations would be applied only in accordance with its Constitution. This led to other States formally objecting, treating it as an impermissible reservation that undermined Uruguay's commitment to the treaty's purpose see e.g. Declaration of Ireland (28 July 20023), Declaration of the United Kingdom of Great

object and purpose of the Statute, as outlined in its Preamble and article 86. It is also reflected in the principle *pacta sunt servanda*: treaties only bind and carry legal effect for the States concerned and consequences of a violation of a treaty are to be borne by the State concerned. Any treaty binding two or more States would, therefore, have no bearing on the Court's competence, the terms of which are exhaustively laid out in the Statute.

92. Indeed, the Court's statutory framework, as set out in article 98(2), refers only to a narrow and specific recognition of certain international agreements. In this regard, it is designed with Status of Forces Agreements (SOFAs) and similar agreements in mind i.e. agreements which 'actively contemplate the exercise of criminal jurisdiction' by either the sending or receiving state. The interim Oslo Accords however, as conceded by Israel,[171] do not fall within the type of agreement permitted under article 98(2) and in any event could not impose any further limitations to the exercise of the Court's territorial jurisdiction.[172]

93. Moreover, despite Israel's attempt to characterise the agreements between the State of Palestine and the occupying power as a broader international agreement, they also do not fall within the category of treaties contemplated by article 21(1)(b) of the Statute,[173] and therefore do not constitute applicable law. As such, the interim Oslo Accords are irrelevant to the Court's interpretation or application of article 12(2)(a) and cannot limit the Court's exercise of territorial jurisdiction.

Britain and Northern Ireland (31 July 2003), Declaration of Denmark (21 August 2003), Declaration of Norway (29 August 2003) available [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=_en#15] (last accessed 27 June 2025). See also Haque 2024 Brief, para. 5; Chile/Mexico 2024 Brief, para. 14; Columbia 2024 Brief, para. 17.

[171] Jurisdiction Challenge, para. 96.

[172] See Afghanistan Article 15 Appeals Judgment, para. 59 whereby the Appeals Chamber confirmed that Afghanistan's bilateral agreement with the United States did not affect the Court's jurisdiction over crimes committed by U.S. nationals within its territory. The same reasoning applies, *mutatis mutandis*, to the Court's jurisdiction over Israeli nationals for conduct committed on the territory of Palestine.

[173] See Heinsch/Pinzauti 2024 Brief, para. 7; Schabas 2024 Brief, para. 19; Haque 2024 Brief, para. 8; ICJ Norway/Defend International Law 2024 Brief, para. 20; Quigley 2024 Brief, para. 4; South Africa/Bangladesh/Bolivia/Comoros/Djibouti 2024 Brief', para. 22.

iii. Israel is precluded from invoking its wrongful acts to undermine the Court's jurisdiction

94. Throughout its submissions, Israel relies on its wrongful acts in a misguided attempt to assert that the State of Palestine does not have plenary jurisdiction. Such efforts are baseless – the Pre-Trial Chamber has already determined that article 12(2)(a) does not require the Court to find a State exists for the purpose of general international law as a condition for finding that the Court has jurisdiction over the territory of that State Party.[174] Moreover, the theory of a transfer of plenary or enforcement jurisdictional competences to the Court is not relevant to the present matter.[175]

95. Pertinently, Israel's efforts are also not grounded in reality. The ICJ most recently concluded that '[t]he sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel's presence in the Occupied Palestinian Territory unlawful'.[176] In accordance with article 21(1)(b) of the Statute and the principles and rules of international law, the Court must be guided by the customary obligations not to recognise — or to give legal effect to — such wrongful acts, and not to aid or assist in their maintenance. These principles preclude any interpretation that would validate, give legal effect, or reinforce the consequences of Israel's internationally wrongful conduct.[177] Giving legal

[174] Art.19(3) Decision, paras. 92-109, specifically 103 and 109.
[175] See *supra* paragraphs 87 – 90.
[176] *Israel's Unlawful Presence Advisory Opinion,* para. 261.
[177] Articles on the Responsibility of States for Internationally Wrongful Acts, 2001, articles. 16 and 41; Articles on the Responsibility of International Organisations, 2011, article 42.

effect to such wrongful acts would also be inconsistent with victims' rights and the object and purpose of the Rome Statute.[178]

1. Israel cannot impose conditions on Palestinian sovereignty and Palestinian self-determination

96. Contrary to Israel's assertion concerning the State of Palestine's alleged lack of plenary jurisdiction — it is recalled that such jurisdiction is held by the sovereign and constitutes an attribute of sovereignty. Occupying powers such as Israel cannot, by virtue of their occupation of a territory, acquire plenary jurisdiction over the territory they occupy. This is most recently affirmed by the ICJ in its *Israel's Unlawful Presence Advisory Opinion* which was rendered mere months before Israel's Jurisdiction Challenge.[179]

97. In this regard, Israel's suggestion that such limited powers transferred under the agreements between the State of Palestine and the occupying power in fact constitute plenary jurisdiction is plainly incorrect.[180] Israel could never retain, grant, or withhold plenary jurisdiction from the State of Palestine and the Palestinian people, as such powers rest and have always rested with them.[181] Plenary jurisdiction entails not the *de facto* regulation of matters under a State's control, but the inherent right to legislate and to apply one's law, jurisdiction,

[178] See Prosecution 2024 Consolidated Response to R103, paras. 66 and 67(2).
[179] Israel's Unlawful Presence Advisory Opinion, paras. 102, 106, 108, 134 and *e.g.* paras. 138-139; see also paras. 162 – 173, specifically paras. 163 and 170.
[180] Jurisdiction Challenge, paras. 93-99.
[181] With respect to e.g. civil and criminal jurisdiction, such jurisdiction was not created by Israel upon the start of its occupation. Such jurisdiction is a continuation of the laws and institutions in place from before the start of the occupation — even though they were wrongfully usurped by Israel (in violation of Article 64 of GCIV and Article 43 of the Hague Regulations), and in violation of the *ius ad bellum* (see *supra*). The interim Oslo Accords are not their source. See also Israel's Unlawful Presence Advisory Opinion, paras. 134, 139, 141 and 136: ('Israel has to a large degree substituted its military law for the local law in force in the Occupied Palestinian Territory at the beginning of the occupation in 1967. Offences under Israel's military law are tried by Israeli military courts rather than by local civil or criminal courts'). See also ICC-01/18-288, Written observations pursuant to Rule 103 (Addameer), 6 August 2024 ('Addameer 2024 Brief'), para. 10 (a) and (b); AOHR UK 2024 Brief, paras. 5-6; Heinsch/Pinzauti 2020 Brief, paras. 64-65; Heinsch/Pinzauti 2024 Brief, para. 20; Haque 2024 Brief, para. 8; Prosecution 2024 Consolidated Response to R103, paras. 72-74.

and administration over a territory. As sovereignty is unaffected by occupation, the State of Palestine maintains each and all of those sovereign entitlements over its territory and population.

98. Moreover, Palestine strongly objects to the false 'historical context' advanced by Israel in these proceedings;[182] including to Israel's continued attempts to erase the Palestinian people's rights to self-determination in mandated Palestine.[183] The Palestinian people's rights' and status in this regard have been unequivocally established.[184] Israel's arguments in this regard are not only factually, legally, historically, and politically incorrect, but also irrelevant to the clear and independent basis for the Court's exercise of territorial jurisdiction — and the State of Palestine will therefore not address them here.

99. The main point is that Israel's continued obstruction of the Palestinian people and the State of Palestine's ability to act on their plenary jurisdiction constitutes an internationally wrongful act and cannot be given legal effect. This position has been substantially confirmed by the ICJ in its recent *Israel's Unlawful Presence Advisory Opinion* as follows:

    a) First — the ICJ reiterated that, under the law of occupation (*ius in bello*), an occupying power could only exercise limited jurisdiction powers under Article 43 of the Hague Regulations and Article 64 of Geneva Convention IV— enforcement jurisdiction in this context being limited by the temporary and fiduciary character of the occupier's role;[185] and

[182] Jurisdiction Challenge, paras. 80-84.
[183] See, for example, Israel's Unlawful Presence Advisory Opinion Request, Verbatim 2024/4 of 19 February 2024, page 64, para. 5; Israel's Attorney General Legal Memorandum, paras. 27-32.
[184] See The Wall Advisory Opinion, p. 165; Namibia Advisory Opinion, paras. 46, 52-53; League of Nations Covenant (1920), article 22(4) ('Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory'). See also Israel's Unlawful Presence Advisory Opinion, paras. 70, 237, 262; Israel's Unlawful Presence Advisory Opinion Request, Written Statement of the State of Palestine, Volume I, 24 July 2023, paras. 1.8 – 1.18; Wilde, Tears of the Olive Trees: Mandatory Palestine, the UK, and Reparations for Colonialism in International Law, Journal of the History of International Law / Revue d'histoire du droit international, 23 December 2022.
[185] Geneva Convention IV, article 64 and Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague (1907) ('Hague

found that Israel has exercised regulatory authority as an occupying power in a manner incompatible with *ius in bello*.[186] Rather than acting within the limits of lawful occupation, Israel has pursued a range of policies and practices that extend far beyond what is permissible under international humanitarian law.[187]

b) Second — the ICJ determined that 'Israeli policies and practices and the manner in which they are implemented and applied on the ground have significant effects on the legal status of the occupation through', *inter alia* 'the extension of Israeli sovereignty to certain parts of the occupied territory, their gradual annexation to Israeli territory, the exercise of Israeli governmental functions and the application of its domestic laws therein' and that 'Israel's policies and practices, including […] the comprehensive application of Israeli domestic law in East Jerusalem and its extensive application in the West Bank'[188] form part of the 'policies and practices [that] amount to annexation of large parts of the Occupied Palestinian Territory'.[189] Moreover, it found that Israel sought to acquire sovereignty over the Occupied Palestinian Territory 'contrary to the prohibition of the use of force in international relations and its corollary principle of the non-acquisition of territory by force'.[190]

c) Third – the ICJ addressed the right of the Palestinian people to the right to self-determination, affirming that this right entailed a host of

Regulations'), article 43; Israel's Unlawful Presence Advisory Opinion, paras. 134, 140, 159, 170 and 138-139 ('By its Government and Law Procedures Ordinance (No. 11), 5727-1967, of 28 June 1967, Israel declared that its domestic law, jurisdiction and administration were applicable to East Jerusalem […] In 1980, Israel adopted a Basic Law that proclaimed the 'complete and united Jerusalem' as the capital of Israel and the seat of its Government […] The same law prohibited the delegation of any powers concerning Jerusalem to 'a foreign political or governing power, or to another similar foreign authority, whether permanently or for a given period' […] the Court is not convinced that the extension of Israel's law to the West Bank and East Jerusalem is justified under any of the grounds laid down in the second paragraph of article 64 of the Fourth Geneva Convention'). See also e.g. article 43 of the Hague Regulations ('The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country').

[186] Israel's Unlawful Presence Advisory Opinion, para. 141 ('For these reasons, the Court considers that Israel has exercised its regulatory authority as an occupying Power in a manner that is inconsistent with the rule reflected in article 43 of the Hague Regulations and article 64 of the Fourth Geneva Convention').

[187] Israel's Unlawful Presence Advisory Opinion, paras. 119, 122, 133, 141, 147, 149, 154, 245, 265.

[188] Israel's Unlawful Presence Advisory Opinion, para. 135.

[189] Israel's Unlawful Presence Advisory Opinion, para. 173.

[190] Israel's Unlawful Presence Advisory Opinion, para. 179. See also A/Res/ES-10/24, Resolution ES-10/24: Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory, 19 September 2024, ('to seek to acquire sovereignty over an occupied territory, as shown by the policies and practices adopted by Israel, is contrary to the prohibition of the use of force in international relations and its corollary principle of the non-acquisition of territory by force and constitutes a violation of the obligation to respect territorial integrity and sovereignty under the Charter of the United Nations and international law').

associated rights, including *inter alia* the right to territorial integrity,[191] the right to the exercise of permanent sovereignty over natural resources, and the right of a people to freely determine its political status and pursue its economic, social and cultural development.[192] It recalled that '[e]very State has the duty to refrain from any forcible action which deprives peoples referred to [in that resolution] of their right to self-determination', and found that 'the effects of Israel's policies and practices […] and its exercise of sovereignty over certain parts of the Occupied Palestinian Territory, particularly the West Bank and East Jerusalem, constitute an obstruction to the exercise by the Palestinian people of its right to self-determination' and that this 'prolonged deprivation of the Palestinian people of its right to self-determination, constitute[s] a breach of this fundamental right'.[193] The right to self-determination entails concrete rights and concrete associated obligations in the *here and now*.

d) Fourth – the ICJ concluded 'that occupation cannot be used in such a manner as to leave indefinitely the occupied population in a state of suspension and uncertainty, denying them their right to self-determination while integrating parts of their territory into the occupying Power's own territory. The Court considers that the existence of the Palestinian people's right to self-determination cannot be subject to conditions on the part of the occupying Power, in view of its character as an inalienable right.'[194]

[191] Israel's Unlawful Presence Advisory Opinion, para. 78 ('from a legal standpoint, the Occupied Palestinian Territory constitutes a single territorial unit, the unity, contiguity and integrity of which are to be preserved and respected (General Assembly resolution 77/247, para. 12; article XI of the Oslo II Accord; General Assembly resolution ES-10/20 (2018), sixteenth preambular paragraph; Security Council resolution 1860 (2009), second preambular paragraph; Security Council resolution 2720 (2023), fourth preambular paragraph)'); and para. 237 ('the right to territorial integrity is recognized under customary international law as 'a corollary of the right to self-determination' […]').

[192] Israel's Unlawful Presence Advisory Opinion, para. 237 (the right to territorial integrity), para. 240 (the right to exercise permanent sovereignty over natural resources), para. 241 (right of a people freely to determine its political status and to pursue its economic, social and cultural development). See also Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory (Request for an Advisory Opinion), Written Statement of the League of Arab States, 28 February 2025, para. 48.

[193] Israel's Unlawful Presence Advisory Opinion, paras. 255-257.

[194] Israel's Unlawful Presence Advisory Opinion, para. 257.

100. In other words, any alternative finding to the fact that plenary jurisdiction is and has been residing with the Palestinian people and their internationally-recognised representative — the State of Palestine — based on a theory that such plenary jurisdiction could only be granted to the Palestinian people and the State of Palestine pending Israel's consent through bilateral negotiations, would give legal effect to Israel's wrongful acts as described above. It would permit Israel to subject 'the Palestinian people's right to self-determination […] to conditions on the part of the occupying Power', and also incentivise Israel to maintain its exercise of duress through its unlawful use of force[195] in order to obtain further concessions from the State of Palestine and the Palestinian people[196] by virtue of its "sustained abuse […] of its position as an occupying Power.'[197]

2. Israel cannot derive jurisdiction from its unlawful occupation

101. Israel further asserts that, where there is no plenary jurisdiction, Palestine could only 'transfer',[198] to the Court the jurisdictional powers it was permitted under the interim Oslo Accords,[199] and not those powers that Israel 'retained' subject to that agreement.[200]

102. Not only can Israel not 'retain' powers it never had,[201] but this assertion fails to note that the ICJ found that 'Israel's continued presence in the Occupied Palestinian Territory is unlawful.'[202] Where an occupation has been deemed unlawful, *all powers* exercised by the occupying power in the occupied territory

[195] Israel's Unlawful Presence Advisory Opinion, para. 179 ('It is the view of the Court that to seek to acquire sovereignty over an occupied territory, as shown by the policies and practices adopted by Israel in East Jerusalem and the West Bank, is contrary to the prohibition of the use of force in international relations and its corollary principle of the non-acquisition of territory by force'); see also paras. 267 and 274.
[196] See article 52 VCLT (on obtaining agreements through the unlawful use of force). See further ICC-01/18-282, League of Arab States Written Observations Pursuant to Rule 103, 6 August 2024, paras. 17-28.
[197] Israel's Unlawful Presence Advisory Opinion para. 261.
[198] Conversely, see *supra*., paragraphs 80 – 93.
[199] Jurisdiction Challenge, para. 86.
[200] See e.g. Jurisdiction Challenge, para. 88.
[201] *Supra*., paragraphs 96 – 99.
[202] Israel's Unlawful Presence Advisory Opinion, paras. 266 and 285 (3).

by virtue of its control over that territory as an occupying power become illegal as a matter of *the ius ad bellum* — irrespective of their nature under the *ius in bello*.[203] Israel therefore could not lawfully 'retain' or exercise any jurisdictional powers in the Occupied Palestinian Territory; and any *de facto* retention or exercise by it of such powers would constitute its continuation of an internationally wrongful act. Israel's arguments in that regard could therefore not be accepted without recognising as lawful Israel's continuation of its internationally wrongful acts.

103. Moreover, Israel's *de facto* and unlawful exercise of any jurisdiction powers can constitute no basis for limiting the Court's jurisdiction in the *Situation of the State of Palestine*, as else — absurdly — any occupying power unlawfully usurping jurisdiction powers in a territory occupied by it would, in so doing, effectively exclude any possibility of that territory falling under the jurisdiction of the Court except by virtue of a referral by the United Nations Security Council. Such a reading would incentivise the commission of core international crimes. It is evident that this is not the correct reading of the Rome Statute.

V. CONCLUSION

104. The Court is once again seized with the question of its territorial jurisdiction in the *Situation in the State of Palestine*. This time, the matter arises under the auspices of article 19(2)(c) at the behest of a State that has never accepted, and openly declares it will never accept, the jurisdiction of the Court. Its purported request for review is therefore manifestly inadmissible. It fails to

[203] Israel's Unlawful Presence Advisory Opinion para. 251; see also Presence and Activities of the United Nations, Advisory Opinion Request, Verbatim CR 2025/6, 29 April 2025), pp. 16-18, paras. 2-14. Presence and Activities of the United Nations, Advisory Opinion Request, Written Statement of Bolivia, 28 February 2025, paras. 40-41.

meet the legal threshold under article 19(2)(c), and on that basis alone, must be dismissed.

105. Nor is there any basis to revisit — let alone depart from — the Chamber's authoritative and reasoned determination under article 19(3). That decision remains authoritative and binding. Israel has presented no compelling legal or factual grounds that would justify reopening it or altering its outcome in any respect.

106. Despite efforts by some States and entities to cast doubt on the clarity of the Court's jurisdiction, the matter is straightforward. The State of Palestine stands in the same position as the other 123 States Parties to the Rome Statute: it has accepted the Court's jurisdiction, and the Court may lawfully exercise that jurisdiction within the bounds of its treaty-based mandate.

107. Israel's competence to investigate and prosecute crimes committed by its nationals does not derive from its occupation of Palestinian territory nor from any interim agreement between the State of Palestine and the occupying power. Rather, it stems from the nationality of the perpetrators themselves— among them Messrs Netanyahu and Gallant. If Israel had any genuine intention of exercising that competence in relation to the crimes at issue, it would have done so. Its failure to act, coupled with a deliberate policy of impunity promoted by its leadership, makes clear that Israel's present challenge is not a good faith effort to uphold the law. Instead, it is a political manoeuvre designed to shield its nationals from accountability and obstruct justice for victims of war crimes, crimes against humanity, and genocide committed against Palestinians.

Respectfully submitted,

Ambassador Ammar Hijazi

Permanent Representative of the State of Palestine

To International Organizations in The Hague

Dated this 27 June 2025

At The Hague, The Netherlands