



AL - HAQ

AFTER THE PRE-TRIAL CHAMBER DECISION:

PALESTINE

AND TERRITORIAL JURISDICTION
at the International Criminal Court





Al-Haq - 54 Main Street 1st & 2nd Fl. - Opp. Latin Patriarchate
Saint Andrew's Evangelical Church - (Protestant Hall)
P.O.Box: 1413 - Ramallah - West Bank - Palestine
Tel: + 970 2 2954646/7/9
Fax: + 970 2 2954903
www.alhaq.org

Author	Pearce Clancy
ISBN	978-9950-327-72-6
Design	Hamza Dado
Publisher	Al-Haq - © All Rights Reserved

Note

This is an updated version of a previous Q&A published in April 2020. The current version has been updated to incorporate subsequent events.

Al-Haq - © All Rights Reserved

Any quotation of up to 500 words may be used without permission provided that full attribution is given. Longer quotations or entire chapters or sections of this study may not be reproduced or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, or stored in any retrieval system of any nature, without the express written permission of Al-Haq.

TABLE OF CONTENTS

I.	Introduction	4
II.	What is the International Criminal Court?	6
III.	What is the “Situation in the State of Palestine”?	8
IV.	What is a Preliminary Examination, and How is it Different to an Investigation?	12
V.	What are Amicus Curiae Submissions?	15
VI.	Have Victims Participated?	17
VII.	What was the Pre-Trial Chamber being asked to decide?	18
VIII.	What did the Pre-Trial Chamber decide in 2021 ?	22
IX.	Why does the Court have jurisdiction in Palestine but not in other situations where international crimes are being committed?	25
X.	Did the Pre-Trial Chamber rule that Palestine is a state under international law?	26
XI.	What did the Pre-Trial Chamber say about the Oslo Accords?	27
XII.	What was the reaction to the decision?	28
XIII.	What now?	31
XIV.	Where Can I Stay Updated?	33
XV.	Endnotes	34



Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity¹

-Preamble, Rome Statute of the International Criminal Court

The International Criminal Court (ICC) was established as a means for victims to pursue justice and accountability for the large-scale commission of international crimes. In doing so, the Court seeks to end the culture of impunity which has protected those most responsible for atrocity crimes, such as genocide, crimes against humanity, war crimes and the crime of aggression.

The commission of such international crimes has been commonplace in Palestine since 1948, and in particular since 1967. Forced displacement, the excessive and deadly use of force, the construction and maintenance of an Annexation Wall and illegal Israeli settlements, the closure of Gaza, Operation Protective Edge of 2014, the attacks and killing of unarmed civilian protestors as part of the Great Return March, and more, have been either ignored or approved by the Israeli military and civilian governmental hierarchies.²

At present, Palestinians live under occupation, in exile, and under an institutionalised regime of racial domination and oppression.³ House demolitions, raids by the Israeli military, attacks by Israeli settlers, and *de jure* and *de facto* annexation are everyday aspects of Palestinian life.

The process currently taking place at the ICC is therefore, for millions of Palestinians, an unprecedented chance for justice and accountability. This updated Q&A⁴ seeks to provide a comprehensive and accessible introduction for outside observers to the Situation in the State of Palestine before the ICC, and to allow for future developments in the pursuit of justice for Palestinians to be understood.



WHAT IS THE INTERNATIONAL CRIMINAL COURT?

The goal of the Court is “to put an end to impunity for the perpetrators of the most serious crimes of concern to the International Community as a whole and thus contribute to the prevention of such crimes”⁵

-Preamble, Rome Statute

The ICC is a permanent international court established to investigate and prosecute persons suspected of the most serious international crimes, namely war crimes, crimes against humanity, and the crimes of genocide and aggression.⁶ Based in The Hague, the Netherlands, the Court was established by the *Rome Statute of the International Criminal Court* and is made up of four main organs.⁷

The first is the Presidency, made up of three of the Court’s judges, and is broadly responsible for overseeing the administration of the ICC, excluding the Office of the Prosecutor (OTP), and the external relations of the Court as an international organisation.⁸

Second, the Chambers, or “Divisions” of judges, are made up of the Pre-Trial Chamber (PTC), Trial Chamber, and Appeals Chamber, and collectively serve as the ICC’s judicial arm.⁹ The PTC is responsible for judicial actions which take place before the opening of a trial, including authorising criminal investigations where necessary, deciding on various procedural issues which may arise, and the issuing of arrest warrants.¹⁰ It is the PTC that, at the time of writing, has responsibility for the situation in the State of Palestine. The Trial Chamber, meanwhile, is responsible for hearing and presiding over criminal trials related to international crimes, whereas the Appeals Chamber hears all issues which have been appealed from the PTC and Trial Chambers.¹¹

Third, the OTP is the organ responsible for investigating and prosecuting those suspected of war crimes, crimes against humanity, and the crimes of genocide and aggression, and is headed by the current Prosecutor, Ms Fatou Bensouda. The OTP, therefore, conducts all of the ICC’s preliminary examinations and criminal

investigations, and operates similar to a public prosecutor in domestic legal systems.¹² At the time of writing, Mr Karim Khan QC is due to take over the OTP in June 2021 following the end of Bensouda's nine-year term.¹³

Fourth, the Registry provides support to all other organs of the ICC and is broadly responsible for the day-to-day work in the Court's management and external affairs as an organisation.¹⁴

Additionally, the Assembly of States Parties (ASP) serves the Court's management oversight and legislative body, made up of states which have ratified and acceded to the *Rome Statute*. While not a primary organ, the ASP is responsible for issues such as the Court's budget, the election of Judges and of the Prosecutor, and drafting and adopting the Rules of Procedure and Evidence, as well as other secondary documents for the Court.¹⁵

Finally, it is worth mentioning the issue of legal representation for defendants and victims. The ICC does not have an organ which provides defence, which is instead fully independent and *ad hoc*, and may be chosen by each individual defendant.¹⁶ For victims, the Registry has set up a number of bodies to provide assistance, including the Victims Participation and Reparations Section, the Victims and Witnesses Section, the Office of Public Counsel for Victims, and the Trust Fund for Victims.¹⁷ Victims may be represented by a lawyer of their own choosing. For those unable to afford legal representation, the Court may make legal aid available, or provide for representation by the Office of Public Counsel for Victims, assistance free of charge.¹⁸ Applications to take part as a victim are submitted via a standard application form.¹⁹



WHAT IS THE “SITUATION IN THE STATE OF PALESTINE”?

The situation in Palestine is rapidly deteriorating and war crimes and crimes against humanity are allegedly frequently committed to entrench Israeli control over Palestinian territory and the Palestinian people.²⁰

-Al-Haq (2018)

The “Situation in the State of Palestine” also “Palestine situation” or “situation in Palestine” is the broad term given to the ICC’s activities with regards international crimes, notably war crimes and crimes against humanity, being perpetrated in Palestine – “situations” are part of the terminology used by the Court to categorise preliminary examinations, criminal investigations, trials, and other functions of the ICC geographically. As such, other notable situations include those of Afghanistan, Sudan, Bangladesh/Myanmar, and more.

Palestine’s history at the ICC is complicated, and stretches back to 22 January 2009, when the State of Palestine submitted its first declaration pursuant to Article 12(3) of the *Rome Statute*, which allows states to accept the jurisdiction of the ICC. Article 12 generally sets out the requirements which need to be met for a situation to fall under the jurisdiction of the Court, whereas Article 12(3) specifically allows for states which are not Party to the *Rome Statute* to accept the Court’s jurisdiction.²¹

Immediately following this, also in 2009, the Court’s first Prosecutor, Luis Moreno Ocampo, opened a preliminary examination into Palestine, but on 3 April 2012 announced that he was declining to proceed to investigation, due to his uncertainty as to whether the State of Palestine constituted a state under international law.²² However, the former Prosecutor said that “[t]he Office could in the future consider allegations of crimes committed in Palestine, should competent organs of the United Nations ... resolve the legal issue” of statehood.²³

Accordingly, on 29 November 2012, the UN General Assembly adopted Resolution 67/19, recognising Palestine’s “non-member observer State status in the United

Nations”,²⁴ and further encouraging the UN Security Council to allow Palestine to become a full Member State.²⁵

The State of Palestine lodged its second Article 12(3) declaration on 1 January 2015, accepting the ICC’s jurisdiction for international crimes committed within its territory from 13 June 2014.²⁶ The very next day, 2 January 2015, Palestine deposited its accession instrument with the UN Secretary-General, and as such became a State Party to the *Rome Statute*.²⁷ As a consequence of this, the Prosecutor opened the second preliminary examination into the Situation in the State of Palestine on 16 January 2015.²⁸

Following its accession, the State of Palestine has taken part in the ASP. Palestine served as the 30th State to ratify Resolution RC/6, which activated the Court’s jurisdiction over the crime of aggression, has contributed towards the Court’s budget, and has voted on matters before the Assembly. Further, Palestine has served as a member of the ASP Bureau, an executive committee which assists the ASP in complying with its various mandates.²⁹

From 2015 to 2019, Prosecutor Fatou Bensouda conducted a preliminary examination into war crimes and crimes against humanity in the Occupied Palestinian Territory, detailed in the Office’s annual reports on preliminary examinations over multiple years.³⁰ Having concluded that war crimes were taking place in Palestine, that these crimes are admissible in line with the rules of the ICC, and that an investigation would serve the interests of justice, the Prosecutor announced the closing of the preliminary examination on 20 December 2019.³¹ However, before opening an investigation, the Prosecutor made a submission to the PTC, under Article 19(3) of the *Rome Statute*, asking it to confirm that the territory the Court has jurisdiction over in the Situation in the State of Palestine, encompasses the West Bank, including East Jerusalem, and Gaza.

It was not strictly necessary for the Prosecutor to do this as it is within the Prosecutor’s power to open a formal investigation without seeking the approval of the Judges. The Prosecutor in the initial *Request* to the PTC, was satisfied that “the Court does indeed have the necessary jurisdiction in this situation”³² – rather, what the Prosecutor sought is *confirmation* of this fact. While supportive of the decision to move the situation forward, Palestinian human rights organisations noted that it would have been preferable to simply open an investigation, and deal with issues of jurisdiction as they arise.³³

The Prosecution respectfully requests Pre-Trial Chamber I to rule on the scope of the Court's territorial jurisdiction in the situation of Palestine and to confirm that the "territory" over which the Court may exercise its jurisdiction under article 12(2)(a) comprises the West Bank, including East Jerusalem, and Gaza.³⁴

-Prosecutor of the International Criminal Court (2020)

Faced with the question of territorial jurisdiction, the PTC, after being prompted by the Prosecutor,³⁵ invited *amicus curiae* submissions, in line with Rule 103 of the *Rules of Procedure and Evidence*.³⁶ After submissions were made in March 2020 by states, international organisations, victims' representatives, individuals, and non-governmental organisations, the PTC accepted and received a total of 43 *amici* briefs.³⁷ The Prosecutor responded to these submissions in April 2020.³⁸

Final submissions were requested on 26 May 2020, when the PTC requested information from the State of Palestine, following a statement from President Abbas made in response to Israeli plans to formally annex vast swaths of the West Bank,³⁹ declaring that the Palestine Liberation Organization and State of Palestine were no longer considering themselves bound by their agreements with Israel and the United States.⁴⁰ The PTC sought information from the State of Palestine regarding this statement's implications for the Oslo Accords, and invited Israel to respond.⁴¹ Palestine responded in June 2020,⁴² as did the Prosecutor⁴³ – Israel opted not to engage with the Chamber's request.

Following the Court's movement on both Palestine and Afghanistan,⁴⁴ the United States' (US) Trump administration took direct action against the Court. On 11 June 2020, President Trump signed Executive Order 13928, which allowed for targeted sanctions against any "foreign person" who has directly engaged with the ICC to investigate, arrest, detain, or prosecute any personnel belonging to the US or its allies, or has otherwise "materially assisted, sponsored, or provided financial, material, or technological support" to such persons. Troublingly, these sanctions may also be targeted against their "immediate family members".⁴⁵ Although the Executive Order was met with widespread condemnation,⁴⁶ it was activated upon the designation of sanctions directed against the Prosecutor Fatou Bensouda and the Head of the ICC's Jurisdiction complementarity and Cooperation Division, Phakiso Mochochoko.⁴⁷ At the time of writing the Executive Order, and its subsequent sanctions, have not been rescinded by President Biden.⁴⁸

On this basis, the Chamber finds 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.⁴⁹

-Pre-Trial Chamber I (2021)

Against the backdrop of elections for the Court's next Prosecutor and the change in administration in the United States, the PTC's decision was handed down on 5 February 2021. The PTC found that the Court has full territorial jurisdiction over the West Bank, including East Jerusalem, and the Gaza Strip, and that the Prosecutor is free – and even obliged, based on the findings of her preliminary examination⁵⁰ – to proceed to investigate the alleged commission of international crimes, inclusive of war crimes and crimes against humanity, in the Occupied Palestinian Territory. Accordingly, the Prosecutor announced the formal opening a criminal investigation on 3 March 2021.⁵¹



WHAT IS A PRELIMINARY EXAMINATION, AND HOW IS IT DIFFERENT TO AN INVESTIGATION?

On behalf of the Palestinian victims that we represent, we urge in the interests of justice, that an impartial and transparent investigation is opened without delay, where the senior Israeli politicians and military commanders who through their policies and plans have perpetrated grave crimes against the Palestinian people, are held to account.⁵²

-Al-Haq, Al-Mezan, and PCHR (2019)

Preliminary Examinations

There are a number of ways a preliminary examination can begin. Situations may be referred by the UN Security Council, by a State Party to the *Rome Statute*, or by a State on the basis of an Article 12(3) declaration, such as in the case of Palestine.⁵³ Additionally, the Prosecutor may begin an examination acting *proprio motu*, or on her own initiative, into crimes within the ICC's jurisdiction,⁵⁴ in which event she needs express authorisation from the PTC before proceeding to investigation.⁵⁵ This is not necessary in any other scenario.

It is important to be aware that a preliminary examination is **not** the same as a criminal investigation. Rather, a preliminary examination is conducted by the OTP to see if a number of criteria, noted below, are met – based on this, the Prosecutor may then proceed towards opening an investigation, or closing the situation entirely.

In carrying out preliminary examinations, the OTP is broadly guided by the principles of independence, impartiality, and objectivity,⁵⁶ in attempting to pursue accountability, an end to impunity, and to contribute towards the prevention of international crimes.⁵⁷

The Prosecutor has outlined her procedure for preliminary examinations as being carried out in four distinct “phases”. “Phase 1” involves initial assessments

as to whether alleged crimes are “manifestly outside the jurisdiction of the Court” or not, and whether they are the subject of pre-existing examinations or investigations.⁵⁸

“Phase 2” concerns questions of jurisdiction, including temporal, material, and territorial or personal jurisdiction.⁵⁹ Each of these forms of jurisdiction must be satisfied for the examination to progress, unless the situation has been referred by the UN Security Council which has the power to “set aside the territorial and personal parameters” of the Court.⁶⁰

“Phase 3” involves assessments as to complementarity and gravity. Given that the role of the Court is to only intervene where states have failed to meet their international obligations, the principle of complementarity requires the state concerned to be “unwilling or unable genuinely to carry out the investigation or prosecution” into the relevant crimes.⁶¹ Such scenarios may arise where the state is shielding persons suspected of international crimes, where there is unjust delay into beginning investigations, or where there is evidence of the commission of investigations or proceedings which are not independent or impartial.⁶² Additional scenarios have arisen where governments have been unable to hold to account armed opposition groups.

Gravity, meanwhile, requires that the “scale, nature, manner of commission, and impact” of the crimes warrant the involvement of the ICC.⁶³ This is assessed in light of the number of victims, the extent of damage and suffering caused, in particular, bodily and psychological harm, the means employed in the execution of such crimes, among other factors.⁶⁴

Finally, “Phase 4” concerns the “interests of justice”. While this term has not yet been defined, the Prosecutor does not need to prove that there is an interest of justice in proceeding but must rather determine that doing so would not be contrary to such interests.⁶⁵ It is the official policy of the OTP that the “interests of justice” will only be invoked in exceptional circumstances, and that the presumption is in favour of investigation and prosecution.⁶⁶

Criminal Investigations

Once the above Phases are complete, the Prosecutor can usually proceed to investigation, save for instances where she has acted *proprio motu* and needs authorisation from the PTC. Whereas preliminary examinations largely deal with procedural issues, during the investigation stage the Prosecutor will begin investigating substantive crimes and identifying specific perpetrators. This includes the collection and examination of evidence,⁶⁷ the interviewing of suspects, victims, and witnesses,⁶⁸ and ultimately the charging⁶⁹ and arrest⁷⁰ of accused persons.



WHAT ARE *AMICUS CURIAE* SUBMISSIONS?

The *amicus curiae* mechanism is important for building and maintaining the legitimacy of any international criminal tribunal, but especially for a permanent tribunal such as the ICC.⁷¹

-Sarah Williams, Hannah Woolaver, and Emma Palmer (2020)

Amicus curiae, or “friend of the Court”, submissions are essentially expert opinions which a court, including the ICC, may request on complicated points of law. While the system, particularly at the ICC, has come under critical scrutiny⁷² it is generally considered to be an important contributor towards the Court’s legitimacy.

When the Court considers that it would be helpful to receive *amicus curiae* submissions, it may solicit requests to file from observers and experts who are interested in doing so. Following this, the Chamber has full discretion over which requests, and how many, to accept.⁷³ Previous to the Situation in the State of Palestine, the Afghanistan situation held the record for the highest number of accepted *amici* at 15, including from one state, namely Afghanistan.⁷⁴

In the Situation in the State of Palestine, the Prosecutor herself requested the PTC to allow for *amici* due to the number of “interested and relevant parties”. She told the Chamber that “the volume of potentially relevant practice and scholarship underlines the desirability of having an open, participatory process to settle this question”.⁷⁵

As noted above, in the Palestine situation the PTC accepted a total of 43 *amici*, including seven from states: Australia,⁷⁶ Austria,⁷⁷ Brazil,⁷⁸ the Czech Republic,⁷⁹ Germany,⁸⁰ Hungary,⁸¹ and Uganda.⁸² Regrettably, all states which submitted individual *amici* did so in opposition to an investigation. However, two separate *amici* from international organisations the League of Arab States,⁸³ representing 22 states, and the Organisation of Islamic Cooperation,⁸⁴ representing 57 states, with some overlap between the two, supported the opening of a formal investigation. The State of Palestine, as the State Party concerned, also submitted its observations.⁸⁵

Further submissions, with a roughly equal number on each side, were made by prominent academics, including from Palestine,⁸⁶ bar associations,⁸⁷ civil society organisations,⁸⁸ and, notably, the Office of Public Counsel for Victims.⁸⁹



HAVE VICTIMS PARTICIPATED?

Stresses the central importance that the Rome Statute accords to the rights and needs of victims, in particular their right to participate in judicial proceedings and to claim reparations, and emphasizes the importance of informing and involving victims and affected communities in order to give effect to the unique mandate of the Court towards victims⁹⁰

-Assembly of States Parties to the Rome Statute of the International Criminal Court (2017)

Yes – numerous representatives for Palestinian victims have submitted their observations, similar to those of *amicus curiae*. These submissions provide the views and concerns of victims, in line with the question of territorial jurisdiction posed by the PTC.⁹¹

The ICC recognises two types of victims who may participate at any stage of Court proceedings: individuals who have suffered harm as a result of international crimes, and organisations or institutions when their property dedicated to specific purposes, such as religion, education, art, science, humanitarianism, and medical treatment, is similarly harmed.⁹²

Victims submissions in the situation in the State of Palestine have included submissions on behalf of individual Palestinian victims from the West Bank, including East Jerusalem, and the Gaza Strip from eminent international and Palestinian lawyers, including Raji Sourani, Nada Kiswanson van Hookydonk, Fergal Gaynor, Chantal Meloni, Katherine Gallagher, Liesbeth Zegveld, Steven Powles and Sahar Frances submitting on behalf of Addameer, the Palestinian Prisoner Support and Human Rights Association. These victims will continue to be represented at every subsequent stage of the proceedings.



WHAT WAS THE PRE-TRIAL CHAMBER BEING ASKED TO DECIDE?

As noted above, the Prosecutor requested the PTC to confirm that the Court's territorial jurisdiction extended over the West Bank, including East Jerusalem, and the Gaza Strip. However, as the statehood of Palestine remains a controversial issue due to non-recognition by "powerful" states,⁹³ the central issue addressed by the Prosecutor, and debated in *amicus curiae* submissions, centred around this question.

In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(b) The State of which the person accused of the crime is a national.

-Article 12(2), Rome Statute

Article 12(2) of the *Rome Statute*, the legal basis for the Court's jurisdiction in the Occupied Palestinian Territory, expressly uses the term "State" when setting out the various forms of jurisdiction the Court may have. Numerous *amicus curiae* submissions,⁹⁴ including states, as well as the Attorney General of Israel in a December 2019 position paper,⁹⁵ took this as meaning that the Court could not exercise jurisdiction over the West Bank, including East Jerusalem, and the Gaza Strip, as they argue that Palestine does not constitute a state.

Al-Haq, along with its partner organisations, the Palestinian Centre for Human Rights (PCHR), Al Mezan Center for Human Rights, and Al-Dameer Association for Human Rights, noted that Palestinian sovereignty over the West Bank, including East Jerusalem, and the Gaza Strip has been consistent since the British Mandate in the early 20th Century, having been in "abeyance" ever since.⁹⁶ Professor John Quigley, of Ohio State University, provides an extensive historical analysis on this.⁹⁷

Further submissions, such as those by Professors William Schabas⁹⁸ and Richard Falk,⁹⁹ argued that the PTC does not have the legal authority to make decisions on the statehood of a State Party to the *Rome Statute*. Accordingly, the Judges were to consider whether Palestine's status as a State Party is legitimate and should do so by looking at how Palestine acceded to the *Rome Statute*, rather than the wider legal framework governing the status of statehood.

... the International Court of Justice was able to distinguish between the sovereign territory of Israel and the occupied territory of Palestine.

*Cannot the Pre-Trial Chamber do the same thing, in order to respond to the Prosecutor's request?*¹⁰⁰

-Professor William Schabas (2020)

The second objection to Article 12(2)'s applicability was that the West Bank, including East Jerusalem, and the Gaza Strip are supposedly not to be understood as the territory of the State of Palestine. In *amici* submissions, challenges were made to the continuity of territorial claims made by the State of Palestine,¹⁰¹ that Palestine's jurisdictional claim cannot extend to territory annexed by the State of Israel,¹⁰² and that the Oslo Accords serve as a barrier to ICC jurisdiction.¹⁰³

The legal rules which apply to Palestine's territorial and jurisdictional claim, and therefore the ICC's jurisdiction, should be understood in connection to the right to self-determination enjoyed by the Palestinian people, as well as the obligation on the Court to interpret relevant legal principles in accordance with human rights norms,¹⁰⁴ and the object and purpose of the *Rome Statute*¹⁰⁵ to end impunity for international crimes.

*... the object and purpose of the Rome Statute and the jurisdiction regime of the ICC is to respect lawful and de jure, not unlawful ... de facto sovereignty through aggression, occupation, or colonization.*¹⁰⁶

-Professors Asem Khalil and Halla Shoaibi (2020)

The International Court of Justice has recognised the Palestinian right to self-determination to extend to the entirety of the Occupied Palestinian Territory, *i.e.* the West Bank, including East Jerusalem, and the Gaza Strip, and to be reinforced as a fundamental norm of international law, which creates a binding obligation on all States to bring the unlawful situation to an end.¹⁰⁷

The UN Security Council has recognised illegal Israeli settlements in the West Bank, including East Jerusalem, as being fundamentally incompatible with international law¹⁰⁸, and they may further be constitutive of the war crime of population transfer.¹⁰⁹ Professors Asem Khalil and Halla Shoaibi of Bir Zeit University show, in their *amicus* submission, that the Oslo Accords which divided the West Bank into Areas A, B, and C, cannot prevent the ICC from exercising jurisdiction – this is because, essentially, while Palestine does not have the physical power to enforce its laws in areas under the *de facto* control of Israel, it does have the *de jure* right to create laws in those areas, and this includes the right to provide the ICC with jurisdiction.¹¹⁰

The Gaza Strip, meanwhile, is well recognised as territory which remains under the occupation of Israel, and a part of the larger Palestinian territorial unit, and as such is also covered by the Palestinian right to self-determination.¹¹¹

This right, as well as the broader mission of the Court to end impunity, as noted by Al-Haq and its partners, clearly links the territory of Palestine to the territory over which the Palestinian people enjoy a right to self-determination – the West Bank, including East Jerusalem, and Gaza.¹¹² It follows from this that the territory the ICC may exercise jurisdiction over is the same.

The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.

-Article 19(3), Rome Statute

Finally, it is worthwhile to briefly outline legal uncertainties which existed surrounding the operation of Article 19(3). That this Article allows the Prosecutor to request confirmation as to jurisdiction is not controversial, however there was significant debate as to when the Prosecutor may do so. While the question of when this may be done is not addressed in the text of Article 19(3), the title of Article 19 appears to relate itself specifically to “Challenges to the jurisdiction of the Court or the admissibility of a case” (emphasis added).¹¹³ It was therefore not clear that the Prosecutor is capable of evoking Article 19(3) at such an early stage, before a “case” against a named defendant has begun to be built.

I conclude that article 19(3) of the Statute can be applied only when the proceedings have reached the stage of a case identified by the Prosecutor.¹¹⁴

-Judge Marc Perrin de Brichambaut (2018)

The Prosecutor previously sought a ruling on jurisdiction under Article 19(3) in the situation in Bangladesh/Myanmar, regarding the forced deportation of the Rohingya people from Myanmar into Bangladesh.¹¹⁵ However, in that decision the PTC did not believe it was necessary to “enter a definite ruling on whether article 19(3) of the Statute is applicable at this stage of the proceedings”, and instead proceeded under another provision of the *Rome Statute*.¹¹⁶ Meanwhile, in his partially dissenting opinion, Judge Marc Perrin de Brichambaut disagreed on this point.



WHAT DID THE PRE-TRIAL CHAMBER DECIDE IN 2021?

On the whole, the February 2021 decision of the Pre-trial Chamber agreed with the Prosecutor in ruling that the Court has full territorial jurisdiction over the State of Palestine, comprising the West Bank, including East Jerusalem, and the Gaza Strip. As the decision rules on quite specific legal questions, it is worthwhile to outline these in detail, as well as clarifying a number of points which have caused confusion.

In any event, the present proceedings are distinguishable from those pertaining to the 9 April 2018 Request ... with regard to the present request for a ruling on a question of jurisdiction, the Prosecutor has indicated that she 'is satisfied that there is a reasonable basis to initiate an investigation into the situation in Palestine, pursuant to article 53(1) of the Statute'.¹¹⁷

-Pre-Trial Chamber I (2021)

First, the PTC confirmed that Article 19(3) is applicable at this stage in the Situation in the State of Palestine.

In doing so, the Chamber distinguished the Palestine situation from that of Bangladesh/Myanmar by noting that while in that situation the request was made during the Prosecutor's preliminary examination, the Situation in the State of Palestine is at a more advanced stage. Based on her assessment that there is a reasonable basis to proceed, as well as having identified, in her initial *Request*, a number of potential cases which may be pursued, "the Prosecutor is, in principle, obliged to initiate an investigation",¹¹⁸ and as such "although the Prosecutor has not officially announced that she has opened an investigation into the present Situation, such an investigation has, in principle, already been opened as a matter of law".¹¹⁹ In his separate opinion, Judge Marc Perrins de Brichambaut, who was also a Judge in Bangladesh/Myanmar, agreed.¹²⁰

Palestine is therefore a State Party to the Statute, and, as a result, a 'State' for the purposes of article 12(2)(a) of the Statute. These issues have been settled by Palestine's accession to the Statute.¹²¹

-Pre-Trial Chamber I (2021)

Second, the PTC confirmed that the State of Palestine is a full and valid State Party to the Rome Statute.

It noted that the State of Palestine had, after the adoption of Resolution 67/19 by the UN General Assembly in 2012, followed the proper procedure for accession to the *Rome Statute* and becoming a member of the ICC. Crucially, during this procedure, Palestine's accession document was accepted by the UN Secretary-General,¹²² and was not challenged by any member of the ASP through formal channels envisaged under the *Rome Statute*.¹²³

As it does not have the authority to judicially review decisions of the Assembly, Palestine's accession was accepted by the PTC.¹²⁴ The Chamber similarly stressed that it does not have the authority to make rulings on questions of statehood under substantive international law – accordingly, its ruling is solely relevant for the purposes of setting out the scope of a criminal investigation.¹²⁵

Accordingly, it is the view of the Chamber that the above conclusion – namely that the Court's territorial jurisdiction in the Situation in Palestine extends to the territories occupied by Israel since 1967 on the basis of the relevant indications arising from Palestine's accession to the Statute – is consistent with the right to self-determination.¹²⁶

-Pre-Trial Chamber I (2021)

Finally, the PTC confirmed that the Court's territorial jurisdiction applies to the Occupied Palestinian Territory in full, inclusive of the West Bank, including East Jerusalem, and the Gaza Strip.

The Chamber stressed the importance of drawing on internationally recognised principles of international human rights law,¹²⁷ in particular the right of self-determination of the Palestinian people, in reaching this conclusion.¹²⁸ As such, resolutions of the UN General Assembly, Security Council, and the 2004 advisory opinion of the International Court of Justice were all widely cited. It is important to point out that the PTC further alluded to the importance of retaining the integrity of the Occupied Palestinian Territory as a single territorial unit and the invalidity of attempts to alter its demographic composition.¹²⁹

The Court took care to confirm that its finding with regards to the Court's territorial jurisdiction does not amount to a delineation of the borders of the

State of Palestine. In addition, the Court devoted a section to confirming the argument made in a number of *amicus curiae* submissions that the Oslo Accords are immaterial for the question of jurisdiction and do not prejudice the authority of the Prosecutor to investigate all international crimes committed in the Occupied Palestinian Territory, including those committed within Area C of the West Bank.¹³⁰



WHY DOES THE COURT HAVE JURISDICTION IN PALESTINE BUT NOT IN OTHER SITUATIONS WHERE INTERNATIONAL CRIMES ARE BEING COMMITTED?

The ICC can gain jurisdiction in three ways. First, the Court may exercise *territorial jurisdiction* over all international crimes which have been committed within the jurisdiction of a State Party to the *Rome Statute*, including on board naval vessels or aircrafts flying the State Party's flag.¹³¹ This is the case in the Situation in the State of Palestine – as the international crimes of concern are taking place in the Occupied Palestinian Territory, the Court may exercise jurisdiction over the perpetrators regardless of whether they are Israeli, Palestinian, or of another nationality. As such, and despite the fact that Israel is not a State Party, its nationals may be investigated and prosecuted by the ICC on the basis of its territorial jurisdiction.

Second, the Court may exercise *personal jurisdiction* over the nationals of a State Party.¹³² When personal jurisdiction is engaged, the conduct in question may take place within the territory of a non-State Party and still be the legitimate subject of an investigation and prosecution. For example, if international crimes were committed by a Palestinian on the territory of a non-State Party, these would be the legitimate subject of an investigation, and potentially prosecution, by the ICC.

Finally, the ICC may exercise jurisdiction in a situation referred to it by the UN Security Council acting under Chapter VII of the *Charter of the United Nations*.¹³³ As noted above, the Council may override the Court's typical limitations on personal and territorial jurisdiction.

Following and leading up to the decision of the Pre-Trial Chamber in February 2021, criticisms were made that the Court was proceeding with the investigation of Israeli crimes while ignoring other situations of protracted and ongoing international crimes and human rights violations. Examples include China's treatment of Uyghur Muslims,¹³⁴ and state misconduct in Iran and Syria.¹³⁵ In these situations, the states in question are not State Parties to the *Rome Statute*, nor has the UN Security Council made referrals to the ICC – in the case of Syria, an ICC referral is particularly unlikely in the face of the Russian and Chinese right of veto.¹³⁶



DID THE PRE-TRIAL CHAMBER RULE THAT PALESTINE IS A STATE UNDER INTERNATIONAL LAW?

In order to avoid any misunderstanding, the Chamber wishes to underline that these findings are without prejudice to any matters of international law arising from the events in the Situation in Palestine that do not fall within the Court's jurisdiction.¹³⁷

-Pre-Trial Chamber I (2021)

The Chamber took care to stress that its ruling on Palestine's validity as a State Party to the *Rome Statute* was not an assessment of Palestine's statehood under general international law. The Chamber recognised its limited authority on matters such as the substantive concept of statehood. The Court's role is to try individuals suspected of international crimes, and the question asked of the Chamber in this instance was to confirm the territorial jurisdiction of the Court – attempting to make a ruling on whether Palestine constitutes a state as a matter of general international law would be *ultra vires*, or outside of the Court's jurisdiction.

The Court is not constitutionally competent to determine matters of statehood that would bind the international community. In addition, such a determination is not required for the specific purposes of the present proceedings or the general exercise of the Court's mandate.¹³⁸

-Pre-Trial Chamber (2021)

Accordingly, the Court ruled that the State of Palestine is a State Party to the *Rome Statute* without prejudice to whether it constitutes a state for all other purposes of international law. In its decision, the PTC made reference to opinions and decisions from other international bodies, namely the International Court of Justice and the UN Committee for the Elimination of Racial Discrimination, which similarly did not consider it necessary to make a determination on the substantive legal question of statehood while faced with questions regarding jurisdiction and other matters in Palestine, and in the case of the International Court of Justice, Kosovo.¹³⁹



WHAT DID THE PRE-TRIAL CHAMBER SAY ABOUT THE OSLO ACCORDS?

... the Chamber finds that the arguments regarding the Oslo Agreements in the context of the present proceedings are not pertinent to the resolution of the issue under consideration, namely the scope of the Court's territorial jurisdiction in Palestine.¹⁴⁰

-Pre-Trial Chamber (2021)

While the PTC concluded that the Oslo Accords are not relevant for the purpose of analysing the extent of the Court's territorial jurisdiction in the Occupied Palestinian Territory, it did note that they may be relevant later in the lifespan of the Situation in the State of Palestine.

More specifically, the Chamber indicated that the Oslo Accords would be key to future litigation regarding Part 9 of the *Rome Statute* on International Cooperation and Judicial Assistance. The PTC drew attention to Articles 97 and 98 of the *Rome Statute*, which set out the procedure a State Party must follow should a request from the Court contradict a pre-existing legal obligation.¹⁴¹ The Chamber did not specify the exact implications of this for future cooperation requests with regards measures such as arrest warrants. However, the Chamber did note that "interested States" may raise these issues at a later time.



WHAT WAS THE REACTION TO THE DECISION?

The decision was immediately welcomed by the State of Palestine, which described it as “historic day for the principle of criminal accountability.”¹⁴² Conversely, Israel condemned the decision, accusing the Court of having “succumbed to politicization, violated its mandate and allowed itself to be dragged into a political conflict”¹⁴³ – in a video published on social media, Israel’s Prime Minister, Benjamin Netanyahu, baselessly referred to the decision as “pure anti-Semitism”.¹⁴⁴

A number of states have made statements commenting on the decision, and in some instances taking the unfortunate step of opposing the Court’s conclusion. Statements by states include:

- On 6 February 2021, Australia’s Minister for Foreign Affairs released a statement announcing that “Australia has deep concerns with the ruling of the Pre-Trial Chamber of the International Criminal Court that it has jurisdiction in relation to the ‘Situation in Palestine’” and reiterating “that Australia does not ... recognise the right of any so-called ‘State of Palestine’ to accede to the Rome Statute. The International Criminal Court should not exercise jurisdiction in this matter.”¹⁴⁵
- On 7 February, Canada’s Minister of Foreign Affairs released a statement outlining that “Canada strongly supports the International Criminal Court (ICC) and the important work that it does as a key pillar of the rules-based international order”, however stressing that “Canada’s longstanding position remains that it does not recognize a Palestinian state and therefore does not recognize its accession to international treaties, including the Rome Statute of the International Criminal Court.”¹⁴⁶
- On 9 February, Germany’s Minister for Foreign Affairs, Heiko Maas, made a statement on Twitter outlining that Germany’s “legal view on jurisdiction of the International Criminal Court regarding alleged crimes committed in the Palestine territories remains unchanged: the court has no jurisdiction because of the absence of the element of Palestinian statehood required by international law.”¹⁴⁷

- On 9 February, the Czech Republic released a statement saying it “fully respects [the Court’s] independent decision-making”, but stressed that it “believes that Palestine has not fulfilled yet all criteria of statehood under international law”.¹⁴⁸
- On 9 February, Hungary’s Minister for Foreign Affairs, Péter Szijjártó, released a statement on Facebook confirming that he had spoken to Israel’s Minister of Foreign Affairs, and voiced his opposition to the PTC’s decision.¹⁴⁹

In particular, it is worthwhile to note the statement made by the United States on 5 February 2021, which read:

“As we made clear when the Palestinians purported to join the Rome Statute in 2015, we do not believe the Palestinians qualify as a sovereign state, and therefore are not qualified to obtain membership as a state, or participate as a state in international organizations, entities, or conferences, including the ICC.

We have serious concerns about the ICC’s attempts to exercise its jurisdiction over Israeli personnel. The United States has always taken the position that the court’s jurisdiction should be reserved for countries that consent to it, or that are referred by the UN Security Council.”¹⁵⁰

Statements made by international organisations include:

- On 8 and 9 February 2021, the European Commission’s spokesperson on external affairs noted that “The EU has taken careful note of the decision” and stressed that “The EU is a strong supporter of the ICC and of its independence.”¹⁵¹
- 7 February 2021, the Organization of Islamic Cooperation, consisting of 57 member states, released a statement and “welcomed the ruling by the Pre-Trial Chamber of the International Criminal Court (ICC) that the territorial scope of the Court’s jurisdiction in the state of Palestine extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East al-Quds. The OIC hailed the ruling as a victory for international law and legitimacy.”¹⁵²

The UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 strongly welcomed the PTC’s decision, calling it a

“significant step forward in the quest for justice and accountability,” and stressed that “had international legal obligations been purposively enforced years ago, the occupation and the conflict would have been justly resolved and there would have been no need for the ICC process.”¹⁵³

Finally, the reception of the decision from Palestinian, regional, and international civil society has been overwhelmingly positive. These include:

- On 5 February, Amnesty International referred to the decision as “historic” and called on “the ICC to urgently undertake effective outreach to the affected communities in the OPT, informing victims of their rights to participate in the ICC’s cases and – on conviction of an accused person – to gain reparations.”¹⁵⁴
- On 6 February, Al-Haq, Al Mezan Center for Human Rights, the Palestinian Centre for Human Rights, and Al-Dameer Association for Human Rights welcomed the decision, underlining the need for “third States and the international community to fully cooperate with the Office of the Prosecutor as per the obligations set forth in Article 86 of the Rome Statue, and in line with Common Article 1 of the four Geneva Conventions and Article 146 of the Fourth Geneva Convention, to ensure the arrest and transfer to the Hague of persons investigated and accused of international crimes in the oPt, to prevent the further continuation of international crimes against the Palestinian people.”¹⁵⁵
- On 6 February, Human Rights Watch also welcomed the decision, noting that “the ICC has a critical role to play as a court of last resort in situations like Palestine where recourse to domestic justice has been foreclosed”.¹⁵⁶
- On 9 February, FIDH, the International Federation for Human Rights, similarly welcomed the decision and called on the Prosecutor to “proceed with a full-fledged investigation and prosecutions into the international crimes committed in Palestine.”¹⁵⁷



WHAT NOW?

Now that an investigation has been formally opened, two significant variables exist in the form of the incoming Prosecutor and the continued effects of US Executive Order 13928. It remains to be seen whether incoming Prosecutor Karim Khan will prioritise the contentious Palestine and Afghanistan situations in the face of mounting Israeli and American pressure – at present Mr Khan has not publicly commented on either of these situations. It also remains to be seen whether President Biden rescinds the Trump-era Executive Order, whether he imposes new sanctions on the incoming Prosecutor and his staff, or whether he will retain the Order but not impose new sanctions. The Executive Order is currently the subject of a legal challenge brought by the Open Society Justice Initiative.¹⁵⁸ Each of these possibilities will inevitably have a knock-on effect on the future of the ICC's work in both Palestine and Afghanistan.

Issues may also arise during the investigation itself, and in fulfilling cooperation requests. First, it is unlikely that ICC personnel will be granted access to the Occupied Palestinian Territory, entry into which is entirely controlled by Israel – note that the successive UN Special Rapporteurs on the situation of human rights in the Palestinian territories occupied since 1967 have been denied access to the territory with which their mandate is concerned. In the context of the ICC, this can limit the availability of important evidence and access to witnesses.

Second, the ICC does not have the authority to make arrests itself and is entirely reliant on States Parties to do so within the framework of Part 9 of the *Rome Statute*. As Israel controls entry and exit to the Occupied Palestinian Territory, the role of third states, in particular States Parties, will be crucial in carrying out arrests. Engaging the assistance of these states will therefore be a significant challenge moving forward.

Finally – as noted by the PTC in its *Decision* – the coming investigation is likely to be “protracted and resource-intensive”.¹⁵⁹ This, in tandem with the temporal limitations on the Court's jurisdiction to crimes committed after 13 June 2014, its territorial limitation to crimes committed in the West Bank, including East Jerusalem, and the Gaza Strip, and the concerns listed above, give cause

for concern that the coming investigation will be long, complex, and arduous. Nonetheless, that the widespread and systematic targeting of Palestinian civilians, the construction and maintenance of illegal Israeli settlements, the ongoing closure of Gaza, house demolitions, and institutionalised regime of racial domination and oppression over Palestinians living in the Occupied Palestinian Territory is now before an independent international criminal tribunal is a significantly positive development in the quest for justice and accountability in Palestine.



WHERE CAN I STAY UPDATED?

Al-Haq will continue to follow up on all developments in the situation in the State of Palestine – material and information will be made available on Al-Haq’s website (alhaq.org),¹⁶⁰ Twitter (@alhaq_org),¹⁶¹ and Facebook page,¹⁶² as well as through our newsletter.¹⁶³

PCHR can be found at its website (pchrgaza.org),¹⁶⁴ Twitter (@pchrgaza),¹⁶⁵ and Facebook page.¹⁶⁶

Al Mezan is active at its website (mezan.org),¹⁶⁷ Twitter (@AlMezanCenter),¹⁶⁸ and Facebook page.¹⁶⁹

Finally, Al-Dameer can be reached at their website (aldameer.org),¹⁷⁰ and Facebook page (in Arabic).¹⁷¹

Further information may be found on the Court’s website,¹⁷² and its specific page for the Palestine situation.¹⁷³



ENDNOTES

- 1 Preamble, *Rome Statute of the International Criminal Court (Rome Statute)* (adopted 17 July 1998).
- 2 On this impunity, see, for example, Al-Haq, *Legitimising the Illegitimate? The Israeli High Court of Justice and the Occupied Palestinian Territory* (2011), available at: <http://www.alhaq.org/cached_uploads/download/alhaq_files/publications/Legitimising%20the%20Illegitimate.pdf>.
- 3 See Al-Haq et al, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports* (10 November 2019), available at: <http://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19thperiodic-reports-10-november-2019-final-1573563352.pdf>.
- 4 Previous version was published as Al-Haq, *Palestine and Territorial Jurisdiction at the International Criminal Court* (28 April 2020), available at: <<https://www.alhaq.org/advocacy/16792.html>>.
- 5 Preamble, *Rome Statute*.
- 6 ICC, *Understanding the International Criminal Court*, pg 3, available at: <<https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf>>.
- 7 Article 34, *Rome Statute*.
- 8 ICC, *Presidency and Chambers*, pg 2, available at: <<https://www.icc-cpi.int/iccdocs/PIDS/publications/PresidencyandChambersEng.pdf>>.
- 9 Article 34(b) and 39(2)(b), *Rome Statute*.
- 10 *Presidency and Chambers*, pg 2.
- 11 *Ibid.*
- 12 See ICC, 'Office of the Prosecutor', at: <<https://www.icc-cpi.int/about/otp>>.
- 13 See ICC, Assembly of States Parties concludes the second resumption of its nineteenth session (12 February 2021), available at: <<https://www.icc-cpi.int/Pages/item.aspx?name=pr1567>>.
- 14 See ICC, 'Registry', at <<https://www.icc-cpi.int/about/registry>>.
- 15 See ICC, 'Assembly of States Parties', at: <<https://www.icc-cpi.int/asp>>.
- 16 See ICC, *The Defence*, available at: <<https://www.icc-cpi.int/Publications/DefenceENG.pdf>>.
- 17 ICC, *Victim's booklet – Victims before the International Criminal Court: A guide for the participation of victims in the proceedings of the ICC (Victims Booklet)*, pg 14, available at: <https://www.icc-cpi.int/about/victims/Documents/VPRES_Victim-s_booklet.pdf>.
- 18 *Ibid.*, pg 23.
- 19 ICC, 'Victims', at <https://www.icc-cpi.int/about/victims>.
- 20 Al-Haq, end impunity and open investigation on palestine (17 September 2018), available at: <<http://www.alhaq.org/advocacy/6159.html>>.
- 21 Al-Haq, *Al-Haq's Questions and Answers: The Preliminary Examination of the Situation in Palestine. (Al-Haq's Questions and Answers)* (2015), pg 2-3, available at: <http://www.alhaq.org/cached_uploads/download/alhaq_files/publications/QA-ICC-2015-Eng.pdf>.
- 22 See OTP, Situation in Palestine (3 April 2012), available at: <<https://www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf>>.
- 23 *Ibid.*, para 8.
- 24 UN General Assembly Resolution 67/19 (29 November 2012) UN Doc A/RES/67/19, para 2.
- 25 *Ibid.*, para 3.
- 26 ICC, Palestine declares acceptance of ICC jurisdiction since 13 June 2014 (5 January 2015), available at: <<https://www.icc-cpi.int/Pages/item.aspx?name=pr1080>>.
- 27 UN, State of Palestine: Accession (6 January 2015) Ref. C.N.13.2015.TREATIES-XVIII.10 (Depository Notification).
- 28 OTP, The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine (16 January 2015), available at: <<https://www.icc-cpi.int/Pages/item.aspx?name=pr1083>>.
- 29 Robert Heinsch and Giulia Pinzauti, *Situation in the State of Palestine: Submissions Pursuant to Rule 103* (16 March 2020) ICC-01/18-107, para 15-18, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01084.PDF>; Coalition for the International Criminal Court, *Report: Assembly of States Parties 15: The Hague, 16-24 November 2016*, pg. 6, available at: <http://www.coalitionfortheicc.org/sites/default/files/cicc_documents/coalition_for_the_icc_report_on_asp15.pdf>.
- 30 See OTP, *Report on Preliminary Examination Activities 2016* (14 November 2016), available at: <https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf>; OTP, *Report on Preliminary Examination Activities 2017* (4 December 2017), available at: <https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf>; OTP, *Report on Preliminary Examination Activities 2018* (5 December 2018), available at: <<https://www.icc-cpi.int/itemsDocuments/181205-otp-rep-PE-ENG.pdf>>.
- 31 OTP, 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), available at: <<https://www.icc-cpi.int/Pages/item.aspx?name=20191220-otp-statement-palestine>>.
- 32 ICC, *Situation in the State of Palestine: Prosecution requests pursuant to article 19(3) for a ruling on the Court's*

territorial jurisdiction in Palestine (Request) (22 January 2020) ICC-01/18-12, para 5, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_00161.PDF>.

33 PCHR, Al-Haq, Al Mezan, and Al-Dameer, *Situation in the State of Palestine: 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-01/18-96, para 4-6, available at: <<http://www.alhaq.org/uploads/download/2020/03/19/amicus-march-2020-16-march-1584611550.pdf>> (henceforth the '*Palestinian Rights Organisations Submission*').

34 *Request*, para 220.

35 *Ibid.*, para 39.

36 ICC, *Order setting the procedure and the schedule for the submission of observations* (28 January 2020) ICC-01/18-14, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_00217.PDF>.

37 ICC, *Situation in the State of Palestine: Decision on Requests for Variation of the Time Limit for Submitting Observations and Issues Arising out of Amici Curiae Observations* (31 March 2020) ICC-01/18-128, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01308.PDF>.

38 ICC, *Situation in the State of Palestine: Prosecution Response to the Observations of Amicus Curiae, Legal Representatives of Victims, and States* (30 April 2020) ICC-01/18-131, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01746.PDF>.

39 UN, Israel's illegal annexation plans for Palestine, 'disastrous' for wider Middle East – Bachelet (29 June 2020), available at: <<https://news.un.org/en/story/2020/06/1067392>>.

40 Wafa, 'President Abbas declares end to agreements with Israel, US; turns over responsibility on occupied lands to Israel' (19 May 2020), available at: <<https://english.wafa.ps/page.aspx?id=1s724Ua117154132029a1s724U>>.

41 ICC, *Situation in the State of Palestine: Order requesting additional information* (26 May 2020) ICC-01/18-134, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_02105.PDF>.

42 State of Palestine, *Situation in the State of Palestine: The State of Palestine's response to the Pre-Trial Chamber's Order requesting additional information* (4 June 2020) ICC-01/18-135, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_02277.PDF>.

43 ICC, *Situation in the State of Palestine: Prosecution Response to "The State of Palestine's response to the Pre-Trial Chamber's Order requesting additional information"* (8 June 2020) ICC-01/18-136, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_02317.PDF>.

44 See ICC, Afghanistan: ICC Appeals Chamber authorises the opening of an investigation (5 March 2020), available at: <<https://www.icc-cpi.int/Pages/item.aspx?name=pr1516>>.

45 US Federal Register, *Executive Order 13928: Blocking Property of Certain Persons Associated with the International Criminal Court* (11 June 2020), available at: <<https://www.federalregister.gov/documents/2020/06/15/2020-12953/blocking-property-of-certain-persons-associated-with-the-international-criminal-court>>.

46 Al-Haq, Al-Haq Condemns United States' Executive

Order Targeting Members of the International Criminal Court's Staff (13 June 2020), available at: <<https://www.alhaq.org/advocacy/16979.html>>; ICC, Statement of the International Criminal Court on recent measures announced by the US (11 June 2020), available at: <<https://www.icc-cpi.int/Pages/item.aspx?name=200611-icc-statement>>; Human Rights Watch, Donald Trump's Attack on the ICC Shows His Contempt for the Global Rule of Law (6 July 2020), available at: <<https://www.hrw.org/news/2020/07/06/donald-trumps-attack-icc-shows-his-contempt-global-rule-law>>; Reuters, 'EU says Trump move against international court 'unacceptable'' (16 June 2020), available at: <<https://www.reuters.com/article/us-warcrimes-afghanistan-trump-eu-idUSKBN23N2GJ>>; Beth Van Schaack, 'The Int'l Criminal Court Executive Order: Global Reactions Compiled' (1 September 2020) *Just Security*, available at: <<https://www.justsecurity.org/72256/the-intl-criminal-court-executive-order-global-reactions-compiled/>>.

47 Al-Haq, Al-Haq Condemns Designations of International Criminal Court Prosecutor and Staff for Sanctions under US Executive Order 13928 as a Direct Threat to Justice in the Situation in the State of Palestine (4 September 2020), available at: <<https://www.alhaq.org/advocacy/17275.html>>.

48 Al-Haq, Al-Haq Calls on the Biden Administration to Respect the International Criminal Court's (ICC) Jurisdiction in the Situation in the State of Palestine and Rescind Executive Order 13928 (11 February 2021), available at: <<https://www.alhaq.org/advocacy/17894.html>>; Center for Constitutional Rights, NGOs to Biden: Rescind Trump-era executive order impeding ICC's work (28 January 2021), available at: <<https://ccrjustice.org/ngos-biden-rescind-trump-era-executive-order-impeding-icc-s-work>>.

49 ICC, *Situation in the State of Palestine: Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine'* (5 February 2021) ICC-01/18-143, para 118, available at: <https://www.icc-cpi.int/CourtRecords/CR2021_01165.PDF> (hereinafter the '*Decision*').

50 *Ibid.*, para 65.

51 ICC, Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine (3 March 2021), available at: <<https://www.icc-cpi.int/Pages/item.aspx?name=210303-prosecutor-statement-investigation-palestine>>.

52 Al-Haq, After Five Years the Prosecutor of the International Criminal Court Finally Advances the Situation of Palestine From Preliminary Examination to the Pre-Trial Chamber for questions on Territorial Jurisdiction (20 December 2019), available at: <<http://www.alhaq.org/advocacy/16323.html>>.

53 See ICC, 'Preliminary examinations', at: <<https://www.icc-cpi.int/pages/pe.aspx>>; see also Article

54 Article 15(1), *Rome Statute*.

55 Article 15(4), *Rome Statute*.

56 OTP, *Policy Paper on Preliminary Examinations* (November 2013), para 25-71, available at: <https://www.icc-cpi.int/iccdocs/otp/otp-policy_paper_preliminary_examinations_2013-eng.pdf> (henceforth the '*OTP Policy Paper*').

57 *Ibid.*, para 93-106.

58 *Ibid.*, para 78.

- 59 *Al-Haq's Questions and Answers*, pg 6.
- 60 *OTP Policy Paper*, para 40; Article 13(b), *Rome Statute*.
- 61 Article 17(1)(a), *Rome Statute*.
- 62 *OTP Policy Paper*, para 51-54.
- 63 ICC, *Regulations of the Office of the Prosecutor* (23 April 2009) ICC-BD/05-01-09, Regulation 29(2), available at: <<https://www.icc-cpi.int/NR/rdonlyres/FFF97111-ECD6-40B5-9CDA-792BCBE1E695/280253/ICCBD050109ENG.pdf>>.
- 64 *OTP Policy Paper*, para 61-65.
- 65 See ICC, *Situation in the Islamic Republic of Afghanistan: Judgement on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan* (5 March 2020) ICC-02/17 OA4, para 49, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_00828.PDF>; *Al-Haq's Questions and Answers*, pg 9.
- 66 See OTP, *Policy Paper on the Interests of Justice* (September 2007) ICC-OTP-2007, available at: <<https://www.legal-tools.org/doc/bb02e5/pdf>>.
- 67 Article 54(3)(a), *Rome Statute*.
- 68 Article 54(3)(a), *Rome Statute*.
- 69 See Article 58, 61, *Rome Statute*.
- 70 Article 59, *Rome Statute*.
- 71 Sarah Williams, Hannah Woolaver, and Emma Palmer, *The Amicus Curiae in International Criminal Justice* (Hart, 2020).
- 72 See Southern Africa Litigation Centre, Statement: ICC Refuses All African Submissions in Respect of the Hashemite Republic of Jordan's Failure to Cooperate with the ICC to Arrest President Al Bashir Before the Appeals Chamber (28 May 2018), available at: <<https://www.southernafricalitigationcentre.org/2018/05/28/icc-refuses-all-african-submissions-in-respect-of-the-hashemite-republic-of-jordans-failure-to-cooperate-with-the-icc-to-arrest-president-al-bashir-before-the-appeals-chamber/>>.
- 73 ICC, *Rules of Procedure and Evidence* (2nd edn, 2013), Rule 103.
- 74 ICC, *Situation in the Islamic Republic of Afghanistan: Decision on the participation of amici curiae, the office of Public Counsel for the Defence and the cross-border victims* (24 October 2019) ICC-02/17-97, available at: <https://www.icc-cpi.int/CourtRecords/CR2019_06256.PDF>.
- 75 *Request*, para 39.
- 76 Australia, *Situation in the State of Palestine: Observations of Australia* (16 March 2020) ICC-01/18-86, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01034.PDF>.
- 77 Republic of Austria, *Situation in the State of Palestine: Amicus curiae observations of the Republic of Austria* (15 March 2020) ICC-01/18-76, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01018.PDF>.
- 78 Federative Republic of Brazil, *Situation in the State of Palestine: Brazilian Observations on ICC Territorial Jurisdiction in Palestine* (16 March 2020) ICC-01/18-106, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01083.PDF>.
- 79 Czech Republic, *Situation in the State of Palestine: Submission of Observations Pursuant to Rule 103* (12 March 2020) ICC-01/18-69, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_00996.PDF>.
- 80 Federal Republic of Germany, *Situation in the State of Palestine: Observations by the Federal Republic of Germany* (16 March 2020) ICC-01/18-103, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01075.PDF>.
- 81 Hungary, *Situation in the State of Palestine: Written Observations by Hungary Pursuant to Rule 103* (16 March 2020) ICC-01/18-89, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01047.PDF>.
- 82 Republic of Uganda, *Situation in the State of Palestine: The observations of the Republic of Uganda Pursuant to rule 103 of the Rules of Evidence and Procedure* (16 March 2020) ICC-01/18-119, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01112.PDF>.
- 83 League of Arab States, *Situation in the State of Palestine: Submission of the observations of League of Arab States relative to the Situation in Palestine* (16 March 2020) ICC-01/18-122, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01145.PDF>.
- 84 Organisation of Islamic Cooperation, *Observations of the Organisation of Islamic Cooperation in relation to the proceedings in the Situation in Palestine* (16 March 2020) ICC-01/18-84, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01031.PDF>.
- 85 State of Palestine, *Situation in the State of Palestine: 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) ICC-01/18-82, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01029.PDF>.
- 86 Asem Khalil and Halla Shoaibi, *Situation in the State of Palestine: Submissions Pursuant to Rule 103* (16 March 2020) ICC-01/18-73, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01015.PDF> (henceforth the 'Khalil and Shoaibi Submission').
- 87 Palestinian Bar Association, *Situation in the State of Palestine: BORDERS OF THE STATE OF PALESTINE UNDER INTERNATIONAL LAW FOR THE PURPOSES OF ICC TERRITORIAL JURISDICTION: Observations pursuant to Rule 103 of the Rules of Procedure and Evidence* (15 March 2020) ICC-01/18-72, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01011.PDF>; The Israel Bar Association, *Amicus Curiae Submissions of the Israel Bar Association* (16 March 2020) ICC-01/18-80, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01022.PDF>.
- 88 See, *inter alia*, FIDH, No Peace Without Justice, Women's Initiatives for Gender Justice, REDRESS, *Situation in the State of Palestine: 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-01/18-85, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01033.PDF>; Defence for Children International – Palestine, *Situation in the State of Palestine: Submissions on behalf of child victims and their families pursuant to article 19(3) of the statute* (16 March 2020) ICC-01/18-102, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01074.PDF>; International Commission of Jurists, *Situation in the State of Palestine: Amicus Curiae Observations by the International Commission of Jurists (Pursuant to Rule 103*

of the Rules) (16 March 2020) ICC-01/18-117, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01108.PDF>; International-Lawyers.org (INTLawyers), *Situation in the State of Palestine: Amicus Curiae Observations Pursuant to Rule 103 on the Rules of Procedure and Evidence* (16 March 2020) ICC-01/18-104, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01076.PDF>.

89 Office of Public Counsel for Victims, *Situation in the State of Palestine: 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-01/18-105, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01082.PDF>.

90 Assembly of States Parties, *Strengthening the International Criminal Court and the Assembly of States Parties* (14 December 2017) ICC-ASP/16/Res.6, para 94, available at: <https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP16/ICC-ASP-16-Res6-ENG.pdf>.

91 See Addameer Prisoner Support and Human Rights Association, *Situation in the State of Palestine: OBSERVATIONS ON BEHALF OF VICTIMS* (16 March 2020) ICC-01/18-123, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01151.PDF>; Legal Representative of Persecution Victims, Katherine Gallagher, *Situation in the State of Palestine: 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-01/18-110-Red, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01171.PDF>; Legal Representatives of Victims, *Situation in the State of Palestine: Victims' observations on the Prosecutor's request for a ruling on the Court's territorial jurisdiction in Palestine* (16 March 2020) ICC-01/18-99, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01068.PDF>; Liesbeth Zegveld, Counsel, *Situation in the State of Palestine: The Khan al-Ahmar Victims' Observations* (12 March 2020) ICC-01/18-68, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_00973.PDF>; Raji Sourani, Counsel, Chantal Meloni, Counsel, Triestino Mariniello, Assistant Counsel, *Situation in the State of Palestine: Submission on Behalf of Palestinian Victims Residents of the Gaza Strip with confidential Annex* (16 March 2020) ICC-01/18-112, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_00973.PDF>.

92 *Victims Booklet*, pg. 13.

93 See Pearce Clancy, 'Vindicating Rights and Ending Impunity: Palestine, Statehood, and the International Criminal Court' (22 April 2020) *Justice in Conflict*, available at: <<https://justiceinconflict.org/2020/04/22/vindicating-rights-and-ending-impunity-palestine-statehood-and-the-international-criminal-court/>>.

94 See Malcolm N Shaw, *Submission of Observations to the Pre-Trial Chamber Pursuant to Rule 103* (16 March 2020) ICC-01/18-75, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01017.PDF>; Israel Bar Association, *Amicus Curiae Submissions of the Israel Bar Association* (16 March 2020) ICC-01/18-80, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01022.PDF>.

95 Office of the Attorney General of the State of Israel, *The International Criminal Court's Lack of Jurisdiction over the so-called "Situation in Palestine"* (20 December 2019), para 6, available at: <<https://mfa.gov.il/MFA/PressRoom/2019/Documents/ICCs%20lack%20of%20jurisdiction%20>

over%20so-called%20e2%80%9csituation%20in%20Palestine%e2%80%9d%20-%20AG.pdf>.

96 *Palestinian Rights Organisations Submission*, para 7.

97 See John Quigley, *Situation in the State of Palestine Submissions Pursuant to Rule 103 (John Quigley)* (3 March 2020) ICC-01/18-66, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_00794.PDF>.

98 William Schabas, *Situation in the State of Palestine: Opinion in Accordance with Article 103 of the Rules of Procedure and Evidence* (15 March 2020) ICC-01/18-71, para 14, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01010.PDF> (henceforth the 'William Schabas Submission').

99 Richard Falk, *Situation in the State of Palestine: Amicus Curiae Submissions Pursuant to Rule 103* (16 March 2020) ICC-01/18-77, para 40, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01019.PDF> (henceforth the 'Richard Falk Submission').

100 *William Schabas Submission*, para 34-35.

101 Eyal Benvenisti, *Situation in the State of Palestine: Amicus Curiae in the Proceedings Related to the Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court's Territorial Jurisdiction in Palestine* (16 March 2020) ICC-01/18-95, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01062.PDF>; UK Lawyers for Israel, B'nai B'rith UK, the International Legal Forum, the Jerusalem Initiative and the Simon Wiesenthal Centre, *Situation in the State of Palestine: 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) ICC-01/18-92, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01055.PDF>.

102 Malcolm N Shaw, *Situation in the State of Palestine: Submission of Observations to the Pre-Trial Chamber Pursuant to Rule 103* (16 March 2020) ICC-01/18-75, para 44, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01017.PDF>; Todd F Buchwald and Stephen J Rapp, *Situation in the State of Palestine: Submission Pursuant to Rule 103 (Todd F. Buchwald and Steven J. Rapp)* (16 March 2020) ICC-01/18-83, pg. 24, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01030.PDF>.

103 Dennis Ross, *Situation in the State of Palestine: 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"* (16 March 2020) ICC-01/18-94, available at: <https://www.icc-cpi.int/CourtRecords/CR2020_01060.PDF>.

104 Article 21(3), *Rome Statute*.

105 See *Vienna Convention on the Law of Treaties* (adopted 23 May 1969, entry into force 27 January 1980) 1155 UNTS 331.

106 *Khalil and Shoaibi Submission*, para 5.

107 ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) (9 July 2004) at para 88, 120, 156.

108 UN Security Council Resolution 2334 (23 December

- 2016) UN S/RES/2334, para 1.
- 109 Article 49(6), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 287.
- 110 See throughout, *Khalil and Shoaibi Submission*.
- 111 *Richard Falk Submission*, para 32-37.
- 112 *Palestinian Rights Organisations Submission*, para 34.
- 113 Article 19, *Rome Statute*.
- 114 ICC, *Partially Dissenting Opinion of Judge Marc Perrin de Brichambaut* (6 September 2018) ICCRoC46(3)-01/18-37-Anx, para 12, available at: <https://www.icc-cpi.int/RelatedRecords/CR2018_04205.PDF>.
- 115 ICC, *Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute* (9 April 2018) ICC-RoC46(3)-01/18-1, available at: <<https://www.legal-tools.org/doc/4af756/pdf>>.
- 116 ICC, *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) ICC-RoC46(3)-01/18, para 28, available at: <https://www.icc-cpi.int/CourtRecords/CR2018_04203.PDF>.
- 117 *Decision*, para 64.
- 118 *Ibid.*, para 65.
- 119 *Ibid.*
- 120 ICC, *Partly Separate Opinion of Judge Perrin de Brichambaut* (5 February 2021) ICC-01/18/143-Anx2, available at: <https://www.icc-cpi.int/RelatedRecords/CR2021_01166.PDF>.
- 121 *Decision*, para 112.
- 122 *Ibid.*, para 100.
- 123 *Ibid.*, para 101.
- 124 *Ibid.*, para 102.
- 125 *Ibid.*, para 108.
- 126 *Ibid.*, para 123.
- 127 *Ibid.*, para 119.
- 128 *Ibid.*, *inter alia*, para 120-123.
- 129 See *ibid.*, para 121, *infra* fn. 313.
- 130 *Ibid.*, para 129.
- 131 Article 12(2)(a), *Rome Statute*.
- 132 Article 12(2)(b), *Rome Statute*.
- 133 Article 13(b), 14, *Rome Statute*.
- 134 Fox News, 'Is the ICC corrupted by China?' (22 December 2020), available at: <<https://www.foxnews.com/world/is-the-icc-corrupted-by-china>>; see also tweet by Nikki Haley, former US Ambassador to the UN (7 February 2021), available at: <<https://twitter.com/NikkiHaley/status/1358519011219288073>>.
- 135 New York Times, 'I.C.C. Rules It Has Jurisdiction to Examine Possible Israel War Crimes' (5 February 2021), available at: <<https://www.nytimes.com/2021/02/05/world/middleeast/icc-israel-war-crimes.html>>; Jerusalem Post, 'Eight things to know about the ICC war crimes suits against Israel' (7 February 2021), available at: <<https://www.jpost.com/arab-israeli-conflict/eight-things-to-know-about-the-icc-war-crimes-suits-against-israel-658164>>;
- Haaretz, 'The Real Victims of the International Criminal Court's Obsession With Israel' (10 May 2020), available at: <<https://www.haaretz.com/israel-news/premium-the-real-victims-of-the-international-criminal-court-s-obsession-with-israel-1.8835247>>.
- 136 See UN, Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security council from Adopting Draft Resolution (22 May 2014), available at: <<https://www.un.org/press/en/2014/sc11407.doc.htm>>
- 137 *Decision*, para 113.
- 138 *Ibid.*, para 108.
- 139 *Ibid.*, para 93, fn. 266.
- 140 *Ibid.*, para 129.
- 141 *Ibid.*, para 127.
- 142 See tweet from Palestinian mission to the Netherlands (5 February 2021), available at: <<https://twitter.com/PalMissionNL/status/1357776198827401220>>.
- 143 Israel Ministry of Foreign Affairs, Israel rejects the ICC's decision regarding the scope of its territorial jurisdiction on the Israeli-Palestinian conflict (7 February 2021), available at: <<https://mfa.gov.il/MFA/PressRoom/2021/Pages/Israel-rejects-the-ICC-s-decision-regarding-the-scope-of-its-territorial-jurisdiction-on-the-Israeli-Palestinian-conflict-7.aspx>>.
- 144 See tweet from Prime Minister account (6 February 2021), available at: <<https://twitter.com/IsraeliPM/status/1358081768625041409>>.
- 145 Australia Minister for Foreign Affairs and Minister for Women, ICC Pre-Trial Chamber decision on jurisdiction in relation to the 'Situation in Palestine' (6 February 2021), available at: <<https://www.foreignminister.gov.au/minister/marise-payne/media-release/icc-pre-trial-chamber-decision-jurisdiction-relation-situation-palestine>>.
- 146 See tweet from Marc Gameau, Canada's Minister for Foreign Affairs (7 February 2021), available at: <<https://twitter.com/MarcGameau/status/1358431444956295171>>.
- 147 See tweet from Heiko Maas, Germany's Minister for Foreign Affairs (9 February 2021), available at: <<https://twitter.com/HeikoMaas/status/1359215215913623564>>.
- 148 Czech Republic Ministry of Foreign Affairs, Statement of the MFA on the Decision of the ICC on the Situation in Palestine dated 5 February 2021 (9 February 2021), available at: <https://www.mzv.cz/jnp/en/issues_and_press/press_releases/statement_of_the_mfa_on_the_decision_of.html>.
- 149 See Facebook post by Péter Szijjártó, Hungary's Minister for Foreign Affairs (9 February 2021), available at: <<https://www.facebook.com/szijarto.peter.official/posts/267934028032488>>.
- 150 United States Department of State, Opposing International Criminal Court Attempts to Affirm Territorial Jurisdiction Over the Palestinian Situation (5 February 2021), available at: <<https://www.state.gov/opposing-international-criminal-court-attempts-to-affirm-territorial-jurisdiction-over-the-palestinian-situation>>.
- 151 See tweet by Ali Abunimah (8 February 2021), available at: <<https://twitter.com/AliAbunimah/status/1358877300012498946>>; see also European Jewish Press, 'Eu says ICC and its Prosecutor 'are independent and impartial judicial institutions with no political objectives to pursue'' (9 February 2021), available at: <<https://ejpress.org/>>

eu-says-icc-and-its-prosecutor-are-independent-and-impartial-judicial-institutions-with-no-political-objectives-to-pursue/>.

152 UN, OIC Welcomes ICC Decision on Scope of Court's Territorial Jurisdiction in State of Palestine – Press Release (7 February 2021), available at: <<https://www.un.org/unispal/document/oic-welcomes-icc-decision-on-scope-of-courts-territorial-jurisdiction-in-state-of-palestine-press-release/>>.

153 UN, ICC ruling on jurisdiction in occupied Palestinian territory welcome step towards justice: UN expert (9 February 2021), available at: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26732&LangID=E>>.

154 Amnesty International, Israel/OPT: Historic ICC ruling brings new hope to victims of crimes under international law (5 February 2021), available at: <<https://www.amnesty.org/en/latest/news/2021/02/israel-opt-historic-icc-ruling-brings-hope-for-victims-of-crimes-under-international-law/>>.

155 Al-Haq, Landmark Decision of the Pre-Trial Chamber of the International Criminal Court Welcomed by Human Rights Organizations (6 February 2021), available at: <<https://www.alhaq.org/advocacy/17878.html>>.

156 Human Rights Watch, Israel/Palestine: ICC Judges Open Door for Formal Probe (6 February 2021), available at: <<https://www.hrw.org/news/2021/02/06/israel/palestine-icc-judges-open-door-formal-probe>>.

157 FIDH, Welcomed ICC landmark decision recognising its territorial jurisdiction over Palestine including Gaza and the West Bank (9 February 2021), available at: <<https://www.fidh.org/en/region/north-africa-middle-east/israel-palestine/welcomed-icc-landmark-decision-recognising-its-territorial>>.

158 Open Society Justice Initiative, Open Society Justice Initiative Sues Trump Administration over International Criminal Court Executive Order (1 October 2020), available at: <<https://www.justiceinitiative.org/newsroom/open-society-justice-initiative-sues-trump-administration-over-international-criminal-court-executive-order>>.

159 *Decision*, para 86.

160 <<http://www.alhaq.org/>>.

161 <https://twitter.com/alhaq_org>.

162 <<https://www.facebook.com/alhaqorganization/>>.

163 <<http://www.alhaq.org/contact-us>>.

164 <<https://www.pchrgaza.org/en/>>.

165 <<https://twitter.com/pchrgaza>>.

166 <<https://www.facebook.com/pchrgaza/>>.

167 <<https://www.mezan.org/en/>>.

168 <<https://twitter.com/AlMezanCenter>>.

169 <<https://www.facebook.com/MezanCenter>>.

170 <<https://www.aldameer.org/en>>.

171 <<https://www.facebook.com/aldameer/>>.

172 <<https://www.icc-cpi.int/Pages/Main.aspx>>.

173 <<https://www.icc-cpi.int/palestine>>.

STAY CONNECTED AND UPDATED



AL-Haq's Website: www.alhaq.org



AL-Haq on Facebook: www.facebook.com/alhaqorganization



AL-Haq on Twitter: www.twitter.com/AlHaq_org



AL-Haq Multimedia Channel on Vimeo: www.vimeo.com/alhaq



AL-Haq Multimedia Channel on YouTube: www.youtube.com/Alhaqhr

SMART PHONES



AL-Haq - 54 Main Street 1st & 2nd Fl. - Opp. Latin Patriarchate
Saint Andrew's Evangelical Church - (Protestant Hall)



P.O.Box: 1413 - Ramallah - West Bank - Palestine



Tel: +970 2 2954646/7/9



Fax: +970 2 2954903



www.alhaq.org



AL - HAQ

About AL-HAQ

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah in the Occupied Palestinian Territory (OPT). Established in 1979 to protect and promote human rights and the rule of law in the OPT, the organisation has special consultative status with the United Nations Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, irrespective of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. Al-Haq conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. Al-Haq has a specialised international law library for the use of its staff and the local community.

Al-Haq is the West Bank affiliate of the International Commission of Jurists- Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), ESCR-Net – The International Network for Economic, Social and Cultural Rights, the Palestinian Human Rights Organizations Council (PHROC), and the Palestinian NGO Network (PNGO). In 2018, Al-Haq was a co-recipient of the French Republic Human Rights Award, whereas in 2019, Al-Haq was the recipient of the Human Rights and Business Award.

