

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

*No.: ICC-01/18  
Date: 04 June 2020*

**PRE-TRIAL CHAMBER I**

**Before:** Judge Péter Kovács, Presiding Judge  
Judge Marc Perrin de Brichambaut  
Judge Reine Adélaïde Sophie Alapini-Gansou

**SITUATION IN THE STATE OF PALESTINE**

**Public**

**The State of Palestine's response to the Pre-Trial Chamber's Order requesting  
additional information**

**Source:** The State of Palestine

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

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## I. PROCEDURAL BACKGROUND

1. On 22 January 2020, the Pre-Trial Chamber received the ‘Prosecution request pursuant to Article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’ (the ‘Prosecution Request’).<sup>1</sup>
2. On 28 January 2020, the Chamber issued the ‘Order setting the procedure and the schedule for the submission of observations’, thereby, *inter alia*, inviting the State of Palestine (‘Palestine’), victims in the Situation in the State of Palestine, and the State of Israel (‘Israel’) to submit written observations on the question of jurisdiction set forth in paragraph 220 of the Prosecution Request, without addressing any other issues arising from this Situation, by no later than 16 March 2020.<sup>2</sup>
3. On 16 March 2020, the Chamber received ‘[t]he State of Palestine’s observations in relation to the request for a ruling on the Court’s territorial jurisdiction in Palestine’ (‘the State of Palestine’s Submission’).<sup>3</sup>
4. On 26 May 2020, acting pursuant to Rule 58(2) of the Court’s Rules of Procedure and Evidence, the Pre-Trial Chamber issued an ‘Order requesting additional information’ (‘the Order’). In that Order, the Pre-Trial Chamber made reference to a statement attributed to Palestine’s President, His Excellency Mr. Mahmoud Abbas, and asked Palestine to provide, without further specification, ‘additional information on this statement, including on the question whether it pertains to any of the Oslo agreements between Palestine and Israel’.<sup>4</sup>
5. As a preliminary matter, Palestine notes that it is not readily apparent from the Order which issue(s) raised in the President’s statement (‘the Statement’) the Court specifically wishes to address in the context of these proceedings. As such, the State of Palestine will respond to the Order based on its understanding of the scope of requested information. However, to the extent that the Chamber decides to rely upon Palestine’s response for the purpose of its decision on the Prosecution Request, Palestine would respectfully ask

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<sup>1</sup> Office of the Prosecutor (‘OTP’), Situation in the State of Palestine, Prosecution request pursuant to Article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine (‘Prosecution Request’), 22 January 2020, [ICC-01/18-12](#).

<sup>2</sup> Pre-Trial Chamber I (‘PTC-I’), Order setting the procedure and the schedule for the submission of observations, 28 January 2020, [ICC-01/18-14](#).

<sup>3</sup> 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](#)

<sup>4</sup> PTC-I, Order requesting additional information, 26 May 2020, [ICC-01/18-134](#), para. 6.

that, as a matter of fairness and to the extent necessary, the Chamber specify the issues the Statement are thought to be relevant to, so as to enable Palestine to address them.

## II. PALESTINE'S RESPONSE TO THE PRE-TRIAL CHAMBER'S ENQUIRY

### A. Preliminary remarks

6. In response to the Pre-Trial Chamber's Order, the State of Palestine would indicate the following: Palestine respectfully notes that the Statement was not made as part of the record of these proceedings and did not in any way purport to, nor does it, legally affect the question presently before the Chamber. As a State Party and a Party to these proceedings, Palestine made its submissions on 16 March 2020, stands by them and has not sought to supplement them. In making those submissions, Palestine assiduously avoided (unlike many other intervening Parties) advancing any argument or claims of a political nature so as to preserve and protect the judicial character of these proceedings. Based on these considerations, Palestine respectfully submits that the Statement has no bearing on and is of no relevance to the legal issue(s) placed before the Chamber by the Prosecutor. Palestine thus reiterates<sup>5</sup> what the International Court of Justice has made clear in the *Wall* Advisory Opinion about avoiding the cloud of political arguments to focus its jurisdictional attention exclusively on the legal questions. The Court concluded that '*[w]hatever its political aspects, the Court cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task, namely, an assessment of the legality of the possible conduct of States with regard to the obligations imposed upon them by international law*'.<sup>6</sup>

### B. Background and Context of the Statement: the planned annexation of Palestinian territory

7. A response to the Pre-Trial Chamber's question requires a proper consideration of context. The Statement was made by President Mahmoud Abbas in response to Israel's declared plan, as reflected in the Israeli government's coalition agreement and repeated statements by Israeli officials, including the Prime Minister, to carry out the unlawful annexation of Palestinian territory under Israeli occupation. This plan, if carried out,

<sup>5</sup> See, the State of Palestine's Submission, 16 March 2020, [ICC-01/18-82](#), paras 71 *et seq.*

<sup>6</sup> ICJ, [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#) ('Wall Advisory Opinion'), Advisory Opinion, 09 July 2004, ICJ Reports 2004, p. 136, para. 41.

would violate some of the most basic and critical elements of the legal framework upon which this Court is built.

8. The implementation of Israel's planned annexation would violate the UN Charter and peremptory norms of international law.<sup>7</sup> The illegal nature and gravity of Israel's previous attempts to annex Palestinian territory have prompted the Security Council, in several of its resolutions on the Question of Palestine, to explicitly stress the inadmissibility of the acquisition of territory by force<sup>8</sup> and to condemn all measures taken by Israel and its officials aimed at altering the demographic composition, character, and status of the Occupied Palestinian Territory, including East Jerusalem.<sup>9</sup>
9. Consistent with this position, the Preamble of the Rome Statute reaffirms 'the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations'.<sup>10</sup>
10. The gravity of annexation is also reflected normatively in Article 8 *bis* of the Rome Statute dealing with the 'supreme international crime' of aggression,<sup>11</sup> which defines an act of aggression as 'the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations', such as 'the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof'.<sup>12</sup>
11. Annexation also inherently and unavoidably entails the commission of war crimes and crimes against humanity falling within the competence of this Court, including but not limited to: extensive destruction and appropriation of property, not justified by military

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<sup>7</sup> Charter of the United Nations, Articles 1(2) and 2(4); see for example, International Law Commission, Fourth report on peremptory norms of general international law (*ius cogens*) by Dire Tladi, Special Rapporteur, 31 January 2019, [A/CN.4/727](#), para. 56.

<sup>8</sup> See, for example, United Nations Security Council ('UNSC'), Resolutions [242 \(1967\)](#), [252 \(1968\)](#), [267 \(1969\)](#), [298 \(1971\)](#), [476 \(180\)](#), [478 \(1980\)](#), and [2334 \(2016\)](#).

<sup>9</sup> UNSC, Resolutions [2334 \(2016\)](#), and specifically with regards to Jerusalem [478 \(1980\)](#).

<sup>10</sup> Rome Statute, Preamble, para. 7.

<sup>11</sup> International Military Tribunal at Nuremberg, Judgment, 1 October 1946, p. 25; See also W. Schabas, 'Origins of the criminalization of aggression: how crimes against peace became the "Supreme International Crime"', in M. Politi *et al* (eds), *The International Criminal Court and the Crime of Aggression* (Ashgate Publishing Ltd), pp. 17-32.

<sup>12</sup> Rome Statute, Article 8 *bis* (2), 2(a).

necessity and carried out unlawfully and wantonly; unlawful deportation or transfer; the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; persecution; and other inhumane acts.<sup>13</sup>

12. When determining the Article 19(3) question asked of it by the Prosecutor, it is thus important for the Pre-Trial Chamber to appreciate that the conduct, which elicited the Statement by President Mahmoud Abbas, is further and demonstrable evidence of the planned commission by Israeli officials of crimes that are within the jurisdiction of the Court, which makes it imperative for this Court to proceed to an investigation, and to do so as expeditiously as possible in order to try to preempt those crimes.

### **C. The Statement**

13. Substantively, the Statement declares that if Israel proceeds with annexation, a material breach of the agreements between the two sides, then it will have annulled any remnants of the Oslo Accords and all other agreements concluded between them. It also declares that Israel's persistent violations of these agreements, and its announced plans and measures for annexation, absolve the Palestine Liberation Organization ('PLO') and the State of Palestine from any obligation arising from these agreements, including security agreements.<sup>14</sup>
14. The Statement also recalls that, notwithstanding this, Israel, as the Occupying Power, must uphold its obligations towards the occupied population arising from international law and international humanitarian law.
15. The Statement also stresses that Israel's violations and planned annexation only reinforces the State of Palestine's commitment to ensure accountability for crimes committed by the Israeli leadership and its subordinates in the course of the Israeli occupation of Palestine, and that the International Criminal Court contributes to that goal of justice and accountability.

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<sup>13</sup> Rome Statute, Article 8(2)(a)(iv), (2)(a)(vii), (2)(b)(viii), Article 7 (1)(h),1(k); See, Palestine's Submission, 16 March 2020, [ICC-01/18-82](#), para. 68, in particular, references in footnote 89.

<sup>14</sup> For a full translation of the Statement, see Annex A.

#### **D. Implications of the Statement and the irrelevance of the Oslo Accords for the purposes of the ICC**

16. In relation to Israel, the Statement simply highlights and reiterates what is already required of Israel, as the Occupying Power, by international law, including the Fourth Geneva Convention, the Hague Regulation, and customary international law, which provide that the Occupying Power shall assume responsibility for the occupied territory and its inhabitants while not altering the demographic composition, character, and status of the territory.<sup>15</sup> The Statement is thus in line with international law, including international humanitarian law, and the norms applicable to Israel's occupation and all policies and practices thereunder, including its annexation measures.

17. Indeed, Common Article 6/6/6/7 of the Geneva Conventions provides that:

In addition to the agreements expressly provided for in Articles 11, 14, 15, 17, 36, 108, 109, 132, 133 and 149, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them. (Emphasis added).

18. The ICRC Commentary to Common Article 6/6/6/7 further makes it clear that '[w]ith regard to agreements between an Occupying Power and local authorities in the territory

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<sup>15</sup> See, generally, Geneva Convention Relative to the Protection of Civilian Persons in Time of War ('Geneva Convention IV'), 12 August 1949, Articles 29 and 47-135; 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 ('Hague Regulations'), 18 October 1907, Article 43, providing that the Occupying Power shall assume responsibility for the occupied territory and its inhabitants. An authoritative commentary pertaining to these provisions says the following:

The first step towards an understanding of the international legal consequences of occupation of foreign territory is to recognize the general ban on acquiring foreign territory by force, derived from the prohibition of the use of force in international relations by the UN Charter, in particular its Article 2, paras. 3 and 4. The annexation of foreign territory is no doubt prohibited by international law. This means that if one state gains control over parts of another state's territory, by the use of force or by threatening such use of force, the situation must be considered temporary. International law of belligerent occupation is built upon the assumption that the Occupying Power does not acquire sovereign rights over the territory, but exercises provisional and temporary control. The legal status of the territory can be altered only through a peace treaty or *debellatio*. It follows from this that the occupying authorities can only administer the territory, without changing the existing order. It is in this sense that the Occupying Power assumes 'responsibility for the occupied territory and its inhabitants'.

H.-P. Gasser, 'Protection of the Civilian Population', in D. Fleck (ed.), *The Handbook of International Humanitarian Law* (OUP, 2<sup>nd</sup> ed), 238, 273, n 526 (footnote omitted).

it occupies, Article 47 of the Fourth Convention will govern the interpretation of such agreements together with Article 6.<sup>16</sup> Article 47 of Geneva Convention IV, in turn, provides:

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory. (Emphasis added).

19. The ICRC Commentary to Article 47 GCIV also contains two important elements of relevance to the present matter. Firstly, it makes clear that the regime set out in this provision not only protects the inhabitants of the occupied territory but also ‘protects the separate existence of the State, its institutions and its laws’.<sup>17</sup>

20. Secondly, and most importantly, the ICRC Commentary notes the following:<sup>18</sup>

As was emphasized in the commentary on Article 4, the occupation of territory in wartime is essentially a temporary, de facto situation, which deprives the occupied Power of neither its statehood nor its sovereignty; it merely interferes with its power to exercise its rights. [...] Consequently occupation as a result of war, while representing actual possession to all appearances, cannot imply any right whatsoever to dispose of territory. As long as hostilities continue the Occupying Power cannot therefore annex the occupied territory, even if it occupies the whole of the territory concerned. A decision on that point can only be reached in the peace

<sup>16</sup> ICRC, [2016 Commentary of Geneva Convention I](#), Article 6, para. 967:

With regard to agreements between an Occupying Power and local authorities in the territory it occupies, Article 47 of the Fourth Convention will govern the interpretation of such agreements together with Article 6.

See also, J. Quigley, ‘The Israel-PLO Agreements Versus the Geneva Civilians Convention’, *Palestine Yearbook of International Law*, Vol. 7, 1992–1994, p. 45.

<sup>17</sup> Geneva Convention IV, Article 47; see also, associated ICRC, [1958 Commentary on Geneva Convention IV](#), Article 47, paras 273-274:

[Article 43] of the Hague Regulations is not applicable only to the inhabitants of the occupied territory; it also protects the separate existence of the State, its institutions and its laws. This provision does not become in any way less valid because of the existence [p.274] of the new Convention, which merely amplifies it so far as the question of the protection of civilians is concerned.

<sup>18</sup> ICRC, [1958 Commentary on Geneva Convention IV](#), Article 47, paras 275-276 (footnotes omitted). Regarding the legal invalidity of such annexation, see also: H.-P. Gasser, ‘Protection of the Civilian Population’, in D. Fleck (ed.), *The Handbook of International Humanitarian Law* (OUP, 2<sup>nd</sup> ed), 238, 273, n 526 and 284, n 538.

treaty. That is a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts.

21. Therefore, nothing in the interim agreements between the PLO and Israel can be construed as dispossessing the Palestinian people of their land, of their right to their land and to exercise self-determination therein, or as providing Israel, the Occupying Power, with any legitimate claim to sovereignty. Annexation as well does not alter the legal principles applicable to the territory in question.
22. This view has been endorsed by the Security Council and the General Assembly in a consistent manner, before and after the conclusion of the Oslo Accords. Both bodies have consistently defined the West Bank, including East Jerusalem, and the Gaza Strip as an Occupied Palestinian Territory, stressing the applicability of the Fourth Geneva Convention, rejecting any Israeli claims to sovereignty, and condemning all measures aimed at altering the demographic composition, character, and status of the territory.<sup>19</sup>
23. The Security Council, in the aftermath of Israel's unlawful annexation of East Jerusalem in 1980, declared that all measures and actions which have altered or purport to alter the character and status of the Holy City of Jerusalem are null and void and must be rescinded forthwith.<sup>20</sup> This is in line with the International Law Commission Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, which stipulate in their principle 8 that 'a unilateral declaration which is in conflict with a peremptory norm of general international law is void.'<sup>21</sup>

<sup>19</sup>See, for example, UNSC Resolution [2334](#) (2016), UNGA Resolution, most recently [74/88](#) (2019), para. 24; See also, UNSC Resolutions [242](#) (1967), [465](#) (1980), paras 5, 7, [471](#) (1980), para. 5, [476](#) (1980), para. 3, [478](#) (1980), paras 3, 5, most recently [74/11](#) (2019), para. 13; See, Prosecution request, 22 January 2020, [ICC-01/18-12](#), paras 151-154 (and references cited therein); International Law Commission, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, Article 41(2), and commentary thereto; M. Sassoli, 'Chapter 67. The Concept and the Beginning of Occupation', in A. Clapham et al (eds), *The 1949 Geneva Conventions – A Commentary* (OUP, 2015), 1389, 1417, n 61 ('Particular efforts to ensure respect by Israel for the rules on military occupation in Geneva Convention IV'); and M. Sassoli, *International Humanitarian Law – Rules, Controversies, and Solutions to Problems Arising in Warfare* (EE Elgar, 2019), 127, n 5.148 (and references included therein).

<sup>20</sup> See, UNSC, Resolutions [476](#) (1980) and [478](#) (1980); See also, UNGA, Resolutions, [36/120 E](#) (1981), [37/123 C](#) (1982), [38/180 C](#) (1983), [39/146 C](#) (1984), [40/168 C](#) (1985), [41/162 C](#) (1986), [42/209 D](#) (1987), [43/54 C](#) (1988), [44/40 C](#) (1989), [45/83 C](#) (1990), [46/82 B](#) (1991), [47/63 B](#) (1992), [48/59 A](#) (1993), [49/87 A](#) (1994), [50/22 A](#) (1995), [51/27](#) (1996), [52/53](#) (1997), [53/37](#) (1998), [54/37](#) (1999), [55/50](#) (2000), [56/31](#) (2001), [57/111](#) (2003), [58/22](#) (2003), [59/32](#) (2005), [60/41](#) (2006), [61/26](#) (2009), [62/84](#) (2008), [63/30](#) (2009), [64/20](#) (2010), [65/17](#) (2011), [67/24](#) (2013), [68/16](#) (2014), [69/24](#) (2014), [70/16](#) (2015), [71/25](#) (2016), and [72/15](#) (2017).

<sup>21</sup> International Law Commission, [Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations with commentaries thereto](#), 2016, p. 378.

24. In the same vein, the General Assembly, based on the relevant provisions of the Geneva Conventions and the aforementioned ICRC commentary, has affirmed:

that the occupation of a territory is to be a temporary, de facto situation, whereby the Occupying Power can neither claim possession nor exert its sovereignty over the territory it occupies, recall[ing] in this regard the principle of the inadmissibility of the acquisition of land by force and therefore the illegality of the annexation of any part of the Occupied Palestinian Territory, including East Jerusalem, which constitutes a breach of international law, undermines the viability of the two-State solution and challenges the prospects for a just, lasting and comprehensive peace settlement.<sup>22</sup>

It also called upon all States, consistent with their obligations under the Charter and relevant Security Council resolutions ‘not to recognize any changes to the pre-1967 borders, including with regard to Jerusalem, other than those agreed by the parties through negotiations, including by ensuring that agreements with Israel do not imply recognition of Israeli sovereignty over the territories occupied by Israel in 1967’,<sup>23</sup> as well as ‘to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967.’<sup>24</sup>

25. These are clear expressions of the fact that occupation (and annexation) have no bearing or effect upon the sovereignty – including jurisdictional – of the occupied State and that the ability of the Occupying Power to exercise any form of authority in the occupied territory is both transient and subject to the limitations set by international law. This has already been extensively addressed in the State of Palestine’s submission and in many of the submissions made by *amici curiae*.<sup>25</sup>

26. Annexation by Israel would therefore have no bearing on the jurisdiction of the Court, in particular *ratione loci* – save that implementation of a scheme of annexation would constitute further acts of war crimes and crimes against humanity by Israeli officials coming within the competence of this Court.<sup>26</sup>

<sup>22</sup> UNGA, [74/88](#) (2019); See also, for example, ICRC, [1958 Commentary on Geneva Convention IV](#), Article 47, paras 273-276.

<sup>23</sup> UNGA, [74/11](#) (2019).

<sup>24</sup> UNGA, [74/88](#) (2019).

<sup>25</sup> See, the State of Palestine’s Submission, 16 March 2020, [ICC-01/18-82](#), paras 64 *et seq.*

<sup>26</sup> The exact typology of such crimes and their identified definitions under the Rome Statute are listed in paragraph 11 above.

27. The ICRC similarly points to ‘a fundamental principle’ of international humanitarian law pursuant to which ‘an Occupying Power continues to be bound to apply the Convention as a whole even when, in disregard of the rules of international law, it claims during a conflict to have annexed all or part of an occupied territory.’<sup>27</sup>

The Diplomatic Conference for the adoption of the Geneva Conventions and their Additional Protocols states that actions of this nature would have no effect on the rights of protected persons, who would, in spite of them, continue to be entitled to the benefits conferred by the Convention.<sup>28</sup>

28. The ICJ, in its ruling of 9 July 2004, concurred with this view:

The territories situated between the Green Line and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories, as described in paragraphs 75 to 77 above [paragraph 77 referring to the Oslo Accords], have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power.<sup>29</sup>

29. Furthermore, any attempt to apply or give effect to an agreement in a manner inconsistent with norms of *jus cogens* would have no legal effect.<sup>30</sup> Such peremptory norms include the prohibition of aggression, the prohibition of crimes against humanity, the prohibition of apartheid and racial discrimination, the right to self-determination and basic rules of international humanitarian law (including but not limited to: extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; unlawful deportation or transfer; the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; persecution; other inhumane acts).<sup>31</sup>

<sup>27</sup> ICRC, [1958 Commentary on Geneva Convention IV](#), Article 47, paras 275-276.

<sup>28</sup> ICRC, [1958 Commentary on Geneva Convention IV](#), Article 47, paras 275-276.

<sup>29</sup> [Wall Advisory Opinion](#), 09 July 2004, ICJ Reports 2004, p. 136, para. 78.

<sup>30</sup> ICRC, [2016 Commentary, Geneva Convention I](#), Article 6, para. 163; See also T. Meron, ‘The Humanization of Humanitarian Law’, *American Journal of International Law*, Vol. 94, No. 2, 2000, pp. 239–278, 252.

<sup>31</sup> See for example, International Law Commission, Fourth report on peremptory norms of general international law (*jus cogens*) by Dire Tladi, Special Rapporteur, 31 January 2019, [A/CN.4/727](#), para. 56; See, also, Palestine’s

30. Thus, any attempt to claim that the Oslo Accords have relieved Israel from its obligations under international law, including international humanitarian law, or that such agreements, the ongoing occupation or annexation have altered the status of the Palestinian Territory occupied in 1967 or the sovereign rights within that territory, could be interpreted as providing immunity for perpetrators of war crimes and crimes against humanity, are contradicted by the rules of international law, and have been consistently rejected by the State of Palestine and the international community.

31. Furthermore, the Court's jurisprudence indicates that these types of agreements have no bearing on the matter of opening investigations. Indeed, the Appeals Chamber in its Judgment on the appeal against the Decision on the authorization of an investigation into the situation in the Islamic Republic of Afghanistan noted that

arguments were also advanced during the hearing that certain agreements entered into between the United States and Afghanistan affect the jurisdiction of the Court and should be a factor in assessing the authorization of the investigation. The Appeals Chamber is of the view that the effect of these agreements is not a matter for consideration in relation to the authorization of an investigation under the statutory scheme...these issues may be raised by interested States should the circumstances require, but the arguments are not pertinent to the issue of the authorization of an investigation.<sup>32</sup>

### III. CONCLUDING REMARKS

32. The need for President Abbas to make the Statement discussed here highlights one important factor about these proceedings, which is that so far the ICC's involvement in the Situation in the State of Palestine has had no apparent dissuasive effect on Israel and its leadership in regards to its commission of crimes, which continue unabated. This clearly calls for the Pre-Trial Chamber to act decisively and expeditiously in rendering its Decision so that the Prosecution can proceed with its investigation and so that Israeli officials are made aware that, at last, their criminal actions will carry personal consequences. Such a Decision will serve to secure justice for victims, deter further

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Submission, 16 March 2020, [ICC-01/18-82](#), para. 68, in particular, references in footnotes 89; See also M. Cherif Bassiouni, *International Crimes: Jus Cogens and Obligatio Erga Omnes*, 59 *Law & Contemp. Probs.* 63 (1996).

<sup>32</sup>Appeals Chamber, Judgment on the appeal against the Decision on the authorization of an investigation into the situation in the Islamic Republic of Afghanistan, [ICC-02/17-138](#), 5 March 2020, para. 44.

criminal action, and underline the Court's objective commitment to the law as removed from politics.

33. Because of the need to act promptly, the State of Palestine respectfully requests that the Pre-Trial Chamber consider shortening the deadline for response to the present submissions, pursuant to Regulation 35 of the Regulations of the Court, and that it enquire from Israel whether it intends to respond to the Chamber's invitation.<sup>33</sup> This would help to avoid unnecessary delays. The Israeli leadership should not be permitted to use the time given by the Pre-Trial Chamber to carry out its criminal plan, but should instead be dissuaded from it by the prompt opening of an ICC investigation.



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Dr. Riad Malki, Minister of Foreign Affairs and Expatriates  
on behalf of  
The State of Palestine

Dated this 04 June 2020

At Ramallah, State of Palestine

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<sup>33</sup> The State of Palestine contends that the on-going and intensifying commission of crimes, including the impending attempt at unlawful annexation, constitute good cause for the request to shorten the deadline.

## **Annex A**

Statement delivered by H.E Mahmoud Abbas, President of the State of  
Palestine

19 May 2020

Translated from Arabic<sup>1</sup>

In light of the provisions of the Israeli government coalition agreement, which stated that “the Prime Minister will be able to bring the agreement that was reached with the United States on applying sovereignty starting on 1 July 2020 to the Cabinet and the Knesset”, and the speech of the Prime Minister of the occupation government at the Knesset the day before yesterday, which was devoid of any commitment to the signed agreements, declaring instead the application of Israeli sovereignty on the Israeli settlements. The Prime Minister of the occupation government reiterated this declaration in his first Cabinet meeting, considering annexation a priority for this government, which means annexation by the occupying Power of parts of the territory of the State of Palestine, based on the so-called "deal of the century" that we reject in its totality. This would entail the annulment by the occupying Power of the Oslo Accords and all other agreements concluded with it, after years of disregard for all these agreements and for all UN resolutions and international law;

Following the US administration’s recognition of Jerusalem as capital of Israel, moving its embassy there, and declaring the so-called "deal of the century", that served as basis and set the stage for the Israeli annexation declaration, which constitutes a grave breach of UN resolutions and international law, as well as this administration’s support to Israeli settlements and Israel’s colonial occupation of the territory of the State of Palestine;

Given our unshakeable faith in, and our firm commitment to, the right of our people to pursue their national struggle to end occupation and achieve their independent, contiguous and sovereign State of Palestine on the 4 June 1967 borders, with East Jerusalem as its capital, and a solution to the question of refugees in accordance with the Arab Peace Initiative and relevant UN resolutions, and the release of the Palestinian prisoners from Israeli detention centers and jails;

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<sup>1</sup> This translation is provided by the Government of the State of Palestine for clarification purposes in the context of the proceedings before the International Criminal Court.

Given also our commitment to achieve just and comprehensive peace in fulfilment of the two-State solution, based on the Arab Peace Initiative and UN resolutions, notably Security Council resolution 1515, which endorses the Arab Peace Initiative, and resolution 2334 that pertains to Jerusalem and settlements, and General Assembly resolution 194 regarding Palestine refugees, as well as General Assembly resolution 67/19 on the status of the State of Palestine in the United Nations;

Abiding by the decisions of the National Council and Central Council of the Palestine Liberation Organization, the sole and legitimate representative of the Palestinian people, the Palestinian leadership has today decided the following;

First: The Palestine Liberation Organization and the State of Palestine are absolved, as of today, of all the agreements and understandings with the US and Israeli governments and of all the commitments based on these understandings and agreements, including the security ones.

Second: The Israeli occupying Power has to immediately shoulder all its responsibilities and obligations before the international community as an occupying Power in the territory of the occupied State of Palestine, with all that it entails, based on international law and international humanitarian law, particularly the Fourth Geneva Convention of 1949, which holds the occupying power responsible for the protection of the civilian population under occupation and their property, criminalizes collective punishment, prohibits theft of resources, appropriation and annexation of land, prohibits forced transfer of the population of the occupied territory and the transfer of the population of the occupying Power (the settlers) to the land it occupies. All these are grave breaches of the Convention and constitute war crimes.

Third: We hold the US administration fully responsible for the injustice befalling the Palestinian people and we consider it a primary accomplice of the Israeli occupation government in all its hostile and unjust decisions and measures against our people. Yet we welcome the position of the other US stakeholders that reject the policies of this administration that are hostile to our people and their legitimate rights.

Fourth: We decide today to pursue signing accession instruments allowing the State of Palestine to join international organizations and conventions that we have not yet joined.

Fifth: We reaffirm our commitment to UN resolutions and international law, as well as to the resolutions adopted by the League of Arab States, the Organization of Islamic Cooperation and

relevant regional organizations to which we are member. We also reiterate our firm commitment to combating international terrorism in all its forms and regardless of its source.

Sixth: We reaffirm our commitment to a solution to the Palestinian-Israeli conflict based on the two-state solution, and our readiness to accept the presence of a third party on the borders between the two parties, through negotiations held under international auspices (the International Quartet plus) and through an international peace conference, on the basis of the UN resolutions and international law.

Seventh: We call on the countries of the world that have rejected the so-called “deal of the century” and US and Israeli policies and measures that violate UN resolutions, international law and the signed agreements, to not only reject and condemn but also adopt positions to deter such actions and to impose serious sanctions to prevent the occupying Power from implementing its plans, and continuing its denial of the rights of our people. We also call on the countries that have not yet recognized the State of Palestine to do so promptly to preserve the prospect of peace and to uphold UN resolutions and international law. We further call for the implementation of UN Security Council resolutions on providing international protection to our people in their occupied State. We will continue pursuing accountability for the crimes committed against our people by the Israeli occupation before all international institutions and courts. In this context, we stress our trust in the independence and credibility of the International Criminal Court.

Eighth: We salute once again our people, in Palestine and in the diaspora, for their resilience, steadfastness and struggle, and for their embrace of the PLO, the sole and legitimate representative of the Palestinian people. We pledge to our honoured martyrs, our brave prisoners and our heroic wounded to remain faithful to our oath until victory, freedom, independence and return are achieved, and till we raise together the Palestinian flag over the Al-Aqsa mosque and the Church of the Holy Sepulcher in our Jerusalem, the eternal capital of our Palestinian State.