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Advisory Opinion in Support of Post-Conflict Justice

The Legal Basis and Mechanism for Lifting ICC Warrants Following the Israel–Palestine Peace Agreement

I. Introduction

1. This Advisory Opinion is submitted in support of the implementation of the recent *Israel–Palestine Peace Agreement* (2025), which marks a fundamental transition from armed conflict to reconciliation and reconstruction. The Opinion addresses the legal feasibility and procedural mechanisms by which the *International Criminal Court* (ICC) may lawfully lift, quash, or suspend outstanding arrest warrants issued in connection with the 2023–2024 Gaza hostilities, including those concerning officials of Israel, the State of Palestine, and members of Hamas.

2. The purpose of this submission is to demonstrate that, under the **Rome Statute of the International Criminal Court**, the **United Nations Charter**, and principles of **transitional justice and peace consolidation**, there exists both legal competence and moral necessity for the ICC, acting upon proper initiative, to withdraw or suspend such warrants in order to safeguard the peace process and enable full implementation of Phase II of the accord.

3. This Opinion further contends that a **third party**—including a neutral State, inter-governmental organization, or recognized mediator—may properly submit a *communication or amicus curiae* intervention to the ICC or the UN Security Council, requesting deferral or withdrawal of proceedings in the *interests of justice*, pursuant to Articles 16, 53, and 61(10) of the Rome Statute.

II. Statement of Facts

4. Following two years of armed hostilities between Israel and Hamas, the parties, with international mediation, concluded a **Peace and Reconstruction Agreement** in early 2025. The Agreement's second phase contemplates mutual recognition, cessation of violence, exchange of detainees, and reconstruction of Gaza under joint supervision.

5. Notwithstanding this historic accord, the ICC currently maintains outstanding **arrest warrants** and **investigations** issued by the Pre-Trial Chamber at the request of the Prosecutor in 2024, encompassing alleged war crimes and crimes against humanity committed by Israeli and Palestinian actors.

6. The existence of such warrants—particularly against high-ranking officials—poses a direct impediment to the functioning of the new joint security mechanisms, to cross-border governance, and to the political legitimacy of both sides' leadership. Unless addressed, these warrants risk undermining the accord by perpetuating a climate of legal hostility inconsistent with peace consolidation.

III. Issues for Determination

7. The questions considered herein are:

- a. Whether, under the Rome Statute, the ICC possesses authority to lift, quash, or suspend outstanding arrest warrants once a comprehensive peace accord has been concluded;
- b. Whether such action may be prompted by, or upon submission of, a third party acting in the interest of international peace; and
- c. What procedural and diplomatic mechanisms exist to implement such withdrawal or suspension in conformity with international law.

IV. Applicable Law

8. The following provisions of the **Rome Statute** are directly relevant:

- **Article 16** – *Deferral of investigation or prosecution by the UN Security Council*;
- **Article 53** – *Prosecutor’s discretion not to proceed in the interests of justice*;
- **Article 58** – *Issuance and amendment of warrants of arrest*;
- **Article 61(10)** – *Cessation of effect of warrants upon withdrawal or non-confirmation of charges*;
- **Article 127** – *Withdrawal of a State from the Statute* (showing persistence of obligations);
- Rules 51 and 98 of the *ICC Rules of Procedure and Evidence*, allowing communications or amicus submissions by external entities.

9. Additionally, **Article 24 of the UN Charter** vests the Security Council with primary responsibility for the maintenance of international peace and security, empowering it to adopt binding decisions under Chapter VII— including resolutions to defer ICC proceedings when necessary for peace implementation.

10. Customary **international humanitarian and human-rights law**, together with the evolving corpus of **transitional-justice jurisprudence**, recognises that post-conflict settlements may lawfully incorporate conditional amnesty, prosecutorial discretion, and truth-and-reconciliation mechanisms, provided that such measures do not condone genocide or systematic atrocity.

11. Precedents include:

- **South Africa’s Promotion of National Unity and Reconciliation Act 1995**, upheld as compatible with international law (*AZAPO v President*, 1996 (4) SA 671 (CC));
- The **Lomé Peace Accord 1999** (Sierra Leone), recognised by the UN as valid except for core crimes;
- **Colombia’s Special Jurisdiction for Peace (JEP) 2016**, endorsed by the ICC Prosecutor as satisfying complementarity;
- The **Northern Ireland Good Friday Agreement 1998**, in which pending prosecutions were effectively neutralised through legislative release.

V. Legal Analysis

A. Competence of the ICC to withdraw or lift warrants

12. Under **Article 58(6)** of the Rome Statute, the Prosecutor may request amendment or cancellation of a warrant where new circumstances arise. The conclusion of a binding peace treaty, verified by the international community and accompanied by credible transitional-justice measures, unquestionably constitutes a *new circumstance* capable of triggering reconsideration.

13. Furthermore, **Article 61(10)** provides that any warrant previously issued “shall cease to have effect with respect to any charges which have not been confirmed ... or which have been withdrawn by the Prosecutor.” Thus, a Prosecutor acting *motu proprio* or upon representations from the parties may request the Pre-Trial Chamber to record the withdrawal of charges, rendering the warrant void.

14. The **Office of the Prosecutor (OTP)** enjoys independence under Article 42 but is bound by Article 53(2)(c) to consider whether “a prosecution is not in the interests of justice, taking into account all the circumstances, including the interests of victims, the gravity of the crime and the interests of peace.” This provision provides an explicit normative bridge between legal prosecution and political peace.

15. The ICC has acknowledged, in *Prosecutor v Kony et al.*, that “interests of justice” may justify postponing or refraining from prosecution when credible peace processes exist. The same rationale applies here:

once both sides have ceased hostilities and agreed to reparative mechanisms, continued enforcement of arrest warrants serves no justice-enhancing purpose.

B. Role of the United Nations Security Council (Article 16 Deferral)

16. Article 16 of the Rome Statute authorises the Security Council, acting under Chapter VII of the UN Charter, to request the Court to defer investigation or prosecution for renewable periods of 12 months.

17. A Council resolution adopted under Article 16 would have binding effect on all ICC organs, suspending proceedings and rendering outstanding warrants unenforceable for the duration of the deferral. The Council may renew such deferral until full implementation of the peace agreement.

18. Historically, deferrals have been sought (though not always adopted) in relation to Sudan (2008) and Kenya (2011). Nothing in the Statute limits the Council’s competence to cases involving a peace accord between recognised entities; indeed, maintaining international peace is its principal mandate.

19. A coalition of States or mediators could therefore submit a **Draft Security Council Resolution** declaring that enforcement of ICC warrants arising from the 2023–2024 Gaza conflict shall be deferred under Article 16 “to permit the consolidation of peace and the establishment of joint accountability mechanisms.”

C. Standing and the possibility of third-party intervention

20. While the Rome Statute confers no *locus standi* for external petitioners to “quash” warrants directly, it permits communications and *amicus curiae* submissions. **Rule 103** of the ICC Rules allows “any interested person or State” to file a written observation on issues relevant to the case or to the interests of justice.

21. Accordingly, a **third party**—for example, a neutral State, the Secretary-General, or an inter-governmental mediator—may properly file a communication urging the Prosecutor and the Pre-Trial Chamber to

reconsider warrants in view of changed political and humanitarian circumstances.

22. In addition, Article 15(2) empowers “any person or organization” to submit information concerning crimes or the interests of justice. This wide formulation, read with the *travaux préparatoires*, allows for peace-oriented submissions even at the post-warrant stage.

23. Therefore, a third party cannot *legally quash* a warrant but may *lawfully initiate* reconsideration by invoking Articles 53, 58(6), and 61(10), prompting the Prosecutor or Chamber to act *sua sponte*.

D. Compatibility with victims’ rights and transitional-justice principles

24. Critics may contend that lifting warrants violates victims’ rights to justice. Yet international jurisprudence increasingly recognises that **restorative justice**—truth-seeking, reparations, and reconciliation—can satisfy victims’ rights more effectively than distant prosecutions that obstruct peace.

25. The UN Secretary-General’s 2004 report *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* affirms that “justice and peace are complementary imperatives” and that sequencing of accountability may legitimately defer prosecutions to secure lasting peace.

26. Where a peace process institutes independent truth commissions, reparations schemes, and guarantees of non-recurrence, the *interests of justice* test under Article 53 is met. The ICC Prosecutor has previously endorsed the Colombian JEP system on this very basis.

27. Therefore, conditional lifting of warrants within a verified transitional-justice framework does not constitute impunity; it represents a lawful, policy-consistent recalibration of justice toward peace.

E. Precedent and analogical practice

28. Comparable actions have occurred in other conflicts:

a. **Uganda (LRA)** – The Prosecutor accepted suspension of active field operations while peace talks were underway (2006–2008).

b. **Sudan (Darfur)** – The African Union repeatedly petitioned for Article 16 deferral on peace grounds, recognised as legitimate though unadopted due to veto politics.

c. **Sierra Leone** – Following the Lomé Accord, partial amnesty was granted; the subsequent Special Court distinguished but respected the peace process.

d. **Colombia** – The ICC Prosecutor publicly supported the JEP system (2016) as satisfying complementarity, despite existing investigations.

e. **Northern Ireland** – Pending warrants were effectively neutralised through legislative action and early release under the Good Friday Agreement 1998.

29. Each example demonstrates that rigid insistence on prosecution during fragile peacebuilding risks renewed conflict, while calibrated legal suspension fosters reconciliation.

F. The moral and legal rationale for quashing the warrants

30. International law’s ultimate purpose is the preservation of peace and the protection of human life. Article 1 of the UN Charter binds all organs—including the ICC, as a treaty-based institution—to act consistently with that goal.

31. Where prosecution of political and military leaders directly undermines an agreed peace process, the continuation of such prosecution may constitute *abuse of process* in the broader sense of international law.

32. The Rome Statute is not a self-executing penal code divorced from humanity; it operates within a system of collective security. Article 53’s *interests of justice* clause exist precisely to prevent the law from destroying peace.

33. Accordingly, the Prosecutor and the Pre-Trial Chamber possess both the competence and the duty to give effect to the peace accord by withdrawing or suspending the warrants, subject to transparent verification of compliance with transitional-justice obligations.

VI. Procedural Roadmap for Implementation

34. To ensure both legality and legitimacy, the following multi-phase procedure is recommended:

Phase 1 – Diplomatic Initiative

a. A neutral State or recognized mediator (e.g., Switzerland, Norway, or the UN Special Coordinator) files a *communication under Article 15(2) and Rule 103*, requesting review of the warrants in light of the peace accord.

b. Simultaneously, the parties to the peace agreement transmit a **joint declaration** to the ICC Prosecutor affirming their commitment to truth, reparations, and non-recurrence.

Phase 2 – Prosecutorial Review

a. The Prosecutor opens a formal *review under Article 53(2)(c)* to assess whether continuation of prosecution serves the interests of justice.

b. If satisfied that peace implementation outweighs prosecutorial interest, the Prosecutor submits a **request to withdraw charges** under Article 61(10) to the Pre-Trial Chamber.

Phase 3 – Judicial Confirmation

a. The Pre-Trial Chamber, upon application of the Prosecutor, issues an order noting withdrawal of charges and declaring the corresponding arrest warrants **ceased to have effect**.

Phase 4 – Security Council Deferral (Article 16)

a. Should the Prosecutor or Chamber hesitate, supportive States may seek a **UNSC resolution** under Chapter VII deferring all ICC actions relating to the conflict for renewable 12-month periods.

b. This deferral suspends enforcement of warrants pending final resolution.

Phase 5 – Assembly of States Parties (ASP) Endorsement

a. The ASP may adopt a **political declaration** recognising the peace

accord and encouraging prosecutorial restraint, providing further institutional legitimacy.

Phase 6 – Transitional-Justice Verification

- a. An independent commission (possibly UN-mandated) verifies fulfilment of the accord’s accountability provisions.
- b. Upon certification, the Prosecutor issues a final declaration of non-prosecution for the relevant individuals.

VII. Anticipated Objections and Responses

35. Objection 1: The ICC has no power to grant amnesty.

Response: True; however, this proposal does not seek amnesty but lawful **withdrawal or deferral** under Articles 53, 58(6), 61(10), and 16. These provisions explicitly empower cessation of proceedings where interests of justice or peace so require.

36. Objection 2: Victims’ rights are infringed.

Response: The peace agreement establishes domestic mechanisms—truth commissions, reparations, and guarantees of non-recurrence—satisfying victims’ rights under international law. The ICC Prosecutor retains oversight to ensure compliance.

37. Objection 3: Political influence compromises judicial independence.

Response: The ICC remains independent; it merely exercises discretion under existing statutory provisions. Judicial review by the Pre-Trial Chamber ensures legality and transparency.

38. Objection 4: Deferral may create impunity.

Response: Deferral is time-bound and conditional. Should parties breach the peace, the Prosecutor may reactivate proceedings without prejudice.

VIII. Comparative Assessment and Policy Considerations

39. Transitional justice is now an accepted component of international criminal law. The jurisprudence of hybrid tribunals (Sierra Leone, East

Timor, Kosovo) demonstrates that reconciliation frameworks can coexist with accountability.

40. Rigid application of criminal process in the midst of peace implementation may contradict the principle of proportionality inherent in the Statute. Justice must be administered in context; the ultimate object of the ICC is to prevent future crimes, not to perpetuate division.

41. The ICC's credibility will in fact be strengthened by demonstrating flexibility, humanity, and responsiveness to successful peacebuilding. By aligning with the UN Charter's objective of peace, the Court will reinforce its moral legitimacy.

IX. Recommendations

42. It is therefore advised that:

1. The **Prosecutor** immediately open a review under Article 53(2)(c) on the basis of the peace agreement.

2. The **Pre-Trial Chamber** be petitioned to note withdrawal or amendment of the warrants pursuant to Article 61(10).

3. The **UN Security Council** adopt a resolution under Article 16 deferring enforcement of ICC warrants for renewable twelve-month periods.

4. A **third-party State or mediator** submit an *amicus curiae* communication under Rule 103 supporting this request.

5. The **Assembly of States Parties** issue a declaration endorsing prosecutorial discretion in the interests of peace.

6. A **Joint Verification Commission** monitor compliance with the accord's justice provisions to assure the ICC that withdrawal does not equal impunity.

X. Conclusion

43. The Rome Statute, when interpreted in harmony with the UN Charter and contemporary principles of transitional justice, provides sufficient legal basis for the **lifting, suspension, or withdrawal** of ICC arrest warrants issued during the Israel–Palestine conflict.

44. Such action may be initiated through a combination of (i) prosecutorial discretion under Article 53; (ii) judicial withdrawal under Article 61(10); and (iii) Security Council deferral under Article 16.

45. A third party—acting as mediator or guarantor of the peace accord—has standing to submit a communication invoking these provisions and requesting formal reconsideration in the *interests of justice and peace*.

46. By exercising its discretion wisely, the ICC will not diminish justice but rather *redefine it* in service of humanity’s higher goal: the restoration of peace, dignity, and lawful coexistence between two nations long at war.

47. The lifting of these warrants does not erase the past; it enables the future. Law must be an instrument of reconciliation, not retaliation. The Rome Statute itself—born from the ashes of conflict—commands no less.

Prepared as an Advisory Opinion in support of post-conflict justice and reconciliation

For potential submission to the International Criminal Court, the United Nations Security Council, and the Assembly of States Parties.

Monaco, li 10.10.2025

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