

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**
Date: **30 July 2024**

PRE-TRIAL CHAMBER I

Before: Judge Iulia Motoc, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Nicolas Guillou

SITUATION IN THE STATE OF PALESTINE

Secret and *EX PARTE*, only available to the Prosecution and the State of Israel

Prosecution Response to Israel's "Request for leave to reply to the 'Prosecution Response to Israel's Request for Access to the Application for Arrest Warrants for Benjamin Netanyahu and Yoav Gallant'" (ICC-01/18-255-SECRET-Exp-AnxI)

Source: Office of the Prosecutor

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I. INTRODUCTION

1. Israel's request to reply to the Prosecution's response to its request for access to the applications for arrest warrants against senior Israeli officials should be rejected.¹ Israel does not identify any new issue arising from the Prosecution's Response that it could not reasonably have anticipated in its original Access Request. Nor does Israel identify any issue that would otherwise merit a reply. Instead, Israel misstates the Prosecution's submissions and seeks to modify or expand the Access Request. This is not the purpose of a reply and would not assist the Chamber.

II. CONFIDENTIALITY

2. Pursuant to regulation 23bis(2) of the Regulations of the Court, this application is filed SECRET following the classification of the Request to Reply. If the Request is reclassified, this Response can follow the same classification.

III. SUBMISSIONS

3. The granting of leave to reply under regulation 24(5) of the Regulations is a matter for a chamber's discretion, to be decided on a case-by-case basis.² A reply may be warranted where the applicant seeks to provide arguments on matters that could not reasonably have been anticipated, or are otherwise necessary to adjudicate the matter.³ However, the two purported issues identified by Israel for a proposed reply do not meet the test for leave to reply, and this should not be granted. Israel misstates the Prosecution's submissions and seeks to use a reply to modify or expand its Access Request.

4. *First*, Israel argues that the Pre-Trial Chamber could grant its Access Request without assessing whether Israel lacks legal basis to challenge the Court's jurisdiction under article 19(2) or to make submissions on admissibility at this stage.⁴ Yet Israel expressly stated that it requested access to the *secret* and *ex parte* Article 58 Applications "so that it is able, if it deems appropriate, to exercise the rights accorded to it under the Rome Statute, including under

¹ ICC-01/18-255-SECRET-Exp-AnxI ("Request to Reply"). On 11 July 2024, Israel requested access on a confidential basis to the Prosecutor's Article 58 Applications filed on 20 May 2024: ICC-01/18-187-SECRET-Exp-AnxI ("Access Request"). The Prosecution responded on 22 July 2024: ICC-01/18-248-SECRET-Exp ("Prosecution's Response").

² ICC-01/14-01/18-799 ("[Yekatom Reply Decision](#)"), para. 8; ICC-01/04-02/06-2530 ("[Ntaganda Second Reply Decision](#)"), para. 7; ICC-01/04-02/06-2488 ("[Ntaganda First Reply Decision](#)"), para. 7.

³ [Yekatom Reply Decision](#), para. 8, citing Regulation 24(5); ICC-02/18-66 ("[Venezuela Reply Decision](#)"), para. 11; ICC-01/21-72 ("[Philippines Reply Decision](#)"), para. 7.

⁴ Request to Reply, para. 7.

Article 19(2)(c), to challenge the Court's jurisdiction in the present case"⁵ and because "[it] may also wish to make submissions on issues of admissibility"—albeit with no reference to a statutory provision.⁶ Israel's Access Request is therefore inextricably linked with the potential submissions before the Court that Israel might seek to make. Israel could not reasonably have failed to anticipate that the Prosecution would address this purported objective of the Access Request. If Israel wished to rely on other provisions or advance other arguments to support the Access Request, it should have done so in its original motion. Israel cannot use a reply to expand or modify its previous request, requiring a further response from the Prosecution, and unnecessarily prolonging these proceedings *ad infinitum*.

5. *Second*, the Prosecution did not submit that "the Pre-Trial Chamber's authorization to entertain *amicus curiae* submissions under Rule 103 precludes Israel's Access Request".⁷ The Prosecution argued that Israel lacks standing under the Statute to file the Access Request.⁸ Since the Request to Reply misrepresents the Prosecution's Response, further submissions in this vein would not assist the Chamber.

IV. RELIEF REQUESTED

6. For these reasons, Israel has not shown that leave to reply is warranted to address either of the two proposed issues. The Prosecution respectfully requests that the Chamber rejects the Request to Reply.



Karim A.A. Khan KC, Prosecutor

Dated this 30th day of July 2024

At The Hague, The Netherlands

⁵ Access Request, para. 1; *see also* paras. 5 ("The purpose for which Israel seeks access to the Article 58 application is to be in a position to offer submissions in relation to the issue of an assertion of jurisdiction by the Court that directly impacts on Israel's sovereignty"), 13 ("Israel is contemplating challenging the Court's jurisdiction in relation to the Prosecutor's Article 58 application") and 16 ("Israel requests access to the Article 58 application for arrest warrants against senior Israeli officials filed by the Prosecutor on 20 May 2024. Israel seeks this information so that it is able, if it deems it appropriate, to exercise its rights to challenge the Court's jurisdiction over the case pursuant to Article 19(2)(c) of the Rome Statute").

⁶ Access Request, para. 5; *see also* paras. 15, 17.

⁷ Request to Reply, para. 8 referring to Prosecution's Response, para. 6.

⁸ Prosecution's Response, paras. 6-9.