

Pursuant to Pre-Trial Chamber I's instruction dated 10-10-2024, this document is reclassified as Public.

**Cour
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**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**
Date: **5 September 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 to extend the page limit for submissions concerning article 18(1)" (ICC-01/18-345-SECRET-Exp-Anx)

Source: Office of the Prosecutor

Pursuant to Pre-Trial Chamber I's instruction dated 10-10-2024, this document is reclassified as Public.

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

to:

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Detention Section

**Victims Participation and Reparations Other
Section**

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I. INTRODUCTION

1. Israel's Request for an extension of pages to provide submissions on article 18(1) of the Statute should be summarily dismissed.¹ Israel's Request has no legal basis and forms part of a pattern in which Israel "picks and chooses" the matters on which it is willing to engage with the Court and the timing of its engagement. Israel's practice of fragmented litigation outside the mechanisms foreseen in the Rome Statute should not be permitted. It diverts the Court's time and resources and risks delaying the Chamber from addressing the substantive and urgent matters presently under consideration.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this application is filed SECRET, in line with the classification of Israel's Request. If the Request is reclassified, this Response can follow the same classification. The Prosecution further notes that it sees no basis for the present classification and submits that these matters should be public.

III. SUBMISSIONS

3. The Prosecution respectfully submits that Israel's Request should be summarily dismissed because it has no legal basis. It results in the fragmentation of proceedings before the Chamber, diverts time and resources, and risks delaying a decision on the article 58 applications.

4. *First*, there is no provision in the Statute that allows Israel to provide submissions on article 18 (or any other matter) at this stage of the *ex parte* proceedings under article 58. Israel, therefore, has no grounds for providing submissions, let alone requesting additional pages to do so. Israel's Request should be dismissed on this basis. The Chamber should likewise find that Israel is not permitted to provide submissions on article 18 at this juncture.

5. *Second*, the Prosecution notes that Israel could have sought to provide submissions on this topic under rule 103, following the Chamber's general invitation arising from the United Kingdom's Request, but it decided not to do so—at least not directly. By choosing to adopt the current approach instead, the Request creates unnecessary litigation, diverts the Court's time and resources and risks delaying the Chamber from addressing the substantive and urgent matters presently under consideration. This should not be permitted by the Court.

¹ ICC-01/18-345-SECRET-Exp-Anx ("Israel's Request" or "Request"). The Prosecution will interchangeably use "Pre-Trial Chamber I" and "the Chamber".

6. *Finally*, should the Chamber decide to entertain Israel's Request (which it should not), the extension of pages should be rejected. There are no exceptional circumstances that justify the extension requested. The Chamber is sufficiently briefed on this topic as a result of the rule 103 process. Indeed, even if Israel chose not to provide submissions directly, multiple other interveners did—and the Prosecution responded to them.² In any event, should the Chamber decide to permit Israel to provide submissions on article 18 at this stage, the Prosecution requests to be allowed to respond with the same number of pages afforded to Israel.

IV. RELIEF REQUESTED

7. For these reasons, the Prosecution submits that Israel's Request should be summarily dismissed and the Chamber should find that Israel is not permitted to provide submissions on article 18 at this stage of the proceedings.



Karim A.A. Khan KC, Prosecutor

Dated this 5th day of September 2024

At The Hague, The Netherlands

² See e.g. ICC-01/18-300 (“[USA](#)”), paras. 17-26; ICC-01/18-293 (“[CIJA](#)”), paras. 25-27; ICC-01/18-285 (“[Chilstein](#)”), paras. 32-37; ICC-01/18-301 (“[The Hague Initiative](#)”), paras. 31-32; ICC-01/18-304 (“[Graham](#)”), paras. 22-32; ICC-01/18-307 (“[Germany](#)”), paras. 13-14; ICC-01/18-298 (“[IA Jewish Lawyers & Jurists](#)”), paras. 5, 10-12; ICC-01/18-265 (“[Shany & Cohen](#)”), paras. 23-25; see ICC-01/18-346 (“[Prosecution Response to Interveners](#)”), paras. 104-113.