

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: **16 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 for leave to reply to Prosecution Response to Israel's 'Request to extend the page limit for submission concerning article 18(1)' (ICC-01/18-345-SECRET-Exp-Anx)"

Source: Office of the Prosecutor

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

to:

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The Office of Public Counsel for Victims

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Detention Section

**Victims Participation and Reparations Other
Section**

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I. INTRODUCTION

1. Israel's Request to Reply to the Prosecution's Response to its Request for Extension of Pages to provide submissions on article 18(1) of the Statute should be dismissed.¹ There is no basis for Israel's Request to Reply. Israel does not identify any new issue arising from the Prosecution's Response that it could not reasonably have anticipated in its original Request. Nor does it identify any issue that would otherwise assist the Chamber in its determination and merit a reply. Instead, Israel misrepresents the Prosecution's submissions and seeks to further needlessly prolong this litigation. This is not the purpose of a reply and should not be permitted.

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 three purported issues identified by Israel for a proposed reply do not meet the test for leave to reply. The Request to Reply is yet another example of Israel's (and its allies') multifaceted strategy to delay, and prevent, the Court from deciding on the Prosecution's Article 58 Applications. Israel's Request should not be granted.

4. *First*, Israel argues that "the Prosecution unforeseeably addresses standing in respect of a filing that has not yet been made".⁴ Yet, it was entirely foreseeable that the Prosecution would address standing in respect of a filing that Israel is not entitled to file. The Chamber need not consider a request for extension of pages for a filing when there is no standing to make such

¹ ICC-01/18-352-SECRET-Exp-Anx ("Israel's Request to Reply" or "Israel's Request"). See also ICC-01/18-349-SECRET-Exp-Anx ("Prosecution's Response" or "Response") and ICC-01/18-345-SECRET-Exp-Anx ("Israel's Request for Extension Pages"). The Prosecution will interchangeably use "Pre-Trial Chamber I" and "the Chamber" and will refer to "Article 58 Applications".

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 Israel's Request, para. 6.

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filing. Israel's Request to reply to this issue should be rejected.

5. *Second*, Israel requests leave to show a purported "inconsistency" by the Prosecution which it asserts "reflects a pattern of Prosecution submissions whose manifest purpose is to deny standing [...] permanently, in respect of the Prosecution's compliance with article 18(1)".⁵ Israel also disagrees with the Prosecution's submission that matters related to article 18(1) have already been sufficiently presented in certain interveners' submissions under rule 103 and asserts that this approach could cause Israel irreparable prejudice.⁶ None of these issues merits a reply.

6. If there was any purported contradiction or pattern by the Prosecution, the Chamber already has all the necessary information to identify it by itself. In any event, there is none. Instead, Israel mispresents the Prosecution's Response. In order to demonstrate Israel's attempts to delay the Chamber from deciding on the Article 58 Applications through unnecessary and unfounded litigation, the Prosecution simply noted that Israel could have requested leave to provide observations in relation to article 18 in the context of the rule 103 proceedings, as other interveners, including State parties and non-State parties, did.⁷ Instead, Israel waited until the eve of the filing of the Prosecution's response to the rule 103 observations to make such a request, months after the Prosecutor had made clear that the recent events fell within the scope of the ongoing investigation in the *State of Palestine*.⁸ Likewise, there is no "pattern" of the kind alleged in the Prosecution's submissions. The Prosecution has addressed and addresses each of Israel's requests on its merits, and always on the basis of the Court's legal framework and jurisprudence.

7. Further, there is no prejudice to Israel from not providing observations in relation to article 18 of the Statute. Israel decided not to request deferral under article 18 when the Prosecution notified it of the opening of the investigation in the *State of Palestine* in March 2021. It would be prejudicial to international justice and to the rights and interests of victims in this Situation, and contrary to the Statute, to now allow Israel to request a deferral or to provide submissions on article 18 of the Statute. In addition, the Prosecution has assessed admissibility and has determined that the cases identified in the Article 58 Applications are

⁵ Israel's Request, para. 7.

⁶ Israel's Request, para. 7.

⁷ Response, para. 5.

⁸ [Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine and Israel](#), 30 October 2023; [Statement of ICC Prosecutor Karim A. A. Khan KC from Ramallah on the situation in the State of Palestine and Israel](#), 6 December 2023.

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admissible before the Court. Significantly, Israel can still challenge the admissibility of the cases under article 19(2) after the Chamber decides, positively, on the Article 58 Applications. Israel's request to reply to this second issue should therefore be dismissed.

8. *Third*, Israel argues that the Prosecution "unforeseeably contends that standing for the prospective filing should be denied based on the incorrect claim that it is a prospective filing in an *ex parte* proceeding, namely the Pre-Trial Chamber's article 58 deliberations", and submits that the request is instead filed in "The Situation in Palestine".⁹ Israel's request to reply to this third issue also lacks merit. The Prosecution correctly stated that there is no legal basis to provide observations in relation to article 18 (or any other matter) at this stage of the article 58 *ex parte* proceedings.¹⁰ The Prosecutor merely described the current procedural stage in the *Situation in the State of Palestine* where on 20 May 2024 the Prosecutor submitted Article 58 Applications, which have yet to be decided by the Chamber. Accordingly, Israel's request to reply to this third issue should be dismissed.

9. Finally, the Prosecution notes that there is no "Situation in Palestine" before the ICC. There is only a *Situation in the State of Palestine*. The Chamber should not permit interveners to incorrectly rename this, or any other situation, in their filings. Such filings should be rejected and/or the interveners be instructed to re-file within the correct situation if they wish their filings to be considered.

IV. RELIEF REQUESTED

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



Karim A.A. Khan KC, Prosecutor

Dated this 16th day of September 2024
At The Hague, The Netherlands

⁹ Israel's Request, para. 8.

¹⁰ Response, para. 4.