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**Cour
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**International
Criminal
Court**

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No.: **ICC-01/18**
Date: **10 October 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 challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute' - ICC-01/18-354-SECRET-Exp-AnxI-Corr"

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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I. INTRODUCTION

1. Israel's Request for Leave to Reply to the Prosecution's Response regarding Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute should be rejected.¹ There is no basis for Israel's Request. Israel identifies no new issue arising from the Prosecution's Response that it could not reasonably have anticipated, or which is otherwise necessary for the Chamber to adjudicate the matter. Rather, Israel's Request merely reflects its disagreement with the positions taken by the Prosecution, which is not unusual in the course of litigation.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this application is filed SECRET following the classification of the Request for Leave to Reply. The Prosecution respectfully observes that there seems to be no basis for this classification and submits that these matters of law should be addressed in public. The Prosecution notes that Israel also appears to share this position.² 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) is discretionary, to be decided on a case-by-case basis.³ A reply may be warranted where the applicant seeks to provide arguments on matters that could not reasonably have been anticipated, or where a reply is otherwise necessary to adjudicate the matter.⁴ However, the three purported issues identified by Israel for the proposed reply do not meet this test for leave. Israel's Request should not be granted.

4. *First*, Israel asserts that the Prosecution's characterisation of the Chamber's Article 19(3) decision and the *Venezuela* decision "could not have been foreseen and merits a reply."⁵ This assertion is unconvincing. The Prosecution's Response carefully set out the holding and

¹ ICC-01/18-361-SECRET-Exp-Anx ("Israel's Request"). *See also* ICC-01/18-357 ("Prosecution's Response"). The Prosecution will interchangeably use "Pre-Trial Chamber I" and "the Chamber" and will refer to "Article 58 Applications".

² *See* Israel's Request, para. 3 ("Israel respectfully reiterates that it wishes for the 'Public and Redacted' version of the Jurisdiction Challenge, and all related filings, to be reclassified as 'Public'.").

³ 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.

⁴ [Yekatom Reply Decision](#), para. 8, citing Regulation 24(5); ICC-02/18-66 ("[Venezuela Reply Decision](#)"), paras. 10-11; ICC-01/21-72 ("[Philippines Reply Decision](#)"), paras. 6-7. *See also* Israel's Request, para. 4.

⁵ Israel's Request, para. 9.

reasoning in the authorities relevant to the issue raised by Israel, which was the temporal scope of article 19(2) proceedings.⁶ Those authorities establish that article 19(2) challenges may be brought only once a case has arisen—that is, after the issuance of a warrant of arrest or summons to appear.⁷ That Israel disagrees with the Prosecution's assessment of those authorities does not render this an issue which could not have reasonably been anticipated. Moreover, the Chamber is well placed to assess them. Israel's Request for Leave to Reply to this issue should be rejected.

5. *Second*, Israel asserts that it “could not have reasonably foreseen that the Prosecution would advance such a narrow interpretation of article 19(2)(c) which effectively renders that provision devoid of all meaning.”⁸ The interpretation set out in the Prosecution's Response—that article 19(2)(c) grants a statutory right to “[a] State from which acceptance of jurisdiction is required under article 12”—does not effectively render the provision devoid of meaning, and is consistent with established principles of treaty interpretation.⁹ Article 19(2)(c) means what it says—it confers standing on the State or States “from which acceptance of jurisdiction is *required* under article 12.”¹⁰ That the Prosecution would adopt this straightforward interpretation of article 19(2)(c) is, again, not something that Israel could not reasonably have foreseen. The Prosecution simply responded to Israel's different and broader interpretation of article 19(2)(c).¹¹ Israel's Request for Leave to Reply to this issue should be rejected.

6. *Third*, Israel seeks to generally reiterate and re-argue its original claim that its acceptance of jurisdiction under article 12(3) is required in order to establish standing under article 19(2)(c).¹² Yet, replies cannot be used to complement or expand previous submissions.¹³ Moreover, Israel asserts that “[t]he Prosecution's position misreads the express language in the 2021 Decision as well as the clear text of article 19(2).”¹⁴ The Prosecution's Response contains no misreading of the article 19(3) decision or the text of article 19(2). Rather, it correctly points out that Israel—a non-party State—is essentially attempting to challenge the “validity and effects of the accession of Palestine to the Rome Statute, accepted by the Court's States

⁶ Prosecution's Response, paras. 5-16. *See also* ICC-01/18-354-AnxII-Corr (“[Israel's Challenge](#)”), paras. 46-57.

⁷ ICC-01/18-143 (“[Article 19\(3\) Decision](#)”), paras. 68, 73; [ICC-02/18-45](#), para. 35. *See also* [ICC-01/04-101-tEN-Corr](#), para. 65.

⁸ Israel's Request, para. 10.

⁹ Prosecution's Response, para. 18, quoting Statute, art. 19(2)(c).

¹⁰ Statute, art. 19(2)(c) (emphasis added). *See also* Prosecution's Response, paras. 9-10.

¹¹ *See e.g.* [Israel's Challenge](#), paras. 41-43.

¹² Israel's Request, para. 11.

¹³ *See* [Israel's Challenge](#), paras. 44-45 and 58-62.

¹⁴ Israel's Request, para. 11.

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Parties—and which the Chamber has already held to be effective, binding, and not reviewable even by the Chamber itself.”¹⁵ Israel's Request for Leave to Reply to this issue should be rejected.

IV. RELIEF REQUESTED

7. On the basis of the foregoing, the Prosecution respectfully requests that the Chamber reject Israel's Request for Leave to Reply. The Prosecution further recalls its request for the Chamber to expeditiously decide on the Prosecution's Article 58 Applications.



Karim A.A. Khan KC, Prosecutor

Dated this 10th day of October, 2024

At The Hague, The Netherlands

¹⁵ Prosecution's Response, para. 26, citing [Article 19\(3\) Decision](#), para. 102.