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No.: ICC-01/18

Date: 14 February 2020

PRE-TRIAL CHAMBER I

**Before: Judge Péter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Adélaïde Sophie Alapini-Gansou**

SITUATION IN THE ALLEGED STATE OF PALESTINE

PUBLIC

**Application for Leave to Submit Observations as Amicus Curiae pursuant to Rule 103(1) of the
Rules of Procedure and Evidence**

Source: The Israel Forever Foundation

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

The Office of the Prosecutor

Counsel for the Defence

Fatou Bensouda

Mr James Stewart

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States' Representatives

**Applicants to participate as Amicus
Curiae**

REGISTRY

Registrar

Counsel Support Section

Peter Lewis

Victims and Witnesses Unit

Detention Section

Mr Nigel Verrill

Victims Participation and Reparations Section

Other

Mr Philipp Ambach

I. Introduction

1. The Israel Forever Foundation hereby respectfully submits this Application for leave to submit observations as an *amicus curiae* to assist in the determination of the jurisdictional issue set out in paragraph 220 of the “*Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine*” (“Request”). This Application is submitted pursuant to the Court’s “*Order setting the procedure and the schedule for the submission of observations*” of 28 January 2020 (“Order”) and Rule 103(1) of the Rules of Procedure and Evidence (“the Rules”).
2. These observations will be limited to “the scope of the Court’s territorial jurisdiction in the situation in Palestine”¹, if any, and legal issues necessary to resolving this jurisdictional question.

II. Relevant Expertise

3. The Israel Forever Foundation (“IFF”) is a US based charitable foundation. Among its programming, IFF provides educational resources on the historical and legal issues related to the ancestral and indigenous rights to the region. IFF has significant expertise on issues related to the history, international law and relevant issues related to the State of Israel and the self-determination of the Jewish people.
4. IFF will be assisted in this filing by Heideman Nudelman & Kalik, PC (“HNK”), a Washington, DC law firm with extensive experience in international law. HNK has previously submitted an Amicus Brief to the International Court of Justice at the Hague and has more than four decades of experience investigating and litigating disputes related to acts of terrorism and various legal issues related to the State of Israel.

III. Summary of the Arguments

¹ Order, para.15.

5. For the International Criminal Court to intervene “where clear jurisdictional parameters have not been met... is neither good law nor makes for responsible judicial action.”² IFF’s submission will assist the Pre-Trial Chamber in determining clear jurisdictional parameters have not been met in this instance because the Prosecution seeks to exercise jurisdiction to investigate alleged conduct which did not take place on the territory of a state Party to the Rome Statute, was not committed by a national of a state Party to the Rome Statute, and was not referred to the Court by the United Nations Security Council.
6. IFF’s submission will clarify legally and historically relevant issues of fact and law, raised in the Request, which bear on the issue of jurisdiction. Specifically, IFF will provide arguments to assist the Pre-Trial Chamber in assessing:
 - i. Whether the Request fails to establish jurisdiction because it misstates the law and facts related to national self-determination;³
 - ii. Whether the Request fails to establish jurisdiction because it incorrectly seeks to ignore the legal ramifications of the Oslo Accords^{4,5}
 - iii. Whether the Request fails to establish jurisdiction because its determinations of Palestinian assertions of statehood and claims to territorial boundaries are predicated on decisions that do not reflect a relevant legal opinion, such as the simple acceptance of instruments of accession by a treaty depository;⁶
 - iv. Whether the Court should decline to take jurisdiction because to do so would require it to resolve contentious legal questions as to which it is an inappropriate forum and which should in the interests of justice be resolved by bilateral process and procedures outside of the purview of the Court; and

² Office of the Prosecutor, *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda: ‘The Public Deserves to know the Truth about the ICC’s Jurisdiction over Palestine’*, 2 Sep. 2014, available at <https://www.icc-cpi.int/Pages/item.aspx?name=otp-st-14-09-02>.

³ Request, particularly para.187 and Section II.C.1.

⁴ The Oslo Accords primarily refer to the Declaration of Principles on Interim Self-Government Arrangements, available at <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20principles.aspx>; Interim Agreement on the West Bank and the Gaza Strip, available at <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement.aspx>.

⁵ Request, paras. 183-189.

⁶ *E.g.* Request, paras.111, 116.

- v. Whether the Court should decline to take jurisdiction because the referral by the entity self-proclaimed as the State of Palestine is procedurally flawed.
7. Any of these arguments, if accepted, would suffice to show that “clear jurisdictional parameters” have not been met in this instance. As a result, these submissions will contribute to the proper determination of the matters at issue before the Chamber.⁷

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Elana Heideman', with a large, stylized initial 'E'.

Dr. Elana Heideman,

Executive Director, The Israel Forever Foundation

⁷ See Rule 103(1). See also Situation in the Islamic Republic of Afghanistan, Decision on the participation of *amici curiae*, the Office of the Public Counsel for the Defence and the cross-border victims, 24 October 2019, para.31.