

Annex

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/18
Date: 8 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

Public

**Request by Professor Steven E. Zipperstein for Leave to Submit Written
Observations Pursuant to Rule 103(1) of the Rules of Procedure and Evidence**

Source: Steven E. Zipperstein

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

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation / Reparation)

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Victims

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I. Introduction

1. This request for leave to file *amicus curiae* observations is made pursuant to the Public redacted version of the Chamber's 27 June 2024 *Order deciding on the United Kingdom's request to provide observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence, and setting deadlines for any other requests for leave to file amicus curiae observations* ("the 27 June 2024 Order").¹
2. The United Kingdom's request arose from the Prosecutor's 20 May 2024 announcement that he had made applications for arrest warrants in the Situation in Palestine pursuant to article 58 of the Statute. The Prosecutor's statement indicated that he had applied for arrest warrants against Yahya Sinwar, Mohammed Diab Ibrahim Al-Masri, Ismail Haniyah, and two Israeli nationals : Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant.²
3. The Chamber stated in paragraph 6 of the 27 June 2024 Order:

"Whilst the following must not be understood as an open call by the Chamber for *amicus curiae* submissions, the Chamber acknowledges that the Request, and the Chamber's decision to grant the United Kingdom leave to file observations, may result in other requests to submit observations. To limit the impact of this procedure on the expeditiousness of the present stage of the proceedings, the Chamber indicates already in the present decision that any such requests pursuant to rule 103(1) of the Rules must also be received by 12 July 2024."

II. Applicable Law

¹ ICC-01/18-14, 27 June 2024.

² Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine (20 May 2024), available at <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-ke-applications-arrest-warrants-situation-state>

4. Rule 103(1) of the Court's Rules of Procedure and Evidence provides that: "At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate."
5. The Court has consistently held that the application of Rule 103 is discretionary.³ The test is whether the requested observations would be desirable for the proper determination of the case.⁴ The applicant bears the burden to demonstrate that the requested observations may assist the Chamber.⁵ The nature and complexity of the issues are relevant factors in assessing whether it is desirable to receive written observations.⁶

III. The Applicant

6. The applicant makes this application in his personal capacity, and not on behalf of any organization.
7. The applicant's background and expertise render him qualified to make *amicus curiae* observations that may assist the Chamber in addressing the important and complex issues raised by the Prosecutor's application for arrest warrants for the Prime Minister and Defense Minister of the State of Israel.
8. The applicant is a Distinguished Senior Scholar at the University of California, Los Angeles (UCLA) Center for Middle East Development. He is also an

³ ICC-01/04-01/06-1289, Appeals Chamber, Decision on "Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence", 23 April 2008, para. 8

⁴ ICC-01/04-373, Pre-Trial Chamber I, Decision on the Request submitted pursuant to rule 103(1) of the Rules of Procedure and Evidence, 17 August 2007, para. 3.

⁵ ICC-02/04-01/05-342, Pre-Trial Chamber II, Decision on application for leave to submit observations under Rule 103 dated 7 November 2008, 10 November 2008, para. 12.

⁶ ICC-02/17-43, Pre-Trial Chamber II, Decision on the 'Request for Leave to File Amicus Curiae Submissions on Behalf of Human Rights Organizations in Afghanistan' (ICC-02/17-35) and on the 'Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court' (ICC-02/17-39), 12 June 2019, para. 7.

Adjunct Assistant Professor of Public Policy at UCLA, a Visiting Professor at Tel Aviv University Law School, and a Visiting Lecturer at the Hertie School in Berlin.

9. The applicant has published several peer-reviewed academic books and articles covering the legal history of the Israeli-Palestinian conflict from 1915 to the present, including *The Legal Case for Palestine: A Critical Assessment* (Routledge 2024); *Zionism, Palestinian Nationalism and the Law: 1939-1948* (Routledge 2022); and *Law and the Arab-Israeli Conflict: The Trials of Palestine* (Routledge 2020).
10. The applicant is also a former United States federal prosecutor. He has practiced law in the United States for more than 40 years. He is an elected member of the American Law Institute and a Life Fellow of the American Bar Foundation.

IV. The Applicant's Proposed Written Observations May Assist the Court

11. The United Kingdom's 10 June 2024 *Request for Leave to Submit Written Observations Pursuant to Rule 103* identified the following issues the United Kingdom intends to address: "Whether the Court can exercise jurisdiction over Israeli nationals, in circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords. Specifically, the observations would address: i. The correct interpretation of provisions regarding criminal jurisdiction in the Oslo II Accord and the Protocol Concerning Legal Affairs, which leads to the conclusion that Palestine lacks criminal jurisdiction over Israeli nationals; ii. Whether there is any other basis on which Palestine could assert criminal jurisdiction over Israeli nationals; iii. The effect that Palestine's lack of criminal jurisdiction over Israeli nationals has

Pursuant to Pre-Trial Chamber I's Order ICC-01/18-418 dated 11.04.2025, this document is reclassified as Public

on the jurisdiction of the Court, more precisely on the present applications for arrest warrants. ”⁷

12. The applicant respects the consistent guidance of the Court that leave is required before making substantive observations pursuant to Rule 103, and that substantive observations may not be made in the request for permission.
13. Thus, the applicant states that if granted permission to submit *amicus curiae* observations pursuant to Paragraph 6 of the 27 June 2024 Order and pursuant to Rule 103(1), the applicant would address the following issues: (i) whether the Oslo Accords were legally binding at the time they took effect; (ii) whether the Oslo Accords remain legally binding and in effect as of today ; (iii) whether Palestine can delegate to the Court criminal jurisdiction over Israeli nationals, even though Palestine explicitly agreed in the Oslo II Accord that it has no such jurisdiction⁸; and (iv) whether, notwithstanding Palestine's waiver of jurisdiction over Israeli nationals, there exists any other jurisdictional or substantive basis upon which the Court should grant the Prosecutor's request to issue arrest warrants for the Prime Minister and Defense Minister of the State of Israel.

⁷ ICC-01/18, *Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103*, para. 27 (10 June 2024).

⁸ UNGA A/51/889, UNSC S/1997/357, *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip*, Art. XVII.2.c (28 Sept. 1995).

V. Relief Requested

14. The applicant therefore respectfully requests permission to submit written *amicus curiae* observations pursuant to paragraph 6 of the 27 June 2024 Order and pursuant to Rule 103(1) of the Court's Rules of Procedure and Evidence on the issues identified in paragraph 13 above. (The applicant also respectfully asks that this request be considered on its own merit, regardless whether the newly-elected United Kingdom government decides to amend or withdraw its predecessor government's 10 June 2024 *Request for Leave to Submit Written Observations Pursuant to Rule 103.*)

Respectfully submitted:



Steven E. Zipperstein

Dated this 8th day of July 2024.

At Santa Barbara, California USA