

Situation in the State of Palestine

Annex I

**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 Alapini-Gansou
Judge Nicolas Guillou

SITUATION IN PALESTINE

IN THE CASE OF
THE PROSECUTOR v. BENJAMIN NETANYAHU and YOAV GALLANT

Public Document

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

Source:

Beate and Serge Klarsfeld

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**

N/A

Legal Representatives of the Victims

N/A

Legal Representatives of the Applicants

N/A

Unrepresented Victims

N/A

Unrepresented Applicants**(Participation/Reparation)**

N/A

**The Office of Public Counsel for
Victims**

N/A

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

N/A

States' Representatives

N/A

Amicus Curiae

N/A

REGISTRY**Registrar**

M. Osvaldo Zavala Giler

Counsel Support Section

N/A

Victims and Witnesses Unit

N/A

Detention Section

N/A

**Victims Participation and Reparations
Section**

N/A

Other

N/A

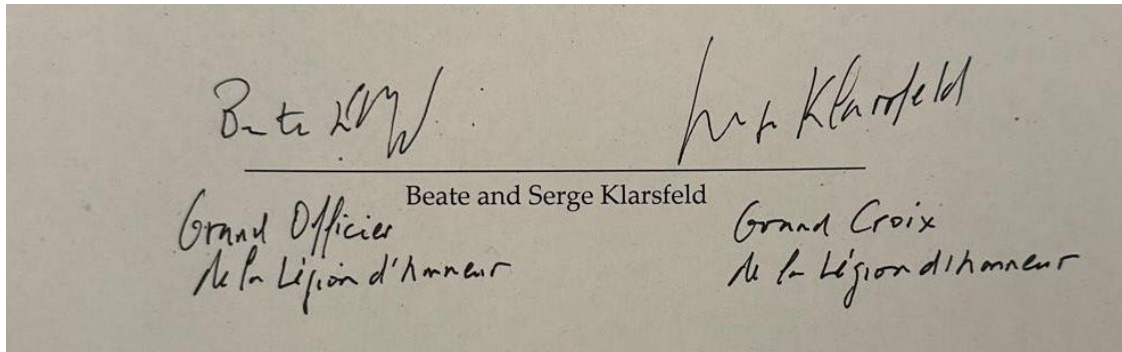
1. We are Serge and Beate Klarsfeld. We were born before the outbreak of World War II. I, as a Jew, and Beate, as a German, worked to bring to justice the German war criminals who had participated in the Final Solution of the Jewish Question in France. We tracked them down in Germany, took legal action against them and acted illegally to ensure that the German society convicted yesterday's executioners. We tracked down men like Klaus Barbie as far away as South America and helped bring him back to France to stand trial.
2. These criminals had consciously contributed at a high level to the destruction of Europe's Jews. Two-thirds of Europe's Jews were murdered in the worst possible conditions: beaten to death, gassed, thrown into crematoria, etc.
3. Many French judges who have served on the International Criminal Court ("ICC") can testify to our commitment. I was one of those who campaigned for the creation of the ICC, and I went as far as Pale in the Serbian Republic of Bosnia to advocate for Karadzic and Mladic to be tried. In Zagreb, in February 1996, I campaigned for General Blaskic to go to The Hague. And our son Arno Klarsfeld campaigned also, as early as 1995, for an ICC to bring to trial the perpetrators of the Tutsi genocide.
4. Beate and I ask you to take into consideration our remarks concerning the current conflict in Gaza and the unjust reproaches levelled at Israel and in particular at its Prime Minister and Defense Minister.
5. We respectfully submit that:
 - (1) Israel is not seeking to kill as many Palestinians as possible in this war in Gaza, which has been imposed on it by the crimes against humanity committed by Hamas on October 7, 2023 on Israeli territory by Hamas terrorists and civilians from the territory of Gaza, whose territory had been totally evacuated by Israeli forces. A territory (Gaza) which Israel had acquired at the expense of Egypt in the 1967 war which had then also been imposed on Israel. If Israel could carry out its campaign without killing a single civilian, it would. Hamas is consciously waging its war in the midst of Palestinian civilians at the expense of its own population.
 - (2) There has been no evidence for decades that Israel is seeking to eradicate the Palestinian people or is planning to significantly reduce their numbers through massacres or ethnic cleansing. In 1949, there were 150,000 Palestinians in the

territory of Israel after the war of independence, i.e. 15% of the population. Today, Israeli Arabs number 2 million in Israel and represent over 20% of the population. In Gaza in 1967, there were 300,000 Palestinians, today there are 2 million. During the Holocaust, 6 million of the 9 million Jews in Europe were eliminated. And in some regions, almost 100% of the Jews were wiped out. In Gaza, on the other hand, there are no Jews left, except those held hostage.

- (3) Beate Klarsfeld survived the bombing of Berlin. At no time did the Allied forces warn the population before the daily bombardments, nor did they set up humanitarian zones to protect German civilians. Israel tries to do that for the Palestinian civilians. Hundreds of thousands of Germans fell victim to these bombardments, including tens of thousands of children.
- (4) Some make comparisons between Gaza and the Warsaw ghetto. We would like to point out that Jews, and especially children, starved to death in the streets of the Ghetto, which is not the case for the children of Gaza, and that the Jews who survived the uprising and its bloody repression were sent to the Treblinka and Majdanek camps, where they were immediately exterminated. It is also rare and noteworthy that in very few conflicts on the planet has a party to the conflict contributed as Israel has done and continues to do to provide humanitarian aid to the civilian population of the government or entity it is fighting after massacres of rare cruelty committed by Palestinian fighters on the innocent Israeli civilian population.
- (5) During the Holocaust, the Jews could not stop their tragic fate. Whoever the Jew was, whatever his religious or political beliefs, his age etc., he was doomed to death if he fell into the hands of the Nazis. I was almost one of them. My father was arrested in Nice and my mother and sister were saved thanks to a false partition set up in a cupboard by my father. This is absolutely not the case in Gaza. All it would take is for the Israeli hostages to be released and the Hamas troops to surrender or flee, for the war and its attendant suffering to cease.
- (6) The bombardments ordered by the Israeli government were necessary to preserve the lives of soldiers who would have died by the thousands if they had had to enter every building to drive out the Hamas fighters hiding there and in the tunnels that had trapped many buildings. When asked by a US senator

whether he approved of the Hiroshima and Nagasaki bombs, a senior US military official replied: "It saved the lives of our soldiers".

- (7) To prosecute the Israeli Prime Minister and his Minister of Defense for crimes against humanity after recalling what has been recalled would be to ask the State of Israel to act in a way that is not required of any other State. Such a disproportionate demand would be particularly unfair and unjust, given that Israel has legal remedies in the event of war crimes being committed.
6. For the foregoing reasons, we respectfully request that the Pre-Trial Chamber I grant us leave to make *amicus curiae* submissions in accordance with Rule 103 of the Court's Rules of Procedure and Evidence.



Dated 8 July 2024

At Paris, France

Enclosures:

- **Annex 1**, S. Klarsfeld, « Pour un tribunal pénal international permanent », *Le Monde*, 27 février 1996
- **Annex 2**, S. Klarsfeld, « TPI : Jacques Chirac doit corriger le tir », *Le Monde*, 19 décembre 1997