

Annex

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No:ICC-
Date: 11 July 2024

PRE-TRIAL CHAMBER I

Before:

**Judge Iulia Motoc, Presiding Judge
Judge Reine Alapini-Gansou, Judge
Judge Nicolas Guillou, Judge**

SITUATION IN THE STATE OF PALESTINE

Public Document

**Request by the State of Palestine to file observations to Pre-Trial Chamber I pursuant
to Rule 103 of the Rules of Procedure and Evidence**

Source: The State of Palestine

I. Introduction

1. On 10 June 2024, the United Kingdom ('the UK') filed a secret request to provide written *amicus curiae* observations under Rule 103(1) of the Rules of Procedure and Evidence ('the Rules') on the International Criminal Court's jurisdiction in relation to the ongoing investigation in the *Situation in the State of Palestine*¹ and the request for the issuance of arrest warrants under Article 58 of the Rome Statute.
2. The State of Palestine takes note of the fact that the issue raised before the Court by the UK has already been ruled upon by Pre-Trial Chamber I ('the Chamber') on 5 February 2021 and that the UK seeks to re-litigate a decision: (i) that has provided victims with legitimate expectations for justice; (ii) upon which parties, including the Prosecution, have acted for years to their prejudice; and (iii) that the re-litigation of which would bring the administration of justice into disrepute.
3. The State of Palestine also takes note of the fact that the request attempts to circumvent Article 19(2) of the Rome Statute, which limits standing to challenge the Court's jurisdiction to: (a) an accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58; (b) a State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or (c) a State from which acceptance of jurisdiction is required under article 12.
4. Nevertheless, the State of Palestine acknowledges the 27 June 2024 order of the Chamber ('the Order') authorizing the UK to file written observations pursuant to Rule 103 of the Rules and requiring that other requests for leave to file *amicus curiae* observations, if any, shall be filed by 12 July 2024. Given the delay in filing and the legitimate expectations of the affected communities, including the victims, the State of Palestine welcomes, and stresses the importance of, the efforts of the Chamber to 'limit the impact of the procedure on the expeditiousness of the present stage of the proceedings'.²

¹ Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103, 10 June 2024, ICC-01/18-171-SECRET-Exp.

² Public redacted version of '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

5. In accordance with the Order, and adding to the previous submissions by the State of Palestine namely, 'The State of Palestine's observations in relation to the request for a ruling on the Court's territorial jurisdiction in Palestine' of 16 March 2020 (ICC-01/18-82)³ and 'The State of Palestine's response to the Pre-Trial Chamber's Order requesting additional information' of 4 June 2020 (ICC-01/18-135),⁴ the State of Palestine hereby applies for leave to file written observations as *amicus curiae* at the current state of proceedings in accordance with Rule 103 of the Rules. In light of the Chamber's decision to reclassify the UK's request as 'public',⁵ the State of Palestine requests that it's filing also be made public.

II. Applicable Law

6. Rule 103(1) of the Rules 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."

III. Procedural History

7. On 1 January 2015, the Government of The State of Palestine lodged a declaration under article 12(3) of the Rome Statute accepting the jurisdiction of the International Criminal Court ("ICC") over alleged crimes committed "in the Occupied Palestinian Territory, including East Jerusalem, since June 13, 2014". On 2 January 2015, the State of Palestine acceded to the Rome Statute by depositing its instrument of accession with the UN Secretary-General. The Rome Statute entered into force for the State of Palestine on 1 April 2015.
8. On 16 January 2015, the Prosecutor announced the opening of a preliminary examination into the situation in the State of Palestine in order to determine whether

file *amicus curiae* observations', 27 June 2024, ICC-01/18, <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1808bb469.pdf>, para 6.

³ The State of Palestine's observations in relation to the request for a ruling on the Court's territorial jurisdiction in Palestine, 16 March 2020, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_01029.PDF.

⁴ The State of Palestine's response to the Pre-Trial Chamber's Order requesting additional information, 4 June 2020, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_01029.PDF.

⁵ <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1808bb469.pdf>, para 7.

the Rome Statute criteria for opening an investigation are met, including issues of jurisdiction, admissibility and the interests of justice.

9. On 22 May 2018, pursuant to articles 13(a) and 14 of the Rome Statute, the State of Palestine referred to the Prosecutor the situation in the State of Palestine since 13 June 2014, with no end date.
10. On 20 December 2019, the Prosecutor announced⁶ that following a thorough, independent and objective assessment of the reliable information available to her Office, the preliminary examination into the situation in the State of Palestine had concluded with the determination that all the statutory criteria under the Rome Statute for the opening of an investigation had been met. On 22 January 2020, the Prosecutor requested from Pre-Trial Chamber I a ruling to clarify the territorial scope of the Court's jurisdiction in the situation.⁷
11. On 28 January 2020, the Chamber issued an order setting the procedure and the schedule for the submission of observations on the Prosecutor's request.⁸ On 16 March 2020, the State of Palestine filed written observations on the Prosecutor's request.⁹
12. On 5 February 2021, the Chamber ruled that the Court could exercise its criminal jurisdiction in the situation in the State of Palestine and that the territorial scope of its jurisdiction extends to The Gaza Strip and the West Bank, including East Jerusalem ('the Decision').
13. On 3 March 2021, the Prosecutor announced the opening of the investigation into the *Situation in the State of Palestine*.¹⁰

⁶ 'Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court's territorial jurisdiction', 20 December 2019, <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-conclusion-preliminary-examination-situation-palestine>.

⁷ Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, 22 January 2020, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_00161.PDF.

⁸ Order setting the procedure and the schedule for the submission of observations, 28 January 2020, ICC- 01/18-14, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_00217.PDF.

⁹ The State of Palestine's observations in relation to the request for a ruling on the Court's territorial jurisdiction in Palestine, 16 March 2020, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_01029.PDF.

¹⁰ 'Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine', 3 March 2021, <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine>.

14. On 17 November 2023, the Office received an additional referral¹¹ of the Situation in the State of Palestine – from South Africa, Bangladesh, Bolivia, Comoros, and Djibouti. On receipt of the referral, the Prosecutor confirmed that his Office had been investigating the *Situation*, that such investigation remained ongoing, and that it extended to the escalation of hostilities and violence since 7 October 2023. On 18 January 2024, the Republic of Chile and the United Mexican States submitted another referral to the Prosecutor with respect to the *Situation in the State of Palestine*, and reiterated their commitment to cooperate with the Court.¹²
15. On 20 May 2024, the ICC Prosecutor filed applications for warrants of arrest before Pre-Trial Chamber I.¹³

IV. The State of Palestine's Observations are Desirable for the Proper Determination of the Case

16. As the article 12(3) declaring State, the referring State, the situation State, a cooperating State, and the State on whose territory and against whose population both the ICC Chamber and Office of the Prosecutor have found a reasonable basis to believe crimes within the jurisdiction of the Court are being perpetrated, the State of Palestine's observations concerning issues raised in respect of the *Situation in the State of Palestine* are undoubtedly desirable for proper determination of the case.
17. The State of Palestine also has an obvious interest to ensure that ICC proceedings in relation to the *Situation in the State of Palestine* are respected and effective, lead to accountability rather than impunity, and are not obstructed or delayed by the efforts of third States seeking to selectively deny justice to victims based on nationality. Indeed, as a State Party to the Rome Statute, the State of Palestine has long acted together with other States Parties to the Rome Statute to respect and ensure respect for the independence and impartiality of the Court, which became ever more important in the face of nine years of accelerating threats and attacks against the Court, its officials, and those cooperating with it by States whose conduct is aimed at manipulating the process

¹¹ <https://www.icc-cpi.int/sites/default/files/2023-11/ICC-Referral-Palestine-Final-17-November-2023.pdf>.

¹² https://www.icc-cpi.int/sites/default/files/2024-01/2024-01-18-Referral_Chile_Mexico.pdf.

¹³ 'Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine', 20 May 2024, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>.

of the Court with to undermine any prospect of equality before the law and consequently the international legal order and the role of the ICC within it.

V. The Issues on which the State of Palestine Wishes to Make Observations Are Appropriate

18. As outlined above, in light of the Chamber's assessment of 'potential relevance' of the arguments of a third State as pertains to the Court's jurisdiction over the *Situation in the State of Palestine*, the State of Palestine will address matters relating to the Court's jurisdiction over the *Situation*, including:

- a. That the UK has no legal authority to challenge the 2021 decision of the Chamber on the jurisdiction of the Court in the *Situation of the State of Palestine* and certainly doing it on behalf of the accused makes a mockery of the independent judicial process and is a perversion of justice;
- b. That Oslo Accords have no bearing upon the right of Palestinian victims of international crimes committed in the territory of the State of Palestine to accountability under the Rome Statute, and they do not affect the right of the State of Palestine and its responsibility to ensure punishment of international crimes committed by Israeli officials and their subordinates, including before the Court;
- c. That the arguments presented by the UK are deeply at odds with the Rome Statute, the norms of jus cogens on accountability for international crimes as well as the principle of equal treatment of States under international law;
- d. That the UK's position materially and purposefully disregards the Chamber's previous ruling on territorial jurisdiction in the *Situation in the State of Palestine*;
- e. That every State Party – including the State of Palestine and United Kingdom– have the responsibility to prevent and punish atrocity crimes under the Rome Statute no matter the perpetrator.

19. The State of Palestine affirms that all States Parties are obliged to adopt good faith interpretations of the Rome Statute which advance its purpose. To argue otherwise will undermine the international law-based order where sovereignty and territorial integrity of States are not respected and where those with power or powerful allies can act with

impunity at the expense of victims of atrocity crimes, including millions of Palestinian victims.

VI. Requested Relief and Concluding Remarks

20. On these bases, the State of Palestine respectfully requests permission to submit written observations pursuant to Rule 103 on the issues identified above.
21. The State of Palestine considers the request by the UK as an unfortunate attempt to selectively and effectively deny justice for Palestinian victims of international crimes under the Rome Statute. In this regard, the State of Palestine notes that the UK government has requested – and been granted – an opportunity for an extension to file its written observations, in light of the elections that have just recently occurred on 4 July 2024.¹⁴ Given the UK's historical responsibility towards the *Question of Palestine*, the State of Palestine invites the new government to rescind the previous government's request and to allow the Court to fulfil its mandate as an independent and impartial judicial institution by ensuring equal justice for all victims.
22. The State of Palestine also appeals for the Chamber, as it has underlined in other situations, to expedite the observations process in furtherance of the victims' right to access to justice and to deter the commission of further crimes. In this connection, the State of Palestine recalls the pledge of Prosecutor Khan to the Palestinian people when visiting Rafah on 29 October 2023: "to promise to them [the Palestinian people] to give a commitment to them, that their birthright is justice. They own justice and they deserve justice as much as any other of God's creation deserves justice."¹⁵
23. The State of Palestine further notes that efforts to derail the ICC's investigation come precisely at the time that the International Court of Justice has ruled in response to urgent provisional measures requested by South Africa against Israel – in three Orders

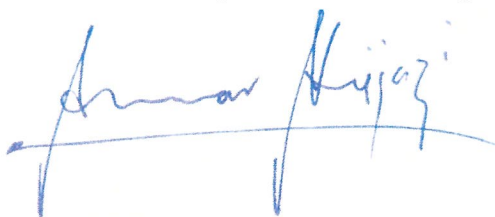
¹⁴ See Decision on the 'Request by the United Kingdom for Extension of Time Limit', ICC-01/18-178, 4 July 2024, <https://www.icc-cpi.int/court-record/icc-01/18-178>.

¹⁵ See Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine and Israel, 30 October 2023, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel>

of 26 January 2024,¹⁶ 28 March 2024¹⁷, and 24 May 2024¹⁸ – that Israel is engaged in acts that may plausibly amount to a violation of the rights of Palestinians under the Genocide Convention. The urgency with which the International Court of Justice has heard the matter and ruled thereon underlines the need for requests such as the one received from the UK not to be a basis for delay or obstruction before the ICC.

24. As the State of Palestine has demonstrated since joining the ICC, it has exercised and will continue to exercise its sovereign competence and fulfil its obligations and extend its cooperation with the ICC as per the Statute and to the greatest extent possible with a view to ensure that crimes are fully and effectively investigated and punished. Palestine will continue to assist and support the efforts of the ICC and its Prosecutor to ensure accountability for international crimes committed within its territory despite Israel's continued crimes, nearly eighty years of impunity, its punitive measures against the ICC, its officials, and those cooperating with it, including the State of Palestine, that is concurrently combatting with the constant dehumanization and racism towards Palestinian victims and the denial of their right to justice by those who shield Israeli officials and allow them to commit crimes cost-free.

25. The State of Palestine respectfully requests that this filing be classified as public.



Ambassador Ammar Hijazi

Assistant Minister for Multilateral Affairs

Ministry of Foreign Affairs and Expatriates of the State of Palestine

Signed on 11 July 2024

At Ramallah, State of Palestine

¹⁶ *South Africa v. Israel*, Order of 26 January 2024, <https://www.icj-cij.org/node/203447>.

¹⁷ *South Africa v. Israel*, Order of 28 March 2024, <https://www.icj-cij.org/node/203847>.

¹⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (*South Africa v. Israel*), Order of 24 May 2024, <https://www.icj-cij.org/node/204091>.