

Annex

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/18
Date: 11 July 2024

PRE-TRIAL CHAMBER I

Before: Judge Iulia Motoc
Judge Nicolas Guillou
Judge Reine Alapini-Gansou

SITUATION IN THE STATE OF PALESTINE

Public Document

**Request by Norway for Leave to Submit Written Observations Pursuant to Rule
103**

Source: Norway

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 the Victims	Legal Representatives of the Applicants
Unrepresented Victims	Unrepresented Applicants (Participation/Reparation)
The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
States' Representatives	Amicus Curiae

REGISTRY

Registrar M. Zavala Giler, Osvaldo	Counsel Support Section
Victims and Witnesses Unit	Detention Section
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REQUEST BY NORWAY FOR LEAVE TO SUBMIT WRITTEN OBSERVATIONS
PERSUANT TO RULE 103(1) OF THE RULES OF PROCEDURE AND EVIDENCE

INTRODUCTION

To the Registrar, International Criminal Court, the undersigned being duly authorized by the Government of Norway.

1. The Kingdom of Norway seeks leave pursuant to Rule 103 of the Rules of Procedure and Evidence (“the Rules”) to submit written observations to assist Pre-Trial Chamber I in its examination of questions relating to jurisdiction in *Situation in the State of Palestine*. The focus of Norway’s request would be to submit written observations on jurisdictional questions relating to the Oslo Accords and whether the Court can exercise jurisdiction over Israeli nationals. This request is filed within the time-limit of 12 July 2024.¹ Norway requests that the present request be classified as public.

APPLICABLE LAW ON AMICUS CURIAE OBSERVATIONS

2. Rule 103(1) provides that:

“At any state in 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.”

3. Norway has noted the Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103 and the authorization, granted by the Pre-Trial Chamber I, to the United Kingdom to file written observations by 12 July 2024,² since extended to 26 July 2024.³

¹ ICC-01/18, Pre-Trial Chamber I, Decision 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, 27 June 2024.

² ICC-01/18, Pre-Trial Chamber I, Decision 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, 27 June 2024.

³ ICC-01/18, Pre-Trial Chamber I, Decision on the Request by the United Kingdom for Extension of Time Limit, 4 July 2024.

THE APPLICANT

4. Norway's role in relation to the Oslo Accords is well-known. As the Pre-Trial Chamber will be familiar with, the Exchange of Letters between Prime Minister Yitzhak Rabin and Chairman Yasser Arafat — the Letters of Mutual Recognition — was conducted under the auspices of Foreign Minister Johan Jørgen Holst of Norway, to whom one of the letters was addressed. The exchange of letters formed the basis of the Oslo Accords.⁴
5. Norway is a long-standing State Party to the Rome Statute, which it signed on 28 August 1998 and ratified on 16 February 2000. Norway's support for the Rome Statute and the International Criminal Court is well-known.
6. Norway has recognized the State of Israel and the State of Palestine.

PROCEDURAL HISTORY

7. On 5 February 2021, Pre-Trial Chamber I decided that the Court can exercise its criminal jurisdiction in the *Situation in the State of Palestine* and that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem.⁵
8. On 20 May 2024, the Prosecutor announced that he had, pursuant to article 58 of the Statute, made applications for arrest warrants in the *Situation in the State of Palestine*. The Prosecutor's statement indicated that he had applied for arrest warrants against Yahya Sinwar, Mohammed Diab Ibrahim Al-Masri, Ismail Haniyah, Benjamin Netanyahu, and Yoav Gallant. It provided further details including identifying the charges, the relevant time period and locations, and the alleged modes of responsibility.

⁴ See Israel–PLO recognition — Exchange of letters between PM Rabin and Chairman Arafat/Arafat letter to Norwegian FM (Non-UN documents), available at <https://www.un.org/unispal/document/auto-insert-205528/>.

⁵ ICC-01/18-143, Pre-Trial Chamber I, Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', 5 February 2021

SUBMISSION TO SUPPORT THE REQUEST FOR LEAVE TO SUBMIT
OBSERVATIONS

9. In accordance with Article 12(2) of the Rome Statute, the ICC has jurisdiction over crimes committed by nationals of States Parties and by the nationals of non-States Parties on the territory of a State Party.
10. On 1 January 2015, the Government of The State of Palestine lodged a declaration under article 12(3) of the Rome Statute accepting ICC jurisdiction over alleged crimes committed “in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014”. In addition, the State of Palestine acceded to the Rome Statute on 2 January 2015 by depositing its instrument of accession with the United Nations Secretary-General and the Statute entered into force for The State of Palestine on 1 April 2015.
11. In its request to file written observations, the United Kingdom refers to the Decision on the “Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine” of 5 February 2021. According to the United Kingdom, the Chamber at the time “did not determine the jurisdictional issues relating to the Oslo Accords (...), instead holding that “when the Prosecutor submits an application for the issuance of a warrant of arrest or summons to appear under article 58 of the Statute, or if a State or a suspect submits a challenge under article 19(2) of the Statute, (...) the Chamber will be in a position to examine further questions of jurisdiction which may arise at that point in time”. The United Kingdom submits that the Chamber, pursuant to Article 19(1) of the Rome Statute, “is required to make an initial determination of jurisdiction in resolving the application for arrest warrants” of which “[t]he Oslo Accords issue necessarily forms part”.
12. Norway has noted the guidance of the Court that leave is required before a party may make substantive observations in accordance with Rule 103. It will not make any substantive submissions in this request for permission.
13. In common with the United Kingdom,⁶ however, Norway is pleased, in order to assist the Court in its determination of the present request, to indicate that, if permission is

⁶ See the United Kingdom’s request to provide observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence, 10 June 2024, ICC-01/18-171-SECRET-Exp, paras. 27(i)–(iii).

granted, Norway would seek to assist the Court as to whether, in light of the Oslo Accords, the Court can exercise jurisdiction over Israeli nationals. The observations would more specifically address the relevance of the Oslo Accords for the determination of the Court's jurisdiction and the correct interpretation of the Oslo II Accord, in light of fundamental principles of general international law. Norway expects to make observations on the significance of the Oslo Accords in this context.

14. The Rome Statute provides in Article 12(1) that States Parties accept the jurisdiction of the Court. The State of Palestine is a State Party; it thereby accepts the jurisdiction of the Court. Norway will make submissions on whether Palestine, through the Oslo Accords or through the conclusion of any other treaty, could be deemed to have *abandoned* any aspects of its sovereignty, including any aspects of the sovereign jurisdiction that all States possess by reason of their statehood. It will furthermore make submissions on whether the Court should see in the conclusion of the Oslo Accords an abandonment of any aspect of the sovereignty of either of the two parties.⁷

CONCLUSION

15. Since the Court has given the United Kingdom leave to make observations on the Oslo Accords issue, it may be desirable to receive observations from a range of participants. Norway respectfully submits that it would be desirable to receive written observations from Norway on the jurisdictional issue arising in connection with the Oslo Accords.
16. Norway's request is brought about by the preliminary observations presented in the request by the United Kingdom. In the event that the United Kingdom should now decide *not* to submit written observations of the kind described in its initial request, Norway would, in the interest of procedural economy, be minded not to submit written observations either.
17. On the basis of the information set out above, Norway respectfully requests permission to submit written observations pursuant to Rule 103 on the issues identified above in connection with the *Situation in the State of Palestine*. We request the present filing be classified as public.

⁷ *The Wimbledon, 1923, P.C.I.J., Series A, No. 1*, p. 25 ("The Court declines to see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty.")

Respectfully submitted,



Martin Sørby

Acting Director General, Legal Department, Norwegian Ministry of Foreign Affairs
on behalf of
Norway

Dated this 11 July 2024

At Oslo, Norway