

Annex

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

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/18

Date: 11 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

Secret

Request by the Argentine Republic for leave to submit written observations pursuant to Rule 103, as per the Order of 27 June 2024 deciding on the United Kingdom's request and setting deadlines for any other requests for leave to file amicus curiae observations.

Source: Argentina

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

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Counsel for the Defence



Legal Representatives of Victims

Legal Representatives of Applicants

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**Unrepresented Applicants
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I. Introduction

1. On 27 June 2024, Pre Trial Chamber I (the "Chamber") issued an Order granting the United Kingdom authorization to provide amicus curiae observations under Rule 103 (1) of the Rules of Procedure and Evidence and set to that end a deadline by 12 July 2024. It also decided that any other request for leave to file amicus curiae observations pursuant to Rule 103 (1) must also be received by that date. The present request is submitted pursuant to said Order.

2. On 5 February 2021, Pre-Trial Chamber I issued a Jurisdiction Decision in which it determined, by majority, that Palestine qualifies as "[t]he State on the territory of which the conduct in question occurred" for the purposes of article 12(2)(a) of the Statute and that the Court's territorial jurisdiction in the Situation in Palestine extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem".

3. Furthermore, the Jurisdiction Decision held that the resolution of the Oslo Accords issue was not "pertinent to the resolution of the issue under consideration", namely territorial jurisdiction. However, it made clear that its decision did not foreclose future arguments on the Oslo Accords at the appropriate time. In this sense, such a Decision also clarified that "[w]hen 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".¹

¹ 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' ("Jurisdiction Decision"), 5 February 2021, para. 131.

4. On 20 May 2024, the Prosecutor submitted applications for the issuance of warrants of arrest under article 58 of the Statute², including in relation to Israeli nationals who would be directly affected by the outstanding "Oslo Accords issue". This circumstance marks the need for the Chamber to examine the impact of the Oslo Accords on this matter.

II. The applicant and its interest in these proceedings

5. The Argentine Republic is a State Party to the Rome Statute of the International Criminal Court. It signed the Rome Statute on 8 January 1999 and deposited the instrument of ratification thereof on 8 February 2001. Since then, it has sustained an unwavering commitment to the purposes and principles of the Court, showing its most tangible support and respect for its independence and impartiality.

6. Firmly believing that the role of the Court is crucial for achieving justice at the international level regarding the most serious crimes of concern to the international community as a whole, and the need to ensure that those crimes do not go unpunished, the Argentine Republic understands that the grounds for jurisdiction in every case should be established beyond any doubt, and thus intends to assist the court, by means of these observations, in the consideration of several pending aspects as to the interaction and effects of the legal regime established by the Oslo Accords on this particular case, in the framework of general international law. These observations will also address the question of the principle of complementarity of the Court in the efforts to ensure that no criminal action goes unpunished.

7. In addition to our country's firm commitment to the ICC, Argentina has always been committed to international criminal justice. This translates into permanent support for the Court's judicial and investigative independence, and the promotion

² 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, ICC-01/18-173-SECRET (a public redacted version was issued on the same date, ICC-01/18-173- Red)

of cooperation so that it can carry out its mandate. This also founds this request to present written observations as an amicus curiae in this case.

III. Subject-matter of observations

8. The Argentine Republic's observations will seek to assist the Chamber in the proper determination of the following issues:

- i) Whether the preconditions to the exercise of the Court's jurisdiction have been satisfied, in the light of the prescriptions of the Oslo Accords;
- ii) Whether the principle that the Court is complementary to national criminal jurisdictions has been duly respected, particularly as regards the precedence of a State to investigate its nationals with respect to criminal acts which may constitute crimes; and
- iii) The effect of these matters on the applications for arrest warrants issued against Israeli nationals.

The Oslo Accords issue

9. An initial determination as to whether the case falls within the jurisdiction of the Court is a pre-requisite for the issuance of warrants of arrest.³ As a result, Pre-Trial Chamber is required to make a new determination of jurisdiction in resolving the application for arrest warrants. Argentina seeks permission to file observations on the Oslo Accords issue at this stage of the proceedings.

10. As the Pre-Trial Chamber stated in the Jurisdictional Decision⁴, further questions of jurisdiction, and particularly those related to the Oslo Accords, have to be

³ Article 19 (1) of the Statute.

⁴ 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' ("Jurisdiction Decision"), 5 February 2021

examined now. Argentina believes that its observations on the question whether the Oslo Accords have an impact on the delegation of a State's criminal jurisdiction to the ICC can be useful to assist the Court in making this determination of jurisdiction, at a stage of procedure where an application for the issuance of arrest warrants must be resolved.

11. The question of jurisdiction becomes even more relevant as the Chamber endeavors to resolve the application for arrest warrants of Israeli nationals, since the Oslo Accords explicitly stipulates that Palestine has no criminal jurisdiction over them. If Palestine has no criminal jurisdiction with respect to Israeli nationals, it is therefore legally impossible for it to delegate any such jurisdiction to the Court, in accordance with the principle "*nemo plus iuris transferre potest quam ipse habet*".

12. Argentina believes that the decision of the Court on the issuance of arrest warrants as requested by the Prosecutor on 20 May 2024⁵ has to be made on the most solid jurisdictional basis, and that it necessarily implies taking into account the potential effects of the Oslo Accords on this matter that the Chamber did not consider in its Jurisdiction Decision of 2021.

13. The jurisdictional issue raised by the Oslo Accords needs to be resolved at this stage of procedure, where a submission of arrest warrant applications has been made. Argentina notes that in order to move forward in the enforcement of such grave measures, that would affect the liberty of the individuals concerned, it is of the utmost importance to resolve any outstanding jurisdictional issue that could bring ambiguity to the process and as a consequence undermine the mandate of the ICC and the legitimacy of its decisions.

⁵ Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine (Prosecutor's Statement'), 20 May 2024

14. Likewise, further analysis into the impact of the Oslo Accords in the Court's jurisdiction must be undertaken regarding the issue of cooperation and complementarity of the Court at the investigative and prosecution stages.⁶

The principle of complementarity

15. In addition to the above mentioned, Argentina stresses the importance of proper application of the complementarity principle in accordance with the Rome Statute. The complementarity test is a key element in the mandate of the ICC. This test seeks to determine whether the national authorities are active in relation to the same case and whether this activity is vitiated by unwillingness or inability of the authorities concerned to carry out the proceeding genuinely⁷. In this vein, Argentina is of the view that further examination must be undertaken on the complementarity principle, so as to verify if proper opportunity has been given to judicial authorities at a national level to intervene at the investigative and adjudicative levels.

16. Argentina considers that the proper determination of an adequate application of the complementary principle is critical to the administration of justice and to promoting the aim of guaranteeing lasting respect for and the enforcement of international justice, which is enshrined in the preamble of the Rome Statute.

17. Argentina respectfully points out that a reasonable and timely opportunity to invoke complementarity before the issuance of arrest warrants, and even before arrest warrants are applied for, would be an adequate application of such a principle in a manner fully consistent with the relevant provisions of the Statute.

18. A notification in order to invoke complementarity should be sufficiently specific to enable the State to provide information in relation to its domestic investigations

⁶ ICC-01/18-12, Prosecution's request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, 20 January 2020.

⁷ ICC-OTP, Situation in Iraq/UK – Final Report, 9 December 2020.

and prosecutions under Article 18(1) of the Statute and to demonstrate the degree of mirroring⁸ at the national level of the scope of the Prosecutor's intended investigation.

19. It is worth highlighting that the circumstances, situations and people involved at the current stage of procedure are significantly different from those analyzed in the complementarity test made by the Pre-Trial Chamber in 2021. On this matter, Argentina recalls that "the Statute assumes that the factual situation on the basis of which the admissibility of a case is established is not necessarily static, but ambulatory"⁹.

20. For this reason, we are of the view that exploring the judicial proceedings being conducted at the national level since 2023 would be useful for an adequate application of the principle of complementarity.

21. Argentina considers that the submission of observations, pursuant to Rule 103, on the matter of the application of the complementarity principle will assist the Pre-Trial Chamber in order to apply this vital principle to the situations and persons involved in the arrest warrants applications under consideration.

IV. Relief Requested

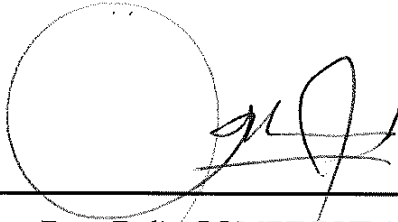
1. In the light of all these considerations, Argentina respectfully requests the Chamber to grant it leave to submit written observations on the issues stated above.

⁸ ICC-01/21 OA, Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I's "Authorisation pursuant to article 18(2) of the Statute to resume the investigation", 23 April 2023

⁹ Prosecutor v. Katanga, "Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case" ICC-01/04-01/07 OA 8, 25 September 2009, para.

2. Noting the sensitivity of the matter and usual practice, Argentina requests the Chamber to classify this contribution as confidential/secret.

Respectfully submitted:



Rosa Delia GOMEZ DURAN

Legal Advisor to the Ministry of Foreign Affairs, International Trade and Worship of
the Argentine Republic

Dated this 11 day of July 2024.

At Buenos Aires, Argentina.