

Annex

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

PRE-TRIAL CHAMBER I

Before: Judge Iulia Antoanella Motoc, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Nicolas Guillou

“SITUATION IN THE STATE OF PALESTINE”

PUBLIC

**Application for Leave to Submit Observations on the Prosecutor's Request
in accordance with the Chamber's Order of 27 June 2024
on behalf of The Touro Institute on Human Rights and the Holocaust**

Source: The Touro Institute on Human Rights and the Holocaust

**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
The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
States' Representatives United Kingdom	Amicus Curiae
REGISTRY	
Registrar Mr Osvaldo Zavala Giler	Counsel Support Section
Victims and Witnesses Unit	Detention Section
Victims Participation and Reparations Section	Other

1. This Request for Leave to submit Observations is submitted pursuant to the Chamber's Order of 27 June 2024 (the "Order"), paragraphs 4 and 5, regarding the question of jurisdiction of the court, paragraph 6 setting the procedure and the schedule for the submission of observations and Rule 103 of the ICC's Rules of Procedure and Evidence.¹
2. The Touro Institute on Human Rights and the Holocaust (IHRH) is a United Nations Economic and Social Council accredited non-governmental organization that seeks to promote tolerance, human rights protection, and the rule of law by exploring and disseminating the lessons of the Holocaust. The IHRH fulfils its mission through scholarship, international education and human rights advocacy. Since being granted special consultative status by the United Nations in 2007, the IHRH has regularly participated in the UN's work and delivered statements at a wide range of UN sessions concerning human rights, antisemitism, Holocaust education, and Israel.
3. The IHRH is directed by Professor Anne Bayefsky, a leading scholar in the field of international human rights law and an international law expert who has served as a member of both governmental and non-governmental UN-related delegations since 1984 (including delegations to the General Assembly, the UN Commission on Human Rights, the UN Human Rights Council, the Vienna World Conference on Human Rights, the Beijing World Conference on Women, and the Durban World Conference on Racism), as well as serving as an expert advisor or consultant in various capacities to the UN High Commissioner for Refugees (UNHCR), the Office of the UN High Commissioner for Human Rights, and the UN Development Programme (UNDP). She has argued before the Supreme Court of Canada specifically on self-determination and secession (see Reference re Secession of Quebec, [1998] 2 S.C.R. 217). Among her published works is the edited collection entitled "Self-determination in international law: Quebec and lessons learned: Legal opinions" (Martinus Nijhoff Publishers, 2000), which focused on the nature of self-determination, sovereignty and the interface with international human rights protection. In an academic career spanning four decades, Professor Bayefsky has taught international

¹ See ICC-01/18-9 20-12-2019 4/112 EK PT and ICC Rules, rule 103 ("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").

law in universities in both Canada and the United States. She is a current member of the International Law Association Committee on Human Rights in Times of Emergency. She also authored a synopsis, published in the Cambridge University Press International Legal Materials, of PTC's February 5, 2021, decision on territorial jurisdiction in the "Situation in Palestine."

4. The IHRH and its leadership possess significant expertise in the area of international human rights law, especially as it relates to the issues raised concerning the "Situation in Palestine," which may assist the Court in resolving questions concerning the Court's jurisdiction and the underlying conflict in this matter.
5. If granted leave of the Chamber, the IHRH would submit observations on a number of issues related to the question of the Court's jurisdiction.
6. The IHRH is deeply invested in the ICC's stated mission of promoting international legal accountability in the spirit of Nuremburg, and the IHRH understands such a goal to be a key lesson and special responsibility of the legal community following World War II and the Holocaust. Accordingly, the IHRH is aware of the striking and disturbing irony that the ICC – theoretically born in response to the horrors and human rights violations epitomized by the Holocaust – would be invoked as an instrument to support the delegitimization and destruction of the modern refuge of the Jewish people, the State of Israel. These efforts challenge the foundation and integrity of the Court, which depends on the lawful and judicious application of jurisdiction.
7. The IHRH will show the Court that the Oslo Accords, as implemented in Gaza, Judea and Samaria, reflect the full and exhaustive extent of the agreements between Israel and the Palestine Liberation Organization (PLO). In this context, while the Oslo Accords provided for the transfer of certain powers and jurisdictions from Israel to the Palestinian Authority - a body created in the framework of the Accords - these powers and jurisdictions were limited in their scope and nature. Accordingly, the IHRH would show that the Oslo Accords repeatedly stipulated that the Palestinian entity would not have any jurisdiction, including criminal jurisdiction, over Israelis. Accordingly, the IHRH believes

that any entity that grew out of the Oslo Accords, would similarly be devoid of any jurisdiction over Israelis and could not have passed on to the Court powers and jurisdiction that it did not, and has never possessed.

8. The IHRH would claim, that in order for the Palestinian entity to claim jurisdiction over Israelis, the PLO would first have to formally announce that it has decided to renege on its commitments and has decided to abandon the Oslo Accords. The IHRH would note that to date, the PLO has not made such announcement, and that de facto the Palestinian entity continues to see itself as operating within the confines of the Oslo Accords. Most pertinently for the purpose of the proceedings before the court, in accordance with the Oslo Accords, the Palestinian entity has entirely refrained from even attempting to exercise criminal jurisdiction against Israelis.
9. The IHRH further believes that the reliance on the output of the UN General Assembly and other United Nations entities is misguided and detrimental to the proper outcome of these proceedings. While the UN Charter does not grant law-making authority, or assign legally binding status, to the recommendations of the General Assembly, it would seem that excessive weight and importance has been attributed to UN bodies and non-binding, politically motivated resolutions adopted in these fora.
10. The IHRH is deeply concerned that the initiative to establish ICC jurisdiction over a non-state party is symptomatic of efforts by Israel's adversaries to instrumentalize and weaponize the Court. The IHRH will urge that account be taken of the misuse of these proceedings to secure quarter for racial and religious intolerance.
11. The IHRH possesses decades of legal expertise in the definition and identification of modern antisemitism, in particular in the realm of international law and international relations, and the risks posed to the rule of law by efforts to cast substantive challenges to the sovereignty, integrity, and well-being of the Jewish state and its people as matters of jurisdiction or procedure. To achieve the justice the Court is duty bound to pursue, it behooves the Court to take account not only of the "right to self-determination" of the Palestinian people, and the purported demands thereof, but also the right of self-

determination of the Jewish people in its ancestral homeland, and its relevance to the issue of jurisdiction now before the Court.

12. The IHRH would also submit observations about the parameters of the exercise by the Palestinian people of a right to self-determination and the connections to statehood for the purposes of jurisdiction under the Rome Statute. Among other requirements, entitlement to statehood necessitates commitments and assurances of a variety of human rights protections now at grave risk. The claimed rapid progression from the principle of self-determination to boundaries to sovereignty to territorial jurisdiction is both unsupported in law and threatens long-established norms of international law.
13. Wherefore, the IHRH respectfully requests leave of the Pre-Trial Chamber to offer observations for the Chamber's consideration.

Respectfully submitted,



Professor Anne Bayefsky
Director
Touro Institute on Human Rights and the Holocaust

Dated this 11th day of July 2024
New York, New York