

Situation in the State of Palestine

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, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Nicolas Guillou**

SITUATION IN PALESTINE

Public

**Application by the Israel Bar Association for leave to submit written observations
pursuant to Rule 103**

Source: Israel Bar Association

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 Victims

Legal Representatives of 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

Mr. Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

**Public Information and Outreach
Section**

I. Introduction

1. In its order of 27 June 2024, the Court authorised the United Kingdom to file written observations pursuant to Rule 103 of the Court's Rules of Procedure and Evidence and set a deadline for any other requests for leave to make observations under Rule 103 for 12 July 2024.¹
2. The Israel Bar Association (the "Applicant") hereby seeks leave to present observations to assist the Pre-Trial Chamber in a determination of the Prosecutor's request for arrest warrants against the Prime Minister of Israel, Mr. Benjamin Netanyahu, and Israel's Minister of Defence, Mr. Yoav Gallant, specifically with regard to the State of Israel's national justice system and the legal processes relating to the alleged acts forming the basis of the Prosecutor's request.
3. The Applicant respectfully submits that the subject matter of the proposed submission will assist in the proper determination of the case by the Court, and that the Applicant is an appropriate entity to submit such observations, for the reasons set forth below.

II. Submissions

4. *The Applicant*

- i. The Applicant is an autonomous statutory entity with the goal of safeguarding the high standards and integrity expected of members of Israel's legal profession. Membership is a mandatory pre-requisite for all those practicing law in Israel.
- ii. Under Israeli law, the Applicant is obliged to strive to protect the rule of law, human rights and the fundamental constitutional values of the State of Israel.

¹ ICC-01/18-173-Red, Pre-Trial Chamber I, 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 file amicus curiae observations', 27 June 2024.

In the execution of this basic mandate, the Applicant fulfils, *inter alia*, a pivotal role in the practice, implementation, and development of Israeli law before Israel's courts. The Applicant is also involved in processes relating to the passage of Israeli law.

- iii. The Applicant has previously acted as *amicus curiae* before the Court.²
- iv. As such, the Applicant is well placed to submit written observations regarding Israel's national justice system and the legal processes concerning the alleged acts forming the basis of the Prosecutor's request for arrest warrants.

5. *Relevance of the proposed submission to the Court's determinations*

- i. In the unique circumstances of the present situation, written observations on Israel's national justice system and the legal processes relating to the current hostilities are desirable for a proper determination of the case. This is especially so considering that Israel is a State not party to the Rome Statute.
- ii. Investigations and judicial processes in Israel may affect the factual record put before the Court by the Prosecutor. For example, the Prosecutor's public statements reference individual incidents occurring in the conduct of the hostilities. The Israel Defense Forces Military Advocate General is currently examining and investigating incidents that may include such incidents.³ Likewise, Israel's Supreme Court is currently considering a petition filed by several Israeli non-governmental organizations against, *inter alia*, the Government of Israel concerning the humanitarian situation in Gaza. This proceeding has included – so far – several hearings and briefs submitted by both the petitioner and the State of Israel as the respondent, in open court and behind closed doors.

² ICC-01/18-80, *Amicus curiae* submissions of the Israel Bar Association, 16 March 2020, available at <https://www.icc-cpi.int/court-record/icc-01/18-80>

³ See, for example, <https://www.idf.il/en/mini-sites/military-advocate-general-s-corps/addressing-alleged-misconduct-in-the-context-of-the-war-in-gaza/>.

- iii. The Applicant respectfully submits that information, material, evidence and findings – both factual and legal – related to such processes would be of assistance for the Court in considering the Prosecutor's factual record underlying the request for arrest warrants. This is the case for a determination of whether a crime has been committed within the jurisdiction of the Court as required under articles 19(1), first sentence, and 58(1)(a) of the Statute, and for any determination regarding admissibility as considered by article 19(1), second sentence, of the Statute.
- iv. The Prosecutor has also acknowledged the importance of considering national judicial processes. In the public statement concerning the request for arrest warrants, the Prosecutor stated that a deferral to national authorities would be made when such authorities “engage in independent and impartial judicial processes that do not shield suspects and are not a sham,” and referenced a requirement for “thorough investigations at all levels addressing the policies and actions underlying these applications.”⁴ It is unclear to what extent the Prosecutor included relevant and up-to-date information regarding relevant proceedings in Israel in the request before the Court.
- v. As such, the Applicant respectfully submits that a proper determination of these issues by the Court would benefit from written observations regarding Israel's judicial system and legal processes.

6. *Nature and content of the proposed submission*

- i. If the current request is granted, the Applicant would seek to assist in the proper determination of the matters before the Court by submitting observations on the following issues:

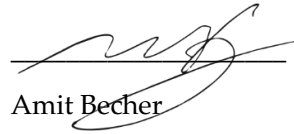
⁴ Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine (Prosecutor's Statement'), 20 May 2024, available at <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>

- a. Israel's national judicial system, including with regard to its authority and capability to examine, investigate and prosecute alleged misconduct occurring in the context of the conduct of hostilities as well as military and government policies.
- b. Actions taken within Israel's military and civilian justice systems in the context of the current hostilities, including information concerning examinations and investigations of incidents by the Israel Defense Forces' Military Advocate General and the Attorney General of Israel, including regarding matters directly related to allegations reportedly included in the Prosecutor's request for arrest warrants.
- c. Judicial processes relating to the current hostilities, including the petition filed before the Supreme Court by several Israeli non-governmental organizations concerning the humanitarian situation in Gaza. The Supreme Court is currently seized of this matter, which has involved a number of oral hearings and written briefs filed both by the petitioner and the State as the respondent in open court and behind closed doors, and which directly concerns the alleged acts the subject matter of the Prosecutor's request.

III. Relief sought

7. The Applicant therefore respectfully requests to submit, pursuant to Rule 103, written observations on the issues mentioned above.

Respectfully submitted:



Amit Becher

President, Israel Bar Association

Dated this 11 day of July 2024.

At Tel Aviv, Israel