

Annex

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/18
Date: 12 July 2024

PRE-TRIAL CHAMBER I

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

SITUATION IN THE STATE OF PALESTINE

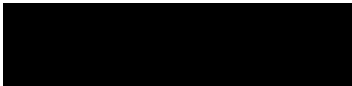
Public Document

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

Source: The Republic of Colombia

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 the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

The Office of Public Counsel for
Victims

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I. Introduction

1. The Republic of Colombia, pursuant to the Pre-Trial Chamber's order of 27 June 2024, and in accordance with Rule 103 of the Rules of Procedure and Evidence, seeks leave to submit written observations in the proceedings regarding the "situation in the State of Palestine".

2. On 5 February 2021, in its decision on the "Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine", the Pre-Trial Chamber I did not address all jurisdictional issues relating to the Oslo Accords, under the conclusion 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".¹

3. Subsequently, on 20 May 2024, the Prosecutor filed applications for warrants of arrest before Pre-Trial Chamber I under Article 58 of the Statute, including Israeli nationals, which, according to the United Kingdom, would be affected by the Oslo Accords.

4. Considering these developments, Colombia believes that its input will assist the Chamber in examining the further questions of jurisdiction for the proper determination of the case.

II. History of the proceedings

5. On 22 January 2020, the Prosecutor filed a request pursuant to Article 19(3) of the Rome Statute for a ruling on the Court's territorial jurisdiction in Palestine, specifically whether the Court has territorial jurisdiction over the Occupied Palestinian Territory comprising Gaza, the West Bank, including East Jerusalem.²

6. On 20 February 2020, Pre-Trial Chamber I of the International Criminal Court issued its "Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence", which: (i) admitted several States, Organizations, and individuals to participate in the proceedings as amici curiae by submitting written observations on the

¹ ICC-01/18-143, para. 131.

² ICC-01/18-12, together with Public Annex A.

question of jurisdiction outlined in paragraph 220 of the Prosecutor's request by no later than 16 March 2020; and (ii) ordered the Prosecutor to submit a consolidated response to any observations on the Prosecutor's request by no later than 30 March 2020.³

7. On 16 March 2020, the Chamber received the "State of Palestine's observations in relation to the request for a ruling on the Court's territorial jurisdiction in Palestine".⁴

8. On 5 February 2021, Pre-Trial Chamber I issued the "Jurisdiction Decision", determining 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".⁵

9. On 20 May 2024, the Prosecutor announced that applications for arrest warrants had been made in the *Situation in Palestine* pursuant to Article 58 of the Statute.⁶

10. On 10 June 2024, the United Kingdom filed a request to provide written *amicus curiae* observations on 'whether the Court can exercise jurisdiction over Israeli nationals, in circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords'.⁷

11. On 27 June 2024, Pre-Trial Chamber I issued the decision on the United Kingdom's Request for leave to submit written observations pursuant to Rule 103, authorizing the United Kingdom to submit written observations by 12 July 2024. The decision also sets "the deadline for any other requests for leave to make observations under Rule 103 of the Rules for 12 July 2024".⁸

III. Governing Law

12. As provisions governing the request for leave to submit written observations are found in the Rule 103(1) of the Rules of Procedure and Evidence and the Pre-Trial Chamber I's decision of 27 June 2024.

³ ICC-01/18-63, paras 51-60.

⁴ ICC-01/18-82 (submitted and notified on 16 March 2020)

⁵ ICC-01/18-143.

⁶ Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine.

⁷ ICC-01/18-171, para. 27.

⁸ ICC-01/18-173-Red, para. 6.

13. Rule 103 (1) of the Rules of Procedure and Evidence 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.

14. In its decision of 27 June 2024, the Chamber determined that ‘the wording of this provision gives the Chamber full discretion on whether or not to grant leave to a request to present *amicus curiae* observations, at any stage of the proceedings”.⁹

IV. Submissions

15. Colombia is a State Party to the Statute of the International Criminal Court. Colombia signed the Rome Statute on 10 December 1998 and deposited its instrument of ratification on 5 August 2002. Colombia reiterates its commitment to the Rome Statute system and the international criminal law and the values it represents.

16. If granted leave, Colombia would like to address the jurisdictional issues raised by the UK’s request, which stem from the effects –if any– of the Oslo Agreements on the exercise of jurisdiction by the ICC in the case at hand and at this stage of the proceedings.

17. It is important to note that in 2012, the UN General Assembly adopted Resolution 67/19 concerning the Status of Palestine at the UN, thereby it was granted the status of “non-member observer state”.¹⁰

18. Further, as recalled by the Pre-Trial Chamber, “Resolution 67/19 further reiterates UNGA Resolution 58/292, which ‘affirms that the status of the Palestinian territory occupied since 1967, including East Jerusalem, remains one of military occupation, and affirms in accordance with the rules and principles of international law and relevant resolutions of the United Nations, including Security Council resolutions, that the Palestinian people have the right to self-determination and to sovereignty over their territory and that Israel, the occupying Power, has only the duties and obligations of an occupying Power under the Geneva Convention

⁹ *Ibid.*

¹⁰ UNGA Resolution 67/19, A/RES/67/19, 4 December 2012.

relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 and the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land, of 1907".¹¹

19. Accordingly, on 1 January 2015, Palestine accepted the Court's jurisdiction over the Occupied Palestinian Territory since 13 June 2014. Subsequently, on 2 January 2015, Palestine adhered to the Rome Statute, leading to its entry into force for Palestine on 1 April 2015. No objection to Palestine's adherence was made by any State Party.

20. Colombia will highlight that in its decision of 5 February 2021, Pre-Trial Chamber I determined that the Court had territorial jurisdiction over conducts occurring in Gaza and the West Bank, including East Jerusalem, and additionally recognized that Palestine is a full-fledged State Party to the Rome Statute. This is in itself sufficient for the ICC to exercise jurisdiction in the case at hand, even upon Israeli nationals.

21. As for the Oslo Accords, they do not regulate issue relating to international crimes. Therefore, they cannot be interpreted as having intended to prevent the State of Palestine from accepting the jurisdiction of an international court over serious crimes of international concern, in the normal exercise of its sovereignty.

22. On the contrary, Colombia is of the view that the Oslo Accords further reinforce the Court's Jurisdiction. The principle of complementarity, embodied in the Rome Statute, dictates that the ICC would not exercise jurisdiction in those cases in which the State having jurisdiction over one or more of the crimes under the jurisdiction of the Court is willing or able to exercise that jurisdiction. This is precisely the situation created by the Oslo Accords: by signing them at the time Palestine agreed to a compromise whereunder it would be unable to exercise criminal jurisdiction over nationals of Israel. The alleged inability of Palestine to prosecute Israeli nationals, as mentioned by the United Kingdom, will necessarily trigger the operation of the ICC's complementary jurisdiction.

23. Colombia would further like to offer observations on the fact that, by accepting that a State can impede the ICC's jurisdiction, merely by entering into bilateral agreements would render futile the provisions of the Rome Statute. Colombia is of the view that if Palestine's inability to exercise its full competence over crimes committed by Israelis in its territory as a

¹¹ ICC-01/18-126-Red, para. 2, citing UNGA Resolution 58/292, A/RES/58/292, 17 May 2004.

result of the Oslo Accords were considered to preclude the ICC from dealing with those offences, it would encourage the commission of international crimes in the occupied territory. This would be plainly contrary to the letter and spirit of the Rome Statute.

24. Moreover, an agreement that would allow the exemption or reduction of a State Party's obligations, under the Statute, to investigate and prosecute crimes falling within the jurisdiction of the ICC would be null and void, as the Statute embodies fundamental prohibitions that reflect *ius cogens*. International norms governing accountability for war crimes, crimes against humanity, and genocide embody peremptory norms of international law or *ius cogens*; because of this normative statute, States cannot be dispensed from the obligation to comply with these norms based on a bilateral agreement. In addition, such norms embed *erga omnes* obligations in the observance of which all members of the international community have a legal interest. Among States Parties to the Rome Statute, there is also the circumstance that all of them have *erga omnes partes* obligations.

25. Ultimately, the question before the Court may turn out to refer to a lack of compatibility of Palestine's rights and obligations under the Rome Statute and pre-existing agreements entered into by that State. But the Statute already contains provisions to address this issue, in particular Articles 97 and 98. The import of these provisions was clarified as follows by the Pre-Trial Chamber in its decision on jurisdiction of 5 February 2021:

“The inclusion of these provisions appears to indicate that the drafters expressly sought to accommodate any obligations of a State Party under international law that may conflict with its obligations under the Statute.”¹²

26. For these reasons, to be developed further in its written observations, Colombia will argue that the Court should not decline jurisdiction in the present circumstances.

V. Request for leave

27. Colombia respectfully requests that the Chamber grants it leave to submit written observations pursuant to Rule 103 of the ICC's Rules of Procedure and Evidence in the time limit determined by the Pre-Trial Chamber I.

¹² ICC-01/18-143, para. 127.

28. Furthermore, Colombia is cognizant of the fact that the Pre-Trial Chamber I has stipulated that all filings in the situation in Palestine must be classified as secret. It is Colombia's position that this specific Request, however, does not need to be secret or confidential.


CAROLINA OLARTE BÁCARES

Ambassador of the Republic of Colombia to the Kingdom of The Netherlands

Dated this 12 July 2024

At The Hague, Netherlands