

Annex

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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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 for Leave to Submit Amicus Curiae Observations by the International
Commission of Jurists (pursuant to rule 103 of the Rules)**

Source: International Commission of Jurists

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 The United Kingdom	Amicus Curiae

REGISTRY	
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I. Introduction

1. Pursuant to rule 103(1) of the Rules of Procedure and Evidence (the “Rules”) and to the “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”¹ (the “Order”), the International Commission of Jurists (the “ICJ”) requests Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) leave to submit *amicus curiae* observations in the form of a written brief on the question the United Kingdom raises in its “Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103”² (the “United Kingdom’s Request” or the “Request”), namely, “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” (the “United Kingdom’s question”).³

2. The ICJ is a non-governmental organization established in 1952 and has its headquarters in Geneva, Switzerland. The ICJ is composed of some 60 eminent jurists representing different justice systems worldwide and has some 61 national sections and affiliated organizations. The ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession. It endeavours to promote States’ compliance with their international human rights legal obligations; to support efforts to combat impunity; to ensure legal accountability for human rights violations and access to effective remedies and reparations for victims. The ICJ has consultative status at the United Nations Economic and Social Council, the United Nations Educational, Scientific and Cultural Organization, the Council of Europe and the African Union.

¹ 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’, Pre-Trial Chamber I, ICC-01/18-173-Red, 27 June 2024.

² Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103, ICC-01/18-171-Anx, 10 June 2024.

³ *Ibid.*, para. 27.

The organization also cooperates with various bodies of the Organization of American States and the Inter-Parliamentary Union. The ICJ intervenes regularly in judicial proceedings in domestic and international jurisdictions in an *amicus curiae* or other third-party capacity,⁴ including before this Court, for example, following the decision on 20 February 2020 by this Chamber to grant leave to the organization to provide written observations in relation to the “Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine”.⁵ Over decades, the ICJ has been working to improve the rule of law and respect for human rights in the Middle East and North Africa, including in the State of Palestine.

II. Procedural Background

3. On 1 January 2015, the State of Palestine lodged a declaration under article 12(3) of the Rome Statute (the “Statute”) accepting the jurisdiction of the Court over alleged crimes “committed in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014.”⁶

4. On 2 January 2015, the State of Palestine deposited its instrument of accession to the Statute with the United Nations Secretary-General in accordance with article 125(2) of the Statute.⁷

⁴ The ICJ has intervened at the European Court of Human Rights (*Suso Musa v Malta* App No 42337/12; *Del Rio Prada v Spain* (No 42750/09); *F.G. v. Sweden* (No. 43611/11); *A.T. v. Sweden* (No. 78701/14)) and in the Inter-American Court of Human Rights (*Murillo et al. v Costa Rica* [2012] IACHR Case No. 12.361). Domestic interventions include at the Bangkok Criminal Court (*Thammakaset Co. Ltd v. Ms. Sutharee Wannasiri*, Black Case Number Aor. 3054/2561 (2018)); the Pattani Provincial Court of Thailand (*Case of the Petitioner Ms. Rorheemah Useng*, Black Case Number, Tor Por 1/2557 (2014)); the Bangkok South Criminal Court of Thailand (*Case of the Defendant Andy Hall*, Black Case Number A 517/2556 (2013)); the High Court of Singapore (*Lee Hsien Loong v. Roy Ngerng Yi Ling* [2015] SGHC 320); the Supreme Court of the Philippines (*Ang Ladlad v Commission on Elections* [2010]); the Constitutional Court of Korea (*Cases No. 2013 HunGa5, 2014 HunGa8, 2012 HunGa17, 2013 HunGa23, 2013 HunGa 27, 2013 HunGa 13*); the Supreme Court of the United Kingdom (*Belhaj & Anor v Straw & Ors* [2017] UKSC 3); the High Court of Ireland (*Foy v Ireland* [2007] IEHC 470); the Court of Appeal of Victoria (*Australia Christian Youth Camps Ltd & Anor v Cobaw Community Health Services Ltd & Ors* [2014] VSCA 75); and the United States Court of Appeals for the District of Columbia (*ACLU v. DOJ* [2013] 923 F.Supp.2d 310).

⁵ Amicus Curiae Observations by the International Commission of Jurists (Pursuant to Rule 103 of the Rules), ICC-01/18-117, 16 March 2020. The ICJ also intervened before the Court in the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar: Amicus Curiae Observations by the International Commission of Jurists (pursuant to Rule 103 of the Rules), ICC-RoC46(3)-01/18-20, 18 June 2018.

⁶ Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I (‘Assignment Decision’), Presidency, Annex I, 24 May 2018, ICC-01/18-1-AnxI, p. 2.

⁷ Secretary-General of the United Nations, ‘Rome Statute of the International Criminal Court, Rome, 17 July 1998, State of Palestine: Accession’, 6 January 2015, Reference: C.N.13.2015.TreatiesXVIII.10 (Depositary Notification), available at <https://treaties.un.org/doc/Publication/CN/2015/CN.13.2015-Eng.pdf> (last accessed 11 July 2024).

5. On 22 May 2018, the State of Palestine referred the Situation in the State of Palestine to the Prosecutor pursuant to articles 13(a) and 14 of the Statute.⁸

6. On 22 January 2020, the Prosecutor submitted a request pursuant to article 19(3) of the Statute “for a ruling on the Court’s territorial jurisdiction in Palestine.” In particular, the Prosecutor sought a ruling “on the scope of the Court’s territorial jurisdiction in the situation of Palestine” and confirmation “that the ‘territory’ over which the Court may exercise its jurisdiction under article 12(2)(a) comprises the West Bank, including East Jerusalem, and Gaza.”⁹

7. On 5 February 2021, Pre-Trial Chamber I issued its “Decision on the Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine.”¹⁰ The Chamber found that Palestine is a State Party to the Statute and that, as a consequence, it qualifies as “[t]he State on the territory of which the conduct in question occurred” for the purpose of article 12(2)(a) of the Statute.¹¹

8. On 3 March 2021, the Prosecutor announced the opening of the investigation into the Situation in the State of Palestine, covering crimes alleged to have been committed since 13 June 2014.¹²

9. On 17 November 2023, Bangladesh, Bolivia, Comoros, Djibouti and South Africa referred the Situation in the State of Palestine to the Prosecutor.¹³ On 18 January 2024, Chile and Mexico additionally submitted a referral to the Prosecutor with respect to the Situation in the State of Palestine.¹⁴

10. On 20 May 2024, the Prosecutor announced that he had made applications for arrest warrants pursuant to article 58 of the Statute against Yahya Sinwar, the Head of

⁸ Assignment Decision, Annex I, ICC-01/18-1-AnxI.

⁹ Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, ICC-01/18-12, 11 January 2020, para. 220.

¹⁰ Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’, Pre-Trial Chamber I, ICC-01/18-143, 5 February 2021.

¹¹ Ibid, p. 60.

¹² Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine, 3 March 2021, available at <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine> (last accessed 11 July 2024).

¹³ State Party referral in accordance with Article 14 of the Rome Statute of the International Criminal Court, 17 November 2023, available at <https://www.icc-cpi.int/sites/default/files/2023-11/ICC-Referral-Palestine-Final-17-November-2023.pdf> (last accessed 11 July 2024).

¹⁴ Letter from the Governments of the Republic of Chile and the united Mexican States, available at https://www.icc-cpi.int/sites/default/files/2024-01/2024-01-18-Referral_Chile_Mexico.pdf (last accessed 11 July 2024).

the Islamic Resistance Movement (“ Hamas”) in the Gaza Strip, Mohammed Diab Ibrahim Al-Masri, the Commander-in-Chief of the military wing of Hamas, Ismail Haniyah, the Head of Hamas Political Bureau, Benjamin Netanyahu, the Prime Minister of Israel, and Yoav Gallant, the Minister of Defence of Israel.¹⁵

11. On 10 June 2024, the United Kingdom filed a request to provide written observations pursuant to rule 103 of the Rules on “[w]hether the Court can exercise jurisdiction over Israeli nationals, in circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords”.¹⁶

12. On 27 June 2024, the Chamber authorized the United Kingdom to file written observations and set 12 July 2024 as the deadline for any other requests for leave to make observations under rule 103 of the Rules.¹⁷

III. Applicable Law

13. Rule 103(1) of the Rules provides that, “[a]t 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. The decision to invite or to accept an *amicus curiae* intervention is a matter within the discretion of the Chamber.¹⁸

15. The Court has previously invited *amicus curiae* submissions in connection with legal issues that may have implications beyond a specific case.¹⁹ The Court has also held that the core rationale underlying an *amicus curiae* submission is that the Chamber

¹⁵ Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine, 20 May 2024, available at <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state> (last accessed 11 July 2024).

¹⁶ ICC-01/18-171-Anx.

¹⁷ 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’, Pre-Trial Chamber I, ICC-01/18-173-Red, 27 June 2024, p. 5.

¹⁸ Prosecutor v. Gbagbo, Decision on the ‘Request for Leave to Submit *Amicus Curiae* Observations pursuant to Rule 103 of the Rules of Procedure and Evidence’, Appeals Chamber, ICC-02/11-01/11-517, 1 October 2013, para. 9; Prosecutor v. Bemba Gombo, Decision on the Application of 14 September 2009 for Participation as an *Amicus Curiae*, Appeals Chamber, ICC-01/05-01/08-602, 9 November 2009, para. 10.

¹⁹ Prosecutor v. Al-Bashir, Order Inviting Expressions of Interest as *Amici Curiae* in Judicial Proceedings (Pursuant to Rule 103 of the Rules of Procedure and Evidence), Appeals Chamber, ICC-02/05-01/09-330, 29 March 2018, para. 1.

be assisted in the determination of the case by an independent intervener having no other standing in the proceedings.²⁰

IV. Request to Intervene as *Amicus Curiae*

16. The ICJ is qualified to offer assistance to the Chamber given its expertise in international law and its experience as an independent third-party intervener in domestic and international courts and quasi-judicial bodies around the world. This Chamber recognized the ICJ's qualifications in this regard when it granted the organization leave to submit *amicus curiae* observations in the Situation in the State of Palestine in the context of its examination of the Prosecutor's request regarding the Court's territorial jurisdiction in Palestine,²¹ and in relation to the Situation in the People's Republic of Bangladesh / Republic of the Union of Myanmar.²²

17. If granted leave to intervene as *amicus curiae*, the ICJ will endeavour to make novel submissions to assist the Chamber in the determination of the United Kingdom's question, which the Chamber has found of potential relevance for its assessment of the Prosecution's application in its Order.²³

18. If granted permission to intervene, the ICJ would set out the grounds arising from international law that would provide this Chamber with a basis to conclude that the Court can exercise jurisdiction over Israeli nationals in relation to the Situation in the State of Palestine.

V. Conclusion and Relief Requested

19. The ICJ submits that the proposed *amicus curiae* observations will contribute to the proper determination of whether or not the Court can exercise jurisdiction over Israeli nationals in relation to the Situation in the State of Palestine. Pursuant to rule

²⁰ Situation in the Republic of Kenya, Decision on Application for Leave to Submit Amicus Curiae Observations, Pre-Trial Chamber II, ICC-01/09-35, 18 January 2011, para. 6.

²¹ Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence, Pre-Trial Chamber I, ICC-01/18-117, 16 March 2020, paras 55-56.

²² Decision on the "Request for Leave to Submit Amicus Curiae Observations by the International Commission of Jurists (pursuant to Rule 103 of the Rules)", Pre-Trial Chamber I, ICC-RoC46(3)-01/18-7, 29 May 2018, para. 7.

²³ ICC-01/18-173-Red, para. 6.

103(1) of the Rules, therefore, the ICJ requests the Chamber leave to submit *amicus curiae* observations in the form of a written brief.



Saïd Benarbia
On behalf of the International Commission of Jurists

Dated this 12 July 2024

At Geneva, Switzerland