

Situation in the State of Palestine

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 Reine Alapini-Gansou

Judge Nicolas Guillou

SITUATION IN PALESTINE

Public Document

Request for Leave to File Submissions Pursuant to Rule 103

**Source: [ALMA - Association for the Promotion of International Humanitarian
Law (R.A. 580524882)]**

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

The Office of the Prosecutor
[REDACTED]

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 Representative	Amicus Curiae Applicants

REGISTRY	
Registrar Mr. Osvaldo Zavala Giler	Counsel Support Section
Victims and Witnesses Unit	Detention Section
Victims Participation and Reparations Section	Other

Request for Leave to Submit Observations on the Question of the Classification of Conflict in the Situation of Palestine

1. This is a request by ALMA – Association for the Promotion of International Humanitarian Law (R.A.) (hereinafter: 'ALMA') pursuant to rule 103 of the Rules of Procedure and Evidence) for leave to submit observations on the merits of the legal questions related to the classification of conflict in the Situation of Palestine.

Particular Expertise of ALMA in the Legal Questions Presented

2. ALMA is a registered association under Israeli law. ALMA was established in March 2010 with the agenda of promoting the knowledge, discussion and understanding of International Humanitarian Law ('IHL') in Israel and internationally. Over the years ALMA been instrumental in the dissemination of IHL in Israel through a variety of educational projects. Among these projects are academic events, courses, the translation of the Rome Statute into the Hebrew language and practical simulations. In 2020, ALMA submitted an Amicus Brief to the ICC Appeal Chamber in the case of Ntaganda.¹ Since its establishment ALMA has placed itself as a key actor in the field of IHL with national and international outreach. ALMA's activities have also been documented in the International Review of the Red Cross.²
3. The founders and current members of ALMA are experts in the field of international law, IHL and international criminal law in different stages in their career and a variety of expertise. Further information about the identity of ALMA members and their expertise can be found on ALMA's website (www.alma-ihl.org/who-we-are). It should be noted that in order to maintain its impartiality, any members of ALMA who are currently working for the Israeli Government were completely excluded from the decision to submit this request, the drafting of it, and from any other process related to this submission all together.

¹ ICC-01/04-02/06-2587, Observations by ALMA – Association for the Promotion of IHL in the Case of The Prosecutor v. Bosco Ntaganda, available at: www.icc-cpi.int/court-record/icc-01/04-02/06-2587

² Ido Rosenzweig, Promoting respect for IHL by NGOs: The case of ALMA – Association for the Promotion of IHL, IRRC (2014), 96 (895/896), 1029–1042, available at: https://international-review.icrc.org/sites/default/files/irrc-895_896-rosenzweig.pdf

Summary of Observations

4. In its request for arrest warrants, the Office of the Prosecutor (OTP) submitted that “*the war crimes alleged in these applications were committed in the context of an international armed conflict between Israel and Palestine, and a non-international armed conflict between Israel and Hamas running in parallel.*”³
5. That submission was based, inter alia, on the Report of the Panel of Experts in International Law submitted to the OTP on 20 May, 2024.⁴ In its report, the Panel of Experts concluded that “*The Panel agrees with the Prosecutor’s conclusion that the conflicts in Israel and Gaza comprise an international armed conflict and a non-international armed conflict running in parallel.*”⁵ The Panel of Experts provided several alternative reasons for the dual classification, but its published report does not provide full reasoning with regard to the important question of how to decide which classification should be applied to each actor under the specific circumstances.
6. Without prejudice to any questions of jurisdiction that might be relevant to the current Situation, the classification of the conflict has extensive implications on the entire process. Such implications include, *inter alia*, the relevant applicable war crimes that might be attributed to the persons participating in the same armed conflict and, correlatively, the issuing of arrest warrants which must specify these crimes.
7. Therefore, both consideration of legal merits and efficient judicial proceedings necessitate that the Court tend to the matter of the classification of the conflict at this stage.
8. The legal approach to the classification of extraterritorial armed conflicts has been thoroughly discussed in the last decades and has brought up an intensive amount of academic writing on the topic.⁶ Such writing includes different approaches to such conflicts, including international armed conflict (IAC), non-international armed conflict (NIAC), and a combination of both IAC and NIAC at the same time.

³ www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state

⁴ www.icc-cpi.int/sites/default/files/2024-05/240520-panel-report-eng.pdf

⁵ Ibid, Paragraph 13.

⁶ See for example Rogier Bartels, https://brill.com/view/journals/icla/20/4/article-p595_595.xml; Dapo Akande https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2132573; Yahli Shereshevsky www.justsecurity.org/96914/armed-conflict-classification-icc-palestine-situation-gaza;

9. The complexity and undetermined nature of the question the Court must answer with regards to classifying the armed conflict in this case is highlighted by the fact that even when the approach that acknowledges the possibility of parallel conflicts has been taken in the past, it has never been suggested that the same parties to the same conflict would be subjected to different sets of rules.⁷
10. It is clear that the ongoing conflict between Israel and Hamas, does not fit smoothly into the wording of Articles 2 and 3 of the Geneva Conventions. Nevertheless, while it is our position that two or more conflicts can take place within the same territory, the use of a dual classification with regard to the same armed conflict, the same forces, and the same conduct could undermine crucial aspects of IHL, including the clarity of governing operations in the course of an armed conflict, and the equality between the parties.
11. One aspect that is currently missing from the discussion and could assist the Court in deciding on the appropriate legal position on this matter is a comparative overview and analysis of state practice and *opinion juris* on how to classify extraterritorial armed conflicts between a state and an organized armed group, including state's practical approaches towards the situations of dual classifications. The suggested observation will provide such an overview.
12. The classification of the conflict has an immediate and direct impact on the OTP's requests for arrest warrants and could assist the Court in deciding to accept or reject these requests.
13. Lastly, the importance of analysing the classification of conflict in complex situations extends beyond the specific factual and legal framework of the current case. Providing a clearer analysis of the applicable classification could be relevant to future armed conflicts in which both IAC and NIAC could theoretically apply to the same parties to the same conflict.

⁷ ICC-01/04-02/06, para 728, available at: www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_03568.PDF

Respectfully submitted:

213)517 128

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on behalf of

[ALMA - Association for the Promotion of International Humanitarian Law (R.A.)]

Dated this 12 July 2024

At Petach-Tikva, Israel