

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
Judge Reine Alapini-Gansou, Judge

SITUATION IN THE STATE OF PALESTINE

Secret

**Request by South Africa, Bangladesh, Bolivia, Comoros, and Djibouti
for leave to submit written observations pursuant to Rule 103**

Source: South Africa, Bangladesh, Bolivia, Comoros, and Djibouti

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	Amicus Curiae

REGISTRY

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

I. Introduction and procedural history

1. On 5 February 2021, Pre-Trial Chamber I in its “Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’” (“Jurisdiction Decision”) decided that the Court could exercise its criminal jurisdiction in the situation in the State of Palestine, and that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem.¹ In paragraph 131 of its Jurisdiction Decision, Pre-Trial Chamber I stated that “[w]hen 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.”²
2. Following the announcement by the Prosecutor on 20 May 2024³ of filing applications for the issuance of warrants of arrest under article 58 of the Rome Statute of the International Criminal Court (1998) (“Statute” or “Rome Statute”), the United Kingdom brought a “Request for Leave to Submit Written Observations Pursuant to Rule 103” on 10 June 2024.⁴
3. On 27 June 2024, Pre-Trial Chamber I delivered its “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” (“Order”).⁵ Pre-Trial Chamber I indicated in its Order that any requests to submit observations

¹ ICC-01/18-143 05-02-2021 1/60 EC PT

² ICC-01/18-143 05-02-2021 1/60 EC PT, para 131

³ 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>)

⁴ ICC-01/18-171-Anx 27-06-2024 1/15 PT

⁵ ICC-01/18-Red 27-06-2024 1/5 PT

pursuant to Rule 103(1) of the Rules of Procedure and Evidence must be received by 12 July 2024.⁶ On 4 July 2024, Pre-Trial Chamber I, following a request by the United Kingdom for an extension of time to file its *amicus curiae* observations, granted the United Kingdom an extension of time limit and authorised it to file its observations by 26 July 2024.⁷

4. In accordance with the Jurisdiction Decision, and pursuant to articles 19(1) and 58 of the Rome Statute, the outstanding further questions of jurisdiction could now be addressed by Pre-Trial Chamber I as part of the application for warrants of arrest in the situation in the State of Palestine.

II. Applicable Law

5. Rule 103(1) of the Rules of Procedure and Evidence of the Court provides:

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.

III. Submissions

6. The Applicants are the Republic of South Africa, the People's Republic of Bangladesh, the Plurinational State of Bolivia, the Union of the Comoros, and the Republic of Djibouti, all of whom are States Parties to the Rome Statute.

⁶ ICC-01/18-Red 27-06-2024 1/5 PT, para 6

⁷ ICC-01/18-178 04-07-2024 1/4 PT

7. The Applicants, having jointly referred the situation in the State of Palestine on 17 November 2023,⁸ are of the view that the Court has jurisdiction in respect of the crimes outlined in paragraphs 1 and 2 of the joint referral. Furthermore, as States Parties, the Applicants have an inherent interest in any interpretation of the Rome Statute in respect of questions of jurisdiction, which may have implications beyond this immediate case. The Applicants therefore wish to provide observations to assist Pre-Trial Chamber I in its assessment of the question of jurisdiction over Israeli nationals that are alleged to have committed crimes within the territorial jurisdiction of the Court.
8. Whilst Pre-Trial Chamber I has already anticipated that other requests to submit observations pursuant to Rule 103 will be made, it has not extended an open call for *amicus curiae* submissions.
9. Therefore, the Applicants wish to apply, pursuant to Rule 103(1) of the Rules of Procedure and Evidence for leave to submit observations. Should authorisation be granted, it is anticipated that the Applicants will submit observations, with a view to assisting Pre-Trial Chamber, on the following:
 - (i) The Court's jurisdiction over individuals for crimes committed within the Court's territorial jurisdiction regardless of their nationality to ensure consistent application of the Court's jurisdiction;
 - (ii) Interpretation and implication of the Oslo Accords *vis-à-vis* the Court's jurisdiction to prosecute crimes.

⁸ Available at: <https://www.icc-cpi.int/sites/default/files/2023-11/ICC-Referral-Palestine-Final-17-November-2023.pdf>

10. The Applicants submits that the proposed *amicus curiae* observations will enable the Pre-Trial Chamber I to be fully informed and contribute to the proper determination of the matter of jurisdiction.

IV. Relief Requested

11. Therefore, pursuant to Rule 103(1) of the Rules of Procedure and Evidence, the Applicants request leave to submit *amicus curiae* observations to Pre-Trial Chamber I in the form of a written brief on the matters referred to above.
12. In light of the extension of time limit granted by Pre-Trial Chamber I to the United Kingdom, it is requested that the Applicants be granted a similar period of four weeks to submit its observations.
13. It is requested that this filing be reclassified as public.



Vusimuzi Philemon Madonsela, Ambassador of South Africa to the Kingdom of the Netherlands



M Riaz Hamidullah, Ambassador of the People's Republic of Bangladesh to the Kingdom of the Netherlands



Roberto Calzadilla Sarmiento, Ambassador of The Plurinational State of Bolivia in
The Netherlands



Issimail Chanfi, Ambassasdor and Permanent Representative of the Union of the
Comoros to the United Nations in New York



Mohamed Siad Doualeh, Ambassador and Permanent Representative of the
Republic of Djibouti to the United Nations in New York

Dated this 12 July 2024

At The Hague, Netherlands

New York, USA