

Situation in the State of Palestine

Annex I

Pursuant to Pre-Trial Chamber I's Order ICC-01/18-418 dated 11.04.2025, this document is reclassified as Public
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**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/18
Date: 29 July 2024

PRE-TRIAL CHAMBER I

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

SITUATION IN PALESTINE

*Secret, EX PARTE, with Secret EX PARTE Annex,
only available to the State of Israel and the Prosecution*

**Request for leave to reply to the "Prosecution Response to Israel's
Request for Access to the Application for Arrest Warrants for
Benjamin Netanyahu and Yoav Gallant" (ICC-01/18-248-SECRET-Exp)**

Source: The State of Israel

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 Office of the Attorney General of Israel	Amicus Curiae

REGISTRY

Registrar Mr. Osvaldo Zavala Giler	Counsel Support Section
Victims and Witnesses Unit	Detention Section
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I. INTRODUCTION

1. Israel¹ respectfully requests leave to reply to the Prosecution Response² to Israel's Request for Access to the Application for Arrest Warrants for Benjamin Netanyahu and Yoav Gallant ("Access Request").³ Leave is sought in respect of two limited issues, that could not have been reasonably anticipated or addressed in the Access Request itself: (a) whether the Pre-Trial Chamber must, in deciding the Access Request, resolve either standing to file or the merits of eventual jurisdictional and/or admissibility submissions that may subsequently be presented by Israel; and (b) whether the *amicus curiae* proceedings that have been authorized by the Pre-Trial Chamber within the context of its current deliberations are relevant to, or preclude, the Access Request.⁴

II. APPLICABLE LAW

2. Regulation 24(5) of the Regulations of Court prescribes that "participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated".
3. The jurisprudence applying this provision has consistently held that a reply may be appropriate: (i) "in respect of issues raised in the response which the replying participant could not reasonably have anticipated"; and (ii) where it "would

¹ Israel's Access Request and this filing are without prejudice to any and all arguments that Israel may make in the future concerning the Court's jurisdiction, admissibility or any other matters arising concerning the Rome Statute or its relation to Israel.

² ICC-01/18-248-SECRET-Exp. Israel was notified in person of the Prosecution Response on 23 July 2024 for the purposes of Regulations 31(2) and 32(1) of the Regulations of Court. See **Annex** for (1) 22 July 2024 Email from CMS to Israeli Embassy in the Hague; and (2) 23 July 2024 ICC Chain of Custody Form.

³ ICC-01/18-187-SECRET-Exp-AnxI. Israel will refer to the article 58 applications against Benjamin Netanyahu and Yoav Gallant as the "Article 58 Applications". Pre-Trial Chamber I will be referred to as the "Pre-Trial Chamber" or the "Chamber".

⁴ Pursuant to Regulation 23 *bis* (2) of the Regulations of the Court ("RoC"), this filing and its Annex is classified as secret and *ex parte* only available to the Prosecution and the State of Israel as it pertains to a filing that bears the same classification. Israel has no objection to this filing and its Annex being reclassified public in due course.

otherwise be necessary for the adjudication" of the matter.⁵ A request for leave to reply must explain the intended subject-matter of the reply to some extent. As the Appeals Chamber has held, a party seeking leave to reply must: (i) do more than "point [...] to issues" to which it wishes to reply, but must rather "demonstrate [...] why they are new and could not reasonably have been anticipated"; and (ii) "explain why a reply to the aforementioned issues is otherwise warranted."⁶

4. Pursuant to Regulation 28 of the Regulations of the Court a Chamber also has discretion to order further submissions by parties or participants when it is "*necessary for ... proper disposal ... bearing in mind the principle of equality of arms and the need for expeditious proceedings*".⁷ The Pre-Trial Chamber has upheld the appropriateness of exercising this discretion to authorise States to file a reply to responses addressing admissibility issues, due to the State's status as the "*triggering force and main actor in [admissibility] proceedings*".⁸

III. SUBMISSIONS

5. Israel submits that granting it leave to reply pursuant to Regulations 24(5) and / or Regulation 28 would be in the interests of justice, would uphold procedural fairness and would not adversely impact the expeditiousness of the proceedings. The two discrete issues on which Israel seeks to reply, as set out below, relate to foundational matters of jurisdiction and admissibility and directly impact on Israel's sovereign rights under the ICC Statute.

⁵ *Situation in the Islamic Republic of Afghanistan*, Decision on the Prosecutor's request for leave to reply, 23 December 2022, ICC-02/17-206 (OA5), paras. 8-9; *Ntaganda*, Decision on Mr. Ntaganda's request for leave to reply, 17 July 2017, ICC-01/04-02/06-1994, ("*Ntaganda* Appeal Decision on Replies"), para. 9.

⁶ *Ntaganda* Appeal Decision on Replies, paras. 13-14.

⁷ *Prosecutor v Ruto et al*, Decision on the application on behalf of the Government of Kenya for leave to reply, 1 August 2011, ICC-01/09-01/11-OA, para 9-10.

⁸ *Prosecutor v Gaddafi*, Decision on the Libyan Government Application for leave to reply, 26 July 2012, ICC-01/11-01/11-191, para. 8; *Prosecutor v Gaddafi*, Decision on the "Libyan Government's Request for Leave to reply to Responses by OTP, OPCV and OPCD", 26 February 2013, ICC-01/11-01/11-288, paras 10-11. See also: *Prosecutor v. Ruto et al*, "Decision under Regulation 24(5)", ICC-01/09-01/11-76, para. 15.

- (i) *First Issue: Whether the Pre-Trial Chamber must, in deciding the Access Request, resolve either the standing to file or the merits of any jurisdictional and/or admissibility submissions that may subsequently be presented by Israel*
6. The Prosecution has offered a variety of premature and extraneous submissions concerning the standing to file and the merits of potential future submissions pertaining to jurisdiction and / or admissibility that may be made by Israel. The Prosecution asserts, *inter alia*, that a State should be barred from exercising its rights under Article 19 while the Pre-Trial Chamber is still deliberating on the Prosecutor's Article 58 requests.⁹ The Prosecution also suggests that Israel's non-participation as an *amicus curiae* in the previous article 19(3) proceedings on jurisdiction and the doctrine of *res judicata* should somehow deprive Israel of its right to file a future jurisdictional challenge.¹⁰ In effect, the Prosecution argues that Israel is precluded from making such a potential challenge both on the ground that it is too early, and on the ground that it is too late. Finally, the Prosecution makes a series of submissions as to the requirements of article 18 which, if accepted, would thwart comprehensive judicial oversight of its conduct with respect to admissibility in circumstances where (1) such issues will be potentially addressed as part of the ongoing *amicus curiae* submissions; and (2) Israel has not yet sought to make submissions on matters pertaining to admissibility.
7. Israel does not propose to reply in detail to each of the inaccurate and misconceived Prosecution submissions as to the standing and merits of potential future jurisdictional or admissibility submissions, but rather to reply as to whether those issues can, or need to be, resolved in determining the Access Request. Israel would explain in reply that the Prosecution's challenges to Israel's rights to avail itself of potential jurisdictional or admissibility submissions cannot, and should not, be resolved within the context of the Access Request, not least because (1) submissions to this effect are manifestly premature and the Chamber cannot therefore benefit

⁹ Prosecution response, paras. 10-11.

¹⁰ Prosecution Response, paras. 12-17.

from a full briefing on them by all parties at this juncture; and (2) jurisdiction and admissibility are critical matters which are of relevance not just to Israel but will also be of import to a plethora of other States. Israel submits that the degree of substantive submissions offered by the Prosecution in its Response on these matters was unforeseeable, and that a reply would therefore assist the Pre-Trial Chamber.

(ii) *Second Issue: Whether the Amicus Curiae Proceedings Authorized by the Pre-Trial Chamber Are Relevant to, or Preclude, the Standing to file the Access Request*

8. The Prosecution argues that Israel's Access Request "falls outside the only procedural mechanism potentially available at this stage to permit such interventions and should therefore be dismissed."¹¹ Israel submits that it was unforeseeable that the Prosecution would argue that the Pre-Trial Chamber's authorization to entertain *amicus curiae* submissions under Rule 103¹² precludes Israel's Access Request. If granted leave to reply, Israel would comment on the distinct nature of Israel's very straightforward and discrete request for access to materials, which is filed pursuant to Israel's sovereign procedural and substantive rights recognized under articles 17, 18 and 19 of the Statute, and which is of a different character to *amicus curiae* submissions under Rule 103.

IV. RELIEF SOUGHT

9. Israel therefore respectfully requests leave to reply as indicated above.

Respectfully submitted:



Dr. Gilad Noam, Office of the Attorney-General of Israel

Dated 29 July 2024 at Jerusalem, Israel.

¹¹ Prosecution Response, para. 6.

¹² 'Order deciding on the United Kingdom's request to provide observations', ICC-01/18-173-Red, 27 June 2024; Decision on requests for leave to file observations pursuant to rule 103, ICC-01/18-249, 22 July 2024.