

Pursuant to Pre-Trial Chamber I's instruction dated 04-10-2024, this document is reclassified as Public.

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**
Date: **21 August 2024**

PRE-TRIAL CHAMBER I

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

SITUATION IN THE STATE OF PALESTINE

Confidential

Request to extend the page limit for submissions concerning article 18(1)

Source: The State of Israel

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

The Office of the Prosecutor Mr. Karim A.A. Khan KC	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
Victims Participation and Reparations Section	Public Information and Outreach Section

I. INTRODUCTION

1. The State of Israel, through its Office of the Attorney General ("Israel"), respectfully requests an extension of the applicable page limit for a submission that will address non-compliance by the Prosecutor with article 18 of the ICC Statute ("Statute"). The importance of the claim, the complexity of the legal issues, and the factual record that must be addressed warrant a finding of "exceptional circumstances" pursuant to regulation 37(2) of the Regulations of Court that justify an extension from 20 to 35 pages.¹

II. CONFIDENTIALITY

2. Pursuant to regulation 23 *bis* (2) of the Regulations of the Court, this filing is classified as confidential as it refers to correspondence between Israel and the Office of the Prosecutor that was classified by both interlocutors as confidential. Israel has no objection to this filing being reclassified as public in due course.

III. PROCEDURAL HISTORY

3. On 3 March 2021, following a Palestinian referral and a majority decision of Pre-Trial Chamber I concerning jurisdiction, the Prosecution announced the initiation of an investigation into "the Situation in Palestine."²
4. By letter dated 9 March 2021, the Prosecution notified Israel, pursuant to article 18(1) of the ICC Statute, of the existence of an investigation concerning certain matters. An exchange of correspondence between the State of Israel and the

¹ Israel is not a Party to the Rome Statute. This filing is without prejudice to Israel's status as a State not Party to the Rome Statute, and its position regarding the Court's lack of jurisdiction in respect of this Situation.

² <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine>. This procedural history is set out in summary form, and not all relevant documents are annexed, in the interests of brevity.

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Prosecution followed concerning the sufficiency of this notification under article 18(1) of the Statute, amongst other matters.

5. On 1 May 2024, following further correspondence and engagement between Israel and the Office of the Prosecutor, Israel addressed a letter to the Prosecutor requesting a deferral of his investigation in relation to acts attributed by his Office to Israeli nationals.
6. On 7 May 2024, the Office of the Prosecutor responded by asserting, *inter alia*, that Israel had no standing to “request” a deferral.
7. On 20 May 2024, the Prosecutor announced to the media that he had filed an application for arrest warrants in respect of Israel’s Prime Minister, Mr. Benjamin Netanyahu, and Israel’s Minister of Defence, Mr. Yoav Gallant.

IV. SUBMISSIONS

8. Israel intends to make submissions to the Pre-Trial Chamber concerning whether the Prosecutor has complied with article 18(1) and (2) of the Statute. In particular, the Prosecution has failed to provide notice to Israel, as required under article 18(1), regarding the investigation that it has been carrying out in relation to events in and around Gaza since 7 October 2023. In consequence, the Prosecutor has denied Israel the opportunity to seek a deferral of the investigation, despite its expressed wish to do so.
9. Israel will also submit that a new Situation has arisen on the basis of new referrals by States, which, in substance and form, exceed the scope of the pre-existing Situation, and which trigger anew the notification obligations in article 18(1) of the Statute.
10. An extension beyond the standard page-limit of 20 pages is justified by exceptional circumstances for three reasons.

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11. First, the issues are of great importance to the functioning of complementarity under the Rome Statute and touch directly upon the sovereignty of States.³ The jurisprudence from the *Venezuela I* and *The Philippines* Situations has emphasized the importance of the Prosecution's compliance with article 18(1), and the specificity of notices required under that provision, as a prerequisite to States exercising their prerogatives under article 18(2). Matters of such importance require full briefing before the Pre-Trial Chamber, to minimize ambiguity as to the factual or legal submissions being made.
12. Second, the legal issues are relatively complex and novel.⁴ Article 18(1) had not been directly addressed by Chambers of this Court until relatively recent decisions. This jurisprudence has substantially clarified the content of the Prosecutor's obligations under article 18(1), but those obligations have not yet been litigated in relation to the specific procedural posture that now arises. Careful review of this jurisprudence and secondary sources is required to ensure that the Pre-Trial Chamber has the benefit of all necessary sources and arguments.

³ *Al Bashir*, Decision on applications for extension of the page and time limits, ICC-02/05-01/09-324, 28 February 2018, paras. 6, 8 (extending page limit for the State of Jordan given the "importance and complexity" of the submissions"); *Situation on Registered Vessels*, Decision on Prosecutor's request for extension of page limit and extension of time limit, ICC-01/30-80, 25 January 2019, paras. 9, 11 (granting requested extension based on Prosecution argument that outcome of submissions would "'affect not only this situation but the operations of this Court as a whole'"); *Afghanistan*, Decision on the Prosecutor's request for an extension of the page limit, 20 September 2019, paras. 9-10 (in relation to Prosecution arguments that an extension was warranted in relation to "'matters of constitutional importance for the Court'", finding that the extension would be granted based on the "complexity and novelty of the issues").

⁴ See e.g. *Yekatom and Ngaïssona*, Decision on the consolidated application of Mr Patrice-Edouard Ngaïssona for an extension of the page and time limits, ICC-01/14-01/18-2189, 3 November 2023, para. 12 (granting a page-limit extension based on need to address "novel and complex issues"); *Bemba*, Prosecution's request to extend the page limit and for sufficient time to file its response to Bemba's request for compensation and damages, ICC-01/05-01/08-3674, 15 March 2019, para. 3 (Prosecution request for extension of page limit from 30 to 60 pages (which was granted) on the basis of the need to respond to request that "is wide-ranging in its scope and raises several novel, diverse and complex issues of consequence to the Court").

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13. Third, the factual record is somewhat extensive and requires explanation.⁵ Israel wishes to ensure that both the Prosecutor's written notices and its own responses are adequately contextualized for the Pre-Trial Chamber, which is important for the Chamber's full appreciation of the relevant issues.

V. CONCLUSION AND RELIEF SOUGHT

14. Israel respectfully requests, pursuant to regulation 37(2) of the Regulations of Court, an extension from 20 to 35 pages to submit observations in relation to the Prosecutor's non-compliance with article 18(1) of the Statute, and its consequences.

Respectfully submitted:



Dr. Galit Raguean, Office of the Attorney-General of Israel

Dated 21 of August 2024, at Jerusalem, Israel.

⁵ *Afghanistan*, Decision on the Prosecutor's Request for Extension of the Page Limit, ICC-02/17-5, 9 November 2017, para. 7 (granting substantial page limit given need to address "many complex issues of a legal and factual nature").