

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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

**IN THE CASE OF
*THE PROSECUTOR v.***

Public Document

**Request of the Legal Representatives of Victims to submit observations on behalf
of Victims in the proceedings related to the Situation in the State of Palestine**

Source: Raji Sourani, Chantal Meloni, Triestino Mariniello

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

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I. INTRODUCTION

1. With all the urgency of the situation, in accordance with Articles 68(3) and 19(3) of the Statute, and pursuant to the Chamber's Order of 22 July 2024,¹ the undersigned Legal Representatives of the Victims ('LRVs') respectfully request permission to present views and concerns in the proceedings in the Situation Palestine, on behalf of the Victims they represent ('Gaza Victims'),² whose very own lives are under imminent risk of irreparable harm as we write.
2. The undersigned LRVs respectfully note that, in accordance with a previous Order of the Chamber, written observations on behalf of the Victims have been already submitted in the proceedings in the Situation Palestine, including by the undersigned lawyers, on 16 March 2020.³ The Chamber's following Decision of 5 February 2021 was notified to each LRVs, as indicated in the cover page of the decision itself.⁴

II. PROCEDURAL HISTORY

3. On 20 December 2019, five years after Palestine's ratification of the Rome Statute and eleven years after Palestine's first acceptance of the Court's jurisdiction under Article 12(3) of the Statute, the Office of the Prosecutor ('OTP') concluded the Preliminary Examination of the Situation Palestine. The Prosecutor found that there was a "reasonable basis to believe that war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip."⁵ Nevertheless, the Prosecutor requested the Chamber to confirm the

¹ Pre-Trial Chamber I, Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence, 22 July 2024, ICC-01/18-249.

² See the confidential Annex to this submission. The powers of attorney have been on file with this honourable Chamber since March 2020.

³ Situation in the State of Palestine, Raji Sourani, Chantal Meloni and Triestino Mariniello, Submission on Behalf of Palestinian Victims Residents of the Gaza Strip with confidential Annex, 16 March 2020, ICC-01/18-112 17-03-2020.

⁴ Pre-Trial Chamber I, Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', 5 February 2021, ICC-01/18-143 ('PTC Decision on Jurisdiction, 2021').

⁵ Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court's territorial jurisdiction, 20 December 2019.

scope of the “Court’s territorial jurisdiction in Palestine”.⁶ The State of Israel anticipated the Request with its own observations, published by the Israeli Office of the Attorney General on 20 December 2019.⁷

4. On 22 January 2020, Pre-Trial Chamber I (the ‘Chamber’) was invested by the OTP with a Request to clarify the territorial scope of the International Criminal Court’s (the ‘Court’) jurisdiction in the Situation in Palestine.⁸
5. On 28 January 2020, the Chamber issued an order inviting “Palestine and Victims in the Situation in the State of Palestine to submit written observations” limited to the question of jurisdiction set forth in the Prosecutor’s Request.⁹ The Chamber, pursuant to Rule 103 of the Rules of Procedure and Evidence (‘RPE’), also invited “States, organisations and/or persons to submit observations on the question of jurisdiction”.¹⁰ The invitation resulted in the submission of observations from 54 different stakeholders, including eight States, two international organisations, thirty-three academics and NGOs, as well as observations on behalf of Victims submitted by eleven groups of LRVs.
6. On 16 March 2020, the undersigned LRVs submitted their views and concerns to the Chamber on behalf of the Gaza Victims.¹¹ On that occasion, the undersigned LRVs also filed to the Chamber their powers of attorney for one hundred and fifty-eight (158) Gaza Victims to the Court (see confidential Annex).
7. On 5 February 2021, in line with the Prosecutor’s conclusions, the Chamber confirmed that the Court has jurisdiction in the Situation in the State of Palestine and that the territorial scope of the jurisdiction extends to Gaza and the West

⁶ Ibidem.

⁷ State of Israel, Office of the Attorney General, *The International Criminal Court’s Lack of Jurisdiction over the So-Called “Situation in Palestine”*, 20 December 2019.

⁸ Office of the Prosecutor, Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, 22 January 2020, ICC-01/18-12 (‘OTP Request, 2020’).

⁹ Pre-Trial Chamber I, Order setting the procedure and the schedule for the submission of observations, ICC-01/18-14, 28 January 2020 (‘PTC Order, 2020’), para. 13.

¹⁰ PTC Order, 2020, para. 15.

¹¹ Situation in the State of Palestine, Raji Sourani, Chantal Meloni and Triestino Mariniello, Submission on Behalf of Palestinian Victims Residents of the Gaza Strip with confidential Annex, 16 March 2020, ICC-01/18-112 17-03-2020.

Bank, including East Jerusalem (the 'Jurisdiction Decision').¹² As a consequence, on 3 March 2021, Prosecutor Bensouda swiftly announced the opening of the investigation.¹³

8. On 20 May 2024, Prosecutor Khan announced that his Office had filed applications for arrest warrants for crimes committed in the Situation Palestine for three members of Hamas – Yahya SINWAR, Mohammed Diab Ibrahim AL-MASRI, Ismail HANIYEH – and two Israeli officials – Prime Minister Benjamin NETANYAHU and the Defence Minister Yoav GALLANT – (the 'Arrest Warrant Applications').¹⁴
9. On 10 June 2024, the United Kingdom (UK) filed a request to provide written *amicus curiae* observations under Rule 103(1) of the Rules (the 'UK's request').¹⁵
10. On 27 June 2024, the Chamber authorized the UK to file *amicus curiae* observations by 12 July 2024 (the 'Order').¹⁶ In the Order, the Chamber set the same deadline for any other requests for leave to make submissions. On 4 July 2024, the Chamber extended the time limit for the UK's submission until 26 July 2024.¹⁷
11. On 22 July 2024, the Chamber issued its Decision on the requests for leave to file observations pursuant to Rule 103 of the Rules.¹⁸ In this Decision the Chamber indicated that Legal Representatives of Victims may request

¹² PTC Decision on Jurisdiction, 2021, para. 118.

¹³ Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine, 3 March 2021.

¹⁴ Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine, 20 May 2024.

¹⁵ Situation in the State of Palestine, the United Kingdom, Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103, 11 June 2024, ICC-01/18-171-SECRET-Exp-Anx. The request, initially filed as secret *ex parte*, was reclassified as public on 27 June 2024 (ICC-01/18-171-Anx).

¹⁶ Pre-Trial Chamber I, 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, 27 June 2024, ICC-01/18-173-Red.

¹⁷ Pre-Trial Chamber I, Decision on the 'Request by the United Kingdom for Extension of Time Limit', 4 July 2024, ICC-01/18-178.

¹⁸ Pre-Trial Chamber I, Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence, 22 July 2024.

permission to provide the Chamber with views and concerns on behalf of Victims pursuant to Article 68(3) of the Statute.

III. VICTIMS' STANDING IN THE PROCEEDINGS

12. Palestinian Victims represented in this request are residents of the Gaza Strip who have suffered direct harm as a result of the most serious crimes specified in Article 5 of the Statute. For this reason, they were allowed to present their views and concerns following the Pre-Trial Chamber's recognition of their interests being directly affected by the Prosecutor's request of 22 January 2020.
13. Gaza Victims are therefore also entitled to submit observations in the ongoing proceedings, as triggered by the UK's request, in accordance with Article 68(3) of the Statute and Rule 93 of the Rules, as well as the Chamber's Order of 22 July 2024. As clearly stated by this Chamber previously, Victims have "the right to be heard and considered" and "the Court has the duty to effectively enable them to exercise this right".¹⁹
14. Under Article 68(3) of the Statute, "Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court [...]". As authoritatively emphasised by the Chamber, legal representatives of victims may request the permission to provide the Chamber with views and concerns on behalf of victims pursuant to Article 68(3) of the Statute.
15. UK's allegations that the Oslo Accords would prevent Palestine from delegating jurisdiction to the Court directly affects personal interests of Victims they represent. Accepting the UK's flawed interpretation of the Oslo Accords would impede the Court to conduct independent and impartial investigations. In doing so, it would directly affect Victims' quest for justice as it would enable alleged perpetrators of the most serious crimes in this situation to escape justice.

¹⁹ Pre-Trial Chamber I, Decision on Information and Outreach for the Victims of the Situation, 13 July 2018, par. 8.

Therefore, Victims have the right to be heard in the ongoing proceedings, in accordance with Article 68(3) of the Statute, because the issue raised by the UK fundamentally impacts their personal interests, including their right to justice and truth.

16. In light of the provisions under Article 19(3) and Rule 59(3) of the Rules, the Victims here represented shall be permitted to exercise their right to be heard and file their observations in the proceedings before this Chamber. Article 19(3) establishes that victims *may* submit observations “in proceedings with respect to jurisdiction and admissibility”. The UK’s request is undoubtedly jurisdictional in nature as it places into question whether the Court can exercise its jurisdiction over Israeli nationals. This is also testified by the fact that the UK’s request has been submitted pursuant to Article 19(1) of the Statute, which provides that the Court «shall satisfy itself that it has *jurisdiction* in any case brought before it” (emphasis added). The UK’s legally unsound interpretation of the Oslo Accords is particularly worrying, as it would impede the Court’s jurisdiction and prevent the Court from acting in line with its mandate in the situation of the State Palestine, ultimately depriving the Palestinian Victims of their fundamental rights to justice.

IV. PROPOSED OBSERVATIONS

17. At the outset, on behalf of the Gaza Victims, the LRVs wish to stress that any delay in the proceedings before the Court exacerbates the Victims’ ongoing suffering, obstructs accountability, and unjustifiably delays justice for over two million people who are trapped in Gaza and at imminent risk of losing their life. In the regard, the Victims are very worried by the number of *Amici Curiae* that have been authorised to file observations, and the impact this is going to cause on the length of the proceedings for the issuance of the warrants of arrest;²⁰

²⁰ Pre-Trial Chamber I, Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence, 22 July 2024.

18. Notably, the many Victims here represented already survived, and are still suffering for, the atrocious crimes committed within the context of e sequence of major military operations in 2014, 2018, 2021²¹ as well as for the suffocating blockade continuously imposed on Gaza since 2007 by Israel, as the Occupying Power. As stressed by the Secretary General of the United Nations, this unlawful blockade amounts to a collective punishment of the Gaza population.²² The Israeli closure, or siege, is depriving Gaza Victims of their fundamental human rights and can constitute the crime of persecution, as noted by the UN Fact-Finding Mission on the Gaza Conflict of 2009.²³
19. The same people, already pluri-victimised, are currently trapped in an unspeakable situation and exposed every moment to the very imminent and concrete risk of death: As recognized by the Prosecutor, Palestinians in Gaza are living under a total siege, constantly bombed, repeatedly displaced, intentionally subject to starvation and collective punishment.²⁴ The UN Office for the Coordination of Humanitarian Affairs (OCHA) has recently estimated that 96% of the population in Gaza is projected to face crisis or worse levels of food insecurity, 495,000 of which are assessed at catastrophic levels.²⁵ While the official number of casualties amounts to 37,953, medical experts have calculated that including “indirect deaths” – i.e. deaths occurring in the coming months and years, due to the conflict – the death toll is expected to reach 186.000 deaths or more, equal to 7.9% of the population of the Strip.²⁶
20. On behalf of the Victims here represented, the proposed observations seek to assist the Chamber’s deliberation by underscoring that:

²¹ So called IDF military operation “Protective Edge” in 2014, “Guardian of the Walls” in 2021 and the military repression of the so-called “Great March of Return” in 2018.

²² Report of the Secretary General, “Human rights situation in the Occupied Palestinian Territory, including East Jerusalem” (2015) UN Doc A/HRC/28/45.

²³ General Assembly, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, 25 September 2009, A/HRC/12/48, par. 1936.

²⁴ Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine, 20 May 2024.

²⁵ UN OCHA, Reported impact snapshot | Gaza Strip (10 July 2024).

²⁶ Rasha Khatib, Martin McKee, Salim Yusuf, “Counting the dead in Gaza: difficult but essential”, *The Lancet*, 5 July 2024.

- i. Under no circumstances, the Oslo Accords alter Palestine’s prescriptive jurisdiction, but they are only confined to affect Palestine’s capability to enforce the jurisdiction domestically:
 1. Arguing the contrary would be in breach of the Fourth Geneva Convention (“GC IV”) and contradict the Oslo Accords.
 2. The Court has already clearly established that bilateral agreements by which States waive jurisdiction over certain individuals are not relevant to the Court.
- ii. The theory of delegation has no basis in the Rome Statute. The accession of Palestine to the Court is by itself sufficient to activate the Rome Statute *in toto*, including the jurisdictional powers of the Court. This clearly emerges from:
 1. The textual interpretation of Articles 5, 11 and 12 of the Statute, which establish the jurisdiction of the Court.
 2. The object and purpose of the Statute, which would be frustrated if the Court were prevented from intervening in cases where States are unable to do so due to lack of jurisdiction *ratione personae* or *ratione materiae*.
 3. The interpretation of the Preparatory Works to the Rome Statute, in light of the intentions manifested by States in the establishment of the Court.
- iii. The UK’s intervention shall not become a *de facto* challenge of jurisdiction, which according to Article 19(2)(b) of the Statute can be proposed exclusively by States having jurisdiction over a case.

V. CONCLUSIONS

21. In conclusion, the Victims wish to recall the fundamental requisite that the proceedings be prompt and effective as recognized by international human

rights standards, whose significance before the Court is clearly recognized by Article 21(3) of the Statute: Justice delayed is justice denied. After so many years, Gaza Victims are very concerned of any possible further delay in the proceedings and are confident that the Chamber will proceed swiftly with the decision on the issuance of the warrants of arrest, as requested by the Prosecutor on May 20th.

22. Over 15 years after Palestine's first *ad hoc* declaration under Article 12(3), Gaza Victims are still waiting for justice. Since then, Gaza has been subject to several most destructive military operations, of which the current one is the culmination. As of July 17th, 38,794 Palestinians in Gaza are reported been killed (32% of which children, 20% women and 8% elderly), more than 10,000 are reported missing or under the rubble, while 89,364 have been injured. 1.9 million people, amounting to 90% of the Gazan population, have been internally displaced and are now cramped in 1.5 square meter per person. 96% of the population is projected to face crisis or worse levels of food insecurity, 495,000 of which into catastrophic level. Civilian objects and infrastructures have been largely destroyed: over 60% of residential buildings and 80% of commercial facilities have been damaged, as well as 88% of school buildings and 69% of school buildings used as shelters. Out of 36 hospitals, 21 are out of service; the remaining 15 are only partially functioning.²⁷ All along and besides the military attacks, the living conditions in besieged Gaza have been deteriorating dramatically.²⁸ The Israeli authorities have not only been causing this catastrophic level of death, damage and suffering but are also preventing humanitarian aid from reaching the population in the Strip, in blatant disregard of their duties as the Occupying Power²⁹. In the past two months, an average of

²⁷ UN OCHA, Reported impact snapshot | Gaza Strip (17 July 2024).

²⁸ See, *inter alia*, Un Independent Experts, UN experts declare famine has spread throughout Gaza Strip, 9 July 2024; UN Secretary General, 18 March 2024; UN General Assembly President underlines need for immediate ceasefire, 4 March 2024.

²⁹ See the ICJ Advisory Opinion, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, 19 July 2024.

2,500 truckloads has entered Gaza, the pre-crisis average being 500 truckloads *per day*.³⁰

23. For the foregoing reasons, the undersigned LRVs strongly submit that it is essential to permit the views and concerns of the Victims to be heard in this phase of the proceedings in accordance with Articles 68(3) and 19(3) of the Statute, as well as the Chamber's Order of 22 July 2024. Thus, the LRVs respectfully request leave to submit written observations on behalf of Gaza Victims in the current proceedings, as initiated by the UK's request and subsequent Chamber's Order.

Raji Sourani (Counsel)

Chantal Meloni (Counsel)

Triestino Mariniello (Assistant Counsel)

on behalf of
the Palestinian Victims Residents in the Gaza Strip

Dated this 25 July 2024

Cairo - Milan - Liverpool

At [place, country]

³⁰ UN OCHA, Reported impact snapshot | Gaza Strip (17 July 2024).