

Annex

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**

Date: 12 July 2024

PRE-TRIAL CHAMBER I

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

SITUATION IN THE STATE OF PALESTINE

Public Document

**Request for Leave to Submit *Amicus Curiae* Observations Pursuant to Rule 103 of the
Rules of Procedure and Evidence from the International Centre of Justice for
Palestinians and the Centre for Human Rights Law, SOAS University of London**

Source: International Centre of Justice for Palestinians and the Centre for
Human Rights Law, SOAS University of London

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

The Office of the Prosecutor [REDACTED]	Counsel for the Defence
Legal Representatives of Victims	Legal Representatives of the Applicant
Unrepresented Victims	Unrepresented Applicants for Participation/Reparation
The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
States Representatives United Kingdom	Amici Curiae

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

I. Introduction

1. In accordance with Rule 103 of the Rules of Procedure and Evidence, the Applicants submit this request for leave to submit *amicus curiae* observations. The Applicants to this request are the International Centre of Justice for Palestinians (ICJP) and the Centre for Human Rights Law, SOAS University of London (CHRL).
2. This request for leave is submitted in accordance with the Pre-Trial Chamber's Order of 27 June 2024 which instructed that any "*requests pursuant to rule 103(1) of the Rules must also be received by 12 July 2024.*"¹
3. It follows a request from the United Kingdom to submit written observations on "*[w]hether the Court can exercise jurisdiction over Israeli nationals, in circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords*"², and for which the Pre-Trial Chamber granted in its Order of 27 June 2024.³
4. The following submissions set out the expertise and experience of the Applicants, and outline the submissions proposed to assist the Chamber.

II. Applicable Law

5. Rule 103 of the Rules of Procedure and Evidence ("Rules") provides that:

*"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."*⁴

¹ *Situation in the State of Palestine*, 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', ICC-01/18-173-Red, 27 June 2024, para. 7 [*hereinafter* Order of 27 June 2024].

² *Situation in the State of Palestine*, Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103, ICC-01/18-173-Red, 10 June 2024, para. 27 [*hereinafter* UK Request of 10 June 2024].

³ Order of 27 June 2024, para. 5.

⁴ ICC, Rules of Procedure and Evidence, Rule 103, p.41, para 1.

6. The central issue to be determined on an application under Rule 103 “*is whether the Chamber will be assisted in its ‘proper determination’ of the issues in the case.*”⁵ In setting out the test, the Pre-Trial Chamber has previously found that it may accept *amicus curiae* submissions at any stage of the proceedings and on “*any issue that the Chamber deems appropriate when it is desirable for the proper administration of justice.*”⁶
7. The test affords the Chamber a wide discretion, and the Chamber has applied its discretion to allow an applicant’s request to act as *amicus curiae* on the basis that the Chamber ‘*may*’ find the information provided “*useful in the context of the present case.*”⁷
8. The Chamber has granted leave to submit *amicus curiae* observations in a range of instances. When considering “*the nature and complexity of the issues at stake*”, the Chamber has previously decided to receive “*additional submissions*” which “*may assist the Chamber.*”⁸ In addition, the Chamber has allowed submissions from Applicants “*putting forward another view*” to those already before the Chamber.⁹
9. Submissions and observations under Rule 103 are not restricted to legal information, and the Chamber has granted leave for *amicus curiae* submissions whereby a wide range of “*information and assistance of direct relevance on certain issues that otherwise will not be available to the Court*” can be supplied.¹⁰ For example, Rule 103 has been used to admit observations arising from direct experience, in addition to specialist legal expertise.¹¹

⁵ *Prosecutor v Lubanga*, Decision Inviting Observations from Special Representative of the Secretary General of the United Nations for Children and Armed Conflict, ICC-01/04-01/06-1175, 18 February 2008, para. 7.

⁶ *Situation in Darfur*, Decision Inviting Observations in Application of Rule 103 of the Rules of Procedure and Evidence, ICC-02/05-10, 24 July 2006, p. 6.

⁷ *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Request for Leave to Submit Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence, ICC-01/05-01/08-451, 17 July 2009, para 12.

⁸ *Situation in the Islamic Republic of Afghanistan*, Decision on the ‘Request for Leave to File Amicus Curiae Submissions on Behalf of Human Rights Organizations in Afghanistan’ (ICC-02/17-35) and on the ‘Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court’ (ICC-02/17-39), ICC-02/17-43, 12 June 2019, para. 7.

⁹ *Prosecutor v Al Bashir*, Reasons for ‘Decision on the Application of 20 July 2009 for Participation under Rule 103 of the Rules of Procedure and Evidence and on the Application of 24 August 2009 for Leave to Reply’, ICC-02/05-01/09 OA, 9 November 2009, para. 9.

¹⁰ *Prosecutor v Lubanga*, Decision Inviting Observations from Special Representative of the Secretary General of the United Nations for Children and Armed Conflict, ICC-01/04-01/06-1175, 18 February 2008, para. 7.

¹¹ See, for example, *Situation in Darfur*, Observations of the United Nations High Commissioner for Human Rights invited in Application of Rule 103 of the Rules of Procedure and Evidence, ICC-02/05-19, 10 October 2006, see the ‘Executive Summary’ on p. 2 and further, paras. 5 and 7; *Prosecutor v Gaddafi and Al-Senussi*,

III. The Applicants

10. The Applicants to this request are the International Centre of Justice for Palestinians (ICJP) and the Centre for Human Rights Law, SOAS University of London (CHRL). The Applicants seeks to assist the Chamber by providing it with observations based on their specific expertise on matters of jurisdiction in complex cases of public international law, requiring in depth knowledge of international criminal law, international human rights law and international humanitarian law, and their regional expertise and specific knowledge on the situation in Palestine. The Applicants also draw from extensive information gained from their work directly with victims and witnesses of alleged crimes within the jurisdiction of the Court.
11. The expertise and experience which each Applicant brings in order to assist the Chamber is further detailed as follows:
- *International Centre of Justice for Palestinians (ICJP)*
12. As noted above, this request for leave is submitted by the International Centre of Justice for Palestinians (ICJP). ICJP is an independent organisation of lawyers, academics and politicians who support the rights of Palestinians and aim to protect their rights through the law.¹² The work of ICJP focuses on utilising the international law expertise of its staff, counsel and associated experts to advocate for Palestinian rights and address issues of justice and accountability. ICJP's staff, counsel and associated lawyers and academics carry extensive expertise and experience in international criminal, humanitarian law and human rights law as well as, regional and country-specific expertise as to the situation in Palestine. For example, this request is prepared by the following individuals:
13. **Mr Tayab Ali**¹³ is Director of the International Centre of Justice for Palestinians and is a partner and Head of International Law at leading and award-winning London law firm Bindmans LLP. Mr Ali is an internationally recognised and highly respected Solicitor

Decision on the 'Application on behalf of Mishana Hosseinioun for Leave to Submit Observations to the Appeals Chamber pursuant to Rule 103, ICC-01/11-01/11-404', 15 August 2013, para. 8.

¹² See, ICJP website: <https://www.icjpalestine.com/about-us/>.

¹³ See, <https://www.bindmans.com/our-people/tayab-ali/> and <https://www.icjpalestine.com/staff/>

Advocate. His practice encompasses criminal and civil/public law in both the UK and international jurisdictions.

14. **Ms Haydee Dijkstal**¹⁴ is instructed as counsel for the International Centre of Justice for Palestinians. She is a Barrister at 33 Bedford Row Chambers and Head of the International Law practice group and has nearly 15 years of expertise practicing international criminal law before international courts and tribunals, including the International Criminal Court. She is currently counsel for victims seeking participation before the ICC in the Afghanistan and Ukraine situations. She was previously co-counsel for victims in the Registered Vessels situation and for the Government of the Comoros, as well as on the Defence team for Abdullah Al-Senussi, the legal team for Sudanese victims in the Banda Jerbo case, and on the legal team for the Kenyan Government in the cases of the Prosecutor v Muthaura et al., and the Prosecutor v Ruto et al; with particular experience in issues of complementarity and admissibility proceedings before the ICC during Kenya's admissibility challenge and Libya's admissibility challenge concerning Abdullah Al-Senussi's case.
15. Integral to ICJP's work is the conduct of investigations into incidents which ICJP's legal counsel have reason to believe may amount to international crimes and human rights violations. This includes a number of incidents particularly in Gaza since 7 October 2023, for which ICJP collects, documents and preserves evidence. As part of this work, ICJP works closely with victims and witnesses who have suffered harm in Palestine by actions perpetrated by Israeli forces, including potential war crimes and crimes against humanity. ICJP's investigative efforts have included working closely with evidence, including from victims and witnesses located in Gaza who have been directly impacted by indiscriminate targeting of civilians and civilian property, and who lost family members and property or who have been injured themselves. It also includes evidence from medical professionals on the impacts to civilians of the blockade on basic and necessary food and other humanitarian supplies, including medical supplies. This evidence not only includes information about alleged crimes and harm to victims, but importantly, also involves evidence and information on perpetration and criminal responsibility. To this, ICJP's investigative work has resulted in legal initiatives to seek accountability and assistance to

¹⁴ See, <https://www.33bedfordrow.co.uk/people/dijkstal-haydee#content/introduction> and <https://www.icjpalestine.com/staff/>

numerous justice mechanisms, both under domestic law and international law, which have each required engagement with the issue of jurisdiction, including the issues raised before the Court.

16. Therefore, it is highlighted that the expertise and knowledge ICJP brings through its staff, counsel and associated members, and through its work and specialisation in advocating for Palestinian rights, allows ICJP to assist the Chamber not only with the complex and novel issues of international law, but to do so with a contextual comprehension and understanding of the regional dynamics, politics and history of the situation in Palestine, and an insight and appreciation of the reality and significance of the questions on jurisdiction on all parties who will be impacted.
17. ICJP's close work with victims and witnesses of crimes committed in Gaza and the Occupied Palestinian Territories who have attempted to seek remedies and recourse with the Israeli authorities and judicial system, and its steps to seek accountability and justice through domestic and international mechanisms, also allows ICJP to assist in the relevant issues of complementarity and cooperation which have been raised as integral to and associated with the question raised on jurisdiction. Its work and experience advocating for the full realization of Palestinian rights under international law (namely the right to the truth, to a remedy and to self-determination), make ICJP well placed to assist with observations on the existing rights of Palestinians within the context of relevant international agreements and treaties, and how this impacts the question of jurisdiction before the Court.

- ***Centre for Human Rights Law, SOAS University of London (CHRL)***

18. This request for leave is also submitted by the Centre for Human Rights Law, SOAS University of London (CHRL) with both extensive expertise and experience in international criminal law, international humanitarian law, and international human rights law, as well as regional and country-specific expertise as to the situation in Palestine.
19. Since its founding in 2011, CHRL has engaged in a wide range of interdisciplinary research that seeks to amplify the scholarship, legal practice and knowledge traditions of scholars working in and on the Middle East, Asia and Africa and their engagement with

social change. CHRL takes a critical, intersectional approach to international human rights law, international humanitarian law, and international criminal law, grounded deeply in its practice in international institutions. CHRL's diverse group of members includes leading experts on the situation in the state of Palestine, as well as international law scholars with extensive experience working at the United Nations (Syria Commission of Inquiry, Office of the United Nations High Commissioner for Human Rights (OHCHR)) as well as with non-governmental organisations in the United Kingdom (REDRESS) and in other jurisdictions.

20. This request is prepared by the Co-Directors of CHRL. The request is, however, informed by extensive discussions with CHRL's members with regional expertise in the Middle East, including the current Editor-in-Chief of the Palestine Yearbook of International Law and a current Human Rights Council-appointed member of the Syria Commission of Inquiry.
21. **Dr Michelle Staggs Kelsall¹⁵ (BA(Med) LLB (Hons), LLM (Distinction), PhD)** is a Senior Lecturer in International Law and Co-Director of the Centre for Human Rights Law at SOAS University of London. She has published for a wide list of international law publications including the European Journal of International Law, the Palestine Yearbook of International Law, and the International Journal of Transitional Justice on matters of sources doctrine, jurisdiction and international criminal procedure. Prior to joining SOAS she was responsible for overseeing trial monitoring and reporting programmes for the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia for over a decade for the Stanford University Centre for Human Rights and International Justice. This included issuing reports detailing comparative interlocutory procedures before international courts and tribunals. Additionally, she has extensive experience drafting briefs on the applicability of the interlocutory decisions of international courts and tribunals in a variety of contexts in her previous role as a Human Rights Officer (Legacy Officer, Extraordinary Chambers in the Courts of Cambodia) at the OHCHR.
22. **Professor Lutz Oette¹⁶** is a Professor of International Human Rights Law at SOAS University of London. He has extensive experience working with United Nations agencies

¹⁵ See, <https://www.soas.ac.uk/about/michelle-staggs-kelsall>.

¹⁶ See, <https://www.soas.ac.uk/about/lutz-oette>.

and has published widely on international human rights law and international legal procedure. His co-authored textbook (with Ilias Bantekas) on *International Human Rights Law and Practice* (Cambridge University Press, 4th Edition) includes a chapter on the application of international human rights law in armed conflict that deals directly with issues pertaining to jurisdiction. Professor Oette also has extensive experience working with civil society actors, academic counterparts, and others on the prohibition of torture and justice for torture survivors worldwide. This has included participating in the drafting of updates pertaining to the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Istanbul Protocol). He is the author of *The Transformation of the Prohibition of Torture in International Law* (Oxford University Press, 2024).

IV. Summary of Proposed Submissions

23. If granted leave, the Applicants will provide submissions to assist the Chamber in its determination of issues regarding the jurisdiction of the Court.¹⁷
24. The Applicants acknowledge the Court's guidance that leave must be granted by the Chamber prior to making substantive observations pursuant to Rule 103.¹⁸ The Applicants therefore restrict the below to providing the Chamber with a brief outline of the issues which the Applicants propose to address if granted leave in accordance with this Rule.
25. **First**, noting the United Kingdom's submission that "*jurisdiction is one of the issues presently before the Pre-Trial Chamber*",¹⁹ the Applicants' primary submission would provide observations with regard to the settled nature of the issue of jurisdiction allowing the Chamber to move swiftly to its determination on the Office of the Prosecutor's request for arrest warrants. This would particularly include observations on the settled nature of the issue of whether the Court has jurisdiction over Israeli nationals for crimes committed on the territory of the Occupied Palestinian Territories. Furthermore, it would include observations affirming that the more appropriate consideration that can be undertaken on whether the Court can adjudicate the crimes alleged as being perpetrated by Israeli nationals is whether those cases, if the arrest warrant applications are granted, are

¹⁷ UK Request of 10 June 2024, paras. 16-28.

¹⁸ See, *Situation in Darfur*, Decision on Application under Rule 103, ICC-02/05-185, 4 February 2009, para. 6.

¹⁹ UK Request of 10 June 2024, para. 16.

admissible before the Court (without prejudice to the firm status of the Court's jurisdiction) – a matter to be raised and challenged at a later stage.

26. **Second**, and without prejudice to the Applicants' intended primary submission in paragraph 25, the Applicants seek leave to provide observations on issues of jurisdiction which have been noted as potentially relevant, including how – under international law – the Oslo Accords do not interfere with the Court's jurisdiction over Israeli nationals, even if the Court finds the Oslo Accords to be pertinent to the issue of jurisdiction.

27. Specifically, the observations would address:

- (1) Interpretation, under international law, of provisions regarding criminal jurisdiction in the Oslo II Accord and the Protocol Concerning Legal Affairs concerning Palestine's prescriptive jurisdiction as a member state to the Court, and the ICC's jurisdiction over Israeli nationals,²⁰ despite the limitation on Palestinians' enforcement jurisdiction under Oslo II.²¹

The Applicants would provide observations contesting any position that the Oslo Accords could be considered a bar to the ICC's exercise of its jurisdiction as it pertains to the issuance of arrest warrants. Specifically, this shall include observations regarding the Palestinian Authority's lodging of an Article 12(3) Declaration accepting the Court's jurisdiction and the object and purpose of the Court's jurisdiction under the Rome Statute as a matter of international criminal law. Furthermore, it would provide observations as to why any provisions on the concession on criminal jurisdiction in Oslo II Accords were limited, temporary, and intended as an interim arrangement in time and scope and did not anticipate the exercise of jurisdiction as a matter of international criminal

²⁰ Prescriptive jurisdiction is the ability for states to assert the applicability of its criminal law to certain conduct, such as through legislation and judicial rulings. In this context, prescriptive jurisdiction refers to Palestine's ability to delegate its jurisdiction to the International Criminal Court. See Roger O'Keefe, Universal Jurisdiction, *Journal of International Criminal Justice* 2 (2004) 735-760, available at: <https://documents.law.yale.edu/sites/default/files/O'Keefe%20-%20Universal%20Jurisdiction%20-%202004.pdf>

²¹ Article I(2)(b) and Article II(2)(c) of Annex IV of Oslo II states: "Israel has sole criminal jurisdiction over [...] offenses committed in the Territory by Israelis"; and "The Palestinian authorities shall not arrest Israelis or place them in custody." See Oslo Accords II, Annex, available at: <https://www.incore.ulster.ac.uk/services/cds/agreements/pdf/is18.pdf>

law for the crimes which the Prosecutor now requests and in order to conduct his investigations.

- (2) The existing rights of Palestinians which constitute peremptory norms under international law, and which have achieved customary status. This would include how the Oslo II Accord would be invalid if it, as an international agreement, undermined or extinguished those norms. To this, how any determination on the interpretation of the Oslo II Accord in regard to the Court's jurisdiction must take into account the non-derogability of these norms as a matter of international law. This will include an analysis of the validity, as a matter of international law including with reference to Article 53 of the Vienna Convention on the Law of Treaties, of bilateral agreements which contravene principles of protection and fundamental rights under international human rights law, international humanitarian law and international criminal law.
- (3) Based on the points outlined above, the importance of the Court to proceed expeditiously with the present application by the Office of the Prosecutor for arrest warrants in light of Palestinian retention of prescriptive criminal jurisdiction over Israeli nationals and the duties and obligations of the Court towards victims.

The Applicants will provide observations pertaining to an interpretation of the Oslo Accords that would deny the Court jurisdiction over crimes committed by Israeli nationals in the territory of the State Party. Specifically, they will provide supporting observations for the position that this would not only transgress the purpose of the Court and the Statute but would also undermine the central principle of complementarity and the rights of victims to obtain justice under the Statute.

V. Conclusion

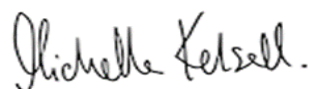
28. For the reasons set out above, the Applicants respectfully request leave from the Chamber to submit written observations in accordance with the Chamber's Order and Rule 103 and submit that the proposed submissions will assist the Chamber in its determination.

For the International Centre of Justice for Palestinians:



Mr Tayab Ali
Ms Haydee Dijkstal

For the Centre for Human Rights Law, SOAS University of London:



Dr Michelle Staggs Kelshall
Professor Lutz Oette

Dated 12th July 2024
London, United Kingdom