

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 Reine Alapini-Gansou
Judge Nicolas Guillou

SITUATION IN THE STATE OF PALESTINE

Public Document

Request by Brazil for Leave to Submit Written Observations Pursuant to Rule 103

Source: The Federative Republic of Brazil

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
[2 names per team maximum]

Legal Representatives of the Victims
[1 name per team maximum]

Legal Representatives of the Applicants
[1 name per team maximum]

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

The Office of Public Counsel for Victims
[2 names maximum]

The Office of Public Counsel for the Defence
[2 names maximum]

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

On 10 June 2024, the United Kingdom filed a request for leave to submit written observations pursuant to rule 103 of the Rules of Procedure and Evidence, in the context of the investigation of the situation in the State of Palestine.

2. In short, the United Kingdom desires to bring to the attention of the Court an issue of jurisdiction that it believes was not decided by Pre-Trial Chamber I in 2021, when the Chamber issued its decision on the scope of its jurisdiction over the State of Palestine. Namely, the United Kingdom finds that the Oslo Accords bar the State of Palestine from exercising criminal jurisdiction over Israeli nationals, and that this restriction would consequently prevent the Court from exercising its own jurisdiction over Israeli nationals in the context of the situation in Palestine.

3. On 27 June 2024, Pre-Trial Chamber I of the Court decided on the United Kingdom's request and set the deadline of 12 July 2024 for any other requests for leave to file amicus curiae observations pursuant to rule 103(1) of the Rules of Procedure and Evidence.

4. In accordance with this decision, Brazil seeks leave pursuant to rule 103 of the Rules of Procedure and Evidence to submit written observations to assist Pre-Trial Chamber I in examining the question of its jurisdiction over the situation in Palestine, especially the alleged effect of the Oslo Accords on the jurisdiction of the International Criminal Court.

II. SUMMARY OF THE SUBMISSIONS

5. The Federative Republic of Brazil wishes to contribute to the work of the Court in the investigation concerning the situation in Palestine, by providing it with some considerations regarding the scope of its jurisdiction over Israeli nationals for alleged crimes committed in Palestinian territory. Particularly, this contribution will focus on the relevance of the Oslo Accords to determine the jurisdiction of the Court. The potential relevance of this issue has been recognized by Pre-Trial Chamber I in its decision on the request by the United Kingdom (ICC-01/18-173-Red, para 5).

6. It is of Brazil's view that a decision on the issue at hand will be relevant not only to the situation presently under scrutiny, but also to other situations and cases before the Court. By outlining in clear and precise terms the rules and principles underpinning the jurisdiction of the International Criminal Court, Pre-Trial Chamber I has the opportunity to strengthen the Court's legitimacy and effectiveness, shielding it from political interference and rendering the exercise of its functions and the cooperation of States Parties more stable, predictable and reliable.

7. As is widely known, the situation in Palestine is worsening by the hour. While the importance of dialogue between Israelis and Palestinians must not be understated as a means to bringing about an end to the conflict and achieving a durable peace, current evidence indicates that war crimes and crimes against humanity may have been committed in Palestinian territory, demanding a judicial response.

8. Brazil believes it is crucial to ensure the speediness of the Court's proceedings in this matter, clearing up any remaining reservations concerning the scope of the Court's jurisdiction.

9. In this context, Brazil wishes to contribute to the work of the Court in the investigation concerning the situation in Palestine, by providing it with further considerations regarding the scope of its jurisdiction. This issue has already been the subject of several decisions of the Court and of submissions presented by the Prosecutor, as follows:

10. The Office of the Prosecutor understands that "[t]he right to delegate jurisdiction is reflective of an internationally recognized legal authority, and not of the material ability of actually exercising jurisdiction over either the territory in question or over certain individuals within or outside that territory" (ICC-01/18-12, para 184).

11. Accordingly, the Office of the Prosecutor maintains that bilateral agreements limiting the enforcement jurisdiction of a state party domestically do not affect the Court's jurisdiction. "Rather, it may become an issue of cooperation or complementarity during the investigation and prosecution stages" (ICC-01/18-12, para 185).

12. As the Appeals Chamber recognized in its judgment on the appeal against the decision on the authorization of an investigation into the situation in the Islamic Republic of Afghanistan, these agreements may affect requests for cooperation, but "the effect of these agreements is not a matter for consideration in relation to the authorisation of an investigation" (ICC-02/17-138, para 44).

13. As set out by Pre-Trial Chamber I, "Pursuant to article 98, the Court may not proceed with requests for surrender and/or assistance which would require a requested State to act inconsistently with its obligations under either 'international law with respect to the State or diplomatic immunity of a person or property of a third

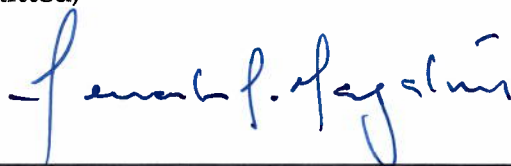
State` or `international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court`" (ICC-01/18, para 127).

14. Pre-Trial Chamber I noted, however, that such issues "may be raised by interested States based on article 19 of the Statute", but "they are not pertinent to the resolution of the issue under consideration, namely the scope of the Court's territorial jurisdiction in Palestine" (ICC-01-18, para 129).

III. RELIEF REQUESTED

15. In light of the considerations set out above, Brazil respectfully requests permission to submit written observations pursuant to Rule 103 of the Court's Rules of Procedure and Evidence on the question of jurisdiction raised by the United Kingdom in its request, namely, the relevance of the Oslo Accords in determining the scope of the Court's jurisdiction over the situation in Palestine.

Respectfully submitted,



Fernando Simas Magalhães,
Ambassador Extraordinary and Plenipotentiary

Federative Republic of Brazil

Dated this 12 July 2024

The Hague, The Netherlands

At [place, country]