

**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 File *Amicus Curiae* Observations Pursuant to Rule 103 of the
Rules of Procedure and Evidence**

Source: Al-Haq Law in the Service of Mankind (Al-Haq)
Al-Mezan Center for Human Rights (Al-Mezan)
Palestinian Center for Human Rights (PCHR)

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 the Victims	Legal Representatives of the Applicants
Unrepresented Victims	Unrepresented Applicants (Participation/Reparation)
The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
States' Representatives	Amicus Curiae

REGISTRY

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

I. INTRODUCTION

1. The Palestinian human rights organisations, Al-Haq, Law in the Service of Man (Al-Haq), the Palestinian Centre for Human Rights (PCHR), Al Mezan Center for Human Rights (Al Mezan) (the 'Applicants') hereby respectfully request leave to file joint written observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence (the 'Rules') of the International Criminal Court (the 'ICC' or the 'Court').

II. PROCEDURAL HISTORY

2. On 5 February 2021, Pre-Trial Chamber I (the 'Chamber') decided that "Palestine is a State Party to the [Rome] Statute", and that as a consequence, Palestine qualifies as "[t]he State on the territory of which the conduct in question occurred" for the purposes of Article 12(2)(a) of the Rome Statute. The Chamber also decided that "the Court's territorial jurisdiction in the Situation in Palestine extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem" (the 'Jurisdiction Decision').¹
3. On 3 March 2021, the Prosecutor announced the initiation of the investigation into the Situation in the State of Palestine.²
4. On 20 May 2024, the Prosecutor publicly announced that his Office had filed applications for warrants of arrest for crimes committed from at least 7 October 2023 for five individuals including two senior Israeli officials (Benjamin NETANYAHU and Yoav GALLANT) (the 'Arrest Warrant Applications').³

¹ [ICC-01/18-143](#)

² [Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine](#), 3 March 2021.

³ [Statement of ICC Prosecutor Karim A. A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine](#), 20 May 2024.

5. On 10 June 2024, the United Kingdom (the 'UK') filed a request for leave to submit written observations pursuant to Rule 103 of the Rules (the 'UK Request').⁴
6. On 27 June 2024, the Chamber authorized the UK Request to file written observations by 12 July 2024. The Chamber set the same deadline for any other requests for leave to make observations (the 'Order').⁵
7. On 2 July 2024, the UK requested an extension of the time limit until 26 July 2024 to submit its written observations.⁶
8. On 4 July 2024, Pre-Trial Chamber I granted the UK request for an extension of the time limit and authorised the UK to file its observations pursuant to Rule 103 of the Rules by 26 July 2024.⁷

III. THE APPLICANTS

9. The Palestinian human rights organisations Al-Haq, PCHR and Al Mezan have been operating in the occupied Palestinian territory since 1979, 1995, and 1999 respectively, investigating, monitoring and documenting violations of international human rights law and international humanitarian law in the occupied Palestinian territory regardless of the identity of the perpetrator. Al Mezan and PCHR have been instrumental in representing the victims before the Israeli judicial system.
10. Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah. Established in 1979 to protect and promote human rights and the rule of law in the occupied Palestinian territory, the organisation has special consultative status with the United Nations Economic and Social Council. Al-Haq is the West Bank affiliate of the International

⁴ [ICC-01/18- 171-SECRET-Exp-Anx](#)

⁵ [ICC-01/18-173-Red](#)

⁶ [ICC-01/18-176](#)

⁷ [ICC-01/18-178](#)

Commission of Jurists – Geneva and is a member of the International Network for Economic, Social and Cultural Rights (ESCR-Net), the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), the Palestinian Human Rights Organisations Council (PRHOC), and the Palestinian NGO Network (PNGO).⁸

11. Al-Haq has been awarded the Fayez A. Sayegh Memorial Award (1986), the Rothko Chapel Award for Commitment to Truth and Freedom (1986), has been co-recipient alongside B'Tselem of the Carter-Menil Human Rights Prize (1989) and the Geuzenpenning Prize for Human Rights Defenders (2009), the Annual Human Rights and Business Award (2019) at the UN Forum on Business and Human Rights, the Gwynne Skinner award for corporate accountability (2020) and the Bruno Kreisky Human Rights Award (2022). While Al-Haq's General Director, Mr. Shawan Jabarin was the 1990 recipient of the Reebok Human Rights Award, the Welfare Association's NGO Achievement Award (2010), the Danish PL Foundation Human Rights Award (2011), and the University of Galway Alumni Award (2024). In 2018 the French Republic co-jointly awarded Al-Haq and B'Tselem the Human Rights Prize of the French Republic, which is "awarded to organizations that are being harassed or pressured for defending and promoting human rights".

12. Al Mezan is an independent, nonpartisan, non-governmental human rights organisation based in the Gaza Strip. Al Mezan was established in 1999 to protect and advance the respect of human rights in the occupied Palestinian territory, particularly economic, social and cultural rights in the Gaza Strip. Al Mezan supports victims of international law violations, and promotes democratic principles, civic participation, and respect for the rule of law in Gaza as part of the occupied Palestinian territory. Al Mezan gained special consultative status with the United Nations Economic and Social Council in

⁸ Al-Haq, "[About Al-Haq](#)".

2010 and is a member of the International Network for Economic, Social and Cultural Rights (ESCR-Net), the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), the Palestinian Human Rights Organisations Council (PHROC), and the Palestinian NGO Network (PNGO).⁹

13. Al Mezan's Director Mr. Issam Younis was awarded the 2008 Weimar Human Rights Prize for his work to protect and promote human rights and provide assistance to victims of abuses. Al Mezan's staff member Mr. Samir Zaqout was awarded for his human rights work in defending the right to freedom of expression by the Palestinian Center for Development and Media Freedom (MADA).

14. PCHR is an independent Palestinian human rights organisation, established in 1995, and based in Gaza City. The Centre enjoys Consultative Status with the ECOSOC of the United Nations. It is an affiliate of the International Commission of Jurists – Geneva; the International Federation for Human Rights (FIDH) – Paris; member of the Euro-Mediterranean Human Rights Network – Copenhagen; member of the International Legal Assistance Consortium (ILAC) – Stockholm; member of the Arab Organization for Human Rights – Cairo; and member of the World Coalition against the Death Penalty – Rome. The Centre's mandate is to: protect human rights and promote the rule of law in accordance with international standards; create and develop democratic institutions and an active civil society, while promoting democratic culture within Palestinian society; support all the efforts aimed at enabling the Palestinian people to exercise their inalienable rights in regard to self-determination and independence in accordance with international law and UN resolutions.¹⁰

⁹ Al Mezan, "[About Al Mezan](#)".

¹⁰ PCHR, "[About PCHR](#)".

15. PCHR is a recipient of the French Republic Award on Human Rights (1996), the Bruno Kreisky Award for Outstanding Achievements in the Area of Human Rights (2002), the International Services Human Rights Award (UNAIS) (2003) and the Human Rights Prize of Andalucia (2009). In addition, the General Director of PCHR, Mr Raji Sourani has been recipient of the Joint Laureate for Robert F Kennedy Memorial for Human Rights (1991) (jointly held with Israeli lawyer, Avigdor Feldman), Washington and the Right Livelihood Award, Stockholm (2013).
16. Since 2009, the Applicants have worked to petition the Prosecutor of the ICC to open an investigation into the Situation of Palestine. Al-Haq submitted and presented a position paper at the 2010 NGO Roundtable in The Hague. Since 2015, Palestinian human rights organisations have submitted eight substantial joint communications to the Office of the Prosecutor outlining a reasonable basis to believe that crimes within the jurisdiction of the Court have been committed in the occupied Palestinian territory. In parallel, thousands of photographic and documentary files recorded by the organisations were submitted by EyeWitness to the ICC.
17. Following the 20 February 2020 decision of Pre-Trial Chamber I in the Situation in the State of Palestine, to grant leave, Al-Haq, Al Mezan and PCHR submitted an *amicus* brief to the Chamber on 16 March 2020. Responding to the Appeals Chamber's Order of 24 July 2020, in the case of *The Prosecutor v Bosco Ntanganda*, inviting qualified publicists of international humanitarian and/or criminal law to request leave to submit observations on the merits of stated legal questions, Al-Haq was again granted leave by the Chamber and submitted its observations in September 2020.
18. Staff of Palestinian human rights organisations have been subjected to death threats and harassment for their work on detailed submissions and communications to the Office of the Prosecutor (OTP). In particular, the OTP

Report on Preliminary Examination Activities (2016) noted: "As publicly reported earlier this year, staff members of certain organisations that have gathered information of relevance to the OTP preliminary examination, such as Al-Haq and Al Mezan Center for Human Rights, have been subjected to threats and other apparent acts of intimidation and interference. The Office takes this situation very seriously and has consulted with the organisations and persons affected as well as liaised with the Dutch authorities, as the Host State to the Court, in order to ensure that appropriate steps and measures are taken to address the situation".¹¹

19. On 19 October 2021, a few months after the ICC Prosecutor announced the opening of an investigation into the Situation in Palestine, the Israeli Defense Ministry, Benny Gantz, designated six Palestinian human rights and civil society organizations, including one of the Applicants, Al-Haq, as "terrorist organizations," under Israel's domestic Counter-Terrorism Law of 2016.¹² On 18 August 2022, the Israeli army raided, ransacked and damaged properties and offices of these organisations, welded shut their doors and left a statement saying it would remain closed for "security reasons".¹³ Israel's targeted assault on Al-Haq was primarily because of its long-lasting constructive engagement with the ICC.¹⁴ This has also been confirmed by recent reporting in the Guardian investigation showing that Israeli intelligence agencies have used spying, hacking and other forms of intimidation against ICC officials in attempting to obstruct justice and derail the investigation in the Situation in the State of Palestine.¹⁵

¹¹ OTP, "[ICC Prosecutor's Report on Preliminary Examination Activities \(2016\) – Excerpt on Situation in Palestine](#)"

¹² Al-Haq, "[Designated Shrinking Space: Israel's Systematic Harassment Campaigns Against Al-Haq, are the Acts of an Illegal Apartheid Regime.](#)", 1 November 2021.

¹³ See [Joint Statement from Designated Palestinian Organizations Raided, Closed and Pillaged by Israeli Occupying Forces](#), 19 August 2022; also see Al-Haq Forensic Architecture Investigations, "[The Raid on Al-Haq's Offices: 18 August 2022](#)", 16 September 2022.

¹⁴ Al-Haq, "[Position Paper: Dangerous Designations, Israel's Authoritarian Dismantling of Palestinian Civil Society, an Attack on Human Rights and the Rule of Law](#)", 30 October 2021.

¹⁵ See the Guardian two-part investigation, "[Spying, hacking and intimidation: Israel's nine-year 'war' on the ICC exposed](#)," and "[Revealed: Israeli spy chief 'threatened' ICC prosecutor over war crimes inquiry](#)", 28 May 2024.

20. Notwithstanding, the Applicants and other Palestinian human rights organisations continue to pursue justice for the victims of international crimes committed in the occupied Palestinian territory in the context of a 76-year settler colonial apartheid and 57-year Israeli military occupation.

IV. SUMMARY OF OBSERVATIONS

21. The Chamber Order authorising the UK's Request to file written observations acknowledged that the UK's request and the Chamber's decision to grant it "may result in other requests to submit observations."¹⁶

22. Mindful of the Chamber's observation that its decision is not intended as an "open call" and its intention "[t]o limit the impact of this procedure on the expeditiousness of the present stage of the proceedings", the Applicants request this leave to file *amicus curiae* observations jointly.

23. The Applicants believe that consideration of the UK's observations may create a significant precedent on the issue pertaining to the proper legal standing to raise jurisdictional challenges, as well as, on issues pertaining to the legal question considered. The Applicants' observations, if granted, will directly address these procedural and legal matters.

24. Rule 103(1) of the Rules of Procedure and Evidence provides that "[a]t any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case [...] grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate". While it is within the discretion of the Court to grant leave for the submission of observations at any stage in proceedings, the immediate scenario, where a state has been authorised to submit observations at this juncture in Article 58 *ex parte* proceedings between an announcement by the Office of the Prosecutor of the filing of applications to Chamber for warrants of

¹⁶ [ICC-01/18-173-Red](#)

arrest, but prior to the Chamber's decision as to the issuance of such warrants, is unprecedented.¹⁷

25. Although concerned that the granting to the UK of authorization to submit observations under Rule 103(1) may negatively impact the expeditious consideration of the Prosecutor's application for the issuance of arrest warrants in the Situation in the State of Palestine, the Applicants make this request to the Chamber for its authorization to submit written observations on the questions related to the Court's exercise of its jurisdiction as raised in the UK's request.¹⁸ The Applicants argue that the Oslo Accords present no bar or limitation to the exercise of the Court's jurisdiction and that the preconditions to the Court's exercise of jurisdiction in the Situation in the State of Palestine have been conclusively met.

26. As noted by the Pre-Trial Chamber II, Article 58 proceedings "triggered by the Prosecutor's application for a warrant of arrest or a summons to appear are to be conducted on an *ex parte* basis."¹⁹ The only communication envisaged at this stage is that conducted between the Chamber and the Prosecutor.

27. Article 19 of the Rome Statute regulates the context within which challenges to jurisdiction and admissibility may be raised by a party having an interest in the matter. In the first instance, the proposed observations will demonstrate that there is no basis for the intervention of the UK at the present stage of the Court's proceedings, as the UK does not qualify as any of the States mentioned in Article 19.

28. Recalling the principle as stated by the Appeals Chamber, that the authorisation of Rule 103 observations is not appropriate where such observations "would serve merely to repeat submissions already provided",²⁰ our submission will

¹⁷ [ICC-01/09-42](#), para. 9.

¹⁸ [ICC-01/18-173-Red](#)

¹⁹ [ICC-01/09-35](#), para. 10.

²⁰ [ICC-01/05-01/08-602](#), para. 11.

further demonstrate that the effect of granting authorisation of the UK's submission of observations at this juncture, is to introduce an unwarranted *de facto* adversarial process that may well have an unwarranted impact upon the Court's ability to expeditiously proceed with the OTP's application for warrants of arrest.

29. Critically, our submission will evidence that the Oslo Accords do not affect or limit the exercise of the Court's jurisdiction. The UK argument appears to be built on the legal rule (*nemo dat quod non habet*) which means that no one can give what he does not have. The error of such an argument in this situation emanates from its disregard for the effect of the law of occupation, and its assumption that as a result of the Oslo Accords, the Occupying Power (Israel) necessarily deprived the occupied State (State of Palestine) of its sovereign rights, including its plenary prescriptive jurisdiction.²¹

30. The said argument omits the fact that the provisions of the Oslo Accords regulating the Palestinian exercise of criminal jurisdiction relate to the enforcement jurisdiction. Palestine's enforcement jurisdiction, as described by the OTP, entails "its prerogative to enforce or ensure compliance with its legislation and to punish non-compliance with respect to certain issues and persons."²² Rather than its prescriptive jurisdiction, which entails the capacity of the occupied State to make the law, including the capacity to confer its jurisdiction to the ICC.²³ Accordingly, although the Oslo Accords might affect the enforcement jurisdiction of the occupied State, it cannot alter its prescriptive jurisdiction. i.e., the ability to confer the exercise of its criminal jurisdiction, including over nationals of the Occupying Power, to an international tribunal.

31. Accentuating this analysis, our submission will also emphasise how the drafters of the Geneva Conventions were alert and foresaw the risks of the conclusion

²¹ [ICC-01/18-131](#), para. 70.

²² [ICC-01/18-12](#), para. 184.

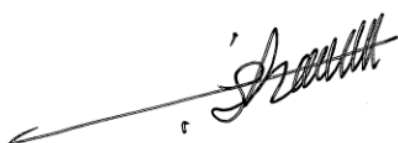
²³ *Ibid*, para. 185.

of an international agreement between the Occupied State and the Occupying Power and although it allowed such 'special agreements', it affirmed that such agreements cannot violate peremptory rights, nor can they deprive or deny the 'protected persons' of their rights.²⁴

32. The Applicant's observations will further demonstrate that contrary to the presumed position of the UK, any changes to "the current factual matrix", as referenced in the UK's application, since the Pre-Trial Chamber's Decision of 5 February 2021 that the Court could exercise its criminal jurisdiction in the Situation in the State of Palestine, may only be read as having further affirmed that the Oslo Accords present no bar to the Court's jurisdiction.

V. RELIEF SOUGHT

33. For these reasons, and intending to assist the Pre-Trial Chamber in its proper determination, the Applicants respectfully seek leave to file a joint amicus brief expanding on these issues.



Mr. Shawan Jabarin,
Al-Haq



Mr. Issam Younis,
Al-Mezan



Mr. Raji Sourani
PCHR

Dated this 12 July 2024
At Ramallah, Palestine

Dated this 12 July 2024
At Cairo, Egypt

Dated this 12 July 2024
At Dublin, Ireland

²⁴ [ICC-01/18-12](#), para. 186.