

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/13**

Date: **13 February 2019**

PRE-TRIAL CHAMBER I

Before: Judge Peter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Alapini-Gansou

**SITUATION ON REGISTERED VESSELS OF THE UNION OF THE
COMOROS, THE HELLENIC REPUBLIC OF GREECE AND THE KINGDOM
OF CAMBODIA**

Public Document

Response on behalf of the Victims to the “Application pursuant to Article 119(1) of the Rome Statute” and to the “Request for leave to reply to Prosecution filing: ICC-01/13-83”

Source: Rodney Dixon QC, and Stoke White Ltd (London), Legal Representatives of the Victims

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

The Office of the Prosecutor

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Mr. James Stewart

Counsel for the Defence

Legal Representatives of Victims

Mr. Rodney Dixon QC

Legal Representatives of the Applicant

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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

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**The Office of Public Counsel for the
Defence**

States Representatives

Mr. Rodney Dixon QC

Amicus Curiae

REGISTRY

Registrar

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Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Response to Shurat Ha-Din’s Application under Article 119(1) and new argument to submit amicus curiae observations

1. The Victims of the attack on the Gaza Freedom Flotilla who are represented by the Legal Representative for Victims, Rodney Dixon QC, hereby respond to the “Application pursuant to Article 119(1) of the Rome Statute”¹ and the “Request for leave to reply to Prosecution filing: ICC-01/13-83”² both filed by Shurat Ha-Din – Israel Law Center.
2. The Victims file this response pursuant to Regulations 24(2), 33(1) and 34(b) and (c) of the Regulations of the Court.
3. The Victims urge the Chamber to dismiss these applications *in limine* as Shurat Ha-Din has no standing to submit them and to be heard. The Victims are deeply dismayed by the underhanded and dishonourable way in which they have been attacked and smeared in these applications, without any substantiation, when there is no legal basis at all for making these filings in the first place. It is an abuse of the Court’s process and procedures for Shurat Ha-Din to have acted in this manner, and the Chamber should firmly reject these applications *in limine*.
4. The obviously flawed attempts of Shurat Ha-Din to make a legitimate legal application run counter to the Pre-Trial Chamber’s findings in highlighting the importance of “respect[ing] the internationally recognized human rights of victims ... especially the rights of victims to know the truth, to have access to justice and to request reparations.”³
5. The Prosecution has correctly identified that Shurat Ha-Din has misinterpreted the jurisprudence of the Court concerning the Rohingya jurisdiction decision to try to claim

¹ Application pursuant to Article 119(1) of the Rome Statute, ICC-01/13-82-AnxI, 31 January 2019 [*hereinafter* Shurat Ha-Din Article 119(1) Application]. While the date on the Application is 31 January 2019, for the purpose of Regulation 33 of the Regulations of the Court, it is noted that the Application was first notified to the parties by way of a Registry transmission which was circulated to the parties on 1 February 2019. See, Transmission of Three Documents received from the Shurat Ha-Din – Israel Law Center, ICC-01/13-82, 1 February 2019.

² Request for leave to reply to Prosecution filing: ICC-01/13-83, ICC-01/13-84-AnxI, 8 February 2019 [*hereinafter* Shurat Ha-Din Leave to Reply].

³ Decision on the “Application for Judicial Review by the Government of the Union of the Comoros”, ICC-01/13-68, 15 November 2018, para. 120.

standing pursuant to Article 119(1).⁴ The Prosecution is right to submit that, in the Rohingya jurisdiction proceedings, the Pre-Trial Chamber “expressly found that the victims in question had ‘standing to submit observations *pursuant to article 68(3)*’ and rule 93”,⁵ and not via Article 119 as suggested by Shurat Ha-Din.⁶ Thus, no precedent was created for third parties to “attempt to intervene in proceedings at this Court.”⁷ For this reason alone, Shurat Ha-Din’s Application under Article 119(1) should be dismissed *in limine*.

6. The Victims also submit that Shurat Ha-Din’s attempt now to try to submit *amicus curiae* observations, made as an alternative argument in its leave to reply to the Prosecutor’s response⁸, should be dismissed. This argument is an afterthought raised for the first time when Shurat Ha-Din has no standing. In any event, the case law on the granting of *amicus* observations makes absolutely clear that “the first and foremost factor for leave to be granted pursuant to rule 103 of the Rules is whether the relevant application relates to an issue that is actually before the competent Chamber.”⁹ Shurat Ha-Din has not identified any such relevant issue currently and actually before the Pre-Trial Chamber.¹⁰

Conclusion

7. For these reasons the Victims respectfully request that the Chamber:

- Dismiss *in limine* Shurat Ha-Din’s Application under Article 119(1) for lack of standing; and
- Dismiss *in limine* Shurat Ha-Din’s arguments to make *amicus curiae* observations.

⁴ Request to Dismiss *In Limine* an Application under Article 119(1) by *Shurat Ha-Din*, ICC-01/13-83, 5 February 2019, paras. 2-4.

⁵ Request to Dismiss *In Limine* an Application under Article 119(1) by *Shurat Ha-Din*, ICC-01/13-83, 5 February 2019, para. 3, citing Request Under Regulation 46(3) of the Regulations of the Court, Decision on the ‘Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute’, ICC-RoC46(3)-01/18-37, 6 September 2018, paras. 20, 21.

⁶ Shurat Ha-Din Article 119(1) Application, paras. 14-16.

⁷ Request to Dismiss *In Limine* an Application under Article 119(1) by *Shurat Ha-Din*, ICC-01/13-83, 5 February 2019, para. 2.

⁸ Shurat Ha-Din Leave to Reply, para. 4.

⁹ Situation in Darfur, Sudan, Decision on Application under Rule 103, ICC-02/05-185, 4 February 2009, para. 8.

¹⁰ Decision on the Prosecutor’s request for leave to appeal the “Decision on the ‘Application for Judicial Review by the Government of the Union of the Comoros’”, ICC-01/13-73, 18 January 2019, para. 47.



Rodney Dixon QC

Legal Representative of the Victims

Dated 13 February 2018

London