

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-01/13  
Date: **5 February 2019**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Péter 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**

**Request to Dismiss *In Limine* an Application under Article 119(1) by *Shurat Ha-Din***

**Source:** Office of the Prosecutor

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

**The Office of the Prosecutor**  
Ms Fatou Bensouda, Prosecutor  
Mr James Stewart

**Counsel for the Defence**

**Legal Representatives of the Victims**  
Mr Rodney Dixon

**Legal Representatives of the Applicants**  
Ms Nitzana Darshan-Leitner  
Mr Nicholas Kaufman

**Unrepresented Victims**

**Unrepresented Applicants**

**The Office of Public Counsel for Victims**  
Ms Paolina Massidda

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

**States Representatives**  
Mr Rodney Dixon

**Amicus Curiae**

## REGISTRY

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**Registrar**  
Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section** **Other**

1. On 1 February 2019, the Registry transmitted to the Pre-Trial Chamber and the other Parties and participants<sup>1</sup> an application filed by *Shurat Ha-Din* (“Applicant”),<sup>2</sup> a non-governmental organisation, that purported to identify a “dispute concerning the judicial functions of the Court” in the meaning of article 119(1) of the Rome Statute, and directly proceeded to make submissions on the merits of the claimed dispute,<sup>3</sup> and to seek relief from the Pre-Trial Chamber.<sup>4</sup>
2. While taking no position on the merits, the Prosecution submits that no standing is conferred upon the Applicant by article 119(1). Within the procedural framework of the Statute and Rules of Procedure and Evidence, the Application can only be treated as an attempt to intervene in proceedings at this Court as an *amicus curiae*—but without complying with the requirements of rule 103, which is the applicable *lex specialis*. Consequently, it must be dismissed *in limine*.
3. The Prosecution notes that the Application expressly “seeks to exercise the recently recognized right to intervene in a Situation by virtue of Article 119(1) [...] and not as an *amicus curiae*”,<sup>5</sup> and purports to rely on a previous decision of this Pre-Trial Chamber for the principle that the Court must under article 119(1) “accord *locus standi* to any interested party seeking resolution of a dispute concerning the judicial functions of the Court.”<sup>6</sup> Yet the Applicant is incorrect to suggest that, in that prior decision, the Pre-Trial Chamber entertained submissions from victims who “were never awarded participatory status nor *amicus curiae* status pursuant to Rule 103”.<sup>7</sup> To the contrary, it expressly found that the victims in question had “standing to submit observations *pursuant to article 68(3)*” and rule 93,<sup>8</sup> and manifestly did not

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<sup>1</sup> [ICC-01/13-82](#).

<sup>2</sup> [ICC-01/13-82-AnxI](#) (“Application”).

<sup>3</sup> [Application](#), paras. 17-34.

<sup>4</sup> [Application](#), paras. 35-37.

<sup>5</sup> [Application](#), para. 17.

<sup>6</sup> [Application](#), para. 15 (referring to [ICC-RoC46\(3\)-01/18-37](#) (“*Bangladesh Decision*”), emphasis supplied).

<sup>7</sup> *Contra* [Application](#), para. 16.

<sup>8</sup> [Bangladesh Decision](#), para. 21 (emphasis added). *See also* paras. 5, 9, 20.

rely on article 119(1) for this purpose. Nor can anything else in the Application be analogised to the circumstances of the *Bangladesh* Decision.

4. Indeed, without taking any position at this time on the scope and function of article 119(1) in general,<sup>9</sup> nothing in that provision displaces the *lex specialis* of rule 103(1) in regulating interventions in ongoing proceedings by third parties<sup>10</sup>—which is what the Application seeks to achieve. To the contrary, the Appeals Chamber has stated unequivocally that “rule 103 [...] regulates the procedure for hearing entities that would not otherwise participate in the proceedings”,<sup>11</sup> and required that other provisions must be read consistently with rule 103.<sup>12</sup> There are good reasons why this is so.

5. Accordingly, the Pre-Trial Chamber should dismiss the Application *in limine*, without prejudice to any future application made under rule 103(1).




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Fatou Bensouda, Prosecutor

Dated this 5<sup>th</sup> day of February 2019

At The Hague, The Netherlands

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<sup>9</sup> See [Bangladesh Decision](#), para. 28; [ICC-RoC46\(3\)-01/18-37-Anx](#) (“*Bangladesh* Decision, Dissenting Opinion”), paras. 14-23.

<sup>10</sup> See further e.g. T.N. Slade and R.S. Clark, ‘Preamble and Final Clauses,’ in R.S. Lee (ed.), *The International Criminal Court—the Making of the Rome Statute: Issues, Negotiations, Results* (The Hague: Kluwer, 1999) (“Slade and Clark”), pp. 422-424, 429-430 (suggesting the drafters aimed to achieve “a nuanced compromise [...] which includes a strong statement on the power of the Court itself to settle disputes on its ‘judicial functions’ but leaves a flexible role for the Assembly of States Parties”, potentially among other bodies). In this context, no mention is made of any desire in Part 13 of the Statute (‘Final Clauses’) to displace the main procedures of the Court’s judicial functioning in Parts 1 to 10, and the associated Rules.

<sup>11</sup> [ICC-02/11-01/11-321 OA2](#) (“*Gbagbo* Appeal Decision”), para. 43.

<sup>12</sup> [Gbagbo Appeal Decision](#), para. 39 (reasoning that judicial discretion under rule 58(2) must, nonetheless, be read in light of rule 103(1)).