Cour
Pénale
Internationale

International
Criminal
Court

Original: **English**

No.**: ICC-01/18**
Date: **27 June 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

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'

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

The Office of the Prosecutor
Mr Karim A. A. Khan KC

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparations

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives
United Kingdom

Amicus Curiae

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

PRE-TRIAL CHAMBER I (the 'Chamber') of the International Criminal Court (the 'Court') issues this decision on the 'Request by the United Kingdom for leave to submit written observations pursuant to Rule 103' (the 'Request').[1]

1. On 10 June 2024, the United Kingdom filed a request to provide written *amicus curiae* 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]

2. Rule 103(1) of the Rules of Procedure and Evidence (the 'Rules') provides, in the relevant part, 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.'

3. The Chamber notes that the wording of this provision gives the Chamber full discretion on whether or not to grant leave to a request to present *amicus curiae* observations, at any stage of the proceedings. The Chamber will therefore consider the Request on its merits.

4. In support of its request, the United Kingdom cites a decision by the Chamber in a previous composition.[3] According to the United Kingdom, the Chamber at the time 'did not determine the jurisdictional issues relating to the Oslo Accords […], instead holding that "when the Prosecutor submits an application for the issuance of a warrant of arrest or summons to appear under article 58 of the Statute, or if a State or a suspect submits a challenge under article 19(2) of the Statute, the Chamber will be in a position to examine further questions of jurisdiction which may arise at that point in time".[4] The United Kingdom submits that the Chamber, pursuant to Article 19(1) of the Rome Statute, 'is required to make an initial determination of jurisdiction in resolving the application for arrest warrants' of which '[t]he Oslo Accords issue necessarily forms part'.[5]

[1] 10 June 2024, ICC-01/18-171-SECRET-Exp.
[2] Request, para. 27.
[3] Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', 5 February 2021, ICC-01/18-143, para. 131.
[4] Request, paras 1 (emphasis removed), 15 and 19.
[5] Request, paras 17-18.

5. Given the potential relevance of the issue the United Kingdom wishes to address for the Chamber's assessment, and without prejudice to any future decision by the Chamber on this matter, the Chamber considers it appropriate to authorise the United Kingdom to file written observations pursuant to rule 103 of the Rules. These observations, which may not exceed 10 pages, shall be filed by 12 July 2024.

Deadline for any other request for leave to file amicus curiae observations

6. Whilst the following must not be understood as an open call by the Chamber for *amicus curiae* submissions, the Chamber acknowledges that the Request, and the Chamber's decision to grant the United Kingdom leave to file observations, may result in other requests to submit observations. To limit the impact of this procedure on the expeditiousness of the present stage of the proceedings, the Chamber indicates already in the present decision that any such requests pursuant to rule 103(1) of the Rules must also be received by 12 July 2024.

Reclassification

7. The United Kingdom requests that the Request be reclassified, because '[t]he sensitivity of the situation and the need for secrecy in certain aspects do not mean that this particular Request needs to be secret or confidential' and asks permission to file its observations, if granted, publicly.[6] The Chamber instructs the Registry to reclassify the Request as 'public'. The Chamber further agrees that given the matter the United Kingdom wishes to address, its observations may be filed publicly.

8. The Prosecution may file its response(s) to rule 103 observations, if any, as public, [REDACTED].

[6] Request, paras 30-31.

IN LIGHT OF THE FOREGOING, THE CHAMBER HEREBY

AUTHORISES the United Kingdom to file written observations pursuant to Rule 103 of the Rules by 12 July 2024;

DETERMINES that the observations shall not exceed 10 pages;

INSTRUCTS the Registry to reclassify the Request as 'public';

SETS the deadline for any other requests for leave to make observations under Rule 103 of the Rules for 12 July 2024.

Done in English. A French translation will follow. The English version remains authoritative.

Judge Iulia Antoanella Motoc
Presiding Judge

Judge Reine Adélaïde Sophie Alapini-Gansou

Judge Nicolas Guillou

Dated this Thursday, 27 June 2024
At The Hague, The Netherlands