

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

*No.: ICC-01/18*  
Date: 14 February 2020

**PRE-TRIAL CHAMBER I**

**Before:** Judge Péter Kovács, Presiding Judge  
Judge Marc Pierre Perrin de Brichambaut  
Judge Reine Alapini-Gansou

**SITUATION IN THE STATE OF PALESTINE**

**IN THE CASE OF  
*THE PROSECUTOR v.***

**Public Document**

**Request for Leave to Submit Amicus Curiae Observations by the International  
Commission of Jurists (pursuant to Rule 103 of the Rules)**

**Source:** International Commission of Jurists

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

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**Unrepresented Victims**

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The competent authorities of the State of  
Palestine  
The competent authorities of the State of  
Israel

**Amicus Curiae**

Guernica 37 International Justice  
Chambers

**REGISTRY**

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**Registrar**

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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

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**Other**

## I. Introduction

1. Pursuant to Rule 103(1) of the Rules of Procedure and Evidence (the “Rules”), the International Commission of Jurists (“ICJ”) requests Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) leave to submit *amicus curiae* observations in the form of a written brief on the “Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine” (the “Prosecutor’s Request”).<sup>1</sup>

2. The ICJ is a non-governmental organization established in 1952 and has its headquarters in Geneva, Switzerland. The ICJ is composed of some 60 eminent jurists representing different justice systems worldwide and has some 61 national sections and affiliated organizations. The ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession. It endeavors to promote States’ compliance with their international human rights legal obligations; to support efforts to combat impunity; to ensure legal accountability for human rights violations and access to effective remedies and reparations for victims. The ICJ has consultative status at the United Nations Economic and Social Council, the United Nations Educational, Scientific and Cultural Organization, the Council of Europe and the African Union. The organization also cooperates with various bodies of the Organization of American States and the Inter-Parliamentary Union. The ICJ intervenes regularly in judicial proceedings in domestic and international jurisdictions in an *amicus curiae* or other third party capacity, including before this Court.<sup>2</sup> From its regional headquarters in

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<sup>1</sup> ICC-RoC46(3)-01/18-1.

<sup>2</sup> The ICJ intervened at the International Criminal Court in the *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, ICC-01/09. The ICJ has also intervened at the European Court of Human Rights (*Suso Musa v Malta* App No 42337/12; *Del Rio Prada v Spain* (No 42750/09); *F.G. v. Sweden* (No. 43611/11); *A.T. v. Sweden* (No. 78701/14)) and in the Inter-American Court of Human Rights (*Murillo et al. v Costa Rica* [2012] IACHR Case No. 12.361). Domestic interventions include at the Bangkok Criminal Court (*Thammakaset Co. Ltd v. Ms. Sutharee Wannasiri*, Black Case Number Aor. 3054/2561 (2018)); the Pattani Provincial Court of Thailand (*Case of the Petitioner Ms. Rorheemah Useng*,

Tunis, the ICJ has been working to improve the rule of law and respect for human rights in the Middle East and North Africa, including in the State of Palestine.

## II. Procedural Background

3. On 1 January 2015, the State of Palestine lodged a declaration under article 12(3) of the Rome Statute (the “Statute”) accepting the jurisdiction of the Court over alleged crimes “committed in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014.”<sup>3</sup>

4. On 2 January 2015, the State of Palestine deposited its instrument of accession to the Statute with the United Nations Secretary-General in accordance with article 125(2) of the Statute.<sup>4</sup>

5. On 22 May 2018, the State of Palestine referred the situation in the State of Palestine to the Prosecutor pursuant to articles 13(a) and 14 of the Statute, thereby *inter alia*: (i) requesting the Prosecutor “to investigate, in accordance with the temporal jurisdiction of the Court, past, ongoing and future crimes within the court’s jurisdiction, committed in all parts of the territory of the State of Palestine;”<sup>5</sup> and (ii) specifying that “[t]he State of Palestine comprises the Palestinian Territory occupied in 1967 by Israel, as defined by the 1949 Armistice Line, and includes the West Bank, including East Jerusalem, and the Gaza Strip.”<sup>6</sup>

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*Black Case Number, Tor Por 1/2557 (2014)*); the Bangkok South Criminal Court of Thailand (*Case of the Defendant Andy Hall, Black Case Number A 517/2556 (2013)*); the High Court of Singapore (*Lee Hsien Loong v. Roy Ngerng Yi Ling [2015] SGHC 320*); the Supreme Court of the Philippines (*Ang Ladlad v Commission on Elections [2010]*); the Constitutional Court of Korea (*Cases No. 2013 HunGa5, 2014 HunGa8, 2012 HunGa17, 2013 HunGa23, 2013 HunGa 27, 2013 HunGa 13*); the Supreme Court of the United Kingdom (*Belhaj & Anor v Straw & Ors [2017] UKSC 3*); the High Court of Ireland (*Foy v Ireland [2007] IEHC 470*); the Court of Appeal of Victoria (*Australia Christian Youth Camps Ltd & Anor v Cobaw Community Health Services Ltd & Ors [2014] VSCA 75*); and the United States Court of Appeals for the District of Columbia (*ACLU v. DOJ [2013] 923 F.Supp.2d 310*).

<sup>3</sup> Presidency, Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I (‘Assignment Decision’), Annex I, 24 May 2018, ICC-01/18-1-AnxI, p. 2.

<sup>4</sup> Secretary-General of the United Nations, ‘Rome Statute of the International Criminal Court, Rome, 17 July 1998, State of Palestine: Accession’, 6 January 2015, Reference: C.N.13.2015.TreatiesXVIII.10 (Depositary Notification), <https://treaties.un.org/doc/Publication/CN/2015/CN.13.2015-Eng.pdf>.

<sup>5</sup> Assignment Decision, Annex I, ICC-01/18-1-AnxI, p. 8, para. 9.

<sup>6</sup> Assignment Decision, Annex I, ICC-01/18-1-AnxI, footnote 4.

6. On 22 January 2020, the Prosecutor submitted a request pursuant to article 19(3) of the Statute “for a ruling on the Court’s territorial jurisdiction in Palestine.” In particular, the Prosecutor seeks a ruling “on the scope of the Court’s territorial jurisdiction in the situation of Palestine” and confirmation “that the ‘territory’ over which the Court may exercise its jurisdiction under article 12(2)(a) comprises the West Bank, including East Jerusalem, and Gaza.”

7. On 28 January 2020, the Chamber issued an “Order setting the procedure and the schedule for the submission of observations,” in which it invited “Palestine and victims in the Situation in the State of Palestine,” Israel and “other States, organizations and/or persons to submit written observations on the Prosecutor’s Request by 16 March 2020.”<sup>7</sup>

### III. Applicable Law

8. Rule 103(1) of the Rules provides that, “[a]t any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.”

9. The decision to invite or to accept an *amicus* intervention is a matter within the discretion of the Chamber.<sup>8</sup>

10. In other cases, the Court has also invited *amicus curiae* submissions in connection with legal issues that may have implications beyond a specific case.<sup>9</sup> The Court has held that the core rationale underlying an *amicus curiae* submission is that the Chamber

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<sup>7</sup> Pre-Trial Chamber I, “Order setting the procedure and the schedule for the submission of observations,” ICC-01/18, 28 January 2020, p. 7.

<sup>8</sup> *Prosecutor v. Gbagbo*, Decision on the ‘Request for Leave to Submit *Amicus Curiae* Observations pursuant to Rule 103 of the Rules of Procedure and Evidence’, Appeals Chamber, ICC-02/11-01/11-517, 1 October 2013, para. 9; *Prosecutor v. Bemba Gombo*, Decision on the Application of 14 September 2009 for Participation as an *Amicus Curiae*, Appeals Chamber, ICC-01/05-01/08-602, 9 November 2009, para. 10.

<sup>9</sup> *Prosecutor v. Al-Bashir*, Order Inviting Expressions of Interest as *Amici Curiae* in Judicial Proceedings (Pursuant to Rule 103 of the Rules of Procedure and Evidence), Appeals Chamber, ICC-02/05-01/09-330, 29 March 2018, para. 1.

be assisted in the determination of the case by an independent intervener having no other standing in the proceedings.<sup>10</sup>

#### IV. Request to Intervene as *Amicus Curiae*

11. The ICJ is qualified to offer assistance to the Chamber given its expertise in international law and its experience as an independent third-party intervener in domestic and international courts and quasi-judicial bodies around the world. The ICC recognized the ICJ's qualifications in this regard when it granted leave to submit *amicus curiae* observations in the situation in the People's Republic of Bangladesh / Republic of the Union of Myanmar.<sup>11</sup>

12. In light of the nature and current status of the Request, no adversarial proceedings are currently in place. This matter also raises legal issues which may have implications for the clarification of international law beyond the immediate case and which, to the ICJ's knowledge, have not been squarely litigated in other international judicial settings. Allowing the ICJ leave to intervene as *amicus curiae* will, therefore, provide the Chamber with additional specific and independent information to help the Chamber in the determination of the Request.

13. The ICJ considers that the Prosecutor's Request raises important legal questions about the rights of States to invoke the jurisdiction of the Court and the scope of the Court's jurisdiction in the Situation in the State of Palestine.

14. If granted permission to intervene, the ICJ would set out the grounds which would provide the Court with a basis to conclude that Palestine constitutes a State for the purpose of Article 12(2)(a) of the Rome Statute and under international law, and that the territory over which it may exercise jurisdiction in the Situation in the State of

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<sup>10</sup> *Situation in the Republic of Kenya*, Decision on Application for Leave to Submit *Amicus Curiae* Observations, Pre-Trial Chamber II, ICC-01/09-35, 18 January 2011, para. 6. See also ECCC *Amicus Curiae* Decision, para. 7.

<sup>11</sup> Request under Regulation 46(3) of the Regulations of the Court, Decision on the "Request for Leave to Submit *Amicus Curiae* Observations by the International Commission of Jurists (pursuant to Rule 103 of the Rules," Pre-Trial Chamber I, ICC-RoC46(3)-01/18, 29 May 2018, para. 7.

Palestine comprises the West Bank, including East Jerusalem, and Gaza. The ICJ's submission would have reference to international law and domestic and international jurisprudence.

## V. Conclusion and Relief Requested

15. The ICJ submits that the proposed *amicus curiae* observations will contribute to the proper determination of the Prosecutor's Request. Pursuant to Rule 103(1) of the Rules, therefore, the ICJ requests the Chamber leave to submit *amicus curiae* observations in the form of a written brief.



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Ian Siederman  
on behalf of  
International Commission of Jurists

Dated this 14th day of February 2020

At Geneva, Switzerland

At [place, country]