ANNEX I
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No.: **ICC-01/13**
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PRE-TRIAL CHAMBER I

Before: **Judge Péter Kovács, Presiding Judge**

Judge Marc Perrin de Brichambaut

Judge Reine Adélaïde Sophie Alapini-Gansou

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

PUBLIC
with two public annexes

Application pursuant to Article 119(1) of the Rome Statute

Source: **Shurat Ha-Din – Israel Law Center**

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

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Detention Section

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Other

Pursuant to Article 119(1) of the Rome Statute, the learned Pre-Trial Chamber is hereby respectfully requested to resolve "*a dispute concerning the judicial functions*" of the International Criminal Court ("the Court" or "the ICC") and to decline to deliberate further on the so-called Mavi Marmara incident in the context of the *Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic of Greece and the Kingdom of Cambodia* ("the Comoros Situation").

The Applicant

1. Shurat Ha-Din – Israel Law Center ("the Applicant"), is an Israeli non-governmental organisation which promotes, *inter alia*, public awareness as to the plight of the victims of international terrorism. The Applicant has, in particular, advocated for the pursuit of justice and compensation for the Israeli victims of terrorist organizations. The Applicant's activities have included the institution of legal proceedings against terrorists, their sponsors and the financial institutions that aid and abet their criminal activities. [1]

Relevant Procedural Background

2. On 17 July 2010, or thereabouts, a gathering took place at the Akgun Hotel in Istanbul, Turkey in order to discuss the "*legal defense of activists on board the Freedom Flotilla, which was raided by Israeli forces in international waters*". Among the speakers at this meeting was a lawyer called Ramazan Ariturk – a member of the Elmadağ law firm, who mentioned, *inter alia*, "*efforts to file an international lawsuit and to establish an international commission for investigating the attack on the flotilla*".[2]

3. On 14 October 2010, true to its word, the Elmadağ law firm filed a communication concerning the Mavi Marmara incident to the Prosecutor pursuant to article 15 of the Rome Statute.

[1] The certificate of incorporation of the Applicant, certification of the role of its President and the power of attorney nominating Nicholas Kaufman as counsel have been submitted to the Registry.
[2] http://www.maannews.com/Content.aspx?id=300157. **All internet links working as of 31 January 2019**.

4. The Prosecutor declined to act on this communication and refrained from exercising her *proprio motu* powers for the best part of three years.

5. Accordingly, on 14 May 2013, the Union of the Comoros ("Comoros") referred the situation "*with respect to the 31 May 2010 Israeli raid on the Humanitarian Aid Flotilla bound for Gaza Strip*" pursuant to articles 14 and 12(2)(a) of the Rome Statute. This referral (the aforementioned title of which betrayed its fundamental bias) was submitted to the Prosecutor not by any official representative of the Comoros Government but by the very same Elmadağ law firm and its earnest partners - Ramazan Ariturk and Cihat Gökdemir.

6. On 6 November 2014, the Prosecutor issued a report in which she concluded that there is "*[a] reasonable basis to believe that war crimes under the Court's jurisdiction have been committed in the context of interception and takeover of the Mavi Marmara by IDF soldiers on 31 May 2010*". Notwithstanding, the Prosecutor decided that "*[t]here is no reasonable basis to proceed with an investigation*" because "*[t]he potential case(s) that would likely arise from an investigation into the situation would not be of sufficient gravity to justify further action by the Court and would therefore be inadmissible pursuant to articles 17(1)(d) and 53(1)(b) of the Statute*".[3]

7. On 29 January 2015, Comoros requested the Pre-Trial Chamber to review the Prosecutor's above-cited decision and to direct her to reconsider it pursuant to Article 53(3)(a) of the Rome Statute.[4] This request was filed, not by Elmadağ or its two mandated lawyers but by "*Sir Geoffrey Nice QC, Rodney Dixon QC, and KC Law (London) on behalf of the Government of the Union of the Comoros*".

8. On 19 February 2015, the Pre-Trial Chamber received an "*Application Concerning the Participation of Victims in the Review Proceedings pursuant to Article 53(3)(a)*". This application was filed on behalf of victims "*of the attack on the Gaza*

[3] https://www.legal-tools.org/doc/43e636/pdf/.
[4] ICC-01/13-3-Red.

Freedom Flotilla" by the very same "*Sir Geoffrey Nice QC and Rodney Dixon QC on behalf of KC Law (London) and the IHH Humanitarian Relief Foundation*". The names of these victims ("the IHH Victims") were listed in a confidential annex.[5]

9. On 13 March 2015, the Prosecution filed observations on the IHH Victims' request to participate in the proceedings highlighting that "*[n]ot only is KC Law the law firm presently instructing counsel for [Comoros], but those same counsel are also presently instructed both by the Applicants and [Comoros].*"[6]

10. On 24 April 2015, the Pre-Trial Chamber ruled that it was "*unpersuaded by the arguments of the Prosecutor who avers that allowing Counsel to remain the legal representative of victims would "inappropriately provide the [Government of the Comoros], through its representatives, with a further opportunity to reply to the Prosecution's response*". The Pre-Trial Chamber added that "*no other objection is advanced elucidating a conflict of interest which, in turn, would warrant the intervention of the Chamber*".[7]

11. On 16 July 2015, the Pre-Trial Chamber issued its decision on the Comoros request for review and requested that the Prosecutor reconsider her decision not to investigate.[8]

12. On 15 November 2018, faced with her second decision not to open an investigation,[9] the Pre-Trial Chamber directed the Prosecutor to reassess the gravity criterion in light of five errors identified in its decision of 16 July 2015.[10]

13. Since then, and until the date of the filing of this submission, proceedings have stagnated with the Prosecutor pursuing a certified appeal on whether or not her decision may be considered final when she has, purportedly, not complied with the expectations of the Pre-Trial Chamber.

[5] ICC-01/13-7-Anx1.
[6] ICC-01/13-8 at paragraph 14.
[7] ICC-01/13-18 at paragraph 16.
[8] ICC-01/13-34.
[9] ICC-01/13-6-AnxA (29 November 2017).
[10] ICC-01/13-68 at paragraph 117.

The Applicant's Standing

14. In its decision on the "*Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute*", applying Article 119(1) of the Rome Statute and ruling by a majority,[11] this very same learned Pre-Trial Chamber found that it was competent to deliver a preliminary ruling on jurisdiction in the Bangladesh/Myanmar Situation.[12]

15. In his learned dissent, His Honour Judge Marc Perrin de Brichambaut pertinently noted that "*assuming the existence of a "dispute", the Majority omits to address the question of **who** can validly present a "dispute concerning the judicial functions of the Court*" [emphasis added]. Without denying the force of this judicial observation, which was undoubtedly designed to prevent opening the floodgates of litigation, the practice of Pre-Trial Chamber I, as it now stands, is in accordance with the majority decision which **must** accord *locus standi* to any interested party seeking resolution of a dispute concerning the judicial functions of the Court.

16. It was for this reason, presumably, that the majority of this learned Pre-Trial Chamber in the Bangladesh/Myanmar matter entertained lengthy submissions from the "Shanti Mohila" victims represented by "Global Rights Compliance" despite the fact that these victims were never awarded participatory status nor *amicus curiae* status pursuant to Rule 103 of the Rules of Procedure and Evidence ("Rules").[13]

Submission

17. The Applicant is, of course, fully aware that the proceedings currently before the Pre-Trial Chamber arise out of a purported State Party challenge to the gravity assessment performed by the Prosecutor when she decided not to pursue an investigation. The Applicant, however, seeks to exercise the recently recognized right to intervene in a Situation by virtue of Article 119(1) of the Rome Statute and not as

[11] Judge Marc Perrin de Brichambault dissenting: ICC-RoC46(3)-01/18-37-Anx at paragraph 14 *infra*.
[12] ICC-RoC46(3)-01/18-37 at paragraph 28.
[13] ICC-RoC46(3)-01/18-9.

an *amicus curiae* within the judicial review framework of Article 53(3)(a). For this reason, the Applicant should be entitled to raise issues which are not confined to the discrete "gravity" assessment alone but which also touch on the wider "interests of justice" criterion mentioned in Article 53(1)(c) of the Rome Statute.

18. The events onboard the Mavi Marmara have been scrutinized in detail by the Prosecutor and a number of national and international panels. For this reason, the Applicant will not offer yet another analysis of the conduct of the Israel Defense Forces ("IDF") during the incident in question. The Applicant will, nonetheless, present information concerning the behavior and motives of İnsan Hak ve Hürriyetleri ve İnsani Yardım Vakfı ("IHH") which must, it is submitted, cause the Pre-Trial Chamber to reassess the legitimacy of the State referral, to reappraise questions of competence and jurisdiction *and* to reassess whether the Prosecutor should still be required to reconsider the opening of an investigation. To this end, the Applicant's submissions will focus on two broad categories of issues and the implications thereof for the exercise of "*the judicial functions of the Court*".

a) The fact that counsel for the IHH Victims and Comoros have failed to disclose important information concerning i) IHH's agenda; ii) a possible conflict of interest which would prevent counsel from representing both Comoros and the IHH victims, and; iii) the failure to disclose information regarding the compensation agreement concluded between Israel and Turkey, and;
b) The fact that the Mavi Marmara was reflagged twice and that the referral to the Court was made when the vessel was no longer registered in a State Party.

(a) <u>The failure to disclose important information</u>

19. There is a well-known legal maxim which states that "*he who comes into equity must come with clean hands*". The purpose of the so-called "clean hands doctrine" is to protect the integrity of a court of law which, as a matter of public policy, should deny

relief for intentionally dubious conduct. The "clean hands doctrine" has been recognized universally and, for the sake of the present submission, the Applicant quotes from the leading precedent of the United States Supreme Court:

> "*[T]hat whenever a party who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy*".[14]

20. The recourse provided by Article 53(3)(a) of the Rome Statute is akin to the judicial review mechanism in common law systems. The remedy which Comoros seeks is, in essence, equitable relief; namely, persuading the Pre-Trial Chamber to rescind the Prosecutor's discretionary decision not to open an investigation. Accordingly, the Applicant submits that the "clean hands" doctrine should apply to the present case.

(i) The failure to disclose IHH's true agenda

21. The Applicant recalls Mr. Rodney Dixon's comments that the IHH Victims and other passengers on board the Mavi Marmara could be considered by some to be "*wearisome, 'do-gooders' of liberal persuasion interfering in the politics of the region*".[15] The Applicant passes no judgment on this assessment but hastens to add that the persons motivating these victims and vigorously pursuing the current litigation – members of the IHH hierarchy - were anything but "*do-gooders of liberal persuasion*" and were intent, not only, on interfering in the politics of the region but were also spoiling for a fight which had been contemplated long in advance. Indeed, the President of IHH – Bülent Yildirim had visited the Gaza Strip in January 2010 as part of the so-called "Viva Palestina" convoy. During this visit, he met with the most senior official of Hamas – an internationally outlawed terrorist organization - Ismail Haniya[16] and

[14] Keystone Driller Co. v. Gen. Excavator Co., 290 U.S. 240, 244-45 (1933).
[15] ICC-01/13-3-Red at paragraph 17.
[16] https://www.terrorism-info.org.il/en/18083/.

declared that he would visit the Gaza Strip again with ships to render the "siege" superfluous.

Bülent Yildirim & Ismail Haniya (January 2010)

22. The Mavi Maramara was purchased by IHH one month prior to the incident[17] at a cost of 850,000 USD and with the explicit intent of breaking the Israeli naval blockade. As Bülent Yildirim himself said:

> **"***This embargo has a place neither in the heart and the conscience of the mankind nor in terms of international justice. Now, we are acting against it. I hope, God willing, the governments will act against the embargo as well***"**.[18]

23. Bülent Yildirim even admitted that the reason that IHH was forced to purchase the Mavi Marmara was because local firms had refused to rent a maritime vessel to the organization for the purpose of the flotilla:

> *"IHH president stated that ship-owners were refusing to rent their vessels* ***for security concerns*** *and they, therefore, decided to purchase vessels for the organization. He said: "The IHH has so far purchased two vessels, one passenger boat and one cargo ship. They were financed by donations to the Palestine fund. Mavi Marmara passenger ship was purchased at TRY 1,800,000 and the cargo ship at TRY 850,000*" [emphasis added].

[17] https://www.ihh.org.tr/en/news/flotilla-to-be-launched-in-may-189.
[18] https://www.ihh.org.tr/en/news/gaza-cargo-ship-arrived-in-istanbul-171.

24. As the Mavi Maramra set sail from Istanbul on 22 May 2010, Yildirim sarcastically likened Israel's treatment of Palestinians to Jewish suffering during the Holocaust stating as follows: "*Hitler set up prison camps in Europe. Now, Zionism is setting up a prison camp in Palestine. Here, I would like to address Israel: Come on and be wise in managing this crisis. If you try to stop this campaign, you will be isolate yourself from whole world, you will only harm yourself. These are humanitarian aid ships. They are not even carrying one jackknife onboard*".[19] Nothing, however, could have been further from the truth. The hard-core IHH activists were armed to the teeth as shown by the items seized by the IDF from the Mavi Marmara:[20]

25. The expressed desire to deliver humanitarian aid was a lie. The sole purpose of the flotilla was to break the naval blockade imposed on Gaza by Israel. As Bülent Yildirim said:

> "*Israel told us to deliver the humanitarian aid cargo to Ashkelon Harbor and that Israel will transfer it to Gaza. Israel claims that they are helping Gaza as well. However, weren't they the ones who murdered children in Gaza? Today, Israeli and Egyptian officials held a meeting. Once they heard that we will not accept their offer about taking the aid cargo to Ashkelon Harbor, they are now telling us to go to Arish Harbor in Egypt. However, our goal is directly arriving in Gaza Harbor*".[21]

[19] https://www.ihh.org.tr/en/news/mavi-marmara-ship-sent-off-to-palestine-with-prayers-690 .
[20] https://mfa.gov.il/mfa/foreignpolicy/issues/pages/seizure_gaza_flotilla_31-may-2010.aspx.
[21] https://www.ihh.org.tr/en/news/the-ship-mavi-marmara-anchored-in-antalya-696 .

26. As the IDF patrol vessels approached the Mavi Marmara in order to enforce the blockade, Yildririm made a speech in the course of which he incited his audience to throw the Israeli soldiers overboard.[22] Other passengers responded to the IDF's request to desist from breaking the blockade in the following fashion: "*Shut up, go back to Auschwitz" and "We're helping Arabs go against the US, don't forget 9/11"*.[23]

27. As has been clearly demonstrated above, members of IHH on board the Mavi Marmara pursued a policy of intentionally aggressive confrontation with the IDF. Such conduct should have been taken into account by the Prosecutor and the Pre-Trial Chamber when assessing the gravity criterion and, for that matter, the interests of justice. Comparing the present situation to that of the AU peacekeepers in Darfur (as does counsel for the IHH Victims), the attack on Haskanita was "grave" precisely because the few victims of that incident were tasked with keeping international peace and were not, like the IHH Victims and their sponsors, striving to breach it.

(ii) The failure to disclose a conflict of interest

28. As mentioned in the introduction to this filing, the former Minister of Justice of Comoros - Anliane Ahmed mandated two Turkish lawyers to represent the referring state - Ramazan Ariturk and Cihat Gökdemir. While the Applicant does not doubt that Rodney Dixon is acting with the consent of Ramazan Ariturk,[24] there is nothing in the public record to show that either his representation or that of former counsel - Geoffrey Nice[25] has ever been officially approved by Comoros. This matter should be clarified.

29. Notwithstanding, the Applicant submits that the combined representation of both Comoros and the IHH victims presents a gross conflict of interest which the Prosecutor, perhaps out of courtesy, declined to highlight in her filing - ICC-01/13-8.

[22] https://youtu.be/wSYjuDEZw1w
[23] https://mfa.gov.il/mfa/pressroom/2010/pages/israel_navy_warns_flotilla_31-may-2010.aspx#weapons
[24] http://www.aljazeera.com.tr/haber/ihhdan-mavi-marmara-itirazi.
[25] Geoffrey Nice, without citing any reason whatsoever, announced his intention to withdraw from his purported representation of Comoros on 23 November 2016; ICC-01/13-55

30. The American Bar Association makes the following recommendations for determining the existence of a conflict of interest:

> "*The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice...* "…
>
> *…Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests*".[26]

25. The report of the Turkish National Inquiry Commission into the Mavi Marmara incident[27] reveals that one of the lawyers for Comoros & the IHH Victims (Cihat Gökdemir) was, himself, a passenger on the Mavi Marmara, as was another "human-rights activist" currently representing the IHH victims – Gülden Sömnez:[28]

Annex 5: Testimonies of the Crew and Passengers of the Humanitarian Aid Convoy to Gaza

Section 1. Depositions Obtained from the Turkish National Inquiry Commission

i. Mahmut Tural (Crew / First Captain)
ii. Gökhan Kökkıran (Crew / Second Captain)
iii. Ekrem Çetin (Crew / Chief Engineer)
iv. Cihat Gökdemir (Passenger)
v. Ümit Sönmez (Passenger)
vi. Hüseyin Oruç (Passenger)
vii. Çiğdem Topçuoğlu (Passenger)
viii. Gülden Sönmez (Passenger)
ix. Elif Akkuş (Journalist)
x. Hasan Hüseyin Uysal (Passenger / Doctor)
xi. Abdülhamit Ateş (Passenger / Wounded)
xii. Anne de Jong (Passenger)
xiii. Mehmet Ali Zeyrek (Passenger) (Only in Turkish)
xiv. Hasan Hüseyin Uysal (Passenger/Doctor) (2nd Testimony)

26. Both of the aforementioned individuals, as passengers allegedly affected by the acts of the IDF, have a personal interest in the outcome of the proceedings

[26] https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients/comment_on_rule_1_7/.
[27] http://www.mfa.gov.tr/data/Turkish%20Report%20Final%20-%20UN%20Copy.pdf at p.122.
[28] https://justicehub.org/article/lawyer-gulden-sonmez-iccs-decision-not-pursue-mavi-marmara-case and https://www.ihh.org.tr/en/news/mavi-marmara-trial-court-insists-on-interpol-notice-2641.

currently before the Court. The Applicant has seen nothing to indicate whether this personal interest has ever been properly brought to the attention of the judges of the Pre-Trial Chamber or, for that matter, to the attention of Comoros. This personal interest cannot permit the two lawyers concerned to act impartially and casts doubt on whether they appropriately advised the Government of Comoros of its ability, for the sake of example, not to refer the Situation to the Court but, rather, to pursue a domestic investigation.

27. As a result of the aforementioned, the Pre-Trial Chamber should satisfy itself as to whether there exists a conflict of interest and, if so, to clarify the matter with the appropriate diplomatic authorities of Comoros pending which, the current representation and legal proceedings should be suspended in their entirety. More particularly, the Pre-Trial Chamber should also clarify whether the referral was truly initiated by the Union of the Comoros or whether that State Party was goaded into referring the matter to the Court by IHH. It should be noted that since the referral in 2013, the composition of the Government of Comoros has changed a number of times and there has been hardly any, if at all, official reference in Comoros to the Mavi Marmara incident or an infringement of its sovereignty as a result thereof. The Applicant firmly believes that Comoros's role in the present proceedings risks being seen as nothing more than a front for the cravings of a collective of radical activists.

(iii) The failure to disclose the Israel-Turkey compensation agreement

28. Despite criticizing the agreement in the UK Law Society Gazette as directly threatening the IHH victims' right to justice,[29] Mr. Rodney Dixon has not, to date, produced the compensation agreement signed between Israel and Turkey on 28 June 2016[30] for the Pre-Trial Chamber's consideration or dealt with the implications thereof in so far as they are relevant to the present litigation.

[29] https://www.lawgazette.co.uk/commentary-and-opinion/justice-for-victims-of-gaza-flotilla-raid/5058365.article
[30] Annex 1.

29. The families of the victims killed as a result of the Mavi Marmara incident were compensated by Israel in the total amount of 20 million USD. Although there is nothing in the compensation agreement which refers specifically to the proceedings before the Court, it is clear that the appendix to the agreement was to "*be considered as covering and terminating all outstanding issues relating to the events surrounding the flotilla incident, its outcomes and consequences*". The failure of Comoros and the IHH Victims to mention this agreement and to deal with its implications must be taken into account when assessing their good faith and, consequently, the "interests of justice". Although not recognizing any form of criminal responsibility, Israel has nevertheless acknowledged the suffering of the families of the IHH Victims compensating them, more than appropriately, in sums which do not even compare to the rather trifling sums offered to the families of the victims of the Bogoro incident in the *Prosecutor v. Germain Katanga*.

(b) The temporary reflagging of the *Mavi Marmara*

30. When the *Mavi Marmara* was purchased from the İDO Istanbul Fast Ferries Company, it was registered under a Turkish flag.[31] This begs the question why the vessel was reflagged and registered in Comoros just weeks before the flotilla set sail and then reflagged and re-registered once more in Turkey shortly after the incident.[32]

31. The most common reason for registering a ship under a so-called "flag of convenience" is to take advantage of various legal leniencies offered by the flag state such as reduced operating costs and less stringent laws pertaining to the employment rights of mariners. In the present instance, the Applicant suggests that the vessel was reflagged in the full anticipation of a violent confrontation with the IDF; firstly, to avoid the risk of diplomatic embarrassment to Government of Turkey and secondly, to artificially acquire jurisdiction of the International Criminal Court.

[31] https://www.ihh.org.tr/en/news/gaza-cargo-ship-arrived-in-istanbul-171 & https://www.ihh.org.tr/en/news/ship-purchased-for-gaza-campaign-231 .
[32] Annex 2.

Even if the Applicant is mistaken in this latter assumption, the reflagging cannot and should not afford the Court with jurisdiction over the Comoros Situation.

32. As a general rule, the flag of a vessel signifies the national laws governing it and identifies the location of those responsible for its operation. Responsibility for ensuring that the Mavi Marmara met international standards rested with Comoros. In the present instance, however, the Applicant seriously doubts whether Comoros was even aware of the intention of IHH to make an assault on the Israeli blockade of Gaza. The Applicant credits Comoros with sufficient foresight and diplomatic common-sense to have denied such a contentious registration had it known that members of IHH were planning to abuse its sovereignty for politically confrontational purposes. [33]

33. In any event, at the time of the referral to the Court in 2013, the Mavi Marmara was **not** registered in Comoros but in Turkey – a **non**-State Party to the Rome Statute. Accordingly, the Comoros Government was not competent to refer a "situation" which had transpired on a vessel which could no longer be considered as falling under its own sovereign "territorial" jurisdiction any more than ex-President Mohammed Morsi (formerly represented by Rodney Dixon) could, so it is submitted, claim the right to refer a situation in Egypt *ad hoc* when he no longer exercised sovereign control over that country.[34]

34. Finally, the Applicant wishes to add that the Court should never have accepted the referral in the first place as a "situation" for the purpose of Article 14 of the Rome Statute. The incident on the flotilla was no more a "situation" than the attack on

[33] In any event, the Applicant submits that filling out a few forms online and hoisting the Comoros flag up a ship's mast were insufficient to grant new nationality. Three international conventions have addressed the nationality of maritime vessels; the 1958 Convention on the High Seas, the 1982 Third United Nations Convention on the Law of the Sea and the 1986 United Nations Convention on Conditions for the Registration of Ships. Comoros has ratified the first two of the aforementioned conventions both of which require the existence of a "genuine link" for nationality to be acquired. There was nothing genuine about the link between the Mavi Marmara and Comoros. The flag which fixed the purported nationality of the Comoros in the month of May 2010 was relinquished after 6 months and replaced with that of Turkey, once again, on 1 February 2011. Neither Comoros nor the IHH victims have produced evidence to support such a genuine link or, more particularly, that Comoros had assumed the authority to regulate administrative, technical ***and*** social matters on board the vessel.
[34] ICC-RoC46(3)-01/14.

Bogoro which comprised the subject-matter of the case *Prosecutor v. Germain Katanga* or the attack on the AU peace-keepers in *Prosecutor v. Abu Garda*.

Conclusion

35. In light of all the aforementioned, the learned Pre-Trial Chamber is requested to resolve a dispute concerning its own judicial functions and to find that it should no longer deliberate on the Mavi Marmara incident within the context of the Comoros Situation. To this end, the Pre-Trial Chamber should deem the Prosecutor's second decision not to pursue an investigation to be final and not warranting any further reconsideration, *inter alia*, in light of the information highlighted in this filing.

36. Should the principal relief sought above be denied, the Pre-Trial Chamber is respectfully requested to direct Mr. Rodney Dixon to clarify his mandate to act on behalf of the Government of Comoros (as distinct from Elmadağ Law Firm) and to explain why he believes that no conflict of interest arises as a result of his dual representation.

37. Finally, given the *prima facie* conflict of interest and given the suggested irrelevance of the Mavi Marmara incident to Comoros's current agenda and geopolitical concerns, the Pre-Trial Chamber should invite the relevant governmental authorities of Comoros to make comments on the Applicant's filing as they see fit – through official diplomatic channels and not through Mr. Rodney Dixon.

Nitsana Darshan-Leitner

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Thursday, January 31, 2019