



Original: **English**

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

Public

Request on behalf of unrepresented victims to dismiss *in limine* the “Motion for Leave to File Supplemental Observations with respect to the Situation in the State of Palestine on behalf of the European Centre for Law and Justice”

Source: Office of Public Counsel for Victims

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

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- Prof. John Quigley
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- Prof. Hatem Bazian
- The Touro Institute on Human Rights and the Holocaust
- The Czech Republic
- The Israel Bar Association
- Prof. Richard Falk
- The Organization of Islamic Cooperation
- The Lawfare Project *et al.*
- MyAQSA Foundation
- Prof. Eyal Benvenisti
- The Federal Republic of Germany
- Australia
- UK Lawyers for Israel *et al.*
- The Palestinian Bar Association

- Prof. Laurie Blank *et al.*
- The International Association of Jewish Lawyers and Jurists
- Prof. Asem Khalil and Asst. Prof. Halla Shoaibi
- Shurat Hadin – Israel Law Center
- Todd F. Buchwald and Stephen J. Rapp
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- The International Commission of Jurists
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- The Republic of Austria
- The International Association of Democratic Lawyers
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- The Palestinian Center for Human Rights *et al.*
- The Federative Republic of Brazil
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- Prof. William Schabas
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- The Popular Conference for Palestinians Abroad
- The Israel Forever Foundation
- Dr. Frank Romano
- Dr. Uri Weiss
- The Republic of Uganda

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

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I. INTRODUCTION

1. On behalf of the unrepresented victims, Counsel of the Office of Public Counsel for Victims (“Counsel”) request Pre-Trial Chamber I (the “Chamber”) to reject *in limine* the motion for leave to file supplemental information submitted by the European Centre for Law and Justice (the “ECLJ Request” and the “ECLJ” respectively).¹

2. The ECLJ Request seeks to place additional submissions on the record without prior authorisation, in disregard of the Court’s legal framework. Further, and irrespective of its procedural irregularities, the ECLJ Request fails to disclose sufficient grounds to warrant the presentation of additional arguments and information by the *amicus* at this stage of the proceedings.

II. PROCEDURAL HISTORY

3. On 20 December 2019, the Prosecutor announced that the preliminary examination into the Situation in the State of Palestine (the “Palestine Situation”) was completed, with the determination that all the statutory criteria under the Statute for the opening of an investigation had been met.² On the same day, she requested a ruling on the scope of the territorial jurisdiction of the Court under Article 12(2)(a) in Palestine.³

4. On 28 January 2020, the Chamber issued its “Order setting the procedure and the schedule for the submission of observations” where, *inter alia*, it appointed counsel from the Office of Public Counsel for Victims to represent victims in the

¹ See the “Motion for Leave to File Supplemental Observations with respect to the Situation in the State of Palestine on behalf of the European Centre for Law and Justice”, [No. ICC-01/18-137](#), 17 June 2020 (dated 16 June 2020) (the “ECLJ Request”).

² See the “[Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court’s territorial jurisdiction](#)” dated 20 December 2019.

³ See the “Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine”, No. ICC-01/18-9, 20 December 2019. See also the “Application for extension of pages for request under article 19(3) of the Statute”, [No. ICC-01/18-8](#), 20 December 2019 and the “Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine”, [No. ICC-01/18-12](#), 22 January 2020 (the “OTP Request”).

Palestine Situation who do not already have legal representation for the purpose of submitting observations on the OTP Request.⁴

5. On 20 February 2020, following receipt of several requests for leave to present *amicus curiae* observations pursuant to rule 103 of the Rules of Procedure and Evidence, the Chamber granted leave to States, organisations and individuals, including the ECLJ, to file submissions as summarised in their respective applications by 16 March 2020.⁵

6. On 13 March 2020, the ECLJ submitted its *amicus curiae* observations.⁶

7. On 26 May 2020, the Chamber requested Palestine to provide additional information with respect to a statement issued by Mahmoud Abbas, President of the Palestinian National Authority, and ordered the Prosecutor – and invited Israel – to respond.⁷ Palestine provided its observations on 5 June 2020⁸ and the Prosecutor responded on 8 June 2020.⁹

8. On 16 June 2020, the ECLJ filed supplemental observations purportedly relating to the Palestine Situation, while simultaneously seeking leave to submit said observations pursuant to rule 103 of the Rules of Procedure and Evidence.¹⁰

⁴ See the “Order setting the procedure and the schedule for the submission of observations” (Pre-Trial Chamber I), [No. ICC-01/18-14](#), 28 January 2020.

⁵ See the “Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence” (Pre-Trial Chamber I), [No. ICC-01/18-63](#), 20 February 2020 (the “Decision on *Amici* Participation”).

⁶ See the “Observations with respect to the Situation in the State of Palestine on behalf of the European Centre for Law and Justice”, [No. ICC-01/18-70](#), 13 March 2020.

⁷ See the “Order requesting additional information” (Pre-Trial Chamber I), [No. ICC-01/18-134](#), 26 May 2020.

⁸ See “The State of Palestine’s response to the Pre-Trial Chamber’s Order requesting additional information”, [No. ICC-01/18-135](#), 4 June 2020.

⁹ See the “Prosecution Response to ‘The State of Palestine’s response to the Pre-Trial Chamber’s Order requesting additional information’”, [No. ICC-01/18-136](#), 8 June 2020.

¹⁰ See the ECLJ Request, *supra* note 1.

III. SUBMISSIONS

A. The ECLJ Request amounts to an unauthorised further submission

9. Rule 103 of the Rules of Procedure and Evidence 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”.

10. The presentation of *amici curiae* submissions before the Court is subject to a strict requirement of *prior* authorisation by the relevant chamber.¹¹ As noted by the Appeals Chamber, “in accordance with rule 103 of the Rules of Procedure and Evidence, the submission of substantive observations is only permissible after a Chamber has decided to invite or grant leave to do so”.¹² The ECLJ Request sets out in detail additional submissions purportedly relating to the Palestine Situation, while simultaneously requesting the Chamber’s leave to present those submissions,¹³ thus disregarding the Court’s legal and procedural framework.

11. Counsel note that the Decision on *Amici* Participation only authorised the ECLJ to submit the observations summarised in its initial application for leave of 4 February 2020,¹⁴ and that these were duly filed on 13 March 2020. The recent ECLJ Request is therefore a thinly-veiled attempt to place additional arguments and information on the record without prior authorisation. Counsel accordingly request

¹¹ See e.g. the “Decision on the ‘Application on behalf of Mishana Hosseinioun for Leave to Submit Observations to the Appeals Chamber pursuant to Rule 103’” (Appeals Chamber), [No. ICC-01/11-01/11-404 OA4](#), 15 August 2013, para. 5.

¹² See the “Decision on the Application of 14 September 2009 for Participation as an Amicus Curiae” (Appeals Chamber), [No. ICC-01/05-01/08-602 OA2](#), 9 November 2009, para. 9 (emphasis added). See also e.g. the “Decision on the ‘Request for leave to submit Amicus Curiae Observations on behalf of the Kenyan Section of the International Commission of Jurists Pursuant to Rule 103 of the Rules of Procedure and Evidence’” (Pre-Trial Chamber II), [No. ICC-01/09-01/11-84](#), paras. 5-6; the “Decision on Application to Appear as *Amicus Curiae* and Related Requests” (Pre-Trial Chamber II), [No. ICC-01/09-14](#), 3 February 2010, para. 9.

¹³ The ECLJ Request does not appear to envisage a further filing, but instead requests the Chamber’s leave “to supplement its observations as set forth above”, i.e. in the ECLJ Request itself. See the ECLJ Request, *supra* note 1, para. 23.

¹⁴ See the “Request for Leave to Submit Observations with respect to the Situation in the State of Palestine on behalf of the European Centre for Law and Justice”, [No. ICC-01/18-18](#), 4 February 2020.

the Chamber to reject the ECLJ Request *in limine* and instruct the Registrar to strike it from the record of the situation and withdraw it from the Court's website. Counsel note that similar remedies were ordered by the Chamber in relation to a filing by the Prosecution that exceeded the applicable page limit without prior approval, with the request for an extension of the page limit being filed alongside the submission.¹⁵

B. A supplemental *amici* submission by the ECLJ is not warranted

12. Not only the ECLJ Request disregards the procedural framework for *amici* participation in proceedings before the Court, it also fails to demonstrate sufficient grounds to warrant the presentation of additional arguments and information at this stage of the proceedings.

13. In particular, the ECLJ Request is unlikely to assist the Chamber in its determination¹⁶ and does not address the issue before it.¹⁷ In essence, the ECLJ Request criticises Palestine's recent submissions pursuant to the "Order requesting additional information", speculating as to the strategic considerations underlying said submissions. It also refers to publicly available statements by Palestinian officials of limited – if any – relevance to the present proceedings, while at the same time levying inflammatory allegations of "*misuse of th[e] Court for political ends*".¹⁸ None of those submissions will assist the Chamber in its determination of the jurisdictional question before it.

14. Counsel note the Chamber's clear direction in the Decision on *Amici* Participation, reminding all *amici curiae* that "*the present proceedings are limited to the*

¹⁵ See the "Decision on the Prosecutor's Application for an extension of the page limit" (Pre-Trial Chamber I), [No. ICC-01/18-11](#), 21 January 2020. See also the "Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine", No. ICC-01/18-9, 20 December 2019 and the "Supplementary information to the Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine", No. ICC-01/18-10, 23 December 2019.

¹⁶ See *e.g.* the "Decision on 'Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence'" (Appeals Chamber), [No. ICC-01/04-01/06-1289 OA11](#), 22 April 2008, para. 8.

¹⁷ See *e.g.* the "Directions on the submissions of observations" (Appeals Chamber), [No. ICC-02/11-01/11-236 OA2](#), 31 August 2012, para. 4.

¹⁸ See the ECLJ Request, *supra* note 1, para. 10.

*question of jurisdiction set forth in paragraph 220 of the Prosecutor’s Request, pursuant to which ‘[t]he Prosecution respectfully requests Pre-Trial Chamber I to rule on the scope of the Court’s territorial jurisdiction in the situation of Palestine and to confirm 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’’ and specifying that “[a]ny observations exceeding this question that are nonetheless submitted by any amicus curiae shall be disregarded by the Chamber”.*¹⁹

15. The Chamber’s rulings to date confirm that a further intervention by the ECLJ is neither necessary nor appropriate. The Chamber’s Decision on *Amici* Participation expressed a clear desire to limit *amici* submissions in the context of the present proceedings, stating that it was “*not necessary to receive any further responses to the observations to be submitted by the amici curiae or any replies to the Prosecutor’s consolidated response*”.²⁰ Further, in its recent “Order requesting additional information”, the Chamber requested Palestine to provide additional information on President Abbas’s statement, and ordered the Prosecutor to reply, with Israel invited to submit a response but opting not to do so. The Chamber clearly did not consider that further submissions from the *amici* on this topic would be of assistance.

16. Accordingly, and irrespective of the procedural irregularities highlighted *supra*, a supplemental submission by the ECLJ is not warranted in the circumstances.

IV. CONCLUSION

17. For the foregoing reasons, Counsel respectfully requests the Chamber to:

- (a) reject the ECLJ Request *in limine* and instruct the Registrar to strike it from the record of the situation and withdraw it from the Court’s website; and
- (b) reject any further request for leave by the ECLJ to present supplemental observations on the same basis.

¹⁹ See the Decision on *Amici* Participation, *supra* note 5, para. 58.

²⁰ *Idem*, para. 61.

18. Should the Chamber be minded to grant the ECLJ Request or a further request by the ECLJ to present supplemental information on the same basis, Counsel respectfully request the Chamber's leave to provide supplemental observations under the same conditions on behalf of the Victims they represent, whose interests will be inevitably affected by any submission presented at this stage of the proceedings.

Respectfully submitted.



Paolina Massidda



Sarah Pellet

Dated this 18th day of June 2020

At The Hague, The Netherlands