



Original: English

**No. ICC-01/18
Date: 20 February 2020**

PRE-TRIAL CHAMBER I

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

SITUATION IN THE STATE OF PALESTINE

Public

Decision on Applications for Leave to File Observations
Pursuant to Rule 103 of the Rules of Procedure and Evidence

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart

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**

Paolina Massidda

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

States Representatives

The competent authorities of the
State of Palestine

Amici Curiae

- Professor John Quigley
- Guernica 37 International Justice
Chambers
- The European Centre for Law and Justice
- Professor Hatem Bazian
- The Touro Institute on Human Rights and
the Holocaust
- The Czech Republic
- The Israel Bar Association
- Professor Richard Falk
- The Organization of Islamic Cooperation
- The Lawfare Project, the Institute for
NGO Research, Palestinian Media Watch, and
the Jerusalem Center for Public Affairs
- MyAQSA Foundation
- Professor Eyal Benvenisti
- The Federal Republic of Germany
- Australia
- UK Lawyers for Israel, B'nai B'rith UK,
the International Legal Forum, the Jerusalem
Initiative and the Simon Wiesenthal Centre
- The Palestinian Bar Association
- Prof. Laurie Blank, Dr. Matthijs de Blois,
Prof. Geoffrey Corn, Dr. Daphné Richemond-
Barak, Prof. Gregory Rose, Prof. Robbie Sabel,
Prof. Gil Troy and Mr. Andrew Tucker
- The International Association of Jewish
Lawyers and Jurists
- Professor Asem Khalil and Assistant
Professor Halla Shoaibi
- Shurat Hadin – Israel Law Center
- Todd F. Buchwald and Stephen J. Rapp
- Intellectum Scientific Society

- The International Commission of Jurists
- Dr. Robert Heinsch and Dr. Giulia Pinzauti
- The Republic of Austria
- The International Association of Democratic Lawyers
- The Office of Public Counsel for the Defence
- The Honourable Professor Robert Badinter, the Honourable Professor Irwin Cotler, Professor David Crane, Professor Jean-François Gaudreault-DesBiens, Lord David Pannick and Professor Guglielmo Verdirame
- The Palestinian Center for Human Rights, Al-Haq Law in the Service of Mankind, Al-Mezan Center for Human Rights and Aldameer Association for Human Rights
- The Federative Republic of Brazil
- Professor Malcolm N Shaw
- Hungary
- Ambassador Dennis Ross
- The International Federation for Human Rights, No Peace Without Justice, Women's Initiatives for Gender Justice and REDRESS
- Professor William Schabas
- International-Lawyers.org
- The League of Arab States
- Me Yael Vias Gvirsman
- The Popular Conference for Palestinians Abroad
- The Israel Forever Foundation
- Dr. Frank Romano
- Dr. Uri Weiss
- The Republic of Uganda

REGISTRY

Registrar
Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**
Philipp Ambach

Other

PRE-TRIAL CHAMBER I of the International Criminal Court issues this Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence (the ‘Rules’).

I. PROCEDURAL HISTORY

1. On 22 January 2020, the Chamber received the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’ (the ‘Prosecutor’s Request’).¹
2. On 23 January 2020, the Chamber received the ‘Request for Leave to Submit Amicus Curiae Observations by Guernica 37 International Justice Chambers (pursuant to Rule 103 of the Rules)’ (the ‘23 January 2020 Guernica 37 Request’).²
3. On 28 January 2020, the Chamber issued the ‘Order setting the procedure and the schedule for the submission of observations’, thereby *inter alia* inviting: (i) the State of Palestine, victims in the Situation in the State of Palestine, and the State of Israel to submit written observations on the question of jurisdiction set forth in paragraph 220 of the Prosecutor’s Request, without addressing any other issues arising from this Situation, by no later than 16 March 2020; (ii) other States, organisations and/or persons to submit applications for leave to file such written observations by no later than 14 February 2020; and (iii) Guernica 37 International Justice Chambers to withdraw the 23 January 2020 Guernica 37 Request and submit a new request in accordance with that order (the ‘28 January 2020 Order’).³
4. On 4 February 2020, the Chamber received the ‘Request for Leave to File Submissions Pursuant to Rule 103’ on behalf of Professor John Quigley.⁴
5. On 4 February 2020, the Chamber received the ‘Notice of Withdrawal of Request for Leave to Submit Amicus Curiae Observations by Guernica 37 International Justice Chambers (pursuant to Rule 103 of the Rules)’.⁵ On the same day, the Chamber also received the ‘Request for Leave to Submit Amicus Curiae

¹ [ICC-01/18-12](#), together with Public Annex A.

² [ICC-01/18-13](#).

³ ICC-01/18-14, paras 13, 16, 17, 20.

⁴ ICC-01/18-15. Professor John Quigley is ‘Professor Emeritus at the Moritz College of Law of The Ohio State University in Columbus, Ohio, US’.

⁵ ICC-01/18-16.

Observations by Guernica 37 International Justice Chambers (pursuant to Rule 103 of the Rules)'.⁶

6. On 4 February 2020, the Chamber received 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'.⁷

7. On 10 February 2020, the Chamber received the 'Request for Leave to File Submissions Pursuant to Rule 103 of the Rules of Procedure and Evidence' on behalf of Professor Hatem Bazian.⁸

8. On 13 February 2020, the Chamber received the 'Request for Leave to Submit Observations on behalf of The Touro Institute on Human Rights and the Holocaust'.⁹

9. On 13 February 2020, the Chamber received the 'Request pursuant to Rule 103 of the Rules of Procedure and Evidence for leave to submit observations' on behalf of the Czech Republic.¹⁰

10. On 13 February 2020, the Chamber received the 'Application pursuant to Rule 103(1) of the Rules of Procedure & Evidence' on behalf of the Israel Bar Association.¹¹

11. On 14 February 2020, the Chamber received the 'Request for Leave to File Submission Pursuant to Rule 103 of the Rules of Procedure and Evidence' on behalf of Professor Richard Falk.¹²

⁶ ICC-01/18-17. Guernica 37 International Justice Chambers is 'a London based Barristers Chambers, and part of The Guernica Group, working in partnership with Dr. Kevin Heller [...] and further interested NGO parties within Jerusalem and the wider Occupied Territories'.

⁷ ICC-01/18-18. The European Centre for Law and Justice is 'an international, Non-Governmental Organisation located in Strasbourg, France, and dedicated to the promotion and protection of human rights in Europe and worldwide'.

⁸ ICC-01/18-19. Professor Hatem Bazian is 'a lecturer in the Departments of Near Eastern and Asian American and Asian Diaspora Studies at the University of California, Berkeley'.

⁹ ICC-01/18-21-Corr. The Touro Institute on Human Rights and the Holocaust is 'a United Nations Economic and Social Council accredited non-governmental organization that seeks to promote tolerance, human rights protection, and the rule of law by exploring and disseminating the lessons of the Holocaust'. The Chamber notes that the request on behalf of the Touro Institute on Human Rights and the Holocaust was initially received on 13 February 2020 at 04:45 hours and that a corrigendum of this request was received on 15 February 2020 at 05:26 hours. While the corrigendum was received after the deadline, the Chamber accepts it considering that the original request was filed before the deadline.

¹⁰ ICC-01/18-22.

¹¹ ICC-01/18-23. The Israel Bar Association is 'an autonomous statutory entity with the goal of safeguarding the high standards and integrity expected of members of the legal profession'.

12. On 14 February 2020, the Chamber received the ‘Request for Leave to Submit Observations with respect to the Situation in the State of Palestine’ on behalf of the Organization of Islamic Cooperation.¹³

13. On 14 February 2020, the Chamber received the ‘Application for Leave to Submit Observations on the Prosecutor’s Request in accordance with the Chamber’s Order of 28 January 2020 on behalf of the Non-Governmental Organisations: The Lawfare Project, the Institute for NGO Research, Palestinian Media Watch, and the Jerusalem Center for Public Affairs’.¹⁴

14. On 14 February 2020, the Chamber received the ‘Request for Leave to Submit Amicus Curiae Observations by MyAQSA Foundation [...] (pursuant to Rule 103 of the Rules)’.¹⁵

15. On 14 February 2020, the Chamber received the ‘Request for Leave to Submit Amicus Curiae Observations in the Proceedings Relating to the Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court’s Territorial Jurisdiction in Palestine’ on behalf of Professor Eyal Benvenisti.¹⁶

16. On 14 February 2020, the Chamber received the ‘Application for leave to file written observations by the Federal Republic of Germany’.¹⁷

¹² ICC-01/18-24. Professor Richard Falk is the ‘Albert G. Milbank Professor of International Law and Practice Emeritus at Princeton University’ and former ‘United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’. The Chamber notes that this request was also mistakenly registered as ICC-01/18-50 by the Registry but that the Registry has subsequently indicated that ICC-01/18-50 will be struck from the case file and will no longer exist.

¹³ ICC-01/18-25.

¹⁴ ICC-01/18-26. The Lawfare Project is ‘a non-profit think tank and litigation fund whose mission is to enforce and protect the human and civil rights of Jewish communities worldwide’. The Institute for NGO Research ‘provides research and policy recommendations relating to the legal, political, and historical issues of the Arab-Israeli conflict’. Palestinian Media Watch ‘is an Israeli research institute [...] that is known internationally for its in-depth research of Palestinian society from a broad range’. The Jerusalem Center for Public Affairs ‘is a leading independent research institute specializing in public diplomacy and foreign policy’.

¹⁵ ICC-01/18-27-Conf. MyAQSA Foundation is ‘a Malaysian Non-Government Organisations [*sic*] focusing in [*sic*] collecting evidence of Israeli aggression within the occupied territory with a view of [*sic*] activating a formal prosecution of the Israeli regime before the ICC’. The Chamber notes that MyAQSA Foundation submitted its request confidentially without justifying the proposed level of classification but that it subsequently informed the Registry that its request may be reclassified as public. *See* email from MyAQSA Foundation to ICC Registry, dated 19 February 2020, at 09:57 hours. Accordingly, the Chamber orders the Registry to reclassify ICC-01/18-27-Conf as public.

¹⁶ ICC-01/18-28. Professor Eyal Benvenisti is the ‘Whewell Professor of International law and the Director of the Lauterpacht Centre for International Law at the University of Cambridge’.

¹⁷ ICC-01/18-29.

17. On 14 February 2020, the Chamber received the ‘Application for leave to file observations pursuant to the Order of 28 January 2020 setting the procedure and schedule for the submission of observations’ on behalf of Australia.¹⁸

18. On 14 February 2020, the Chamber received the ‘Application for Leave to Submit Observations on the Prosecutor’s Request in accordance with paragraph e) of the Chamber’s Order of 28 January 2020 on behalf of the Non-Governmental Organisations UK Lawyers for Israel [...], B’nai B’rith UK [...], the International Legal Forum [...], the Jerusalem Initiative [...] and the Simon Wiesenthal Centre [...]’.¹⁹

19. On 14 February 2020, the Chamber received the ‘Request for leave to submit amicus curiae observations pursuant to rule 103 of the Rules of Procedure and Evidence’ on behalf of the Palestinian Bar Association.²⁰

20. On 14 February 2020, the Chamber received the ‘Application by Prof. Laurie Blank, Dr. Matthijs de Blois, Prof. Geoffrey Corn, Dr. Daphné Richemond-Barak, Prof. Gregory Rose, Prof. Robbie Sabel, Prof. Gil Troy and Mr. Andrew Tucker for Leave to Submit Written Observations’.²¹

21. On 14 February 2020, the Chamber received the ‘Request by the [International Association of Jewish Lawyers and Jurists] for Leave to Submit Observations in

¹⁸ ICC-01/18-30.

¹⁹ ICC-01/18-31. UK Lawyers for Israel ‘is an independent association of lawyers who seek to ensure the proper application of laws in matters relating to Israel’. B’nai B’rith UK ‘is the UK branch of B’nai B’rith International [...], a global Jewish advocacy and human rights organisation headquartered in Washington and the oldest Jewish service organisation in the world’. The International Legal Forum ‘is an Israeli human rights organization dedicated to combatting antisemitism terrorism and the delegitimization of Israel and the Jewish people’. The Jerusalem Initiative ‘is a non-profit organization established to empower Arabic-speaking Israeli Christians, of all denominations, and supports their full integration in the country’s social fabric’. The Simon Wiesenthal Centre ‘applies the lessons of the Holocaust to counter antisemitism and other contemporary forms of discrimination and hate’.

²⁰ ICC-01/18-32. The Palestinian Bar Association ‘represents over ten-thousand registered lawyers’.

²¹ ICC-01/18-33. Prof. Laurie Blank ‘is Clinical Professor of Law, Director of the Center for International and Comparative Law and the Director of the International Humanitarian Law Clinic at Emory University School of Law’. Dr. Matthijs de Blois is ‘Senior Fellow at The Hague Initiative for International Cooperation’. Prof. Geoffrey Corn ‘is the Vinson and Elkins Professor of Law and Director, Center for International Legal Practice and National Security at South Texas College of Law at Houston and Distinguished Fellow, JINSA Gemunder Center for Defense and Strategy’. Dr. Daphné Richemond-Barak ‘is Assistant Professor at Interdisciplinary Center Herzliya (IDC Herzliya)’. Prof. Gregory Rose ‘has taught international law for 30 years at the University of London and the University of Wollongong Australia’. Prof. Robbie Sabel ‘is Professor of International Law, Faculty of Law Hebrew University Jerusalem [and] Member of the Permanent Court of Arbitration [...]’. Prof. Gil Troy ‘is Distinguished Scholar of North American History at McGill University’. Mr. Andrew Tucker ‘is Director of The Hague Initiative for International Cooperation [...]’.

accordance with the “Order setting the procedure and the schedule for the submission of observations” issued by Pre-Trial Chamber I on 28 January 2020’.²²

22. On 14 February 2020, the Chamber received the ‘Request for Leave to File Submissions Pursuant to Rule 103’ on behalf of Professor Asem Khalil and Assistant Professor Halla Shoaibi.²³

23. On 14 February 2020, the Chamber received the ‘Request for leave to file a written observation [i]n accordance with the Order setting the procedure and the schedule for the submission of observations from 28 January 2020’ on behalf of Shurat Hadin – Israel Law Center.²⁴

24. On 14 February 2020, the Chamber received the ‘Request for Leave To File Submission Pursuant to Rule 103’ on behalf of Todd F. Buchwald and Stephen J. Rapp.²⁵

25. On 14 February 2020, the Chamber received the ‘Request for Leave to File Submissions Pursuant to Rule 103’ on behalf of Azril Mohd Amin.²⁶

26. On 14 February 2020, the Chamber received the ‘Amicus Curiae Submission by Intellectum Scientific Society’.²⁷

27. On 14 February 2020, the Chamber received the ‘Request for Leave to Submit Amicus Curiae Observations by the International Commission of Jurists (pursuant to Rule 103 of the Rules)’.²⁸

²² ICC-01/18-34. The International Association of Jewish Lawyers and Jurists is ‘a UN-ECOSOC special consultative accredited NGO, [and] was founded in 1969 to promote human rights, fight genocide, and combat all forms of racism, including specifically anti-Semitism, Holocaust denial, and the negation of the State of Israel’.

²³ ICC-01/18-35. Professor Asem Khalil is ‘Professor of Public Law at Birzeit University’. Assistant Professor Halla Shoaibi is ‘Assistant Professor of International Law at Birzeit University’.

²⁴ ICC-01/18-36. Shurat Hadin – Israel Law Center ‘is an independent civil rights non-governmental organization focused, inter alia, on representing terror victims’ and ‘also represents Jews and Israeli citizens who suffer from discrimination to their national origin and ethnicity’.

²⁵ ICC-01/18-37. Todd F. Buchwald is ‘Professorial Lecturer in Law at the George Washington University Law School in Washington, D.C.’. Stephen J. Rapp is ‘a Distinguished Fellow at the United States Holocaust Memorial Museum’s Center for Prevention of Genocide’, ‘a Visiting Senior Fellow of Practice at the Blavatnik School of Government at Oxford University’ and ‘serves as Chair of the Commission for International Justice & Accountability’.

²⁶ ICC-01/18-38. Azril Mohd Amin is ‘an Advocate and Solicitor of the High Court of Malaya in Kuala Lumpur, Malaysia’ and ‘Chief Executive Officer [...] of the Malaysian-based Centre for Human Rights Research and Advocacy’.

²⁷ ICC-01/18-39. Intellectum Scientific Society ‘is a think-tank, non-profit organization and publisher in Greece with a particular focus on international human rights and the situation in Palestine’.

28. On 14 February 2020, the Chamber received the ‘Request for Leave to File Submissions Pursuant to Rule 103’ on behalf of Dr. Robert Heinsch and Dr. Giulia Pinzauti.²⁹

29. On 14 February 2020, the Chamber received the ‘Request pursuant to rule 103 of the Rules of Procedure and Evidence for leave to submit observations as *amicus curiae*’ on behalf of the Republic of Austria.³⁰

30. On 14 February 2020, the Chamber received the ‘Request for Leave to submit *Amicus Curiae* observations on behalf of the International Association of Democratic Lawyers’.³¹

31. On 14 February 2020, the Chamber received the ‘Request to Submit *Amicus Curiae* Submissions Pursuant to Rule 103 and Regulation of the Court 77(4)(c)’ on behalf of the Office of Public Counsel for the Defence.³²

32. On 14 February 2020, the Chamber received the ‘Application for leave to file written observations on the question of jurisdiction pursuant to Rule 103 of the Rules of Procedure and Evidence’ on behalf of the Honourable Professor Robert Badinter, the Honourable Professor Irwin Cotler, Professor David Crane, Professor Jean-François Gaudreault-DesBiens, Lord David Pannick and Professor Guglielmo Verdirame.³³

²⁸ ICC-01/18-40. The International Commission of Jurists ‘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’.

²⁹ ICC-01/18-41. Dr. Robert Heinsch is ‘an Associate Professor of Public International at the Grotius Centre for International Legal Studies at Leiden University and the Director of its Kalshoven-Gieskes Forum on International Humanitarian Law as well as its International Humanitarian Law Clinic’. Dr. Giulia Pinzauti is ‘an Assistant Professor of Public International Law at the Grotius Centre for International Legal Studies at Leiden University, and Deputy Director of the IHL Clinic of the Kalshoven-Gieskes Forum on International Humanitarian Law’.

³⁰ ICC-01/18-42.

³¹ ICC-01/18-43. The International Association of Democratic Lawyers ‘is a non-governmental organisation in consultative status with ECOSOC and UNESCO’ and ‘has consistently pursued aims that include, *inter alia*: achieving the aims set out in the Charter of the United Nations; restoring, defending and developing democratic rights and liberties in legislation and in practice; promoting the independence of all peoples and opposing any restriction on this independence whether in law or in practice; defending and promoting human and peoples’ rights’.

³² ICC-01/18-44.

³³ ICC-01/18-45. The Honourable Professor Robert Badinter ‘is a distinguished criminal lawyer, Emeritus Professor at the University of Paris I, Panthéon Sorbonne and Honorary President of the Constitutional Council of France’. The Honourable Professor Irwin Cotler ‘is the Chair of the Raoul Wallenberg Centre for Human Rights, an Emeritus Professor of Law at McGill University, former

33. On 14 February 2020, the Chamber received the ‘Request for Leave to File Submissions Pursuant to Rule 103’ on behalf of the Palestinian Center for Human Rights, Al-Haq Law in the Service of Mankind, Al-Mezan Center for Human Rights and Aldameer Association for Human Rights.³⁴

34. On 14 February 2020, the Chamber received the ‘Brazilian Application for Leave to File Amicus Curiae Observations on the question of jurisdiction set forth in paragraph 220 of the Prosecutor’s Request’ on behalf of the Federative Republic of Brazil.³⁵

35. On 14 February 2020, the Chamber received the ‘Request for Leave to Submit Observations Pursuant to Rule 103’ on behalf of Professor Malcolm N Shaw.³⁶

36. On 14 February 2020, the Chamber received the ‘Application for leave to file written observations by Hungary’.³⁷

37. On 14 February 2020, the Chamber received the ‘Request for Leave to Submit Amicus Curiae Observations on Issues Raised by the “Prosecution request pursuant to

Minister of Justice and Attorney General of Canada and long-time Member of Parliament, an international human rights lawyer and defender of political prisoners worldwide’. Professor David Crane ‘was the founding Chief Prosecutor of the Special Court for Sierra Leone from 2002 to 2005’. Professor Jean-François Gaudreault-DesBiens ‘is Full Professor of Law of the University of Montreal, where he served as Dean of Law from 2015 to 2019, and where he held the Canada Research Chair on North American and Comparative Cultural and Juridical Identities from 2006 to 2016’. Lord David Pannick ‘is a practising barrister in the United Kingdom, a Crossbench (independent) Member of the House of Lords and a Fellow of All Souls College, Oxford’. Professor Guglielmo Verdirame ‘is a Professor of International Law at the King’s College London at the Dickson Poon School of Law and the Department of War Studies’.

³⁴ ICC-01/18-46. Al-Haq Law in the Service of Mankind ‘is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank’ and was ‘[e]stablished in 1979 to protect and promote human rights and the rule of law in the occupied Palestinian territory’. Aldameer Association for Human Rights ‘aims to ensure the development of human rights principles and internationally recognized standards and values in the Gaza Strip’. The Palestinian Center for Human Rights aims ‘to protect human rights and promote the rule of law in accordance with international standards; create and develop democratic institutions and an active civil society, while promoting democratic culture within Palestinian society; support all the efforts aimed at enabling the Palestinian people to exercise their inalienable rights in regard to self-determination and independence in accordance with international law and UN resolutions’. Al-Mezan Center for Human Rights ‘was established in 1999 to protect and advance the respect of human rights in the occupied Palestinian territory, particularly economic, social and cultural rights in the Gaza Strip’.

³⁵ ICC-01/18-47.

³⁶ ICC-01/18-48. Professor Malcolm N Shaw is ‘the Emeritus Sir Robert Jennings Professor of International Law at the University of Leicester, UK, and Senior Fellow at the Lauterpacht Centre for International Law at the University of Cambridge, UK’.

³⁷ ICC-01/18-49.

article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine” on behalf of Ambassador Dennis Ross.³⁸

38. On 14 February 2020, the Chamber received the ‘Request for Leave to Submit Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence’ on behalf of the International Federation for Human Rights, No Peace Without Justice, Women’s Initiatives for Gender Justice, and REDRESS.³⁹

39. On 14 February 2020, the Chamber received the ‘Request for Leave to Submit an Opinion in Accordance with Article 103 of the Rules of Procedure and Evidence’ on behalf of Professor William Schabas.⁴⁰

40. On 14 February 2020, the Chamber received the ‘Request for Leave to Submit Amicus Curiae Observations by International-Lawyers.org [...] pursuant to Rule 103 of the Rules of Procedure and Evidence in accordance with paragraphs 15 and 17 of the Order of the Pre-Trial Chamber I Setting the Procedure and Schedule for the Submission of Observations’.⁴¹

41. On 14 February 2020, the Chamber received the ‘Request for Leave to Submit Observations with respect to the Situation in the State of Palestine’ on behalf of the League of Arab States.⁴²

42. On 17 February 2020, the Chamber received the ‘Request for Leave to File Submissions Pursuant to Rule 103’ on behalf of Me Yael Vias Gvirsman.⁴³

³⁸ ICC-01/18-51. Ambassador Dennis Ross ‘is a U.S. diplomat who was the chief American negotiator for the Middle East Peace Process from 1988 to 2000, in both George H.W. Bush and Bill Clinton administrations’.

³⁹ ICC-01/18-52. The International Federation for Human Rights, No Peace Without Justice, Women’s Initiatives for Gender Justice, and REDRESS ‘have varied and extensive expertise on matters of justice and accountability, and have a long history of engagement with the Court’.

⁴⁰ ICC-01/18-53. Professor William Schabas ‘is Professor of International Law at Middlesex University London and Professor of International Criminal Law and Human Rights at Leiden University’.

⁴¹ ICC-01/18-54. International-Lawyers.org ‘was founded as an association in 2010 in Geneva, Switzerland under Swiss law as a non-profit, non-governmental organization that has the goal of promoting global justice. Its work is guided by the principles of international law’.

⁴² ICC-01/18-55-Corr. The Chamber notes that the request on behalf of the League of Arab States was initially submitted on 14 February 2020 at 19:22 hours and that a corrigendum was submitted on 17 February 2020 at 11:46 hours. While the corrigendum was submitted after the deadline, the Chamber accepts it considering that the original request was filed before the deadline.

⁴³ ICC-01/18-56. This request was submitted on 14 February 2020 at 16:04 hours. Me Yael Vias Gvirsman is ‘a member of the Israel Bar Association specializing in the field of international criminal law’ and ‘has established the only International Criminal and Humanitarian Law Clinic in Israel based at the Harry Radzyner Law School, at the Interdisciplinary Center (IDC) Herzliya, in 2014, which is an apolitical and non-partisan Law Clinic devoted to the two fields in Israel’.

43. On 17 February 2020, the Chamber received the ‘Request for Leave to Submit Amicus Curiae Observations by The Popular Conference of Palestinians Abroad (pursuant to Rule 103 of the Rules)’.⁴⁴

44. On 17 February 2020, the Chamber received the ‘Application for Leave to Submit Observations as Amicus Curiae pursuant to Rule 103(1) of the Rules of Procedure and Evidence’ on behalf of the Israel Forever Foundation.⁴⁵

45. On 17 February 2020, the Chamber received the ‘COURT’S TERRITORIAL JURISDICTION IN PALESTINE’ on behalf of Dr. Frank Romano.⁴⁶

46. On 17 February 2020, the Chamber received the ‘Request for Leave to File a Submission Pursuant to Rule 103 of the Rules of Procedure and Evidence’ on behalf of Ralph Wilde and Ata Hindi.⁴⁷

47. On 18 February 2020, the Chamber received the ‘Request pursuant to Rule 103 of the Rules of Procedure and Evidence for leave to submit observations’ on behalf of Dr. Uri Weiss.⁴⁸

48. On 20 February 2020, the Chamber received the ‘Request by the Republic of Uganda for leave to submit amicus curiae observations in response to the Prosecutor’s

⁴⁴ ICC-01/18-57. This request was submitted on 14 February 2020 at 16:10 hours. The Popular Conference for Palestinians Abroad ‘was set up in 2017’ and ‘brings together Palestinians abroad from across the world to address matters of human rights, accountability and justice’.

⁴⁵ ICC-01/18-58. This request was submitted on 14 February 2020 at 22:56 hours. The Israel Forever Foundation ‘is a US based charitable foundation. Among its programming, IFF provides educational resources on the historical and legal issues related to the ancestral and indigenous rights to the region. IFF has significant expertise on issues related to the history, international law and relevant issues related to the State of Israel and the self-determination of the Jewish people’.

⁴⁶ ICC-01/18-59. This request was submitted on 14 February 2020 at 23:52 hours. Dr. Frank Romano is ‘attorney at law, active member of the California Bar, United States’.

⁴⁷ ICC-01/18-60. This request was submitted on 15 February 2020 at 05:30 hours. Ralph Wilde ‘is Associate Professor of Law at University College London, University of London, where he teaches general international law, including the law of statehood and self-determination, international human rights law, and the international law on the use of force’. Ata Hindi ‘is a Research Fellow in International Law with the Institute of Law at Birzeit University’.

⁴⁸ ICC-01/18-61. Dr. Uri Weiss ‘is an Israeli activist against the occupation’. The Chamber notes that this request was submitted on 18 February 2020 at 10:17 hours but that Dr. Uri Weiss indicates that it is a corrected version of the document he submitted on 14 February 2020. *See* ICC-01/18-61, p. 4. The Registry has confirmed that Dr. Uri Weiss submitted his request on 14 February 2020 at 23:02 hours to an incorrect email address. *See* email by Registry, dated 19 February 2020, at 11:22 hours. Accordingly, the Chamber accepts it considering that the original request was filed before the deadline.

request pursuant to article 19(3) of the Rome Statute for a ruling on the Court's territorial jurisdiction in Palestine'.⁴⁹

II. DETERMINATION BY THE CHAMBER

49. 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'. As is apparent from this rule's wording, the Chamber's decision in relation to applications for leave to submit observations is discretionary in nature.

50. At the outset, the Chamber notes that a number of requests for leave to submit observations contain inaccuracies as to typography, style and/or formatting. However, the Chamber has decided not to order any such requests for leave to submit observations to be resubmitted in the interests of efficiency.

51. The Chamber notes that the 'Request for Leave to File a Submission Pursuant to Rule 103 of the Rules of Procedure and Evidence' on behalf of Ralph Wilde and Ata Hindi was submitted on 15 February 2020 at 05:30 hours. Accordingly, the Chamber rejects this request considering that it was submitted after the deadline set by the Chamber in its 28 January 2020 Order.

52. The Chamber further observes that Azril Mohd Amin requests leave to submit observations on behalf of MyAQSA Foundation.⁵⁰ However, MyAQSA Foundation has submitted a request for leave to present observations itself and, in that request, it does not indicate that it will be represented by Azril Mohd Amin.⁵¹ Therefore, the Chamber rejects the request on behalf of Azril Mohd Amin.

53. The Chamber takes note of the applications for leave to submit observations submitted on behalf of:

⁴⁹ ICC-01/18-62. The Chamber notes that the request on behalf of the Republic of Uganda was initially received on 14 February 2020 at 15:58 hours by means of a *note verbale* and that it was resubmitted on 19 February 2020 at 18:08 hours in accordance with the regular procedure. While the resubmitted request was received after the deadline, the Chamber accepts it considering that the original request was filed before the deadline.

⁵⁰ ICC-01/18-38, paras 7, 14.

⁵¹ ICC-01/18-27-Conf. Moreover, MyAQSA Foundation subsequently informed the Registry that there is no agreement for Azril Mohd Amin to represent MyAQSA Foundation in the present proceedings. See email from MyAQSA Foundation to the Registry, dated 19 February 2020, at 09:57 hours.

- i. the Czech Republic;
- ii. the Organization of Islamic Cooperation;
- iii. the Federal Republic of Germany;
- iv. Australia;
- v. the Republic of Austria;
- vi. the Federative Republic of Brazil;
- vii. Hungary;
- viii. the League of Arab States;
- ix. the Republic of Uganda.

54. Having considered these applications, the Chamber invites these States and Organisations to submit the observations summarised in their respective applications.

55. Furthermore, the Chamber notes the applications for leave to submit observations on behalf of:

- i. Professor John Quigley;
- ii. Guernica 37 International Justice Chambers;
- iii. the European Centre for Law and Justice;
- iv. Professor Hatem Bazian;
- v. the Touro Institute on Human Rights and the Holocaust;
- vi. the Israel Bar Association;
- vii. Professor Richard Falk;
- viii. the Lawfare Project, the Institute for NGO Research, Palestinian Media Watch, and the Jerusalem Center for Public Affairs;
- ix. MyAQSA Foundation;
- x. Professor Eyal Benvenisti;
- xi. UK Lawyers for Israel, B'nai B'rith UK, the International Legal Forum, the Jerusalem Initiative and the Simon Wiesenthal Centre;
- xii. the Palestinian Bar Association;

- xiii. Prof. Laurie Blank, Dr. Matthijs de Blois, Prof. Geoffrey Corn, Dr. Daphné Richemond-Barak, Prof. Gregory Rose, Prof. Robbie Sabel, Prof. Gil Troy and Mr. Andrew Tucker;
- xiv. the International Association of Jewish Lawyers and Jurists;
- xv. Professor Asem Khalil and Assistant Professor Halla Shoaibi;
- xvi. Shurat Hadin – Israel Law Center;
- xvii. Todd F. Buchwald and Stephen J. Rapp;
- xviii. Intellectum Scientific Society;
- xix. the International Commission of Jurists;
- xx. Dr. Robert Heinsch and Dr. Giulia Pinzauti;
- xxi. the International Association of Democratic Lawyers;
- xxii. the Office of Public Counsel for the Defence;⁵²
- xxiii. the Honourable Professor Robert Badinter, the Honourable Professor Irwin Cotler, Professor David Crane, Professor Jean-François Gaudreault-DesBiens, Lord David Pannick and Professor Guglielmo Verdirame;
- xxiv. the Palestinian Center for Human Rights, Al-Haq Law in the Service of Mankind, Al-Mezan Center for Human Rights and Aldameer Association for Human Rights;
- xxv. Professor Malcolm N Shaw;
- xxvi. Ambassador Dennis Ross;
- xxvii. the International Federation for Human Rights, No Peace Without Justice, Women’s Initiatives for Gender Justice and REDRESS;
- xxviii. Professor William Schabas;

⁵² The Chamber notes that the Office of Public Counsel for the Defence submits that ‘granting leave to appear in the current proceedings may be authorised under Rule 103 of the Rules of Procedure and Evidence, but that Regulation 77(4)(c) of the Regulations of the Court [...] is the more applicable provision given that it is the *lex specialis*’. See ICC-01/18-44, para. 13. Given the current stage of the proceedings, the Chamber considers that it is more appropriate to consider the request on behalf of the Office of Public Counsel for the Defence under rule 103 of the Rules. See also Appeals Chamber, *Situation in the Islamic Republic of Afghanistan*, Decision on the participation of amici curiae, the Office of Public Counsel for the Defence and the cross-border victims, 24 October 2019, [ICC-02/17-97](#), paras 49, 50.

- xxix. International-Lawyers.org;
- xxx. Me Yael Vias Gvirsman;
- xxxi. the Popular Conference for Palestinians Abroad;
- xxxii. the Israel Forever Foundation;
- xxxiii. Dr. Frank Romano;
- xxxiv. Dr. Uri Weiss.

56. The Chamber has considered the affiliation, expertise and experience of the aforementioned organisations and individuals. In addition, it has assessed the summaries of the submissions they propose to submit if leave were to be granted. On this basis, the Chamber concludes that it is desirable for the proper determination of the Prosecutor’s Request to receive their proposed submissions.⁵³

57. However, the Chamber observes that the summaries of the submissions proposed to be submitted by certain applicants appear to exceed, in part, the question of jurisdiction set forth in paragraph 220 of the Prosecutor’s Request. For instance, certain applicants propose to provide observations on the ‘interests of justice’,⁵⁴ alleged conduct possibly amounting to crimes falling within or outside the jurisdiction of the Court,⁵⁵ the recognition of Palestine by other States,⁵⁶ and broader issues related to the Situation in the State of Palestine⁵⁷.

58. The Chamber reminds all *amici curiae* that the present proceedings are limited to the 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’.

⁵³ The Chamber notes that the document entitled the ‘COURT’S TERRITORIAL JURISDICTION IN PALESTINE’ on behalf of Dr. Frank Romano exceeds the page limit set by the Chamber in the 28 January 2020 Order. While the Chamber grants this request, it nevertheless orders Dr. Frank Romano to submit a corrigendum of his request in keeping with the applicable page limit.

⁵⁴ See for instance ICC-01/18-18, para. 7; ICC-01/18-47, para. 10.

⁵⁵ See for instance ICC-01/18-18, para. 13; ICC-01/18-19, paras 3, 4.

⁵⁶ See for instance ICC-01/18-42, para. 5.

⁵⁷ See for instance ICC-01/18-21-Corr, paras 5, 6; ICC-01/18-42, para. 5.

Any observations exceeding this question that are nonetheless submitted by any *amicus curiae* shall be disregarded by the Chamber.

59. Furthermore, with a view to ensuring that the present proceedings are conducted expeditiously and efficiently, the observations to be submitted by the *amici curiae* shall not exceed 30 pages. The Chamber further emphasises that these observations must adhere, in particular, to regulation 36 of the Regulations of the Court. In addition, the Chamber instructs the *amici curiae* to properly format the cover page of the document containing their submissions in accordance with the established practice of the Court. As announced in the 28 January 2020 Order, these submissions shall be submitted by no later than 16 March 2020.⁵⁸ The Chamber encourages the *amici curiae* to submit their observations before this deadline or as early as possible on the day of the deadline in accordance with the local time in The Hague.

60. In addition, the Chamber recalls that, in the 28 January 2020 Order, it ordered the Prosecutor to submit a consolidated response to any observations on the Prosecutor's Request submitted in accordance with the 28 January 2020 Order by no later than 30 March 2020.⁵⁹ In this regard, the Chamber finds it appropriate to further order the Prosecutor to submit a consolidated response not exceeding 75 pages.

61. Lastly, having regard to the significant number of submissions to be submitted in the context of the present proceedings, the Chamber considers that it is 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.

⁵⁸ ICC-01/18-14, para. 17.

⁵⁹ ICC-01/18-14, para. 18.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **REJECTS** the: (i) ‘Request for Leave to File a Submission Pursuant to Rule 103 of the Rules of Procedure and Evidence’ on behalf of Ralph Wilde and Ata Hindi; and (ii) the ‘Request for Leave to File Submissions Pursuant to Rule 103’ on behalf of Azril Mohd Amin;
- b) **NOTES** the withdrawal of the 23 January 2020 Guernica 37 Request;
- c) **GRANTS** leave to the States, organisations and individuals referred to in paragraphs 53 and 55 of the present decision to submit the observations summarised in their applications for leave to file observations, which shall not exceed 30 pages, by no later than 16 March 2020;
- d) **REMINDS** all *amici curiae* that their observations shall be limited to the question of jurisdiction set forth in paragraph 220 of the Prosecutor’s Request;
- e) **ORDERS** the Prosecutor to submit a consolidated response to any observations on the Prosecutor’s Request submitted in accordance with the 28 January 2020 Order and the present decision, which shall not exceed 75 pages, by no later than 30 March 2020;
- f) **ORDERS** the Registry to reclassify the ‘Request for Leave to Submit Amicus Curiae Observations by MyAQSA Foundation (MyAQSA) (pursuant to Rule 103 of the Rules)’ (ICC-01/18-27-Conf) as public; and
- g) **ORDERS** Dr. Frank Romano to submit a corrigendum of the document entitled ‘COURT’S TERRITORIAL JURISDICTION IN PALESTINE’ in accordance with the page limit set by the Chamber in the 28 January 2020 Order by no later than 28 February 2020.

Done in both English and French, the English version being authoritative.



Judge Péter Kovács, Presiding Judge



Judge Marc Perrin de Brichambaut



**Judge Reine Adélaïde Sophie
Alapini-Gansou**

Dated this Thursday, 20 February 2020

At The Hague, The Netherlands