

**Cour
Pénale
Internationale**

27/11/2024 13



**International
Criminal
Court**

Original: English

No.: ICC-01/18

Date: 21 November 2024

PRE-TRIAL CHAMBER I

Before: Judge Nicolas Guillou, Presiding
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Beti Hohler

SITUATION IN THE STATE OF PALESTINE

Public

**Decision on Israel's challenge to the jurisdiction of the Court pursuant to article
19(2) of the Rome Statute**

Decision to be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor
Mr Karim A.A. Khan
Mr Andrew Cayley

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel
for Victims**

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

States Representatives
State of Israel

Amicus Curiae

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this decision on ‘Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute’ (the ‘Challenge’),¹ submitted by the State of Israel (‘Israel’).

I. Procedural history

1. On 1 January 2015, the State of Palestine (‘Palestine’) accepted the jurisdiction of the Court from 13 June 2014 onwards by way of an article 12(3) declaration.² The next day, on 2 January 2015, Palestine acceded to the Rome Statute (the ‘Statute’).³
2. On 22 May 2018, Palestine referred the situation in the State of Palestine to the Prosecution pursuant to articles 13(a) and 14 of the Statute, following which the Presidency referred the *Situation in the State of Palestine* (the ‘Situation’) to the Chamber.⁴
3. On 5 February 2021, Pre-Trial Chamber I, in a different composition, by majority, rendered the Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’, in which it found that Palestine is a State Party to the Rome Statute and that, as a consequence, Palestine qualifies as ‘[t]he State on the territory of which the conduct in question occurred for the purposes of article 12(2)(a) of the Statute’ and that the Court’s territorial jurisdiction in the Situation extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem.⁵

¹ 23 September 2024, ICC-01/18-354-SECRET-Exp-AnxI-Corr, together with secret Annex A, only available to the Prosecution and the State of Israel. Pursuant to an order of the Chamber, the public redacted version of the Request, as submitted by Israel on 23 September 2024, was reclassified as public: ICC-01/18-354-AnxII-Corr. In the present decision, the Chamber will refer to certain information contained in the annexes classified as secret. This information is either publicly known, or the Chamber considers it appropriate to make the relevant information public, as part of the present decision.

² Annex I to Presidency, Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I, 24 May 2018, ICC-01/18-1-Anx1 (‘Annex to Presidency Decision’).

³ Secretary-General of the United Nations, ‘Rome Statute of the International Criminal Court, Rome, 17 July 1998, State of Palestine: Accession’, 6 January 2015, C.N.13.2015, Treaties XVIII.10.

⁴ Annex to Presidency Decision, p. 3. On 22 April 2024, the Presidency designated Judge Guillou to replace a judge of the Chamber: Presidency, Decision replacing a judge in Pre-Trial Chamber I, 22 April 2024, ICC-01/18-164-SECRET. On 20 May 2024, on instruction of the Presidency, this decision was reclassified as public. On 25 October 2024, the Presidency designated Judge Hohler to replace a judge of the Chamber. Presidency, Decision replacing a judge in Pre-Trial Chamber I, 24 October 2024, ICC-01/18-366.

⁵ Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’, 5 February 2021, ICC-01/18-143.

4. On 3 March 2021, the Prosecutor announced the opening of an investigation with respect to alleged crimes within the jurisdiction of the Court committed in the Situation since 13 June 2014.⁶
5. On 17 November 2023, the Prosecution received further referrals, pursuant to articles 13(a) and 14 of the Statute, from five State Parties.⁷ On 14 January 2024, two more State Parties submitted such a referral to the Prosecution.⁸
6. On 20 May 2024, the Prosecutor publicly announced that he will be filing applications for warrants of arrest against Mr Benjamin Netanyahu and Mr Yoav Gallant.⁹
7. On 20 September 2024, the Registry transmitted the Challenge into the case record.¹⁰ Israel requests the Chamber to ‘declare with immediate effect that the investigation of the Prosecutor in the cases of Mr Netanyahu and Mr Gallant, and the proceedings before this Chamber under Article 58 of the Statute, are to be suspended until the Court has given its ruling on this challenge to jurisdiction’ and to ‘determine that the application concerning Mr Netanyahu and Mr Gallant, and any investigative action on the same jurisdictional basis, are not within the Court’s jurisdiction’ and to ‘dismiss the [Prosecution]’s application for arrest warrants for Mr Netanyahu and Mr Gallant’.
8. On 23 September 2024, the Prosecution submitted its response to the Challenge (the ‘Response’).¹¹
9. On 7 October 2024, the Registry transmitted into the case record a request by Israel for leave to reply to the Response (the ‘Leave to Reply Request’).¹²

⁶ OTP/PAL/SPs/Notif/090321/FB, ICC-01/18-355-SECRET-Exp-AnxB.

⁷ State Party referral in accordance with Article 14 of the Rome Statute of the International Criminal Court, submitted by the Republic of South Africa, the People’s Republic of Bangladesh, the Plurinational State of Bolivia, the Union of the Comoros, and the Republic of Djibouti, dated 17 November 2023; available on the Court’s website at <www.icc-cpi.int/palestine>.

⁸ Referral by the Republic of Chile and the United Mexican States, dated 18 January 2024; available on the Court’s website at <www.icc-cpi.int/palestine>.

⁹ Office of the Prosecutor, Statement of ICC Prosecutor Karim A.A. Khan K.C.: Applications for arrest warrants in the situation in the State of Palestine, 20 May 2024, available on the Court’s website at <www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>.

¹⁰ Registry Transmission of “Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute”, 20 September 2024, ICC-01/18-354-SECRET-Exp.

¹¹ Prosecution’s Response to “Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute” – ICC-01/18-354-SECRET-Exp-AnXI-Corr, 27 September 2024, ICC-01/18-357-SECRET-Exp.

¹² ICC-01/18-361-SECRET-Exp-Anx.

II. Determination of the Chamber

Preliminary matter

10. With regard to the Leave to Reply Request, the Chamber considers that the Challenge and the Response are sufficiently clear and that the issues identified by Israel for further submissions could either have been reasonably anticipated or do not relate to matters that the Chamber requires further information on. The Leave to Reply Request is therefore rejected.

Consideration of the Challenge

11. Israel challenges the Court's jurisdiction regarding the Prosecution's applications for warrants of arrest against Mr Netanyahu and Mr Gallant and any other investigative action on the same jurisdictional basis.¹³ Israel argues that Palestine does not possess the competences required under international law to be able to delegate territorial jurisdiction to the Court.
12. In terms of standing, Israel refers to the Chamber's holding in 2021 that issues of territorial jurisdiction may be raised by interested States based on article 19 of the Statute. Israel submits that it is a State from which acceptance of jurisdiction is required under article 12 of the Statute even if there is another State which has delegated jurisdiction to the Court for that same situation.¹⁴
13. This is incorrect as a matter of law. In the matter under consideration, the acceptance by Israel of the Court's jurisdiction is not required, as the Court can exercise its jurisdiction on the basis of the territorial jurisdiction of Palestine. As soon as there is one jurisdictional basis pursuant to article 12(2)(a) or (b) of the Statute, there is no need for an additional one.¹⁵
14. Israel also argues that its *claim* that Palestine is not a State on the territory of which the alleged conduct occurred is in itself sufficient to make it the sole State whose acceptance of jurisdiction is required.¹⁶ It points out that it 'would be problematic [...] to deny

¹³ Challenge, para. 1.

¹⁴ Challenge, paras 38-62.

¹⁵ Pre-Trial Chamber II, *Situation in the Islamic Republic of Afghanistan*, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, 12 April 2019, ICC-02/17-33, para. 58.

¹⁶ Challenge, para. 44.

standing on the basis that a State needs to establish the merits of a jurisdictional challenge as a prerequisite to its standing to make it.’¹⁷ Israel submits that all that is required for it to have standing under article 19(2)(c) of the Statute is that its claim is *prima facie* tenable.¹⁸ Israel further alleges that it has an ‘immediate *right* to challenge jurisdiction under Article 19 given the current stage of the proceedings’¹⁹ and that it is in fact under an *obligation* to do so now pursuant to article 19(5) of the Statute.²⁰ According to Israel, its obligation to act without further delay is triggered by the fact that it now knows, based on the public statements of the Prosecutor and on the basis of the Requests for Assistance it received from the Court, that Israeli nationals are the subjects of applications for arrest warrants in relation to acts that allegedly took place on the territory of Gaza.²¹

15. First, the Chamber rejects Israel’s argument that merely because it *claims* that Palestine could not have delegated jurisdiction to the Court, the Chamber would have to ignore its previous decision (rendered in a different composition) which has become *res judicata*.²² Indeed, there is a fundamental difference between granting a State standing on the presumptive validity of its claim to have jurisdiction over a situation or a case and granting it standing on the basis of an argument – which was already ruled upon – that a particular State Party does not have jurisdiction.
16. In any event, Israel’s standing is not an issue in this instance, as Israel clearly would have standing to bring a challenge as the State of nationality under article 19(2)(b) *juncto* article 12(2)(b) of the Statute if the Chamber decides to issue any warrants of arrest for Israeli nationals. The issue before the Chamber is whether Israel is entitled – or indeed obliged – to bring such a challenge *before* the Chamber has ruled on the Prosecution’s applications for warrants of arrest.²³
17. The Chamber notes that States are not entitled under the Statute to challenge jurisdiction of the Court on the basis of Article 19 prior to the issuance of a warrant of arrest or a

¹⁷ Challenge, para. 45.

¹⁸ Challenge, para. 45.

¹⁹ Challenge, para. 48.

²⁰ Challenge, para. 49.

²¹ Challenge, para. 49.

²² Decision on the ‘Prosecution’s request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, 5 February 2021, ICC-01/18-143.

²³ See Pre-Trial Chamber I, *Situation in the Bolivarian Republic of Venezuela I*, Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute, 27 June 2023, ICC-02/18-45, paras 35-36; with reference to Decision on the ‘Prosecution’s request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, 5 February 2021, ICC-01/18-143, paras 73-4.

summons. Indeed, the Prosecution typically conducts the entire application process under Article 58 of the Statute *ex parte*. States therefore only become aware of the existence of the proceedings after the Court has ruled on the application when the arrest warrant or summons is notified to them or made public. The wording of article 19(2)(b) of the Statute makes it clear that States may only challenge the Court's jurisdiction in relation to a particular *case*, i.e. after the relevant Pre-Trial Chamber ruled that there are reasonable grounds to believe that a person has committed a crime within the jurisdiction of the Court and issued a warrant of arrest or a summons to ensure the person's appearance before the Court.

18. The Chamber wishes to reassure Israel that it will not be estopped on the basis of article 19(5) of the Statute from bringing a jurisdictional challenge because of the public statements made by the Prosecutor or the Requests for Assistance it has received from the Court in relation to the investigation. Israel will have the full opportunity to challenge the Court's jurisdiction and/or admissibility of any particular case if and when the Chamber issues any arrest warrants or summonses against its nationals.

THE CHAMBER HEREBY, FOR THE ABOVE REASONS,

REJECTS Israel's request for leave to reply; and

REJECTS Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Statute as premature.

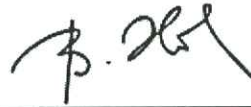
Done in English. A French translation will follow. The English version remains authoritative.



Judge Nicolas Guillou
Presiding



Judge Reine Adélaïde Sophie Alapini-
Gansou



Judge Beti Hohler

Dated this Thursday, 21 November 2024

At The Hague, The Netherlands