



Original: English

No. **ICC-01/18**
Date: **21 January 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 the Prosecutor's Application for an extension of the page limit

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

The Office of the Prosecutor
Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor

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

Amicus Curiae

REGISTRY

Registrar
Peter Lewis

Defence Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’ or ‘ICC’), in the situation in the State of Palestine (‘Palestine’), issues the following Decision on the Prosecutor’s Application for an extension of the page limit.

I. BACKGROUND

1. On 1 January 2015, Palestine lodged a declaration under article 12(3) of the Rome Statute (the ‘Statute’), accepting the jurisdiction of the Court over alleged crimes ‘committed in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014’.¹
2. On 2 January 2015, Palestine deposited its instrument of accession to the Statute with the Secretary-General of the United Nations, in accordance with article 125(2) of the Statute.²
3. On 16 January 2015, the Prosecutor opened a preliminary examination into the situation in Palestine.³
4. On 22 May 2018, Palestine submitted to the Prosecutor a referral of the situation in Palestine pursuant to articles 13(a) and 14 of the Statute. In particular, the letter of referral requests the Prosecutor ‘to investigate, in accordance with the temporal jurisdiction of the Court, past, ongoing and future crimes within the court’s jurisdiction, committed in all parts of the territory of the State of Palestine’.⁴ It further specifies that ‘[t]he State of Palestine comprises the Palestinian Territory occupied in

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

² Secretary-General of the United Nations, ‘Rome Statute of the International Criminal Court, Rome, 17 July 1998, State of Palestine: Accession’, 6 January 2015, Reference: C.N.13.2015. Treaties-XVIII.10 (Depositary Notification), <https://treaties.un.org/doc/Publication/CN/2015/CN.13.2015-Eng.pdf> (last accessed on 21 January 2020).

³ ICC Press Release: 16 January 2015, ‘The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine’, ICC-OTP-20150116-PR1083; see also Annex I to Assignment Decision, ICC-01/18-1-AnxI, p. 5, para. 1 and footnote 1.

⁴ Annex I to Assignment Decision, ICC-01/18-1-AnxI, p. 8, para. 9.

1967 by Israel, as defined by the 1949 Armistice Line, and includes the West Bank, including East Jerusalem, and the Gaza Strip'.⁵

5. On 24 May 2018, pursuant to regulation 46(2) of the Regulations of the Court ('the Regulations'), the Presidency assigned the Situation in Palestine to this Chamber.⁶

6. On 13 July 2018, the Chamber issued its 'Decision on Information and Outreach for the Victims of the Situation'.⁷ Following this decision, the Registrar filed five reports on 'Information and Outreach Activities Concerning Victims and Affected Communities in the Situation'.⁸

7. On 20 December 2019, the Chamber received from the Prosecutor the 'Application for extension of pages for request under article 19(3) of the Statute'⁹ (the 'Request for an extension of the page limit'). The same day, the Prosecutor also filed its 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine' (the 'Request pursuant to article 19(3) of the Statute').¹⁰

8. On 23 December 2019, the Prosecutor filed a document entitled 'Supplementary information to the Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine',¹¹ with two annexes containing two legal memoranda issued by the State of Israel on 'the question of the Court's jurisdiction with respect to the situation in Palestine', (the 'Supplementary information') and

⁵ Annex I to Assignment Decision, ICC-01/18-1-AnxI, footnote 4.

⁶ Assignment Decision, ICC-01/18-1.

⁷ ICC-01/18-2.

⁸ Public redacted version of 'Registry's Initial Report on Information and Outreach Activities Concerning Victims and Affected Communities in the Situation', filed 12 November 2018 (ICC-01/18-3-Conf), 19 November 2018, ICC-01/18-3-Red ; Public redacted version of 'Registry's Second Report on Information and Outreach Activities Concerning Victims and Affected Communities in the Situation', filed 12 February 2019 (ICC-01/18-4-Conf), 13 February 2019, ICC-01/18-4-Red ; Public redacted version of 'Registry's Third Report on Information and Outreach Activities Concerning Victims and Affected Communities in the Situation', filed 13 May 2019 (ICC-01/18-5-Conf), ICC-01/18-5-Red ; Public redacted version of 'Registry's Fourth Report on Information and Outreach Activities Concerning Victims and Affected Communities in the Situation', filed 9 August 2019 (ICC-01/18-6-Conf), ICC-01/18-6-Red ; 'Registry's Fifth Report on Information and Outreach Activities Concerning Victims and Affected Communities in the Situation', 15 November 2019, ICC-01/18-7.

⁹ ICC-01/18-8.

¹⁰ ICC-01/18-9 and ICC-01/18-9-AnxA.

¹¹ ICC-01/18-10, ICC-01/18-10-AnxA and ICC-01/18-10-AnxB.

requesting that those documents be ‘placed on the record of the situation for completeness’.

II. DETERMINATION OF THE CHAMBER

9. The Chamber recalls article 19(3) of the Statute and regulations 37(2) and 38(3)(b) of the Regulations. Pursuant to regulation 37(2) of the Regulations, the Chamber ‘may, at the request of a participant, extend the page limit in exceptional circumstances’.

10. As a preliminary issue, the Chamber notes that the Prosecutor issued her Request for an extension of the page limit alongside her Request pursuant to article 19(3) of the Statute, the very document for which she seeks an extension of the page limit.¹² Indeed, the latter request is 110 pages long, which is the same length asked for by the Prosecutor in her Request for an extension of the page limit.

11. The Chamber considers that it was inappropriate for the Prosecutor to proceed in this manner. The Chamber recalls that a party or participant is formally authorised to file a document exceeding the specific page limit set out in the Regulations only once a chamber has granted a request to vary the page limit pursuant to regulation 37(2) of the Regulations. By acting otherwise, the Prosecutor seems to take for granted that the Chamber will authorise the requested extension of the page limit. However, the decision as to whether to grant such an extension remains within the discretion of a chamber, and is granted only when a chamber has determined the existence of ‘exceptional circumstances’ as per regulation 37(2) of the Regulations. The Chamber is also of the view that the Prosecutor’s concern about ‘considerable public interest and speculation’ does not warrant a departure from the legal provisions of the Court’s legal texts. The Chamber requests that the Prosecutor keep this in mind when submitting any future requests for an extension of the page limit.

¹² The Chamber recalls that the cover page and the notification page shall not be counted in calculating page limits pursuant to regulation 36(2)(c) of the Regulations.

12. Turning to the merits of the Request for an extension of the page limit, the Chamber agrees with the Prosecutor that the nature, novelty and complexity of the issue, that is, the jurisdiction of the Court with respect to the situation in Palestine, both in terms of its legal and factual aspects,¹³ gives rise to ‘exceptional circumstances’ within the meaning of regulation 37(2) of the Regulations. The Chamber also takes into consideration the fact that the Prosecutor wishes to develop arguments on the procedural basis on which she filed the Request pursuant to article 19(3) of the Statute.¹⁴ Therefore, the Chamber finds that exceptional circumstances exist justifying the extension of the page limit, and grants the Request for an extension of the page limit.

13. However, taking into consideration that the Prosecutor erred in filing her Request pursuant to article 19(3) of the Statute alongside her Request for an extension of the page limit, the Chamber, in order to ensure the integrity of the proceedings, finds appropriate to reject *in limine* the Request pursuant to article 19(3) of the Statute and all related documents, including the Supplementary information, and invites the Prosecutor to file a new request pursuant to article 19(3) of the Statute. This new request should be made of one single document of no more than 110 pages. If the Prosecutor still wishes to refer to the public documents she has first annexed to her Supplementary information,¹⁵ she can still do so by referring to them in her new request, but without exceeding the set limit of 110 pages. In such a case, she would also have to add those references in a table of authorities similar to the one she annexed to her Request pursuant to article 19(3) of the Statute.¹⁶ The Chamber notes that the present decision is purely procedural, and that if the Prosecutor renews her request, the Chamber will then deal with its merits.

¹³ Request for an extension of the page limit, paras 2, 5-6.

¹⁴ Request for an extension of the page limit, para. 6 referring to ICC-RoC46(3)-01/18-37.

¹⁵ See ICC-01/18-10-AnxA and ICC-01/18-10-AnxB.

¹⁶ See ICC-01/18-9-AnxA.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request for an extension of the page limit;

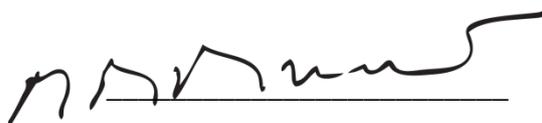
REJECTS *in limine* the Request pursuant to article 19(3) of the Statute and all related documents, including the Supplementary information, and invites the Prosecutor to file a new request of no more than 110 pages in accordance with paragraph 13 of this decision;

INTRUCTS the Registrar to strike from the record of the situation and withdraw from the Court's website the Prosecutor's Request pursuant to article 19(3) of the Statute (ICC-01/18-9), its annex (ICC-01/18-9-AnxA), and all related documents, which are the Prosecutor's Supplementary information (ICC-01/18-10) and its two annexes (ICC-01/18-10-AnxA and ICC-01/18-10-AnxB).

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



Judge Péter Kovács
Presiding Judge



Judge Marc Perrin de Brichambaut



Judge Reine Alapini-Gansou

Dated this Tuesday, 21 January 2020.

At The Hague, the Netherlands.