

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

*No.: ICC-01/18*

*Date: 13 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**

**Application for leave to file written observations  
by the Federal Republic of Germany**

Document 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 the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**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

The competent authorities of the  
State of Israel

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Philipp Ambach

**Other**

## I. Application for Leave

1. By order of 28 January 2020, this Pre-Trial Chamber invited States wishing to provide written observations on the Prosecutor's Request of 22 January 2020 for a ruling on the Court's territorial jurisdiction in Palestine to submit applications for leave to file such observations. In this context, the Chamber noted "the complexity and novelty of the Prosecutor's Request" and thus considered it "desirable" to extend such an invitation, pursuant to rule 103 of the Rules and Regulations of the Court.
2. Germany, as a State Party to the Rome Statute, is a staunch supporter of the International Criminal Court and its organs, and a leader in the fight against impunity.
3. Germany shares the Prosecutor's view that the Court's jurisdictional regime is a "cornerstone of the Rome Statute" and that any investigation should proceed on a solid jurisdictional basis.
4. It is against this background that Germany wishes to apply for leave to file written observations on the question of jurisdiction set forth in paragraph 220 of the Prosecutor's Request. As requested by the Chamber, this application contains a summary of the observations that would be submitted if leave were to be granted.

## II. Summary of Observations

5. The scope of the Court's territorial jurisdiction pursuant to Article 12 of the Rome Statute does not extend to the occupied Palestinian territories ("Palestine").

### *Palestine's "Accession" to the Rome Statute*

6. In order for the Court to exercise jurisdiction under Article 12 of the Rome Statute in the occupied Palestinian territories, it does not suffice to refer to Palestine's "accession" to the Rome Statute without assessing in a conclusive manner whether Palestine is a State under international law.
7. This is even more so as the Secretary General of the United Nations, by circulating Palestine's instrument of "accession", did not rule that Palestine had become a party to the Rome Statute, nor did he make any other determination with respect to any legal issues raised by the instrument. Germany holds the view that only States can become a party to the Rome Statute and does not include "Palestine" on the list of State Parties published in the Federal Gazette (Bundesgesetzblatt).

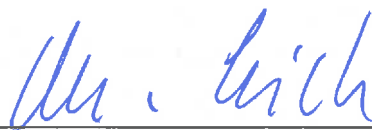
### *Palestinian Statehood*

8. There is no State "for the sole purposes of the Rome Statute" that would be different from a State under the relevant norms of international law. The existence of a State that fulfills all the criteria under general international law is a prerequisite for the Court to exercise its jurisdiction under Article 12 of the Rome Statute.

9. It is Germany's long-standing and consistent position to support a negotiated two-state solution and hence the goal of an independent, democratic, sovereign and viable State of Palestine. To this end, Germany aims at preserving the conditions allowing for a two-state solution. Germany is one of the most important donors to the Palestinians, linking development cooperation and stabilization funds to the build-up of state institutions. However, it is Germany's consistent position that a Palestinian State, and the determination of territorial boundaries, can be achieved only through direct negotiations between Israelis and Palestinians. The Court would be ill-suited for determination of these issues.
10. United Nations General Assembly Resolution 67/19 (29 November 2012) did not and could not determine whether Palestine is a State under international law. Resolution 67/19 was limited to a procedural upgrade of the Palestinian representation in the United Nations alone. Many States, including Germany, made this clear on adoption of this resolution.
11. Germany also made its position clear with regard to the Palestinian participation in the work of the Assembly of States Parties. In a statement made in the Bureau of the Assembly of States Parties on 8 November 2016, Germany stated: "Consistent with our reiterated positions in other international fora we hold the view that the designation "State of Palestine" as used in some of these reports shall not be construed as recognition of a State of Palestine and is without prejudice to individual positions of State Parties on this issue."

*Delegation of Territorial Jurisdiction*

12. Article 12 of the Rome Statute presupposes that there is a “State” that has the ability under international law to delegate territorial jurisdiction to the Court with respect to the relevant cases. Palestine does not possess nor did it ever possess the jurisdiction that it would need to delegate to the Court in order for the Court to exercise jurisdiction.



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Dr. Christophe Eick  
Legal Adviser

Berlin, 13 February 2020