

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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*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

***Amicus Curiae* Submission by Intellectum Scientific Society**

Source: Intellectum Scientific Society (hereinafter Intellectum)

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

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor

Mr James Stewart, Deputy Prosecutor

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**

**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

Registrar

Mr Peter Lewis, Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach, Chief

Other

I. INTRODUCTION

1. In 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, in which it is verbatim stated that the ICC Prosecutor "therefore requested from Pre-Trial Chamber I a jurisdictional ruling on the scope of the territorial jurisdiction of the International Criminal Court ("ICC" or the "Court") under article 12(2)(a) of the Rome Statute in Palestine".

2. More specifically, the ICC Prosecutor has "sought confirmation that the "territory" over which the Court may exercise its jurisdiction, and which [she] may subject to investigation, comprises the West Bank, including East Jerusalem, and Gaza."

3. Moreover, in the above Statement it is duly noted that "Such determination is made strictly for the purposes of determining the Court's ability to exercise its jurisdiction and the scope of such jurisdiction under the Statute".

4. Additionally, pursuant to paragraph 17 of the Pre-Trial Chamber I "Order setting the procedure and the schedule for the submission of observations" it is noted that "other States, organisations and/or persons may submit applications for leave to file written observations by no later than 14 February 2020. Such applications shall: (i) not exceed 10 pages; (ii) provide a summary of the observations that would be submitted if leave were to be granted; and (iii) contain details on the affiliation and expertise of organisations and persons applying for leave to file observations. Without any prejudice to the decision of the Chamber in relation to such applications, the Chamber gives notice to potential *amici curiae* that any observations will have to be submitted by no later than 16 March 2020".

II. SUMMARY OF OBSERVATIONS

5. Indeed, pursuant to Art. 19 (3) of the Rome Statute of the International Criminal Court (hereinafter ICCRSt) "The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to

jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court. jurisdictional ruling on the scope of the territorial jurisdiction of the International Criminal Court ("ICC" or the "Court") under article 12(2)(a) of the Rome Statute in Palestine”.

6. Admittedly the issue of the territorial jurisdiction of the Court regarding Palestine is an issue of critical importance which has aroused much academic and public discussion especially after 27 December 2008, when Israel launched a large-scale military attack on the Gaza Strip under the code name Operation ‘Cast Lead’ during which its air force, navy and land forces participated.¹

7. Hence, the crucial question became whether its territory could fall under the ICC’s territorial jurisdiction and, if so, from which point in time. It would suffice at this point to note that according to the ICC’s official press release of 5 January 2015, Palestine submitted a declaration on 1 January 2015 under Article 12(3) ICCRSt, stating its acceptance of the ICC’s ad hoc jurisdiction over crimes committed after 13 June 2014. This declaration was accepted by the ICC Registry.

8. Furthermore, only a day later, on 2 January 2015, Palestine acceded to the ICCRSt using a different instrument, as noted in the ICC’s official press release of 7 January 2015. As a result the Prosecutor of the ICC opened a preliminary investigation into the situation in Palestine; members of Israel’s government threatened to “liquidate the ICC” and cut its funding.

9. As Daphne Richmond-Barak points out the initial legal “paradox” of Palestine’s two declarations has a particularly interesting legal explanation.² The logical and legally correct explanation can be found in Article 11(2) ICCRSt where it is stipulated that “if a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed

¹ Victor Tsilonis, [The Jurisdiction of the International Criminal Court. \(Springer\) \(Switzerland, 2019\). ISBN 978-3-030-21525-5](#), pp. 46-63.

² Daphné Richemond-Barak (2015) “Doubly Duty at the ICC” EJIL Analysis < <https://www.ejiltalk.org/double-duty-at-the-icc/> > (last accessed 7 January 2019).

10. Nevertheless, it also results from the aforementioned analysis that the actual issues surrounding the ICC jurisdiction in Palestine was not until very recently the territorial jurisdiction (*ratione loci*) but rather its temporal jurisdiction (jurisdiction *ratione temporis*).

11. Michail Vagias thoroughly examines this difficult topic in his PhD thesis and subsequent book, distinguishing three main types of cases: (1) both the State with the occupying force and the State with the occupied territory are parties to the ICCRSt; (2) the State with the occupied territory is party to the ICCRSt, but the State with the occupying force is not (3) the State with the occupying force is party to the ICCRSt, but the State with the occupied territory is not.

12. Regarding occupied territories, no limitations or special conditions are provided for in the ICCRSt that would limit the exercise of the ICC's jurisdiction exclusively in the territories of state parties over which these exercise effective control. Therefore, the ICC's jurisdiction extends to the recognised territory of a state party, not exercise effective control upon this other State. Consequently, the ICCRSt's ratification by Cyprus, for example, renders the ICC competent *ratione loci* in Northern Cyprus, which has been illegally occupied by Turkey since 1974. Therefore, were crimes against humanity to be committed by Islamist terrorists against American tourists in Northern Cyprus, the ICC could exercise its jurisdiction, even though the USA has not ratified the ICCRSt (that is, despite the lack of *ratione personae* jurisdiction), pursuant to the fact that Cyprus is a state party to the ICCRSt and the ICC has territorial jurisdiction despite the lack of effective control over the territory of Northern Cyprus by the Republic of Cyprus ever since 1974.

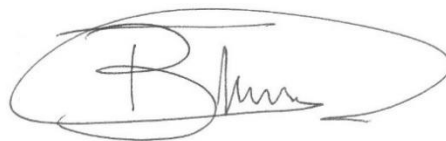
13. Consequently, the amicus curiae brief which Intellectum intends to submit if a leave is granted, will endorse the view that the territorial jurisdiction of Palestine should be taken for granted and that Pre-Trial Chamber I should respond affirmatively in all aspect of the ICC Prosecutor question posed pursuant to Art. 19(3) ICCRSt.

III. DETAILS ON THE AFFILIATION AND EXPERTISE OF ORGANISATIONS AND PERSONS

14. Regarding the non-profit, non-governmental organization Intellectum Scientific Society (hereinafter Intellectum) the following should be summarily noted: Intellectum NGO is a think-tank, non-profit organization and publisher in Greece with a particular focus on international human rights and the situation in Palestine; for this reason it has published since 2009 significant articles and interviews with eminent persons like professor William Schabas about Palestine. Moreover, [Intellectum](#) publishes an annual interdisciplinary journal and is an official member of the prestigious [Eurozine network](#), in which most of the best European journals on thought and culture participate.

15. Dr Victor Tsilonis is the chairman of Intellectum NGO since its official foundation in Thessaloniki, Greece and the legal representative of the organization. He is also the principal barrister at the [Newlaw](#) law firm, [Joint Vice-President for Victims of the International Criminal Court Bar Association \(ICCBA\)](#), Chairman of the ICCBA Professional Standards Committee and Alternate Member of ICC Disciplinary Board (2018-2022). Finally yet importantly he is a leading expert in jurisdictional issues of the International Criminal Court and is the author of the recently published book: [The Jurisdiction of the International Criminal Court, \(Springer, 2019\), ISBN 978-3-030-21525-5](#).

Dr Victor Tsilonis, **Lead Counsel for Intellectum Scientific Society**

A handwritten signature in black ink, enclosed within a large, hand-drawn oval. The signature appears to be 'V. Tsilonis'.

Dated this 13th day of February 2020

At Thessaloniki, Greece