

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

*No.: ICC-01/18*

*Date: 14 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**

**Request pursuant to rule 103 of the Rules of Procedure and Evidence for leave to  
submit observations as amicus curiae**

**Source: Republic of Austria**

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**

Republic of Austria (Applicant)

**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**

1. The Republic of Austria has always been a staunch supporter of international criminal justice and the fight against impunity in order to hold the perpetrators of the most serious crimes of international concern accountable. As a founding member of the International Criminal Court (ICC), Austria had deposited its instrument of ratification to the Rome Statute of the International Criminal Court on 28 December 2000. Since the establishment of the ICC, Austria has always advocated for the Court's central role in the international criminal justice system and supported its independence and impartiality. Austria strongly rejects any attempt to politicise the Court, thereby undermining its judicial integrity.

2. Austria has taken note of the Prosecutor's request of 22 January 2020 pursuant to Article 19 (3) of the Statute for a ruling on the Court's territorial jurisdiction in Palestine and of the order of Pre-Trial Chamber 1 of 28 January 2020 (ICC-01/18) to invite States, organisations and/or persons to submit observations on the question of jurisdiction set forth in paragraph 220 of the Prosecutor's request. Following this invitation by the Court, the Republic of Austria hereby applies for leave to file written observations as *amicus curiae* in accordance with Rule 103 of the Rules of Procedure and Evidence of the Court.

3. The Republic of Austria has not recognised Palestine as a sovereign State and has not established diplomatic relations with Palestine at the bilateral level. Such recognition is contingent upon the achievement of a negotiated two-state solution, in which the State of Israel should be able to exist in peace within recognised and permanently secured borders alongside an independent, democratic and viable Palestinian State.

4. The fact that Austria had voted in favour of Palestine's membership in UNESCO in 2011 as well as Palestine's status as a non-member observer state in the UN General

Assembly in 2012 and that Austria had not formally objected to the membership of Palestine in other multilateral agreements and fora must not be interpreted as bilateral recognition of Palestine as a sovereign State by Austria.

5. Accordingly, while Austria has not objected to the accession of Palestine to the Statute, which entered into force on 1 April 2015, such accession does not automatically mean that Palestine would be recognised by Austria and all other States Parties of the Statute as a sovereign State and that the Court has jurisdiction in the Palestine situation. In addition, even if there was jurisdiction, the concrete scope of territorial jurisdiction would be doubtful.

6. The Prosecutor has requested 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.” When dealing with this request, the Court must carefully examine and determine the scope of territorial jurisdiction strictly in accordance with the Statute and international law.

*Helmut Tichy*

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Ambassador Helmut Tichy, Director General for Legal Affairs, Austrian Federal  
Ministry for European and International Affairs  
on behalf of the  
Republic of Austria

14 February 2020

At Vienna, Austria