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ICC Pre-Trial Chamber I issues its decision on the Prosecutor's request related to territorial jurisdiction over Palestine

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Today, 5 February 2021, Pre-Trial Chamber I of the International Criminal Court ("ICC" or "Court") decided, by majority, that the Court's territorial jurisdiction in the Situation in Palestine, a State party to the ICC Rome Statute, extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem.

On 20 December 2019, the ICC Prosecutor announced the [conclusion of the preliminary examination](#) of the Situation in Palestine. The Prosecutor determined that all the statutory criteria under the Rome Statute for the opening of an investigation have been met. A decision on opening the investigation in this situation is in the remit of the ICC Prosecutor. On 22 January 2020, the Prosecutor seized the Chamber under article 19(3) of the Rome Statute, requesting a ruling only on the scope of the Court's territorial jurisdiction in the [Situation in the State of Palestine](#).

In today's decision, Pre-Trial Chamber I recalled that the ICC is not constitutionally competent to determine matters of statehood that would bind the international community. By ruling on the territorial scope of its jurisdiction, the Chamber is neither adjudicating a border dispute under international law nor prejudging the question of any future borders. The Chamber's ruling is for the sole purpose of defining the Court's territorial jurisdiction.

Pre-Trial Chamber I examined the [Prosecutor's request](#) as well as the [submissions](#) of other States, organisations and scholars who participated as *amicus curiae* and groups of victims. The Chamber held that, in accordance with the ordinary meaning given to its terms in their context and in the light of the object and purpose of the Statute, the reference to '[t]he State on the territory of which the conduct in question occurred' in article 12(2)(a) of the Statute must be interpreted as a reference to a State Party to the Rome Statute. The Chamber found that, regardless of its status under general international law, Palestine's accession to the Statute followed the correct and ordinary procedure and that the Chamber has no authority to challenge and review the outcome of the accession procedure conducted by the Assembly of States Parties. Palestine has thus agreed to subject itself to the terms of the ICC Rome Statute and has the right to be treated as any other State Party for the matters related to the implementation of the Statute.

Pre-Trial Chamber I noted that, among similarly worded resolutions, the General Assembly of the United Nations in [Resolution 67/19](#) "[reaffirmed] the right of the Palestinian people to self-determination and to independence in their State of Palestine on the *Palestinian territory occupied since 1967*". On this basis, the majority, composed of Judge Reine Adélaïde Sophie Alapini-Gansou and Judge Marc Perrin de Brichambaut, found that the Court's territorial jurisdiction in the *Situation in Palestine* extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem.

In addition, the Chamber found, by majority, that the arguments regarding the Oslo Agreements, and its clauses limiting the scope of Palestinian jurisdiction, are not pertinent to the resolution of the issue of the Court's territorial jurisdiction in Palestine. Such matters and other further questions on jurisdiction may be examined when and if the Prosecutor submits an application for the issuance of a warrant of arrest or summons to appear.

Judge Marc Perrin de Brichambaut appended a partly separate opinion on the reasons for which article 19(3) of the Statute is applicable in the present situation. Judge Péter Kovács, Presiding Judge, appended a partly dissenting opinion, in which he disagrees on the fact that 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 in Palestine* extends – in a *quasi*-automatic manner and without any restrictions – to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem.

<https://www.icc-cpi.int/Pages/item.aspx?name=pr1566>