

**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

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

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