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

December 20, 2019

The International Criminal Court

<https://www.icc-cpi.int/Pages/item.aspx?name=20191220-otp-statement-palestine>

Today, I announce that following a thorough, independent and objective assessment of all reliable information available to my Office, the preliminary examination into the Situation in Palestine has concluded with the determination that all the statutory criteria under the Rome Statute for the opening of an investigation have been met.

I am satisfied that there is a reasonable basis to proceed with an investigation into the situation in Palestine, pursuant to article 53(1) of the Statute. In brief, I am satisfied that (i) war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip ("Gaza") ([for specifics, see paras. 94-96](https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/18-9)); (ii) potential cases arising from the situation would be admissible; and (iii) there are no substantial reasons to believe that an investigation would not serve the interests of justice.

As there has been a referral from the State of Palestine, there is no requirement to seek Pre-Trial Chamber's authorisation before proceeding to open an investigation, and I do not seek to do so.

However, given the unique and highly contested legal and factual issues attaching to this situation, namely, the territory within which the investigation may be conducted, I deemed it necessary to rely on article 19(3) of the Statute to resolve this specific issue.

Earlier today, I 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.

Specifically, I have sought confirmation that the "territory" over which the Court may exercise its jurisdiction, and which I may subject to investigation, comprises the West Bank, including East Jerusalem, and Gaza. 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.

As I have observed in my submissions before the Chamber, determining where I can investigate in the unique circumstances of this situation should be resolved before I commence an investigation, and not settled only later by judges after my investigations are completed. This foundational question should be decided now, and as swiftly as possible in the interests of victims and affected communities; potential witnesses and their related protection needs and obligations as well as the conduct of the investigations and the efficiency of the judicial proceedings, not to mention providing clarity for the States concerned. As such, as a prosecuting office, we believe this is the responsible step to take in the circumstances of this situation.

By seeking this ruling, I have invited the Chamber to rule expeditiously, while also permitting victims, relevant States, and others to participate in these proceedings, as appropriate. By engaging in an open and transparent manner in obtaining a ruling on this important issue, I hope that the process would not only assist the Chamber in its determination, but also endow its decision, and my ensuing investigation, with greater clarity and reinforced legitimacy.

It is necessary for this specific matter before the Chamber to be resolved without undue delay so that my Office can take the appropriate next steps accordingly.