



Mr James Stewart
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Meeting of the Hague Working Group

Remarks on Point 5) of the Agenda

Checked against delivery

Thank you, Ambassador, for allowing me to speak.

Let me also congratulate you on your election as the new Vice-President of the Assembly of States Parties and the Hague Working Group Chair.

I just wanted a few moments to brief those in attendance on the matter of Palestine and the need for a State Party support for the International Criminal Court (“ICC” or the “Court”) when facing threats or attacks.

Yesterday, as you know, the Prosecutor issued a statement respecting an investigation of the Situation in Palestine.

In making the fact of the investigation public, we hope to allow everyone to get used to it, and to calm anxieties, concerns and expectations.

We also felt we could not let mounting attacks against the Court and the Prosecutor on the part of some or, for that matter, growing concerns on the part of others, appear to compromise in any way the independence or impartiality of her Office.

The fact of the investigation is there and we need to deal with it in a calm and professional manner.

The Prosecutor’s statement is brief, but it covers a lot of ground.

It explains why the Office of the Prosecutor (“OTP”) was obliged to act under the Rome Statute.

It recognises that we will have to set priorities concerning this investigation in due time, because of the realities we face:

- the operational challenges of the pandemic,
- our limited resources, and
- the heavy workload we already bear.

We will carry out our responsibilities under the Rome Statute – but in a duly deliberate and pragmatic way.

In any event, the first step has to be notification of our investigation to States Parties or other States having jurisdiction, in case they have a legitimate reason to request us to defer our investigation to one they are doing.

The statement also reminds everyone about the OTP’s obligation to investigate to establish the truth, and that means investigating incriminating and exonerating circumstances equally.

It also explains why we felt, as a responsible prosecuting Office, that we should get a judicial ruling on the question of the territorial scope of the Court’s jurisdiction in the Palestine Situation.

The Pre-Trial Chamber heard all sides of the jurisdictional argument.

The judges, by a majority, ruled that the Court could exercise its criminal jurisdiction in the Situation in Palestine and that this jurisdiction extends to Gaza and the West Bank including East Jerusalem.

The majority judges deferred, to later proceedings, consideration of any further arguments that might be raised on questions of jurisdiction.

It is important to remind ourselves, however, about what the judges did not do:

- They made no findings about the alleged crimes, only saying we had competence to investigate them;
- They did not find that Palestine was a State according to public international law;
- They did not adjudicate any border dispute or prejudge the question of what future borders might be.

Such matters have nothing to do with the ICC – they are left to bilateral discussions between the Palestinian and Israeli authorities in the context of a negotiated agreement.

The judges merely decided the question we placed before them.

The Chamber did, however, rule unanimously that Palestine was a State Party to the Rome Statute.

And the majority ruled that Palestine's referral of the Situation to the OTP obliged the OTP to act, once it determined, as it did here, that the underlying conditions prescribed by the Rome Statute were met. Even so, we have left open questions of complementarity for continuing assessment.

The Prosecutor's statement covers other points too but I will not go into detail now as it can be read by all.

We hope it will restore a certain measure of reason and balance to the discussion of what the Chamber ruled and what we, as an OTP, will do.

We are carrying out the responsibility that the framers of the Rome Statute entrusted to us, and this we are doing independently, impartially and objectively, without fear or favour, in a non-partisan way, and with no other agenda.

We are also working within the practical constraints that our current material circumstances place upon us – and, as always, within the law.

We welcome engagement with Palestine and Israel, in the interests of achieving a measure of justice for both Palestinian and Israeli victims of alleged Rome Statute crimes.

We also count on the support and cooperation of States Parties to the Rome Statute.

The statement respecting the investigation, we know, will provoke extremely hostile reactions in some quarters, and, even if you may not be entirely in agreement with the Court's exercise of jurisdiction in this Situation, it is vitally important for you to defend the Court against attack.

Our concern has to be for the victims of Rome Statute crimes, whoever they are and whoever the alleged perpetrators may be.

In the current circumstances, we need, more than ever before, your support and your willingness to stand up against attacks against this Court and its officials – this Court which you, as States Parties, created to put international crimes firmly beyond the pale.

If there is time and you have questions, I will do my best to answer them.

Thank you for your attention. | OTP