

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**

Date: **4 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 with Public Annex

Request for Leave to File Submissions Pursuant to Rule 103

Source: Professor John Quigley

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor

Mr James Stewart, Deputy Prosecutor

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**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis, Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach, Chief

Other

I. INTRODUCTION

1. On the basis of the Order setting the procedure and the schedule for the submission of observations,¹ I, John Quigley, hereby ask leave to submit written observations, in my name alone, on the Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine.²

II. BACKGROUND AND EXPERTISE

2. I am Professor Emeritus at the Moritz College of Law of The Ohio State University in Columbus, Ohio, USA. I have been a member of the faculty of the College since 1969. I teach international criminal law and international human rights law, as well as a seminar course titled Middle East Conflict. I have published extensively in these areas of the law. A list of my publications can be accessed via Moritz College of Law, "Faculty Publications": <https://moritzlaw.osu.edu/faculty/publications>. A list of my publications specific to the Arab-Israeli conflict is appended to this filing.

3. I bring to bear my research on Palestine's status and territory. I am author of the only book-length analysis of Palestine's status under international law: *The Statehood of Palestine: International Law in the Middle East Conflict* (Cambridge University Press, 2010). That book traces Palestine's status from the time of the Peace Treaty of Lausanne (1923) and recounts international practice confirming Palestine's status as a state.

¹ See Order setting the procedure and the schedule for the submission of observations, ICC-01/18-14, 28 January 2020 ("Order").

² See Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, ICC-01/18-12, 22 January 2020 ("Request").

4. I bring to bear practical experience on the issue as well. I served as external legal consultant to the Negotiation Affairs Department of the Palestine Liberation Organization when Palestine submitted an article 12(3) declaration in 2009.

5. On 20 October 2010, I was honored to participate at the invitation of the Prosecutor in the NGO Roundtable held at the Court's headquarters as the Prosecutor was considering the validity of Palestine's article 12(3) declaration. The topic I addressed at the NGO Roundtable was Palestine's statehood.

III. SUMMARY OF PROPOSED SUBMISSIONS

6. I propose to make submissions in support of the Prosecutor's conclusion that Palestine is a state. I plan to address four points that appear in the Prosecutor's Request but that, in my estimation, require elaboration to appreciate how strongly they support the Prosecutor's conclusion on Palestine's statehood. As summarized further below, the four points are: the significance of General Assembly Resolution 67/19 of 29 November 2012; the status of Palestine during the era of the mandate issued to Great Britain by the League of Nations; the relevance of the Convention on the Rights and Duties of States (Montevideo, 1933) to a determination of Palestine's status; the relevance of the current split in administration between two territorial sectors of Palestine.

7. First, I will explain how one indicium of Palestine's statehood is General Assembly Resolution 67/19 of 29 November 2012. Resolution 67/19 in one respect had future applicability only, namely, that Palestine would henceforth enjoy "observer State status in the United Nations." However, as regards Palestine's status as a state, Resolution 67/19 was not prospective. It did not convert into a state an entity that was not previously a state. Rather, the decision to accord observer State status was premised on Palestine already being a state.

8. Second, I intend to show how although Pre-Trial Chamber I (“Chamber”) does not need to determine a starting date for Palestine statehood, the longevity of Palestine’s status as a state reinforces the Prosecutor’s conclusion that it is presently a state. Palestine statehood dates from the Peace Treaty of Lausanne of 1923, which created states of Palestine, Syria, and Iraq out of the territory of the former Turkish Empire. During the ensuing period of a British mandate, Palestine was accepted as a state in the international community. Its status was considered comparable to that of a protectorate, namely, a state some of whose affairs are handled by an outside power. Palestine had its own citizenship and entered into its own treaties with other states. Palestine statehood was not extinguished by the events of 1948, nor by the events of 1967. Palestine statehood was re-confirmed in 1988 with the declaration of the Palestine Liberation Organization as its government.

9. Third, I will explain that the Prosecutor appropriately declined to insist on the so-called Montevideo criteria in assessing Palestine’s status as a state. Article 1 of the Convention on the Rights and Duties of States (Montevideo, 1933) is not a template for statehood. Its listing of features that one normally finds in a state is descriptive rather than prescriptive. It was not the aim of the Montevideo Convention to write a definition of statehood, as is apparent when Article 1 is read in the context of the Convention in its entirety. Article 1 was a preface to the Montevideo Convention’s essential provisions, which were those requiring acceptance of a state and protecting it from outside political or military intervention. The fact that Article 1 was not intended as a listing of prerequisites for statehood is indicated by the fact that it did not account for the circumstance of belligerent occupation, a circumstance in which a state exists despite having no control over territory or population. Had the Montevideo Convention been intended as a document to define statehood, it would have had to say that control is not a prerequisite when a state’s territory is under belligerent occupation. Most of the states parties to the Montevideo Convention were already parties to the Laws and Customs of War on Land (Hague Convention

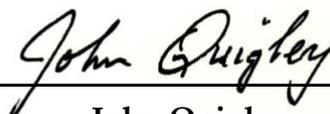
IV) of 1907 and its accompanying Regulations. The Regulations govern belligerent occupation and indicate that belligerent occupation does not negate the statehood of the occupied state. Had the Montevideo Convention been written as a treaty to define statehood, it would have included this situation.

10. Finally, I intend to show how the situation of Gaza does not alter Palestine's status as state. The Prosecutor notes that the Gaza sector of Palestine and the West Bank sector have been separately administered since 2007. She nonetheless concludes, appropriately, that Palestine is a state. A split in administration inside a state does not impair an entity's status as a state. In the case of Palestine, external affairs are handled in a unified fashion. There is no assertion of separate statehood for the Gaza sector.

11. I anticipate requiring no more than 30 pages to develop the above submissions.

IV. CONCLUSION

12. For the foregoing reasons, I request that the Chamber grant me leave to make the proposed submissions in accordance with the Chamber's Order and rule 103 of the Court's Rules of Procedure and Evidence. I believe these submissions will assist this Chamber in its deliberation of the Prosecution's Request.



John Quigley

Dated this 4th day of February 2020
At Columbus, Ohio