

**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 Document

**Request for leave to submit amicus curiae observations
pursuant to rule 103 of the Rules of Procedure and Evidence**

Source: Palestinian Bar Association

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

Dr. Mutaz M. Qafisheh

REGISTRY

Associate Professor of International Law
at Hebron University, Palestine

Partner, Attorney-at-Law at Atlas Law
Firm, Palestine

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. In reference to ICC's Pre-Trial Chamber Order No. ICC-01/18-14 of 28 January 2020, and on behalf of the Palestinian Bar Association (PBA), we request leave to submit written observations, as *amicus curiae*, on the Prosecutor's Request with regard to the ICC's territorial jurisdiction pertaining to the State of Palestine. We would appreciate if our request is approved, so as we may submit our written observations to the Chamber before 16 March 2020.
2. Founded in 1997, the PBA represents over ten-thousand registered lawyers, amongst whom are experts in various fields of criminal law and procedure as well as international law, including human rights law, international humanitarian law and international criminal law.
3. The PBA is of the view that the ICC should have jurisdiction to decide on the Situation in Palestine. Upon approving this request for leave, the PBA will submit detailed observations to illustrate the basis on which the ICC should possess territorial jurisdiction to adjudicate on acts committed in the territory of the State of Palestine, which consists of the West Bank, including East Jerusalem, and Gaza Strip in accordance with international law.
4. As the ICC Prosecutor seeks confirmation on the delimitation of the territory for the purpose of the Court's jurisdiction, our observations will present legal arguments that determine the territory of the State of Palestine. The observations will illustrate that the territory is well-defined under international law, beyond (and in addition to) United Nations resolutions. We will start by exploring the borders of Palestine with Jordan and Egypt as drawn before May 1948. Next, our observations will discuss the boundaries that have been demarked with Israel after 1948 and how this demarcation has acquired *de jure* status. We will furthermore demonstrate, using further legal foundations (Colonial Law, Mandates Law, Law of State Succession, Law of Statehood Recognition, Law of Negotiation, Citizenship Law and Treaty Law) that the territory of Palestine has been manifested by overwhelming State practice that reflects customary international law over which the ICC would be competent to establish its *ratione loci* jurisdiction within a fixed territory.

5. The observations will then show how the boundaries between the State of Palestine and the State of Israel have become well-defined for the purposes of the ICC territorial jurisdiction. The West Bank boundaries, including those of East Jerusalem, have arisen from the line that was drawn by the Armistice Agreement that both Israel and Jordan concluded on 3 April 1949, commonly known as the 'Green Line'. The borders between Palestine and Israel in relation to the Gaza Strip are identical to the line demarcated by the Egyptian-Israeli Armistice Agreement signed on 24 February 1949. Although initially drawn on *de facto* basis for military considerations in the aftermath of the 1947-1949 war, these lines have been converted, by the passage of time coupled with consistent State practice, into *de jure* frontiers. The demarcation of Palestine's boundaries is established both in fact and in law, along with ample evidence that acknowledges the State's spatial scope within the 1967-occupied territory. Thus, the ICC may exercise its *ratione loci* jurisdiction within these limits, keeping in mind that the occupation of State's territory does not alter its legal status in accordance with general rules of international law.
6. Accepting the view that the ICC may refrain from adjudication in Palestine owing to the claim pertaining to its unfixed borders will lead to a far-reaching consequence: jeopardising the Court's competence in relation to other ICC State Parties with disputed frontiers, such as Afghanistan, Cyprus, Serbia and South Korea. It may, too, affect the Court's jurisdiction regarding non-ICC parties facing similar border issues after potentially joining the Rome Statute in the future, including India, Pakistan, Russia, Turkey and Sudan.
7. As a judicial body, it may not be the task of the ICC to resolve questions relating to disputed sovereignties that normally States settle by treaties, customs or decisions of competent international organizations and tribunals. What the Court needs to do is to merely exercise its jurisdiction based on the Rome Statute within the territories that have been already defined under international law.

8. We will conclude, in our observations, that by exercising *ratione loci* jurisdiction in the 1967-occupied territory of the State of Palestine, the ICC will be *applying* international law, not *creating* it, for its jurisdictional purposes. This is, indeed, the normal function of courts and the ICC is no exception.
9. Please note that the PBA designates Dr Mutaz M. Qafisheh, Associate Professor of International Law at Hebron University and Partner Attorney-at-Law at Atlas Law Firm, as a focal point for the submission of our observations. Dr. Qafisheh holds PhD in international law from the Graduate Institute of International and Development Studies in Geneva. He possesses a long standing experience in international human rights law as he previously worked, among other functions, as Human Rights Officer at the United Nations in Geneva and Beirut. He wrote numerous publications, including on international criminal law, published by well-known institutions, including in Oxford, Cambridge, London, The Hague and New York. Dr Qafisheh is a registered member of the PBA since 2000 as a practicing lawyer.

Respectfully submitted,



Mr Jawad Obeidat
President, Palestinian Bar Association

Dated this 14 February 2020

At Ramallah, State of Palestine