

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **10 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 for Leave to File Submissions Pursuant to Rule 103 of the Rules of
Procedure and Evidence**

Source: Professor Hatem Bazian

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. I, Dr. Hatem Bazian, request permission to make submissions as an *amicus curiae* party in accordance with rule 103 of the Rules of Procedure and Evidence and Pre-Trial Chamber I's 28 January 2020 "Order setting the procedure and the schedule for the submission of observations". As detailed below, my proposed submissions go to the question of Palestinian statehood currently before this Chamber. It is a matter which I have significant expertise to comment on. I believe my proposed submissions will assist this Chamber in its deliberations over the Prosecutor's 22 January 2020 request for a ruling on the Court's territorial jurisdiction.

II. SUMMARY OF PROPOSED SUBMISSIONS

2. If granted leave, I intend to argue how the Palestinian people and Palestine, the land they inhabit, have been subject to long and arduous series of international violations of legal and indigenous sovereignty rights dating back to the end of World War I. The issuing of the Balfour Declaration in 1917, and the granting of the Mandate Authority to Great Britain were violations of international law and set in motion over 70 years of denial of Palestinians and Palestine sovereignty rights and full expression of self-determination in their ancestral homeland.

3. The International Criminal Court ("ICC") is not being asked to decide on all aspects of the conflict and contestation related to Palestine and Palestinians rights. However, the ICC does have jurisdiction over the Occupied Palestinian Territory, that is the West Bank, including East Jerusalem, and Gaza, which have been subject to persistent violations of international law by Israel. Structural denial of Palestinian sovereignty by the Great Powers from the past, followed by Israel's ethnic cleansing, confiscation of land and continued expansion of settlements as well as non-stop violence must be ended by this Court through affirming Palestine's statehood standing. Indeed, the term "Occupied Territories, East Jerusalem and Gaza" must be

interpreted to mean that Palestinians' rights and Palestine's sovereignty are violated by the occupying power, Israel, and the ICC should uphold and defend the rights of the occupied to represent him/herself against ongoing violations. If freedom, dignity and justice that are rooted in the Universal Declaration of Human Rights and the United Nation Charter are not the basis of approaching the subject of the Occupied Territories, East Jerusalem and Gaza then the efficacy of these international conventions become meaningless.

4. Certainly, the United Nations adoption on 13 September 13 2007, of the Declaration on the Rights of Indigenous People ("UNDRIP") is a long time coming and the rights of the Palestinians should be examined within its scope. In this context, article 46 of the UNDRIP declares that "[i]ndigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights(4) and international human rights law." The power and efficacy of the UNDRIP is meaningless as far as human rights and fundamental freedoms are concerned if violations of these rights are carried out and denial of recourse for indigenous populations—the Palestinians are an indigenous population—is restricted due to the denial of standing as a state. It is my firm opinion that the ICC would be on the right side of history if it takes the just and badly needed step of recognizing Palestine standing as a state that is able to resort to the body of international law that can protect the lives of Palestinians who are living under occupation. Occupation is an exception and does not negate the sovereignty and fundamental indigenous people's rights, the Palestinians.

III. EXPERTISE IN SUBJECT-MATTER

5. I have expertise in the proposed submissions. I am a lecturer in the Departments of Near Eastern and Asian American and Asian Diaspora Studies at the

University of California, Berkeley. I also served as an adjunct professor of law at Berkeley Law School, where I taught courses on Islamic Law and Society, Islam in America: Communities and Institutions, De-Constructing Islamophobia and Othering of Islam, Religious Studies, and Middle Eastern Studies.

6. In 2009, I founded the Islamophobia Research and Documentation Project at the Center for Race and Gender at UC Berkeley, a research unit dedicated to the systematic study of Othering Islam and Muslims. In 2012, I launched the Islamophobia Studies Journal, which is published bi-annually through a collaborative effort between the Islamophobia Research and Documentation Project of the Center for Race and Gender at the University of California at Berkeley, the Arab and Muslim Ethnicities and Diasporas Initiative for the School of Ethnic Studies at San Francisco State University; the Center for Islamic Studies at the Graduate Theological Union, the International Centre for Muslim and non-Muslim Understanding at the University of South Australia, and Zaytuna College.

7. In addition, to my academic work, I am actively involved in other work involving American Muslims and the Palestinian community:

- I chair the national board of American Muslims for Palestine (“AMP”), which I co-founded in 2006. The organization’s stated mission is to “support the American public and media about issues related to Palestine and its rich cultural and historic heritage” and works to educate the American public about justice in Palestine from within American policy context and under human rights and international and American law, primarily the Fourth Geneva Conventions, the Universal Declaration of Human Rights, the Declaration on the Rights of the Child, the US Arms Export Control Act and the Foreign Assistance Act of 1961;

- I serve on the board of directors of the Muslim Legal Fund of America, a charity that funds legal work and programs to defend Muslims against injustice in American courtrooms, prisons, and communities;
- I sit on the steering committee of UC Berkeley's Religion, Politics and Globalization Program, whose professed mission is "to create an intellectual space where scholars from the humanities and social sciences can come together to share and deepen their understanding of the role of religion in world affairs";
- I am a co-founder and Professor of Islamic Law and Theology at Zaytuna College, the first Accredited Muslim Liberal Arts College in the United States.

8. Finally, I have published and commented extensively on the issue of Palestine and Palestinian statehood. My recent book, "Palestine ... it is something colonial", for example, I discuss Palestine's modern history around the settler colonial discourse to provide a framework for understanding the events that have unfolded since the late 19th century to the present. I offer a theoretical basis for approaching Palestine without falling into the pitfalls of an internationally supported "peace process", that one hand affirms the settler colonial rights, problematizes the colonized, and dispenses with the ramifications.

IV. CONCLUSION

9. For the above-mentioned reasons, I request leave to make the proposed submissions as an *amicus curiae* party.



Hatem Bazian

Dated this 10th day of February 2020
At Berkeley, California