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Pénale
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**International
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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

**Submission of the observations of League of Arab States relative to the Situation
in Palestine**

Source: League of Arab States

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

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I. INTRODUCTION

1. This filing is made on behalf of the League of Arab States (“LAS”) following its Request for Leave to Submit Observations with respect to the Situation in the State of Palestine to the Pre-Trial Chamber I (“Chamber”) on 14 February 2020.¹
2. Pursuant to Rule 103(1) of the Rules of Procedure and Evidence (the “Rules”) and the Decision on 20 February 2020 by the Chamber of the International Criminal Court (the “ICC” or “Court”), the LAS hereby submits its *amicus curiae* observations in relation to the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute” (the “Request”), as set forth in paragraph 220 of the Request.²
3. The LAS is a regional organization based in Cairo, Egypt which was formed on 22 March 1945. While initially comprised of only six members, there are currently 22 member States across the Middle East and North Africa region, which are: Algeria, Bahrain, Comoros Islands, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.³

¹ League of Arab States, Request for Leave to Submit Observations with respect to the Situation in the State of Palestine, ICC-01/18-55-Corr. T, 16 February 2020

² Office of the Prosecutor of the International Criminal Court, request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, ICC-01/18-12, 22 January 2020; Pre-Trial Chamber I of the International Criminal Court, Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence in the Situation in the State of Palestine, 20 February 2020, ICC-01/18-63, para. 58

³ List of Member States and the year of joining the LAS: Hashemite Kingdom of Jordan (1945), United Arab Emirates (1971), Bahrain (1971), Tunisia (1958), Algeria (1962), Djibouti (1977), Kingdom of Saudi Arabia (1945), Sudan (1956), Syrian Arab Republic (1945), Somalia (1974), Iraq (1945), Oman (1971), State of Palestine (1976), Qatar (1971), Comoros (1993), Kuwait (1961), Lebanon (1945), Libya (1953), Egypt (1945), Morocco (1958), Mauritania (1973), and Yemen (1945). The list of member States and history of LAS available at: <http://www.leagueofarabstates.net/ar/aboutlas/Pages/CountryData.aspx>, accessed, 15 March 2020.

4. The LAS has as its purpose the strengthening of relations between the member-states, the coordination of their policies in order to achieve co-operation between them and to safeguard their independence and sovereignty; and a general concern with the affairs and interests of the Arab countries.⁴
5. Since its inception in 1945, the LAS has accorded particular attention to the Question of Palestine given its centrality and importance for all Arab nations and as an expression of the solidarity of the Arab peoples and States with the Palestinian people and their plight, as well as given the importance of the resolution of this Question for regional and international peace and security.⁵
6. As part of its efforts towards ending the Israeli occupation and achieving peace, the LAS adopted in 2002 the Arab Peace Initiative in support of the Palestinian cause and peace.⁶ The plan called for full Israeli withdrawal from all the territories occupied since 1967, independence and sovereignty for the Palestinian State on the territories occupied since the 4th of June 1967 in the West Bank and the Gaza Strip, with East Jerusalem as its capital, and for a just and agreed upon solution to the Palestine refugees problem in accordance with UN General Assembly resolution 194 in exchange of normalization of relations between all Arab countries and Israel. The plan was also endorsed by the Organization of Islamic Cooperation, furthering its significance and scope. The Arab Peace Initiative is an integral part of the terms of reference for a just, comprehensive and lasting peace, together with relevant UN

⁴ League of Arab States, Charter of the Arab League, 22 March 1945 (Article II)

⁵ Ibid

⁶The Council of the League of Arab States, The Arab Peace Initiative, 28 March 2002, available at: https://ecf.org.il/media_items/572 [The Arab Peace Initiative] , accessed, 15 March 2020.

resolutions, the Madrid principles, including land for peace, and the Quartet Roadmap, as stated in UN Security Council resolution 2334.⁷

7. The observations contained in this submission are thus based on the LAS's extensive and direct involvement with the Question of Palestine over the past 75 years, in support of the fulfilment of the inalienable rights of the Palestinian people, including the right to self-determination.

8. In summary the LAS submits that:

a. The State of Palestine's defined territory is well established under international law and comprises of the West Bank, including East Jerusalem, and the Gaza Strip. Palestine's Statehood is a historical and undisputable fact;

b. A situation of occupation does not transfer sovereignty from the occupied State to the occupying Power; and,

c. Peace and justice are not mutually exclusive .

9. The question before the Chamber is strictly a matter of law. The LAS submits that the Chamber's application of the Rome Statute should be consistent with the object and purpose of the Statute: to end impunity for the most serious crimes that are of concern to the international community and to bring justice to victims, including Palestinian victims.⁸

⁷ Ibid, para.2; United Nations Security Council Resolution S/RES/1515, 19 November 2003; "[w]elcoming and encouraging the diplomatic efforts of the international Quartet and others, 1. Endorses the Quartet Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (S/2003/529); 2. Calls on the parties to fulfil their obligations under the Roadmap in cooperation with the Quartet and to achieve the vision of two States living side by side in peace and security...".

⁸ According to the Preamble of the Rome Statute "the most serious crimes of concern to the international community as a whole must not go unpunished."

10. The absence of accountability has made peace more elusive. Without accountability, and its potential for deterrence, crimes against Palestinian victims have continued unabated. Not only is peace less likely in such circumstances, but justice too will have been denied for victims of international crimes. It is therefore essential that the Court abide by its statutory requirements and its founding principles. Impunity can only serve to foster criminality and undermines peace, while accountability furthers justice and advances peace.
11. Thus, the investigation by the Court into the crimes occurring on the territory of the State of Palestine, which comprises the West Bank, including East Jerusalem, and the Gaza Strip, will advance justice, peace, and security in the region.
12. At a time when the Court is under external threats and intimidation, the LAS reiterates that it rejects efforts aimed at politicizing the Court's judicial proceedings. The Court's independent character must be protected and respected.⁹

II. SUBMISSION

- a. Palestine as a State Party to the Rome Statute and a State under international law

13. For the purposes of the proceedings before Court, the State of Palestine became a State Party to the Statute on 1 April 2015.¹⁰ The Rome Statute does

⁹ See, PTC-I, Situation in Palestine, requests for leave to participate in the proceedings, by Brazil, ICC-01/18-47; Hungary, ICC-01/18-49; Germany, ICC-01/18-29; Austria, ICC-01/18-42; Uganda, ICC-01/18-62; and Australia, ICC-01/18-30.

¹⁰The International Criminal Court, The State of Palestine accedes to the Rome Statute, available at: https://www.icc-cpi.int/Pages/item.aspx?name=pr1082_2. ; see also: The International Criminal Court,

not mandate the Court to make determinations on the Statehood of States Parties, nor does it provide a basis upon which to do so.¹¹ The Court thus should not entertain calls for separate assessment of Palestine's Statehood as a pre-requisite for initiating an investigation. Palestine's Statehood has already been long established, and is currently reflected in both Palestine's international relations, and its accession to the Rome Statute.

i. A historical perspective¹²

14. As recorded in the letter of the Secretary General of the LAS to the Secretary General to the United Nations, prior to 1948, Palestine, composed in its majority of Arabs, was part of the Ottoman Empire, subjected to its rule of law though enjoying full representation in its Parliament. Arabs had constantly been seeking their freedom and independence, thus when the First World War broke out, they sided with the Allied forces, who declared that they were fighting to restore freedom to the nations. The Arabs therefore "placed all their means at their disposal and in fact fought with them for the realization of their national aspirations and their independence. Great Britain took upon herself the recognition of the independence of the Arab Countries in Asia including Palestine."¹³

15. When the war ended, Great Britain did not fulfil its pledges. Instead Palestine was placed under a Mandate entrusted to Great Britain. The terms of the

Palestine declares acceptance of ICC jurisdiction since 13 June 2014, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=pr1080>, accessed, 15 March 2020.

¹¹ Article 5 of the Rome Statute provides the limited jurisdiction of the ICC.

¹² For a comprehensive history of Palestinian statehood, see, John Quigley, *the Statehood of Palestine, International Law in the Middle East Conflict*, New York, Cambridge University Press, (2010).

¹³ Cablegram from the Premier and Acting Foreign Secretary of All-Palestine Government to the Secretary-General Concerning Constitution of All-Palestine Government, 28 September 1948, UN.Doc.A/C.1.300, available at: <http://learnpalestine.politics.ox.ac.uk/uploads/sources/588c155bba374.pdf>, accessed, 15 March 2020.

Mandate provided for the safeguarding of the interests of the inhabitants of Palestine and their preparation for eventual independence to which they are entitled by virtue of the Covenant of the League of Nations which admitted that the inhabitants of Palestine were fit for it.¹⁴

16. At that time, the LAS recognized Palestinian sovereignty declaring:

“Even though Palestine was not able to control her own destiny, it was on the basis of the recognition of her independence that the Covenant of the League of Nations determined a system of government for her. **Her existence and her independence among the nations can, therefore, no more be questioned *de jure* than the independence of any of the other Arab States.** Even though the outward signs of this independence have remained veiled as a result of *force majeure*, it is not fitting that this should be an obstacle to the participation of Palestine in the work of the League [of Arab States].”¹⁵

17. On the 19th of November 1947, the General Assembly made its recommendations for the solution of the Palestine problem on the basis of partition providing for the establishment of two States. The Mandate over Palestine came abruptly to an end, leaving behind no legally constituted authority in order to administer law and order. This gave rise to the Nakba, in which entire Palestinian villages and towns were violently depopulated and destroyed.¹⁶ In response to the bloodshed, the Arab States were lead to declare:

¹⁴ Ibid

¹⁵ Pact of the League of Arab States, Cairo, March 22, 1945, Annex on Palestine, United Nations Treaty Series, vol70, 237 (emphasis added)

¹⁶ Nakba refers to the period between 1947 and 1949 during which more than half of the Palestinian people were systematically ethnically cleansed from Palestine and the State of Israel was declared over territory

“The right to set up a government in Palestine pertains to its inhabitants under the principle of self-determinations recognized by the Covenant of the League of Nations as well as the United Nations Charter.

...

The Arab States recognize that the independence and sovereignty of Palestine which was so far subject to the British Mandate has now, with the termination of the Mandate, become established in fact, and maintain that the lawful inhabitants of Palestine are alone competent and entitled to set up an administration in Palestine for the discharge of all governmental functions without any external interference. As soon as that stage is reached the intervention of the Arab States, which is confined to the restoration of peace and establishment of law and order, shall be put an end to, and the sovereign State of Palestine will be competent in co-operation with the other State members of the Arab League, to take every step for the promotion of the welfare and security of its peoples and territory.”¹⁷

18. Thus, on 1 October 1948, the All-Palestine Government, which had been established under the auspices of the LAS, issued a Declaration of Independence, affirming Palestinian right to self-determination as the indigenous inhabitants of the land.¹⁸ With the support of the LAS, the West

exceeding that allocated by the partition plan, thus undermining the Palestinian people’s historic and legal right to self-determination. For more on Nakba see, I. Pappé, *The Ethnic Cleansing of Palestine*, Oxford, One world Publications, 2006 and

¹⁷ Cablegram from the Premier and Acting Foreign Secretary of All-Palestine Government to the Secretary-General Concerning Constitution of All-Palestine Government, 28 September 1948, UN.Doc.A/C.I.300, available at: <http://learnpalestine.politics.ox.ac.uk/uploads/sources/588c155bba374.pdf> , accessed, 15 March 2020.

¹⁸Ibid

Bank, including East Jerusalem, passed under Jordanian control, and the Gaza Strip under Egyptian control.¹⁹ The Political Committee of the Arab League made clear that such administration was temporary.²⁰

19. The LAS also emphasized the independence of Palestine and that the sovereignty lies with its lawful inhabitants, the Palestinian people, who have the right to determine their future, without foreign interference.²¹
20. In May 1949, the United Nations Conciliation Commission for Palestine facilitated an agreement between Israel and several Arab States, known as the Lausanne Protocol in which it confirmed that the frontiers of Resolution 181 (II) would form the basis of future negotiations.²²
21. However, since 1967, the 1949 Armistice line has been endorsed, inter alia, by States, the International Court of Justice ("ICJ"), the General Assembly and the Security Council as the internationally recognized delimitation between Israel and the occupied Palestinian territory, which is comprised of the West Bank, including East Jerusalem, and the Gaza Strip.

ii. Palestine's Statehood is reflected in international relations

22. Palestine's statehood is reflected in the conduct of its international relations.
The State of Palestine has been a full and active member of the League of Arab

¹⁹ Upon its ratification to the Rome Statute, King Abdullah II of Jordan announced that Jordan had renounced all sovereign claims over the occupied Palestinian territory - see William Bourdon, "Jurisdiction of the International Criminal Court over Human Rights Violations Committed by the Israeli Forces in the Occupied Territories After July 1, 2002", 12 *Palestine Year Book of International Law* 165, 178 (2002-2003)

²⁰ A.R. Azzam Pasha, Secretary-General of the League of Arab States, cablegram to the UN Secretary General, 15 May 1948, UN Doc.S/745, available at: <https://undocs.org/S/745>, accessed, 15 March 2020.

²¹ League of Arab States, Declaration on Palestine, 15 May 1948.

²² United Nations Conciliation Commission for Palestine, Third Progress Report, Annex A, B and C, 21 June 1949, UN doc. A/927.

States, the Non-Aligned Movement, the Organization of Islamic Cooperation, the Group of Asia-Pacific States and the Group of 77 for decades.²³

23. It has been recognized by 139 States around the world.²⁴

24. In 2011, Palestine became a full member of UNESCO, a UN specialized agency for which membership is only open to States. In 2012, Palestine was accorded observer State status in the United Nations. Since then, the State of Palestine acceded to numerous instruments and joined several organizations.²⁵

iii. Palestine's Accession to the Rome Statute

25. At the time of its accession to the Rome Statute, the issue of Palestine's Statehood had already been definitively determined by pertinent international bodies and its instrument of accession was accepted in

²³ Including: State of Palestine is a member of many inter-governmental organizations in addition to UNESCO, including the United Nations Economic and Social Commission for Western Asia ('ESCWA'), the United Nations Industrial Development Organization ('UNIDO'), the United Nations Conference on Trade and Development ('UNCTAD'), the United Nations Framework Convention on Climate Change ('UNFCCC'), the Organisation for the Prohibition of Chemical Weapons ('OPCW'), the Organization of Islamic Cooperation (OIC), the Non-Aligned Movement ('NAM'), the League of Arab States (LAS), the Asian-African Legal Organization Consulting ('AALCO'), the International Olive Council ('IOC'), the International Organization for Civil Protection and Civil Defense ('ICDO'), the World Customs Organization ('WCO'), the International Seabed Authority (ISA) and the International Police Organization ('INTERPOL'). Moreover, State of Palestine is a member of the Permanent Court of Arbitration ('PCA') and the International Tribunal for the Law of the Sea ('ITLOS'). In 2018 it referred a complaint to the International Criminal Court arising out of Israel's settlement enterprise and indiscriminate attacks on civilian targets.²²⁹ It has also laid an inter-state complaint against Israel for practicing racial discrimination and apartheid in Palestine in terms of Article 11 of the Convention on the Elimination of All Forms of Racial Discrimination. Finally, in 2019 the State of Palestine became chair of the Group of 77, the largest bloc of States in the United Nations comprising of 134 developing States. As a Chair, the State of Palestine was entrusted in negotiating on behalf of 134 States with the rest of the United Nations member States and ensured that their interests are taken into account.

²⁴ For a list of States that recognize State of Palestine, see: Permanent Observer Mission of the State of Palestine to the United Nations, Diplomatic Relations: <http://palestineun.org/about-palestine/diplomatic-relations/>

²⁵ Refer to footnote 20. For more on State of Palestine's accession to international treaties, see: <http://www.mofa.pna.ps/ar-jo/المكتب الاعلامي/المسطرة/المتظومة الدولية/الاتفاقيات-الدولية-التي-الضمت-اليها-دولة-فلسطين/>, accessed, 15 March 2020.

accordance with Article 125(3) of the Statute stipulating that “this Statute shall be open to accession by all States”.²⁶

26. Even before Palestine became a State Party to the Rome Statute, it accepted the jurisdiction of the Court by declaration under the Statute.²⁷ By this declaration, the Court was bestowed with the competence to exercise jurisdiction over crimes committed on Palestinian territory.²⁸
27. The State of Palestine’s accession to the Court is no different than the accession of the other State Parties, whose obligations and the Court’s duties towards them remain non-contentious and unquestioned. The Court should not deny the State of Palestine the equal treatment that it owes towards States Parties. To single out Palestine for such treatment would not only undermine the principle of equality of treatment, a fundamental tenet of the international rule of law, it would also open the Court to accusations that it has been moved by political considerations in the discharge of its functions under the Statute.
28. Similarly, and most obviously, the State of Palestine is not the first State Party that has no effective control over parts of its territory due to the actions of other States and non- States Parties. Examples may include, Georgia and Cyprus, each of which has accepted the jurisdiction of the Court despite lacking effective control over parts of their territory.²⁹

²⁶ Rome Statute of the International Criminal Court, Article 125.

²⁷ The International Criminal Court, Palestine declares acceptance of ICC jurisdiction since 13 June 2014, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=pr1080>.

²⁸ Office of the Prosecutor of the International Criminal Court, request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, ICC-01/18-12, 22 January 2020, para. 56

²⁹ ECHR, *Ilaşcu*, Judgment, 8 July 2004, 48787/99, para. 333 (emphasis added), see also, paras 330-346; The ECHR affirmed the position taken in *Ilaşcu* in several subsequent cases including *Catan and Others*, 19 October 2012, 43370/04 and 2 others, para. 109; See also European Commission of Human Rights, Report of the Commission, 10 July 1976, applications 6780/74 and 6950/75; and ECHR, Judgment, 10 May 2001, 25781/94, para. 78

b. The extent of the effects of the Occupation

29. The question of the scope of the territorial jurisdiction should be determined by considerations of both fact and law.³⁰ The status of the West Bank, including East Jerusalem, and the Gaza Strip, as occupied Palestinian territory is categorically established under international law.

30. The existence of a belligerent military occupation³¹ does not negate the State of Palestine's accession to the Rome Statute and its status as a State Party to the Court. By extension, the Israeli occupation cannot deny Palestine its rights, as enumerated under Article 12, including the right to refer Rome Statute crimes perpetrated on its territory for investigation.

31. Thus the status of Palestine's statehood, sovereignty and its territory are not affected by Israel's occupation. Even prolonged and illegal occupations do not change the status of the occupied territory.³² Despite being occupied by Israel, Palestine's territory as comprising the West Bank, including East Jerusalem, and the Gaza Strip, is well defined since 1967 and the right of the Palestinian people to self-determination and statehood is recognized even prior to 1948.

i. The recognized status of occupation

³⁰K. Marke, *Identity and Continuity of States in Public International Law*, Geneva, Librairie Droz (1968) p.2; J. Crawford, *The Creation of States in International Law*, Oxford Clarendon Press, 2nded, 2006

³²David Raic, *Statehood and the Law of Self-Determination*, The Hague, Kluwer Law International, 2002, p.68; Emma Playfair (ed) *International Law and the Administration of Occupied Territories*, Oxford, Clarendon Press, 1992, p. 169.

32. the State of Palestine is solely and fully able to grant jurisdiction to the Court to investigate crimes committed in the occupied Palestinian territory which comprises the West Bank, including East Jerusalem, and the Gaza Strip.
33. There is a whole body of binding and consistent norms that the international community has reaffirmed over decades in regard to the need to ensure the fulfilment of the right to self-determination of the Palestinian people and the obligation of Israel to end its occupation and to respect the territorial integrity of the occupied Palestinian territory, in line with the UN Charter and international law.
34. The United Nations Security Council Resolution 242 (1967), later reaffirmed by Security Council Resolution 338 (1973), emphasized the inadmissibility of the acquisition of territory by the use of force and affirmed:

“that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

- (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;
- (ii) Termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within

secure and recognized boundaries free from threats or acts of force.”³³

35. Not only did the United Nations Security Council and the General Assembly call for Israeli withdrawal from this territory, they also condemned “all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, inter alia, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions.”³⁴

36. Furthermore, in its resolution according to Palestine observer State status, the General Assembly reaffirmed “the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian territory occupied since 1967.”³⁵

37. In its resolution 476 (1980), the Security Council reaffirmed “the overriding necessity for ending the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem”.³⁶

38. Additionally, Security Council Resolution 465 (1980) also examined the situation relating to settlements in the Arab territories occupied since 1967 and affirmed;

³³ United Nations Security Council Resolution S/RES/242, 22 November 1967 and United Nations Security Council Resolution 338, 22 October 1973.

³⁴ United Nations Security Council Resolution S/RES/242, 22 November 1967

³⁵ United Nations General Assembly A/RES/67/19, 27 November 2012.

³⁶ United Nations Security Council Resolution S/RES/476, 30 June 1980.

“that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem....Deploring the decision of the Government of Israel to officially support Israelis settlement in the Palestinian and other Arab territories occupied since 1967.”³⁷

39. In its resolution 478 (1980), the Council affirmed “that the enactment of the “basic law” by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem” and determines that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent “basic law” on Jerusalem, are null and void and must be rescinded forthwith.”³⁸

40. Most recently, in resolution 2334 (2016), the Security Council reaffirmed “that the establishment by Israel of settlements in the Palestinian Territory occupied since 1967, including East Jerusalem, has no legal validity”, condemned “all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem” and called upon all states to “distinguish, in their

³⁷ United Nations Security Council Resolution S/RES/465, 1 March 1980.

³⁸ United Nations Security Council Resolution S/RES/478, 20 August 1980, for more, see: United Nations Security Council Resolution S/RES/338, 22 October 1973; other Resolutions include: United Nations, General Assembly Resolutions 36/120 E, 10 December 1981, 37/123 C, 16 December 1982, 38/180 C, 19 December 1983, 39/146 C, 14 December 1984, 52/53, 9 December 1997, 53/37, 2 December 1998, 54/37, 1 December 1999, 55/50, 1 December 2000, 56/31, 63/30, 23 January 2009, 64/20, 23 January 2010, 65/17, 70/16, 2 December 2014, 71/21, 16 December 2016, 73/15, 7 December 2017

relevant dealings, between the territory of the State of Israel and the territories occupied since 1967".³⁹

41. Since 1967, the United Nations, including the General Assembly, the Security Council, the Human Rights Council and other bodies have thus issued more than 390 resolutions reaffirming that the Palestinian territory comprises the West Bank, including East Jerusalem, and the Gaza Strip.⁴⁰ This position was

³⁹ United Nations Security Council Resolution S/RES/2334, 23 December 2016.

⁴⁰ United Nations Resolutions include: General Assembly Resolution 34/70 of 6 December 1979, reaffirmed that "the acquisition of territory by force is inadmissible under the Charter of the United Nations and that all territories thus occupied must be returned...also the urgent necessity of the establishment of a just, comprehensive and lasting peace in the region, based on full respect for the principles of the Charter of the United Nations as well as for its resolutions concerning the situation in the Middle East and the question of Palestine...that until Israel, in accordance with relevant resolutions of the United Nations, withdraws from all occupied Palestinian and other Arab territories, and until the Palestinian people attains and exercises its inalienable national rights...a comprehensive and lasting peace in the Middle East, in which all countries and peoples in the region live in peace and security with recognized and secure boundaries, will not be achieved"; General Assembly Resolution 32/161 of 19 December 1977 affirmed State of Palestine's permanent sovereignty over natural resources the occupied territory of the West Bank, including East Jerusalem, and the Gaza Strip, it also "[e]mphasizes the right of Arab States and peoples whose territories are under Israeli occupation to full and effective permanent sovereignty and control over their natural and all other resources...Reaffirms that all measures undertaken by Israel to exploit the human, natural and all other resources, wealth and economic activities in the occupied Arab territories are illegal and calls upon Israel immediately to desist forthwith from all such measures...further reaffirms the rights of the Arab States and peoples subjected to Israeli aggression and occupation to the resolution of, and full compensation for the exploitation, depletion and loss of and damages to, their natural, human, and all other resources, wealth and economic activities, and calls upon Israel to meet their just claims"; Security Council Res 465 of 1 March 1980 examined the situation relating to settlements in the Arab territories occupied since 1967 and "[a]ffirming once more that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem...Deploring the decision of the Government of Israel to officially support Israelis settlement in the Palestinian and other Arab territories occupied since 1967"; Security Council Resolution 1322 of 7 October 2000 called upon "Israel, the occupying Power, to abide scrupulously by its legal obligations and its responsibilities under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949"; General Assembly Resolution 60/39 of 24 October 2005 reaffirmed "[t]he illegality of the Israeli settlements in the territory occupied since 1967 and of Israeli actions aimed at changing the status of Jerusalem...the construction by Israel, the occupying Power, of a wall in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law"; Human Rights Council A/HRC/RES/37/35 of 23 March 2018: "Stressing the urgent need for efforts to reverse the negative trends on the ground and to restore a political horizon for advancing and accelerating meaningful negotiations aimed at the achievement of a peace agreement that will bring a complete end to the Israeli occupation that began in 1967 and the resolution of all core final status issues, without exception, leading to a peaceful, just, lasting and comprehensive solution of the question of Palestine"; Human Rights Council A/HRC/RES/34/30 of 11 April 2017: "Deeply regretting the onset of the fiftieth year of the Israeli occupation, and stressing the urgent need for efforts to reverse the negative trends on the ground and restore a political horizon for advancing and accelerating meaningful negotiations aimed at the achievements of a peace agreements that will bring a complete end to the Israeli occupation that began 1967 and the resolution of all core final status issues, without exception, leading to a peaceful, just, lasting and comprehensive solution to the question of Palestine".

also endorsed by the International Court of Justice and other international organs.⁴¹

42. The United Nations General Assembly, has also made pronouncements concerning the international status of the Occupied Palestinian Territory, including East Jerusalem, the right to self-determination of the Palestinian people, the illegality of the construction of settlements and the Wall in breach of this status. These pronouncements undoubtedly produce definitive legal effects.

43. Indeed, the General Assembly has established its competence to determine the peoples entitled to exercise their right to self-determination. Its resolutions have entailed a host of legal consequences. In its past practice in relation to Non-Self-Governing territories, the General Assembly asserted its competence on numerous occasions to make such binding determinations concerning the status of territories, inter alia, in the cases of Alaska and Hawaii, Puerto Rico, Portuguese overseas territories, as well as Southern Rhodesia and Namibia. In so doing the General Assembly affirmed the rights and obligations which these territories had under the Charter and general international law. This came to be an accepted part of United Nations practice, with the General Assembly becoming responsible for overseeing the realization of the right to self-determination by numerous former colonies and mandated territories.⁴²

⁴¹ The International Court of Justice, *Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory*, Advisory Opinion, ICJ Report 2004; for more, refer to footnote 19.

⁴² The Charter of the United Nations, 26 June 1945, Chapter XI, Articles 73-74 (Declaration Regarding Non-Self Governing Territories), Chapter XII, Articles 75-85 (International Trusteeship System), Chapter XIII, Articles 86-91 (Trusteeship Council); United Nations General Assembly A/RES/9 (I), 9 February 1946; United Nations General Assembly A/1466 (XIV), 12 December 1959; United Nations General Assembly A/RES/1514 (XV) 14 December 1960; United Nations General Assembly A/RES/2160 (XXI), 30 November 1966; United Nations General Assembly A/RES/3236, 22 November 1974, and many others. See also: Antonio Cassese, *Self-*

44. The International Court of Justice confirmed the authority of the United Nations General Assembly to make these determinations. In its Advisory Opinion on Namibia, the Court pointed to legal consequences which flow from General Assembly resolutions and from determinations which the Court has referred to as having "operative design". Further, in replying to the objection that the Assembly had made pronouncements which, not being a judicial organ, it was not competent to make, the ICJ underlined: "To deny to a political organ of the United Nations . . . the right to act, on the argument that it lacks competence to render what is described as a judicial decision, would not only be inconsistent but would amount to a complete denial of the remedies available against fundamental breaches of an international undertaking."⁴³

ii. The applicable legal framework and the law of occupation and its implications

45. The International Court of Justice confirmed in its Advisory Opinion on the Wall that the Palestinian territory comprises the West Bank, including East Jerusalem, and Gaza. Numerous United Nations Security Council and General Assembly Resolutions do the same, including notably United Nations General Assembly Resolution 58/292 of 2004, that was adopted by

Determination of Peoples. A Legal Appraisal, Cambridge, Cambridge University Press, 1995; East Timor (Portugal v. Australia), Judgment, ICJ Reports 1995, p 102; Crawford, The Creation of States in International Law, Oxford Clarendon Press, 2nd ed, 2006; M. Shaw, International Law, Cambridge, Cambridge University Press, 8th ed, p.162. The right to self-determination is affirmed by the Charter of the United Nations and its content is clarified in the Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960 and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations of 1970. It has been acknowledged by the International Court of Justice and confirmed by the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and recognized by many jurists.

⁴³ *Legal Consequences for States of the Continued presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, para. 102.

140 States including some those contesting the court's Jurisdiction in this matter. The Resolution affirmed that:

"[T]he status of the Palestinian territory occupied since 1967, including East Jerusalem, remains one of military occupation, and affirms, in accordance with the rules and principles of international law and relevant resolutions of the United Nations, including Security Council resolutions, that the Palestinian people have the right to self-determination and to sovereignty over their territory and that Israel, the occupying Power, has only the duties and obligations of an occupying Power under the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 and the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land, of 1907."⁴⁴

46. Indeed, the applicable law regulating belligerent occupation includes: 1907 Hague Regulations;⁴⁵ 1949 Geneva Convention IV on the Protection of civilians;⁴⁶ and the 1977 Additional Protocol I.⁴⁷ These laws, reflected in customary international law, are applicable in every situation of occupation, irrespective of circumstances surrounding *jus ad bellum*.⁴⁸ Israel's occupation

⁴⁴ United Nations General Assembly Resolution 58/292, 6 May 2004.

⁴⁵ Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, Articles 42-56.

⁴⁶ The Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, Articles 27-34 and 47-78.

⁴⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims in International Armed Conflicts, 8 June 1977, Articles 63-71

⁴⁸ The Charter of the United Nations, 26 June 1945, Article 2(4); Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Jurisdiction and Admissibility, Judgment, ICJ Reports 1984, para. 190; International Law Commission, Commentaries Articles State Responsibility for Internationally Wrongful Acts, commentary to Article 40, p. 112; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports, para. 87.

of the State of Palestine is a fact recognized and regulated by international law.

47. The laws governing occupation aim at closely regulating the occupation to make sure that the territory is restored to the State of the sovereign.⁴⁹ The prohibition of transferring sovereignty to the occupier is a cornerstone principle of the law of belligerent occupation. As also correctly highlighted by the Prosecutor in her filing, safeguarding the protected people includes guaranteeing the overarching right to self-determination of the occupied people, recognized as a right *erga omnes* in international law.⁵⁰
48. The law of occupation safeguards the occupied territory and its people from any attempts of annexation or claims of sovereignty over the occupied territory by the occupying Power. The status of occupation of the territory of the State of Palestine therefore confirms both the sovereignty of the Palestinian people over the territory and Israel's lack of sovereignty as an occupying power.
49. Thus, Palestinian sovereignty over the West Bank, including East Jerusalem, and the Gaza Strip cannot be legally contested especially by Israel, which under international law cannot make any legitimate or lawful claims to sovereignty over the territory it occupies.⁵¹

⁴⁹Michael Lynk, Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, General Assembly Seventy-Second session, 23 October 2017, A/72/556; see also: Aeyal Gross, *Writing on the Wall. Rethinking the International Law of Occupation*, Cambridge, Cambridge University 2017 p.26-29.

⁵⁰Office of the Prosecutor of the International Criminal Court, request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, ICC-01/18-12, 22 January 2020, para.147-156.

⁵¹ Emma Playfair (ed) *International Law and the Administration of Occupied Territories*, Oxford, Clarendon Press, 1992, p. 169.

iii. The illegality of Israel's occupation

50. The four elements that define an occupation's legality are the prohibition of annexation, the temporary nature of the occupation, safeguarding the best interest of the occupied people, and most importantly, administering the occupied territory in full compliance with international law.⁵² International law and the international community distinguish between a legal occupation and an illegal occupation. This was confirmed in the Advisory Opinion of the ICJ in *Legal Consequences for States of the Continued presence of South African in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*.⁵³
51. Many United Nations resolutions have condemned Israel for its illegal acts that violate peremptory norms of international law and its obligations under the laws of occupation, such as, the construction of settlements and the Wall, the transfer of its civilians into the occupied territory, the illegal annexation of East Jerusalem, and the continued and systematic violations of the rights of the Palestinian people.⁵⁴
52. In 2017, Michael Lynk, the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, condemned the occupation as illegal on the grounds of annexation, transfer of civilians, denial of self-determination, prolonged period of occupation, and systematic

⁵²O. Ben-Naftali, A. Gross & K. Michaeli, "Illegal Occupation: Framing the Occupied Palestinian Territory", *Berkeley Journal of International Law* (2005), p. 551-3; Aeyal Gross, *Writing on the Wall. Rethinking the International Law of Occupation*, Cambridge, Cambridge University 2017 p.17-26.

⁵³*Legal Consequences for States of the Continued presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971.

⁵⁴For more on Israeli violations, see: Michael Sfar, *The Wall and the Gate: Israel, Palestine and the Legal Battle for Human Rights*, New York, Metropolitan Books, 2018; John Dugard, *Confronting Apartheid, A Personal History of South Africa, Namibia and Palestine*, Johannesburg, Jacana, 2018, pp.202-259.

violations of the laws of occupation.⁵⁵

53. Combined, these factors rebut any argument regarding the transfer of sovereignty or the acquisition of territory by occupation.

54. In these circumstances, the status of the territory of the State of Palestine as an occupied territory should be regarded as further motivation to reaffirm the scope of territorial jurisdiction and ensure the protection of the Palestinian people. The Court's assertion of jurisdiction in the circumstances will be consistent with the law on belligerent occupation, and will be a vital means of safeguarding the best interests of the occupied people.

c. Implications of an investigation on future peace negotiations

55. As indicated by the Office of the Prosecutor in its paper on the interest of justice, the objectives of Peace and justice are not mutually exclusive. Rather, they are complementary.

“The ICC was created on the premise that justice is an essential component of a stable peace. The Preamble to the Statute recognizes that the crimes under the Court's jurisdiction threaten the peace, security and well-being of the world.”⁵⁶

i. previous peace initiatives do not restrict any criminal investigations

⁵⁵Michael Lynk, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967*, General Assembly Seventy-Second session, 23 October 2017, A/72/556

⁵⁶ Office of the Prosecutor, *Policy Paper on the Interest of Justice*, September 2017, p. 8, available at: <https://www.icc-cpi.int/NR/rdonlyres/772C95C9-F54D-4321-BF09-73422BB23528/143640/ICCOTPInterestsOfJustice.pdf>, accessed, 15 March 2020.

56. The League has always been supportive of a just, comprehensive and lasting solution to the Question of Palestine. Prior to the Arab Peace Initiative, the League supported the Oslo Accords that were designed to set the stage for a just and lasting peace in the region after a five-year transitional period. It was an interim agreement based on United Nations Security Council resolutions 242 (1967) and 338 (1973).⁵⁷

The Oslo Accords do not restrict the rights of the occupied State or the occupied people nor preclude the Court from opening an investigation into the crimes committed on the territory of the State of Palestine. The Fourth Geneva Convention contemplates that an occupying power may enter into special agreements to assist in the provision of functions of government to the protected population.⁵⁸

57. As noted at Article XXXI paragraph 6 of the Accords, “neither party shall be deemed, by virtue of having entered into this Agreement, to have renounced or waived any of the existing rights, claims or positions”.⁵⁹ The Accords further stipulated that “the two Parties view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period”. However, Israel did not stop its criminal conduct following the conclusion of these accords, as the International Court of Justice found, including by seizing lands for its

⁵⁷Declaration of Principles of Interim Self-Government Arrangements (1993), International Legal Materials 1525; The Israeli – Palestinian Interim Agreement on the Gaza Strip and the Jericho Area, 4 May 1994, International Legal Materials (1994) p. 622; Agreement on Preparatory Powers and Responsibilities, 29 August 1994 International Legal Materials (1995), p. 455; Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995, International Legal Materials (1997), p. 551; Protocol concerning the Redeployment in Hebron, Jerusalem, 17 January 1997, International Legal Materials (1997), p.650; Wye River Memorandum, 28 October 1998, International Legal Materials (1998), p. 1251.

⁵⁸ The Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, Articles 7 and 8.

⁵⁹ Preamble and Article XXXI Interim Agreement on the West Bank and the Gaza Strip (1995).

settlement enterprise, transferring its own population into occupied territory and forcibly displacing Palestinians⁶⁰. This criminal conduct falls squarely within the Court's jurisdiction, as contemplated in the Rome Statute itself. The LAS notes that Articles 7(1)(d) and 8(2)(b)(viii) provide the Court with jurisdiction over acts of transfer of population, including when committed by an occupying power to or from occupied territory.⁶¹

ii. Investigation would not have any nefarious effects on future negotiations

58. It appears to be posited by some *amici* that a determination on territorial jurisdiction by the Pre-Trial Chamber might jeopardize future peace and/or negotiation efforts. A pronouncement by the Chamber on the subject of its territorial jurisdiction is in no way incompatible with the pursuit of peace or negotiations. Arguments to the contrary are untenable.

59. This has been acknowledged by the International Court of Justice. In the *Legality of the threat or use of nuclear weapons*, the ICJ refused to regard the contention that a finding from the Court might adversely affect ongoing peace negotiations and, therefore, be contrary to the interest of the United Nations, as a compelling reason to decline to exercise its jurisdiction. The Court answered this allegation by asserting that "*no matter what might be its conclusions in any opinion it might give, they would have relevance for the continuing debate on the matter in the General Assembly and would present an additional element in the negotiations on the matter... That being so, the Court*

⁶⁰The International Court of Justice, *Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory*, Advisory Opinion, ICJ Report 2004, paras 119-121.

⁶¹ Rome Statute, Preamble, para. 7; and Article 8(3) and Article 8*bis*(2).

cannot regard this factor as a compelling reason to decline to exercise its jurisdiction."⁶²

60. Similarly, the LAS submits that advancing accountability for international crimes and serving the cause of justice would facilitate and indeed serve peace efforts. As with the ICJ, the ICC cannot regard this factor as a compelling reason to decline to exercise its jurisdiction.

III. CONCLUSION

61. Based on the above, it is clear that the territory of the State of Palestine comprises the Palestinian Territory, including East Jerusalem, occupied by Israel since 1967 (i.e. the West Bank, including East Jerusalem, and the Gaza Strip).

62. The prospect of resuming a political process of negotiations has no bearing on the question of jurisdiction in pursuit of justice and accountability for international crimes, as they are defined under the Rome Statute.

63. As a matter of law and fact, it is indisputable that the Palestinian people are the sole sovereign in the Occupied Palestinian Territory, including East Jerusalem.

64. The question before the Chamber is strictly legal. As a matter of law, the Chamber has full competence and authority to rule that for purposes of the

⁶² *Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports 1996, para. 17, emphasis added.

Rome Statute, the scope of the Court's territorial jurisdiction would be the occupied Palestinian territory as a whole.

65. By finding that it has competent jurisdiction in relation to crimes committed in the West Bank, including East Jerusalem, and the Gaza Strip, the Court's judgment will be congruent with well-established norms of international law, United Nations General Assembly and Security Council resolutions, and the findings of the International Court of Justice.
66. The LAS aligns itself with the submission of the Prosecutor in that there appears to be a reasonable basis to believe that crimes have been committed on the territory of the State of Palestine, a State Party of the Rome Statute. These crimes fall within the jurisdiction *ratione loci* of the Court.
67. Any finding to the contrary would create the intolerable situation under international law where the very body designed to ensure accountability for international crimes, including and *especially* in territories under occupation, has denied itself the jurisdictional competence to consider violations of the Rome Statute. The signal to the victims of such crimes would be similarly intolerable: their territory and their rights to and within that territory would be recognized by international bodies for all purposes except the most critical one: to be free from the most serious crimes that are of concern to the international community as a whole.
68. Finally, the possibility of this Court to exercise justice over crimes committed on the territory of Palestine is of immense importance to the possibility of peace. Widespread and systematic violence against Palestinians and state-organized displacement, fostered by total impunity, have become for Israel a national *modus operandi* and an alternative to peaceful neighborly relations.

The ICC has its part to play in order to make the rule of law relevant once again to Israeli officials and to put a high price on their continued disregard for it. Palestinian victims deserve justice, and the ICC could well be the only avenue to provide it. Justice was for them long delayed and it should not be denied.


Dr.Said Abu Ali

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Head of Sector of Palestine and the Occupied Arab Territories
on behalf of
The League of Arab States

Dated this 16 March 2020

At Cairo, Egypt