



Original: English

No.: ICC-01/18
Date: 16 March 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

Amicus Curiae Observations Pursuant to Rule 103 on of the Rules of Procedure and Evidence

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I. The Main Legal Issues before the Pre-Trial Chamber

1. The 28 January 2020 Order of the Pre-Trial Chamber makes reference to paragraph 220 of the 20 December 2019 Request by the Office of the Prosecutor of the International Criminal Court (hereafter: OTP Request), specifying the two main legal issues to be addressed in these Amicus Curiae observations, namely:
 - a. the scope of the Court's territorial jurisdiction in the situation of Palestine (and)
 - b. the 'territory' over which the Court may exercise its jurisdiction under article 12(2)(a).
2. In fact, the first legal issue concerns the **acceptance of territorial jurisdiction** over the State of Palestine. This refers specifically to article 12(2)(a) of the Rome Statute of the ICC, which provides that the ICC may exercise its jurisdiction if States party to the Rome Statute have accepted the jurisdiction of the Court, namely: "The State on the territory of which the conduct in question occurred ...".
3. Such acceptance can occur in general, by ratification of the Statute, or *ad hoc*, for paragraph 3 of Article 12 provides:

If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception...
4. It is the position of INTLawyers that the existence of the State of Palestine and its acceptance of the Court jurisdiction is widely accepted and therefore ought to be assumed by the Court. This position is affirmed by the majority of Member States of the United Nations and the States Parties to the Rome Statute

of the International Criminal Court. INTLawyers set out the particulars of this argument below.

5. The second legal issue is **what amounts to the Palestinian “territory”**, in relation to Article 12(2)(a), and in particular whether, according to paragraph 220 of the OTP Request, this “comprises the West Bank, including East Jerusalem, and Gaza.” INTLawyers will argue that the territory of the State of Palestine comprises the West Bank, including East Jerusalem, and Gaza and that the Court therefor has jurisdiction over all of this territory. Amicus Curiae set out the particulars of this argument below.

II. Observations of the Amicus Curiae

A. Palestine acceded to the Rome Statute, and therefore must be regarded as a State by the ICC for the purposes of exercising territorial jurisdiction

6. On 31 December 2014, the President of the State of Palestine lodged a declaration under Article 12(3) of the Statute Establishing the International Criminal Court (“Rome Statute”), accepting the jurisdiction of the International Criminal Court (“ICC” or “Court”) over alleged crimes committed “in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014.”¹
7. On 2 January 2015, the Government of the State of Palestine acceded to the Rome Statute after depositing its instrument of accession with the Secretary-General of the United Nations, which took note of such accession on 6 January 2015.²
8. Notwithstanding any arguments regarding statehood, having been permitted to accede to the Rome Statute, an indisputable fact, there can be no doubt that the

¹ State of Palestine, *Declaration accepting the Jurisdiction of the International Criminal Court* dated 31 December 2014, ICC-01/18 at 4, n. 2.

² ICC-01/18 Ibid, at 4, n. 3. 2.

State of Palestine must be regarded as a State for the purposes of the ICC exercising territorial jurisdiction. ICC-01/18.

B. The State of Palestine fulfils the criteria of statehood according to international customary law and on the basis of sovereignty

9. The conclusion that the territorial jurisdiction vests in the Court, based on the ratification of the Rome Statute by the State of Palestine, is supported by the fact that the State of Palestine meets the criteria of statehood that form part of international law.
10. As the Prosecutor correctly argues, the Palestinian people have been recognized as deserving of self-determination as a state.³ The prosecutor is, respectively, mistaken in limiting the recognition of self-determination to after the creation of the United Nations.
11. Palestine's right to self-determination dates back to at least the end of World War I, when Great Britain was given the trust of ensuring its transition to statehood. The League of Nations mandate States that Palestine as a community formerly belonging to the Turkish Empire" had reached a stage of development whereby its existence as an independent nation "can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone."⁴

This unambiguous assertion of the Palestinians' right to statehood is today without doubt as Palestine meets the objective criteria established by international law for statehood and thus was able to ratify the Rome Statute as a sovereign State.

³ ICC-01/18 Ibid, at 104, para. 193.

⁴ *Treaty of Peace Between the Allied and Associated Powers and Germany, The Protocol Annexed Thereto, The Agreement Respecting the Military Occupation of the Territories of the Rhine, and the Treaty Between France and Great Britain Respecting Assistance to France in the Event of Unprovoked Aggression by Germany, signed at Versailles, 225 CTS 188 (28 June 1919), at Article 22.*

12. The objective criteria for statehood are laid out in the Montevideo Convention on the Rights and Duties of States⁵, namely: a permanent population, a defined territory, a government and capacity to enter into relations with other States.⁶ As observed by Ryngaert and Sobrie, “Once an entity fulfils these criteria, it is a state *erga omnes*.”⁷
13. Palestine has a **permanent population**.
14. Palestine has been inhabited by Palestinians from time immemorial. But even if one were to merely reach back to the more modern times, consecutive population registers, from the period of the Ottoman Empire, through the British Mandate period, Jordanian rule, and up until today, it cannot be disputed that a great many Palestinians, currently around 5 million, have lived and continue to live in the State of Palestine. The vast majority of these Palestinians have never lived elsewhere.
15. Article 22 of the 1919 Covenant of the League of Nations explicitly recognised Palestinian communities that had formerly belonged to the Turkish Empire, which three years later were recognised as part of the 1922, British-administered Mandate of Palestine and their right not only to self-determination, but to exercise it as a sovereign State.⁸
16. It can therefore be concluded that Palestine has a permanent population.
17. Palestine has a **defined territory**. The relevant question to be asked is *not* whether a State’s boundaries have been challenged or are even in dispute, as many countries’ borders are challenged or have been challenged. The relevant question to ask, according to the International Court of Justice is whether they *are* defined, and in particular:

⁵ *Montevideo Convention on the Rights and Duties of States*, 165 LNTS 19 (1933) 22.

⁶ *Ibid*, Art. 1. See also; Crawford, J. (1976), “The Criteria for Statehood in International Law,” 48 *Brit. Y.B. Int’l.L.* 93, 111 and Dugard, J. (1987), *Recognition and the United Nations* 8, n. 1.

⁷ Ryngaert, C. and Sobrie S. (2011), ‘Recognition of States: International Law or Realpolitik? The Practice of Recognition in the Wake of Kosovo, South Ossetia, and Abkhazia’ *Leiden Journal of International Law*, 24: 467–490.

⁸ Doebbler, C.F.J. (20110), “Human Rights and Palestine: The Right to Self-Determination in Legal and Historical Perspective,” 2 *Beijing Law Review* 111, 113-117.

The appurtenance of a given area, considered as an entirety, in no way governs the precise delimitations of its boundaries, any more than uncertainty as to boundaries can affect territorial rights.⁹

18. With specific reference to the scope of the territory of Palestine, this has been affirmatively established in multiple respects.
19. International Court of Justice Judge James Crawford has noted, echoing Judge Philip Jessup in relation to the determination of territorial boundaries at the time of Israel's admission to the United Nations: its boundaries were not “exactly fixed by definite frontiers” but that did not, in his view necessarily exclude Israel from being recognized as a State.¹⁰
20. While Palestine existed as a territorial entity under the Ottoman Empire, at the time of the founding of the United Nations, Palestine’s boundaries were delineated by the United Nations itself. United Nations General Assembly Resolution 181 indicated boundaries for Palestine, including a map of Palestine in Annex A.¹¹
21. Palestine’s territory has been frequently referred to by multiple States and United Nations Agencies as the national boundaries that were formed following the 1949 Line of Armistice. These boundaries were set out in the 1949 General Armistice Agreements signed between Israel and, respectively, Jordan, Lebanon, Syria and Egypt and comprising the territories of East Jerusalem, the West Bank and Gaza.¹²
22. In 1967, Israel occupied these territories, whereupon the United Nations Security Council produced Resolution 242, which affirmed:
 - (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict; AND
 - (ii) Termination of all claims or States of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and

⁹ ICJ (1969) *North Sea Continental Shelf, Judgement*, I.C.J. Reports 1969 3, at. Para. 32.

¹⁰ Crawford, J (2007) *Ibid*, at p. 48.

¹¹ United Nations *General Assembly Resolution* 181(II) 29 November 1949.

¹² General Armistice Agreement, Signed at Rhodes, on 3 April 1949, Registered with the United Nations on 6 October 1949.

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.

23. The Line of Armistice has been repeatedly confirmed in UN resolutions, the most recent being Resolution 2334, in which the Security Council underlined “it will not recognize any changes to the pre-4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations”.¹³
24. Notwithstanding the territory delimited by the Line of Armistice, it is important to recognise, as Professor Guy Goodwin-Gill did in 2011, that Palestine’s territorial claims may well extend beyond the 1967 borders, and: “neither the Palestinian people nor the right to self-determination is territorially limited to the space currently referred to as the Occupied Palestinian Territory. ... the intent of successive General Assembly resolutions has been clearly to include both Palestinians in the Occupied Palestinian Territory, and those who remain displaced in other countries.”¹⁴
25. In any event, boundary disputes do not preclude statehood, nor does the circumstance that a government cannot exercise full control over its territory. In this regard, one can compare the situation of Palestine with Bosnia-Herzegovina, which despite the obvious lack of effective control during the years of conflict between 1992 and 1995, the 1995 Dayton Agreement duly recognised the existence of territorial borders and self-government.¹⁵
26. Palestine **has a government** with control over its population. Palestine also has a government with control over its population. The daily governance of the people of Palestine is exercised by the government of the State of Palestine. While exercise of government functions has been carried out by the Palestinian Liberation Organization as the Palestinian National Authority in the West Bank

¹³ United Nations (2016) *Resolution 2334 Adopted by the Security Council at its 7853rd meeting*, 23 December 2016, S/RES/2334(2016).

¹⁴ Goodwin-Gill, G. (2011) Palestine, Statehood and the Challenges of Representation’ EJIL Talk, December 19, 2011. Available at: <https://www.ejiltalk.org/palestine-statehood-and-the-challenges-of-representation/>

¹⁵ Bojicic-Dzelilovic, V. (2015) ‘The politics, practice and paradox of “ethnic security” in Bosnia-Herzegovina’ *Stability: International Journal of Security and Development*, 4(1): 1-18.

- and the Islamic Resistance Movement or HAMAS as the Palestinian National Authority in Gaza, these two factions of Palestinians are both acting on behalf of the Palestinian people and the State of Palestine.
27. They each carry out numerous government functions that indicate control over the people in the territory, including issuing passports, exercising significant control over the borders, collecting taxes, maintaining police and security forces, maintaining utilities, registering the births and deaths of Palestinian citizens, regulating fully-accredited primary, secondary and tertiary education, and operating a court system that exercises criminal and civil jurisdiction over people within its territory.
 28. The exercise of government control over a Palestinian population in East Jerusalem, the West Bank and Gaza is further reinforced by a *Collective Position* accepted by the two main governing Palestinian factions, which dates to an Agreement signed in Cairo in 2011¹⁶ and affirmed by way of a subsequent Reconciliation Agreement signed on 10 October 2017 in Cairo, Egypt.¹⁷
 29. The *Collective Position* has remained in place, despite internal divisions between these two main Palestinian factions,¹⁸ and external interference to the State of Palestine's exercise of governmental authority over the territories of East Jerusalem, West Bank and Gaza.¹⁹ Neither internal divisions, nor external interference can deny the existence of statehood.
 30. Finally, Fatah, Hamas and numerous other Palestinian groups have long supported the decision to refer the matter of Palestine to the ICC.²⁰

¹⁶ Cairo Hamas-Fatah Agreement – English (2011), Available: https://ecf.org.il/media_items/1200

¹⁷ 'Hamas, Fatah sign reconciliation agreement in Cairo' *Al-Jazeera*, 12 October 2017. Available at: <https://www.aljazeera.com/news/2017/10/hamas-fatah-sign-reconciliation-agreement-cairo-171012115017367.html>

¹⁸ The fact that there has been internal division does not deny statehood. There are many historical examples one could mention, but as a contemporary comparison, Libya was still considered a state by the UN Security Council in 2011 despite competing government claims. This point was also noted by Quigley (2020), *supra*, para. 55.

¹⁹ The Permanent Court of Arbitration (PCA) in The Hague established in the 1928 PCA (1928) *Island of Palmas Case (Netherlands v. United States of America)* RIAA II, p. 829, which pre-dated the Montevideo criteria, that a foreign state's interference in another state's governmental affairs does not preclude the existence of a government. Likewise, Israel's interference over numerous aspects of Palestinian governance does not preclude the existence of a Palestinian government.

²⁰ Kattan, V. (2014) 'The Implications of Joining the ICC after Operation Protective Edge' *Journal of Palestine Studies*, 44(1): 61-73, at p. 62.

31. Finally, Palestine has the **capacity to enter into foreign relations**.
32. Palestine has been recognized as a state by 138 of the 193 States that are Members of the United Nations, as a “non-member Observer State” by the United Nations General Assembly on 26 November 2012²¹ and has acquired membership in several international organizations. Moreover, the State of Palestine has concluded more than 20 international treaties with States and International Organisations, including the International Criminal Court.²²
33. The fact that Palestine satisfies the criteria of statehood makes it clear that it has legitimately submitted its credentials to the Registry of the International Criminal Court, which in turn duly accepted these credentials.
34. Accordingly, INTLawyers argue, concurring with the ICC Prosecutor and the Amicus Curiae brief of Professor Quigley that Palestine fulfils the objective criteria of statehood, and in any event is not barred by a politically motivated, restrictive reading of this criteria.

C. Statehood does not require universal recognition

35. It is not necessary for all States to recognise a state in order for state recognition to take effect.²³ This was illustrated by the Peoples Republic of China, a State of considerable size and stature, which was not recognized by many States for a long time and took its place in the UN only in 1971.
36. Moreover, there were many States that refused to recognise the Soviet Union and South Africa. Today, many States, members of the UN, have refused to recognise Israel, or have withdrawn diplomatic relations, largely based on Israel’s poor human rights record. This includes the government of Venezuela, which

²¹ United Nations (2012) *Status of Palestine in the United Nations*, General Assembly, Question of Palestine, Sixty-seventh session, Agenda item 37, 26 November 2012, A/67/L.28.

²² Adem, S. (2019) *Palestine and the International Criminal Court* The Hague: T.M.C. Asser Press, at p. 199.

²³ Handmaker, J.D. & Zyberi, G. (2007). "Israël’s recht op bestaan: een issue?". *Nederlands Juristenblad*, 82(15), 932–933.

withdrew its ambassador from Tel Aviv in August 2006 in protest at Israel's indiscriminate bombing of civilians in Lebanon.

37. Some States, including Australia, Austria, Brazil, Canada, Czech Republic, Germany, Hungary, and the United States, several of which have also submitted request to make Amicus Curiae Observations before the Pre-Trial Chamber in the current matter, maintain various levels of diplomatic relations with the State of Palestine.
38. Just because there are some States that withhold explicit recognition of Palestine as a State does not mean that Palestine fails to acquire statehood.
39. Notwithstanding our previous arguments regarding the existence of statehood on the basis of objective criteria and explicit recognition by States and international organisations, it is an indisputable fact that Palestine was permitted to accede to the Rome Statute.

D. Sub-argument 1d: Territorial jurisdiction and sovereignty are not affected by the circumstances of occupation, from the standpoint of international law

40. According to international law, an entity that is occupied remains formally sovereign. A State continues to have territorial authority and jurisdiction – which it could partly transfer to an international institution, even if, in practice, such authority may be difficult to exercise, as is indeed the situation currently faced by the Government of Palestine in the context of Israel's belligerent occupation.
41. This position is reinforced, first, by international humanitarian law, which among other provisions, forbids the forcible acquisition of territory, particularly through a belligerent occupation. As argued by Imseis, this is based on two core principles.

First, belligerent occupation represents a temporary condition during which the role of the belligerent occupant is limited merely to that of the de facto administrative authority whose legal duty is to maintain

the situation existing in the occupied territory ex ante. Second, belligerent occupation does not yield any right of sovereignty to the belligerent occupant over the occupied territory.²⁴

42. Hence, notwithstanding the physical separation of East Jerusalem, the West Bank and Gaza due to Israel's longstanding, belligerent occupation, construction of a wall (deemed illegal by the ICJ in its 2004 Advisory Opinion),²⁵ as well as movement and other restrictions, and that for obvious reasons Gaza and the other areas are separately governed at the moment, neither of the authorities governing these areas deny being part of Palestine.
43. Hence, Israel's hostile occupation of parts of Palestine, and in particular Israel's use of force and hostile acquisition of territory in order to construct illegal settlements, does not change the legal territorial rights of Palestine.
44. The requirement to respect Palestinian sovereignty and international humanitarian law was comprehensively reaffirmed by the International Court of Justice in its 2004 Advisory Opinion, observing that the areas of the West Bank, East Jerusalem and Gaza are all territories integral of the State of Palestine, and hence:

Israel is bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law.²⁶

45. Various Special Rapporteurs (SR) on the situation of human rights in the Palestinian territories occupied since 1967 have affirmed Palestinian territory and sovereignty. For example, in his 15 March 2019 report, Professor Michael Lynk noted, in paragraph 29:²⁷

²⁴ Imseis, A. (2005) 'Critical Reflections on the International Humanitarian Law Aspects of the ICJ Wall Advisory Opinion', *The American Journal of International Law*, 99(1): 102-118, at 107.

²⁵ ICJ (2004) *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004

²⁶ Ibid: Paragraph 149.

²⁷ United Nations Human Rights Council (2019) *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, 15 March 2019, Ref: A/HRC/40/73. Available: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session40/Documents/A_HRC_40_73.docx

- a. On the basis of UN Security Council Resolution 2334,²⁸ the Palestinian territory to which international humanitarian law applies includes “*in toto* to the Palestinian territory: the West Bank, including East Jerusalem, and Gaza”.
- b. Israel remains the occupying power of the Palestinian territory and acts “only as the temporary administrator of the Palestinian territory until it returns the territory in full, in as short and as reasonable a time as possible, back to the inherent sovereign and protected population: the Palestinian people” (with a reference to Prof. Aeyal Gross).²⁹
- c. Citing Professor Orna Ben-Naftali, as an occupying power, Israel “acquires no sovereignty right over any of the territory, and it is prohibited from taking *any* steps towards annexation” (emphasis in the original).
- d. Making reference to previous reports of the Special Rapporteur, “Israel is in breach of these foundational principles of international humanitarian law, and it is now presumed to be the unlawful occupant of the Palestinian Territory”.³⁰

E. The Oslo Accords do not limit the ICC’s territorial jurisdiction over the State of Palestine

46. The Oslo Accords, which have been heavily criticised both in their content and in their implementation, can in no way be regarded as legally constraining the

²⁸ United Nations Security Council Resolution 2334 (23 December 2016): “Reaffirming the obligation of Israel, the occupying Power, to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949...”

²⁹ Gross, A. (2017) *The Writing on the Wall: Rethinking the International Law of Occupation*, Cambridge University Press.

³⁰ See Reports of the UN Special Rapporteur: 22 October 2018 (A/73/45717) and 23 October 2017 (A/72/556).

Court's jurisdiction.³¹ As Adem observes, "the intervention of the ICC is neither a panacea nor an avenue to pursue *in lieu of* peace deals".³²

47. The OTP Request of 20 December 2019 makes extensive reference to the Oslo Accords, which in affirm existing legal positions pertaining to Palestinian territorial sovereignty. Hence, in making reference to the Oslo Agreements, the OTP was correct to assert territorial jurisdiction on the basis of Article 12(2)(a) and in particular:
- a. the prosecutor was correct in determining, for the purposes of establishing jurisdiction, that the Palestinian Authority (PA) was given authority through the Accords over multiple areas of governance (para 65); and that
 - b. the Accords amounted to a 'functional transfer and a territorial transfer' (para 66) and that
 - c. the territories of the West Bank and Gaza amount to a 'single territorial unit' (Idem).
48. Moreover, the OTP was correct in maintaining that 'the Oslo Accords cannot override the right to self-determination of the Palestinian people' (para 187), which is intrinsically tied to sovereignty and territorial jurisdiction.

F. The territorial jurisdiction of the ICC extends all the territory of the State of Palestine as defined by international law, including Gaza, the West Bank and occupied Jerusalem

49. The territory of Palestine must be understood as encompassing all of Gaza, the West Bank and occupied Jerusalem. The territorial boundaries were established in the creation of the mandate of the League of Nations and only modified by

³¹ Handmaker, J. and Tartir, A. (2020) 'ICC and Palestine Symposium: The (Non) Effects of Oslo on Rights and Status' *OpinioJuris*, Available at: <http://opiniojuris.org/2020/02/06/icc-and-palestine-symposium-the-non-effects-of-oslo-on-rights-and-status/>

³² Adem (2019) *supra*, at p. 222.

consent to the creation of Jordan. Even if one were to accept the legitimacy of the creation of Israel in violation of the right to self-determination of the Palestinian people, the territory of Israel and Palestine was defined by the UN General Assembly.

50. Israel's continued occupation of parts of the State of Palestine is illegal and the illegal situation it creates cannot be recognized. Similarly, the Oslo Accords cannot adjust the boundaries of Palestine in any way that effects the Court's jurisdiction.

III. Expertise of the Amicus Curiae

51. **International-Lawyers.org (INTLawyers)** was founded as an association in 2010 in Geneva, Switzerland under Swiss law as a non-profit, non-governmental organization that has the goal of promoting global justice.³³ With consultative status accorded by the United Nations and African Commission on Human and Peoples' Rights, INTLawyers' work is guided by the principles of international law. Since its establishment, the organisation has made numerous representations to international organisations of the United Nations, to regional intergovernmental agencies and other treaty-monitoring bodies.
52. **Dr. Curtis Doebbler** is an international human rights lawyer who since 1988 has been representing individuals before international human rights bodies in Africa, Europe, the Americas and before United Nations bodies. He is also an American lawyer authorized to practice before the courts of the District of Columbia or Washington, DC and in the State of Texas and several federal courts in the United States, including the Supreme Court of the United States. He is Research Professor of Law at the University of Makeni (Sierra Leone), currently on partial leave serving the Refugee and Immigrant Center for Education and Legal

³³ The original website of International-lawyers.org / INTLawyers was, unfortunately, hacked during the course of 2019. The site will soon be re-established. In the meantime, the organisation has a presence on Twitter: <https://twitter.com/intlawyersorg> and on Facebook: <https://www.facebook.com/INTLawyers-244407862323269/>

Services in San Antonio, Texas, USA, as a litigation attorney through the end of 2020, and he is a visiting professor at Webster University in Geneva (Switzerland). He holds law degrees from New York Law School, the Radboud Universiteit Nijmegen and the London School of Economics and Political Science.

53. **Dr. Jeff Handmaker** is (since 2007) a senior lecturer and researcher in law, human rights and development at the International Institute of Social Studies (ISS) of Erasmus University Rotterdam in the Netherlands and (since 2009) a senior research fellow in the School of Law at the University of the Witwatersrand in South Africa. He was called to the Bar in the United Kingdom in 1995. He is an Editor (former Editor-in-Chief) of the South African Journal on Human Rights. He holds various secondary functions, including as a PILP Project Board member of the Dutch Section of the International Commission of Jurists and as a member of International-Lawyers.org. In 2017 he was a Visiting Researcher in the Department of Sociology at Princeton University. Handmaker was recently awarded a Royal Dutch Academy of Sciences Grant Fellowship at the Netherlands Institute for Advanced Studies, which will be taken up in 2021. Handmaker currently teaches international law and human rights at the ISS and has published extensively in peer-reviewed journals and book publications, including on legal accountability, international litigation and the international criminal court. He holds law degrees from the University of Newcastle-Upon-Tyne and the School of Oriental and African Studies, University of London and a PhD from Utrecht University.
54. **Mr. Ismail Ziada** is Palestinian, originally from Gaza, Palestine, currently resident in the Netherlands. On 20 July 2014, six members of Mr. Ziada's family were killed when his family home was targeted during an Israeli military airstrike directed at the al-Bureiji refugee camp in the centre of Gaza city. Ziada's legal representatives have gathered considerable evidence that they maintain point to direct international criminal responsibility by specific Israeli military commanders, in relation to this incident.

Mr. Ziada's personal experience is an important reminder that the enormous human costs of hostilities within the territorial jurisdiction of Palestine have been high, particularly in the Gaza area in 2014. According to the United Nations Office for the Coordination of Humanitarian Affairs; in total, conflicts in the territory between Israel and the Palestinians have resulted in more than 5,500 Palestinian fatalities (and well over 100,000 injured) as well as 248 Israeli fatalities (and more than 5000 injured), between 2008 and 2019.³⁴

Conclusion

Based on the arguments provided above, INTLawyers respectfully submits that, based on an objective assessment of international law, the Pre-Trial Chamber should confirm to the Office of the Prosecutor that they have full and unhindered territorial jurisdiction to investigate and prosecute any alleged crime, including ongoing crimes, that have taken place in all areas falling under the sovereignty of the State of Palestine, and, notwithstanding Israel's belligerent occupation, that the scope of this territory includes East Jerusalem, the West Bank and Gaza.



Dr. Jeff Handmaker, on behalf of International-Lawyers.org (INTLawyers)

Dated this 16 March 2020
at The Hague, The Netherlands.

³⁴ United Nations Office for the Coordination of Humanitarian Affairs (2020), *Occupied Palestinian Territory: Data on Casualties*. Available at: <https://www.ochaopt.org/data/casualties>