

**Request for Leave to Submit on the Situation in the State of Palestine before the
International Criminal Court**

Original: English

Date: 13 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

Source: Azril Mohd Amin, Advocate & Solicitor

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 Other**

Mr Philipp Ambach, Chief

A. INTRODUCTION

1. Pursuant to the issuance of the order and schedule by the Pre-Trial Chamber of this Honourable International Criminal Court inviting all relevant and interested parties to make submissions before this Honourable Court¹ on the request of the Prosecutor for a preliminary ruling on this Honourable Court's jurisdiction in respect of Palestine², I, Azril Mohd Amin, a representative of the Malaysian non-governmental organisation, MyAqsa, hereby request leave to submit written observations, for and on behalf of MyAqsa, on the said Request by the Prosecutor.

B. MY BACKGROUND AND EXPERTISE

2. I am an Advocate and Solicitor of the High Court of Malaya in Kuala Lumpur, Malaysia, and have been called to the Malaysian Bar and subsequently been licensed to practice law and appear before all courts within the States of Malaya in West Malaysia pursuant to the Legal Profession Act 1976³ of Malaysia since 5 October 2000.
3. Together with my partner in law practice, Faidhur Rahman Abdul Hadi, who is similarly an Advocate and Solicitor of the same High Court and was called to the Malaysian Bar on 27 April 2012, I maintain a law firm, Messrs Azril & Associates within Kuala Lumpur, Malaysia. I am active in human rights and humanitarian law via my involvement as Chief Executive Officer ("CEO") of the Malaysian-based Centre for Human Rights Research and Advocacy ("CENTHRA"). Together with a 6-member team of investigative lawyers, we have been raising awareness about the plight of the Palestinian people since 2013.
4. From November 2017 to November 2019, I was the chairperson of the Malaysian Alliance of Civil Society Organisations in the UPR Process ("MACSA") a coalition of human rights organisations involved in the preparation and presentation of oral and written submissions before the UN Human Rights Council in respect of its Universal Periodic Review ("UPR") of Malaysia's record on human rights.

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

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

³ Laws of Malaysia Act 166

5. Among my record on human rights and humanitarian law directly relevant to the issues sought to be determined by this Honourable Court is my previous recent role as lead investigative lawyer for the Permanent People's Tribunal on Genocide Against Rohingya, Kachin and other minorities of Myanmar ("PPT")⁴ and as Deputy Chief Prosecutor of the PPT's concluding session in Kuala Lumpur, Malaysia in September 2017.
6. The PPT's Inaugural Session was held at the International State Crime Initiative, Queen Mary University of London on the 6th and 7th of March 2017. The Tribunal there had urged the United Nations (UN) and the Association of Southeast Asian Nations (ASEAN) to take swift and effective measures to stop international state crimes against the Rohingyas and Kachins, specifically.
7. I have been appointed to act and represent the Malaysian non-governmental organisation MyAqsa in respect of legal matters pertaining to the State of Palestine and to advise MyAqsa on the human rights and humanitarian laws applicable to Palestinian refugees generally under domestic Malaysian as well as international law. I have been assisting MyAqsa for the past three (3) years and have among others, given MyAqsa legal advice on the State of Israel's breach of UN Security Council Resolution 2334 which I believe to be relevant in respect of the submission I wish to make on MyAqsa's behalf herein.

C. BACKGROUND OF MyAqsa

8. MyAqsa Foundation ("MyAqsa") is a foundation incorporated under the Trustees (Incorporation) Act 1952⁵ of Malaysia and is a Malaysian non-governmental organisation based in Putrajaya, Malaysia focusing on the building strategic partnerships with all government-linked and non-government organisations in service of the global Muslim community with particular emphasis on Palestine in general and more specifically for the recognition of Jerusalem as the capital of the State of Palestine and the maintenance and welfare of the al-Aqsa Mosque, the third holiest shrine in Islam located in Jerusalem, Palestine for Palestinians and other Muslims worldwide.⁶

⁴ Permanent People's Tribunal on Myanmar (PPT), <https://tribunalonmyanmar.org/>

⁵ Laws of Malaysia Act 258

⁶ About MyAqsa Foundation, <https://www.myaqsa.my/about>

9. MyAqsa has and still is active in tending to the welfare of the Palestinian people and championing the legal status of Jerusalem and the al-Aqsa Mosque on their behalf, for example, by protesting the unilateral declaration issued by the Trump administration of the United States of America recognising Jerusalem as the capital of Israel in 2017⁷.
10. MyAqsa has also been actively assisting this Honourable Court in the procurement of evidence of oppression of Palestinians by the State of Israel and submitting on points of law raised before this Honourable Court in respect to the State of Palestine since 27 October 2018 when it communicated its concern to the Office of the Prosecutor of this Court on the breach by the State Israel on UN Security Council Resolution 2334.
11. Resolution 2334⁸ was adopted on 23 December 2016 by the UN Security Council with, among others, the affirmative vote of Malaysia then being one of the non-permanent members of the said council, with the aim of safeguarding Palestinians who have had their human rights violated and property unlawfully confiscated by the State of Israel to build illegal settlements in violation of the Fourth Geneva Convention which the State of Israel is party to, prior to the passage thereof. Thus MyAqsa as a representative of Malaysia considers that monitoring and enforcement of the same by all parties is within its duties as a responsible corporate citizen of Malaysia and a member of the international community.
12. Concerns raised by MyAqsa on the State of Israel's repeated violations of UN Security Council 2334 in October 2018 led to a meeting between representatives of MyAqsa and representatives of this Honourable Court on 2 May 2019, at The Hague in the Kingdom of the Netherlands. At the said meeting MyAqsa postulated that the State of Palestine had acceded to the jurisdiction of this Honourable Court by declaring its acceptance of the jurisdiction of this Court via Article 12(3) of the Rome Statute in June 2014, thus enabling this Court to exercise jurisdiction on the State of Palestine from 1 April 2015. As UN Security Council Resolution 2334 was passed in December 2016, all violations thereof are within the competence of this Honourable Court.⁹

⁷ Yayasan MyAqsa cabar Perjanjian Balfour, Berita Harian, 11 December 2017, <https://www.bharian.com.my/berita/nasional/2017/12/362016/yayasan-myaqsa-cabar-perjanjian-balfour> (in Malay)

⁸ UN Security Council 2334 (2016) adopted by the UN Security Council at its 7853rd meeting on 23 December 2016

⁹ Azril Mohd Amin, MyAqsa teruskan inisiatif di ICC, Berita Harian, 17 May 2019, <https://www.bharian.com.my/rencana/komentar/2019/05/564875/myaqsa-teruskan-inisiatif-di-icc> (in Malay)

13. Representatives of this Honourable Court, including the Legal Support Division, International Cooperation and Situation Analysis of the Office of the Public Prosecutor (OTP) welcomed the observations of MyAqsa and invited the same to partake in submissions before this Honourable Court. On this basis, MyAqsa verily believes it is in possession of all criteria and qualifications set by all applicable laws of procedure, including but not limited to Rule 103 of the Court's Rules of Procedure and Evidence, to make written submissions on the question posed by the Public Prosecutor before this Honourable Court pursuant to Article 19(3) of the Rome Statute on its jurisdiction with respect to the State of Palestine.

D. SUMMARY OF PROPOSED SUBMISSIONS

14. I propose, on behalf of MyAqsa, to make submissions assisting the Public Prosecutor towards resolution of the question of jurisdiction upon which this Honourable Court may exercise with respect to the State of Palestine, in recognition of the unique situation affecting the State of Palestine, such as its non-adherence to the traditional criteria defining statehood per the Convention on the Rights and Duties of States done in Montevideo in 1933¹⁰ as it does not effectively exercise powers of governance upon any territory it has laid claim to.

15. I believe that I am in a position to represent MyAqsa to assist this Honourable Court in resolution of this point of law given my prior experience in navigating jurisdictional issues affecting the right of the oppressed Rohingya community to recourse via this Court by virtue of the People's Republic of Bangladesh which many of the Rohingya have fled to being a state party to the Rome Statute despite the Union of the Republic of Myanmar's position as a non-party to the Rome Statute¹¹.

16. Should leave be granted by this Honourable Court, I propose to assist the Prosecution discover its jurisdiction by making submissions in respect of Gaza, the West Bank, East Jerusalem, the concept of statehood and sovereign territory, offences against international law committed in the Palestinian territories by the State of Israel attracting universal jurisdiction and the applicability of the Rome Statute thereto, and the approach of other international legal organs to the question of Palestinian statehood, specifically in the context of accountability for example in the

¹⁰ Also known as the 1933 Montevideo Convention

¹¹ Azril Mohd Amin, Many benefits of Rome Statute, New Straits Times, 1 April 2019, <https://www.nst.com.my/opinion/letters/2019/04/474798/many-benefits-rome-statute>

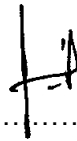
UN Special Procedures Branch, the UN Human Rights Council and relevant UN Commissions of Inquiry.

17. Further, I have access to several documentations of evidence of violation of Palestinian human rights and war crimes visited upon the Palestinian population within the Palestinian territories committed against them by the State of Israel to which MyAqsa has obtained during its many visits to the Palestinian territories which I am able to adduce in my submissions to assist this Honourable Court.

18. I anticipate requiring no more than 40 pages to develop the above submissions.

E. CONCLUSION

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



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AZRIL MOHD AMIN

Dated this 13th day of February, 2020

At Putrajaya, Malaysia