

**Cour
Pénale
Internationale**



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Court**

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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

Public with Public Annex

Submissions Pursuant to Rule 103 (John Quigley)

Source: Professor John Quigley

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I. INTRODUCTION

1. The Prosecutor’s Request¹ correctly finds that Palestine is a state and that its territory encompasses the areas of Palestine occupied by Israel in 1967. This submission examines key issues relevant to Palestine’s statehood and explains how state practice and determinations made by courts and other institutions confirm her conclusion. The submission traces Palestine statehood to its origin in 1923 and demonstrates that Palestine has been a state continuously since that time. The submission explains why arguments against Palestine’s statehood are based on a misapprehension of how a court is to approach a question of statehood. It explains, in particular, why the Convention on the Rights and Duties of States (Montevideo, 1933) is not relevant in this regard. The Prosecutor correctly regards statehood as an issue of fact to be assessed by a court when required.

II. SUBMISSIONS

A. Palestine is a State

a. Palestinian statehood dates from 1923

2. Palestine statehood began at a specific point in time—1923. When the Ottoman Turkish Empire was dismembered after World War I, its Arab territories, including Palestine, were established as states. The 1923 Peace Treaty of Lausanne was key in this process. It was the instrument whereby Turkey’s Arab territories were relinquished in World War I’s aftermath. Article 16 specified that Turkey’s rights in these territories were renounced, and that their future would be resolved by the

¹ 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”).

parties concerned.² By 1923, Palestine, Syria, and Iraq had been formed and their borders defined.

3. The Peace Treaty of Lausanne referred to these territories as states in three separate provisions:

- Article 30 dealt with nationality. It used the term “states” when referring to them, including Palestine, as “states” being “detached” from Turkey. It recited: “Turkish subjects habitually resident in territory which in accordance with the provisions of the present Treaty is detached from Turkey will become *ipso facto*, in the conditions laid down by the local law, nationals of the State to which such territory is transferred.” Pursuant to this provision a nationality law was adopted in Palestine.³ A nationality, of course, is a typical attribute of states. States accord a nationality to their inhabitants.
- Article 46 dealt with the financial responsibility for the Ottoman public debt. It states that responsibility to repay the debt was to be “distributed” between Turkey and “the States newly created in Asia which are detached from the Ottoman Empire under the present Treaty.” Like Article 30, it did not mention these states by name, but its phrasing made it even more clear that Palestine, Syria, and Iraq were these states, since they had been “newly created.”⁴
- Article 9 of Protocol XII to the Peace Treaty provided: “In territories detached from Turkey under the Treaty of Peace signed this day, the State which acquires the territory is fully subrogated as regards the rights and obligations of Turkey [...]”. Here again, the territories were referred to as “states.”

² League of Nations Treaty Series, vol. 28, at 11.

³ Palestinian Citizenship Order in Council, 1925, S.R. & O., no. 777, at 474; also in *Legislation of Palestine 1928-1925*, vol. 1, at 37. Norman Bentwich, Nationality in Mandated Territories Detached from Turkey, *British Year Book of International Law*, vol. 7, 97 (1926), at 102.

⁴ Jacob Stoyanovsky, *The Mandate for Palestine* (Longmans: London 1928), at 233.

4. The Peace Treaty carried great weight as to the status of the former Arab territories because of participation in it by the major powers of the day. States that had been at war with the Ottoman Turkish Empire signed it: Britain, France, Italy, Japan, Greece, Romania, the Serb-Croat-Slovene State. The United States had not been at war with Turkey but played an active role in drafting the Peace Treaty and in so doing recognized its terms.

5. As detailed below, the Peace Treaty became the lodestone to which lawyers and courts looked when ascertaining Palestine's status under international law. For instance, article 30 was cited on nationality questions.⁵ In a 1940 case, a British court cited article 30 when determining that Palestine was a state. In that case, a Palestine resident argued that his residency there made him a British national. The man cited the phrase "State to which such territory is transferred" and said that it meant Britain, and therefore, that he was a British national. The Court of Criminal Appeal disagreed. It ruled that there was no transfer of territory to Britain.⁶ The court read article 30 to mean that Palestine was the "state" to which territory was "transferred."⁷

i. The Permanent Court of International Justice rules that Palestine is a State

6. The 1923 Peace Treaty of Lausanne has also been relied upon by international courts in their ruling that Palestine is a state. In 1925, article 9 of Protocol XII of the Peace Treaty was at issue when a man who had a concession agreement with the Ottoman Turkish Empire tried to enforce it against Palestine. The man, a national of Greece, claimed that Palestine was now responsible under a concession agreement

⁵ Albert Millot, *Les Mandats Internationaux: étude sur l'application de l'Article 22 du Pacte de la Société des Nations* (Paris: Larose 1924), at 92.

⁶ *King v. Ketter*, [1940] 1 K.B. 787, at 789-790.

⁷ Georg Schwarzenberg, British and Palestinian Nationalities (Notes of Cases), *Modern Law Review*, vol. 3 (1939), at 164.

made with the Ottoman Turkish Empire and was in breach of that agreement. The concession related to the construction of public works in Palestine. The man said that Palestine was not honoring the agreement and that it, as successor state to the Ottoman Turkish Empire, must do so.

7. The dispute led to a major international ruling on Palestine's status by the Permanent Court of International Justice ("PCIJ"). Greece took the dispute to the PCIJ claiming that the "Government of Palestine" must honor the concession agreement as the successor in its territory to the Ottoman Turkish Empire.⁸ The PCIJ agreed, concluding that "Palestine is subrogated as regards the rights and obligations of Turkey."⁹

8. The Court also found Palestine statehood in the Peace Treaty's provision on Ottoman debt. The Court reasoned that article 46 "lays down rules for the subrogation of the successor states as regards the rights and obligations of the Turkish authorities."¹⁰ The Court read the phrase "the State which acquires," as a "successor State." The Court's reference to "successor State" was to Palestine.

9. Article 46 led to another finding that Palestine was a state. When controversy developed over the repayment of the Ottoman debt, an international arbitration was arranged under Eugène Borel, a professor at the University of Geneva and a leading international lawyer of the day. Statehood emerged as an issue after Borel completed the arbitration, because the states involved in the arbitration, which included Palestine, were to pay the arbitration's expenses. Under article 47 of the Peace Treaty, the expenses were to "be borne by the parties concerned." Borel concluded that the expenses should be shared by Iraq, Palestine, and Transjordan, which by

⁸ Permanent Court of International Justice, [Mavrommatis Palestine Concessions](#), Series A, no. 2, at 7 (1924). Permanent Court of International Justice, [Mavrommatis Jerusalem Concessions](#), Series A, no. 5, at 7 (1925).

⁹ Permanent Court of International Justice, [Mavrommatis Palestine Concessions](#), Series A, no. 2, at 32 (1924).

¹⁰ *Ibid.*, at 32.

that time had come under a separate mandate with Britain. Borel referred to them as “three states sufficiently separated to be considered here as distinct parties.”¹¹

10. These rulings by the PCIJ and Borel affirm that Palestine’s statehood in the Peace Treaty was accepted in the international community. The PCIJ and Borel were aware, of course, that Britain held administrative power in Palestine by a mandate arrangement with the League of Nations. They did not find that arrangement to derogate from Palestine’s status as a state.

ii. Britain, United States, Italy, Spain say that Palestine is a state

11. An additional affirmation of Palestine’s statehood came in an episode involving tariffs that Britain legislated for goods entering Britain from foreign countries.¹² Under the 1932 Import Duties Act, a “colonial preference” was given to goods entering Britain “from any part of the British Empire.” Since Parliament did not want to disadvantage goods coming from Britain’s mandates, like Palestine, the Import Duties Act authorized the Government to accord “colonial preference” to “any territory in respect of which a mandate of the League of Nations is being exercised by the Government of the United Kingdom.”¹³

12. The British Government promptly issued an order granting a preference to three territories Britain held as Class B mandates: Tanganyika, Cameroons, and Togoland.¹⁴ Under the League of Nations mandate system, Class B mandates had less status than Class A mandates. Palestine was a Class A mandate. This distinction created a problem regarding the tariffs. If Britain accorded Palestine a preference, states with which Britain had so-called most-favored-nation treaties might claim that

¹¹ Ottoman Public Debt Case, United Nations, *Reports of International Arbitral Awards*, vol. 1 (1925), at 609-610.

¹² United Kingdom, Import Duties Act, 1932, §1, 22 Geo. 5, c. 8.

¹³ *Ibid.*, §5.

¹⁴ United Kingdom, Import Duties (Mandated Territories) Preference Order, 1932, No. 133, 17 March 1932, *Statutory Rules and Orders and Statutory Instruments Revised to December 31, 1948* (London: His Majesty’s Stationery Office 1950), vol. 5, at 490.

goods entering Britain from their territories were entitled to the preference. Under such treaties, each state agrees to admit goods of the other at a tariff rate no higher than it charges on goods entering from any other state. The treaty partner states were unlikely to consider the Class B mandates to be states, but Britain knew that they might invoke their treaty rights if preferences were accorded to Palestine goods entering Britain.¹⁵ The British Government decided to ask treaty partners whether they would do so. At the same time, the British Government decided that if the treaty partners were to say they would invoke the preference, it would take the matter to the PCIJ for adjudication.¹⁶

13. Three treaty partners—the United States, Italy, and Spain—did object, on the basis that Palestine was a state and therefore that their own goods entering Britain would be entitled to the same treatment as goods from Palestine. The United States referred to its most-favored-nation provision with Britain, saying that Palestine is a “foreign country,” hence “that any tariff privileges accorded to Palestine should also accrue to the United States.”¹⁷ Italy, in its reply, stated that “Palestine as a mandate territory should be considered as a foreign state.”¹⁸ Spain too referred to Palestine’s mandate status and cited the clause in the Covenant of the League of Nations that set up the mandate system. Spain concluded “that, in accordance with the terms of Article 22 of the Covenant of the League of Nations, [...] the territory in question can in no way be considered as Imperial territory, but only as a foreign country.”¹⁹

¹⁵ Meeting of the Cabinet to be held at No. 10, Downing Street, at 2, C.P. 25 (32), 27 April 1932, Secret, CAB/23/71.

¹⁶ *Ibid.*, at 1.

¹⁷ The Secretary of State to the British Chargé (Osborne), Washington, 27 August 1932, Doc. 641.67n3/11, *Foreign Relations of the United States 1932* (Washington: US Government Printing Office 1947), vol. 2, at 32. Referenced in Green Hackworth, *Digest of International Law* (Washington: US Government Printing Office 1940), vol. 1, at 115.

¹⁸ The Chargé in Italy (Kirk) to the Secretary of State, Rome, 22 October 1932, Doc. 641.67n3/17, *Foreign Relations of the United States 1932*, vol. 2, at 35-36.

¹⁹ The Ambassador in Spain (Laughlin) to the Secretary of State, Madrid, 28 October 1932, Doc. 641.67n3/18, *Foreign Relations of the United States 1932*, vol. 2, at 36-37.

14. Britain's Foreign Office equally told the Cabinet that the conclusion by these states that Palestine was a "foreign country" was "in accordance with the view of the situation which the Law Officers have taken in the past."²⁰ The "Law Officers" were the Attorney General and Solicitor General, the officials who advised the British government on legal matters. In this regard, the British Government's own legal advisers agreed that Palestine was a state. They concluded that if trade preferences were given to Palestine but not to the treaty partners, "the risk of a claim for damages for breach of treaty would be a serious one."²¹

15. And what if Britain were to take the issue before the PCIJ? The Foreign Office told the Cabinet "that the case of His Majesty's Government in this matter must (in view of the series of adverse opinions by successive law officers) be regarded as a weak one and that His Majesty's Government in the United Kingdom would be running a serious risk of losing it if it were referred to a court for a legal decision."²² The PCIJ had already found Palestine to be a state, in the case of the Greek concessions, and Britain's top lawyers thought it would say the same if the tariff question were litigated. The British Government abandoned the idea of extending trade preferences to goods from Palestine.²³ Like the judicial rulings, the tariff episode showed that Palestine was a state despite being under mandate to Britain.²⁴

iii. Palestine became a state despite being under mandate

16. The same view of Palestine statehood was held within the League of Nations. The Palestine Mandate, an agreement between Britain and the League, was overseen by the League's Permanent Mandates Commission. The Commission's chair for

²⁰ Foreign Office, Suggested Extension of Imperial Preference to Palestine, at 1, E 5478/606/31, C.P. 363 (32), 20 October 1932, Secret, CAB 24/234.

²¹ *Ibid.*, at 2

²² *Ibid.*, at 1.

²³ Chargé in Britain, Dispatch No. 433, 15 January 1934, Doc. 641.67n3/20, *Foreign Relations of the United States 1932*, vol. 2, at 37.

²⁴ Jacob Stoyanovsky, *The Mandate for Palestine* (Longmans: London 1928), at 264.

many years was a lawyer named Pierre Orts. He read the Palestine Mandate as reflecting the status of Palestine as a state. Article 7 of the Palestine Mandate required that a nationality law be enacted to create a Palestine nationality. At a meeting of the Permanent Mandates Commission in 1937, Orts stated, “[t]he mandate, in Article 7, obliged the Mandatory to enact a nationality law, which again showed that the Palestinians formed a nation, and that Palestine was a State, though provisionally under guardianship.”²⁵

17. Orts saw Palestine as a state, despite Britain’s role exercising the League of Nations mandate. Lawyers of the era analogized Palestine’s status to that of a protectorate, namely, a state some of whose affairs are handled by an outside power.²⁶ Their views on Palestine’s status were not based on an inclination to favor either the Arabs or the Jews of Palestine. Orts in fact generally sided with Palestine’s Jewish citizens in disputes that reached the Permanent Mandates Commission.²⁷ Analysis of Palestine’s status was based on the structure that had been set up for Palestine.

iv. Malcolm Shaw’s understanding of Palestine’s status in 1923 is flawed

18. Professor Malcolm Shaw, who is also appearing before this Chamber as an *amicus* party, has attempted to refute my analysis of Palestine as a state from 1923. His position as reflected in his prior publications, however, is based on a flawed

²⁵ League of Nations, Permanent Mandates Commission, Minutes of the Thirty-Second (Extraordinary) Session devoted to Palestine, held at Geneva from July 30th to August 18, 1937, including the Report of the Commission to the Council, Tenth Meeting, 5 August 1937, 10 a.m., No. C.330.M.222. Also quoted in Victor Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891-1949* (New York: Pluto Press 2009), at 137.

²⁶ Hersch Lauterpacht, *The Mandate under International Law in the Covenant of the League of Nations* (1922), reprinted in Elihu Lauterpacht, ed., *International Law: Being the Collected Papers of Hersch Lauterpacht* (Cambridge: Cambridge University Press 1977), vol. 3, 29, at 46.

²⁷ Chaim Weizmann, *Trial and Error: The autobiography of Chaim Weizmann* (New York: Schocken Books, 1966), at 376.

concept of how one determines whether an entity is a state.²⁸ Shaw focuses entirely on the mandate arrangement to the exclusion of state practice. He takes the scope of Britain's powers of administration as Mandatory as negating Palestine's statehood. He omits any analysis of the Peace Treaty of Lausanne. He fails to mention the fact that the PCIJ and other courts found Palestine to be a state. He does not mention state practice. He disregards the fact that Britain itself dealt with Palestine as a state and that Palestine entered treaties with other countries and that that these treaties were concluded in the name of Palestine.

19. Shaw's major article on the issue, "The League of Nations Mandate System and the Palestine Mandate: What did and does it say about international law and what did and does it say about Palestine?", completely ignores the international practice that constitutes the "international law" on the issue.

20. Shaw's position is at odds with the position taken by States at the time. In 1945, the League of Arab States, which at its founding admitted Palestine as a member state, accurately positioned Palestine as a state based on the Peace Treaty of Lausanne. In an annex to the League's Pact, it concluded that "[a]t the end of the last Great War, Palestine, together with the other Arab States, was separated from the Ottoman Empire. She became independent, not belonging to any other State."²⁹ The League was aware, of course, that Britain had administered Palestine. By "independent," the League meant that Palestine was its own sovereign, not falling under the sovereignty of any other state. The League, like the PCIJ and other courts, accurately grasped the essence of Palestine's status while under mandate to Britain. Palestine was a state despite the powers exercised by Britain. One finds no international rulings or state practice of the era to the contrary.

²⁸ Malcolm Shaw, *The League of Nations Mandate System and the Palestine Mandate: What did and does it say about international law and what did and does it say about Palestine?* *Israel Law Review*, vol. 49, at 287 (2016).

²⁹ Pact of the League of Arab States, Cairo, March 22, 1945, Annex on Palestine, *United Nations Treaty Series*, vol. 70, at 237.

b. Palestine statehood continued after 1948

21. Palestine statehood was not extinguished by the events of 1948. While military forces under the newly declared State of Israel occupied most of Palestine, the remainder of its territory was occupied by Arab states in protection of its status. Egypt occupied the Gaza sector, while Jordan occupied the Central Palestine sector. Despite their occupation, a Palestine government was still in place. A government calling itself the All-Palestine Government was declared in Gaza, asserting that Palestine became independent upon Britain's withdrawal as Mandatory and that it was its government.³⁰

22. Further, both occupying powers, Egypt and Jordan, continuously recognized Palestine statehood and sovereign rule. A UN-appointed mediator for Palestine suggested that a substantial territorial segment of Palestine merge with Jordan, if the population were to consent.³¹ With Jordan in occupation of Central Palestine, a resolution was adopted at an assembly in Jericho on 1 December 1948, proposing the merger of Central Palestine with Jordan, explaining that "the people of Palestine now see through political and military developments in Palestine that the time has come when active steps should be taken with the cooperation of the neighboring Arab States to safeguard their future and decide their ultimate fate of living a life of independence and freedom."³² On 7 December 1948, the Jordanian government approved the merger, and on 13 December 1948, the Jordanian Parliament did as well.³³ On 2 November 1949, a Law Amending Public Administration Law in

³⁰ Cablegram dated 28 September 1948 from the Premier and Acting Foreign Secretary of the All-Palestine Government to the Secretary-General concerning constitution of the All-Palestine Government, UN Document A/C.1/300.

³¹ UN General Assembly, 3rd session, Progress Report of the United Nations Mediator on Palestine, at 18 (1948), UN Document A/648.

³² Marjorie Whiteman, *Digest of International Law*, vol. 2 (Washington: US Government Printing Office 1963), at 1163.

³³ *Ibid.*, at 1164.

Palestine was adopted by the Jordanian Parliament, declaring the laws of Palestine as remaining applicable.³⁴

23. In April 1950, elections were held for a Jordan parliament that would include Central Palestine, which came to be called the West Bank of the Jordan River.³⁵ On 24 April 1950, the Parliament, now with representation from both the West Bank and the East Bank of the Jordan River, adopted a second resolution of merger, but with a caveat. It provided, "Arab rights in Palestine shall be protected. These rights shall be defended with all possible legal means and this unity shall in no way be connected with the final settlement of Palestine's just case within the limits of national hopes, Arab cooperation and international justice."³⁶ This resolution placed Central Palestine "only *provisionally* [...] under Jordanian sovereignty."³⁷ The aim was "to cede sovereignty temporarily to Jordan until such time as the indigenous population might find it opportune to reassert control."³⁸

24. As for the Gaza sector, similar sentiments recognizing Palestine's statehood were expressed by Egypt, which from 1948, held Gaza as a belligerent occupant:

³⁴ Anis F. Kassim, Legal Systems and Developments in Palestine, *Palestine Yearbook of International Law*, vol. 1, 19, at 27 (1984). Philip Robins, *A History of Jordan* (New York: Cambridge University Press 2004), at 72. Raja Shehadeh, *From Occupation to Interim Accords: Israel and the Palestinian Territories* (London: Kluwer 1997), at 77.

³⁵ Philip Robins, *A History of Jordan* (New York: Cambridge University Press 2004), at 73.

³⁶ Marjorie Whiteman, *Digest of International Law*, vol. 2 (Washington: US Government Printing Office 1963), at 1166. Albion Ross, Amman Parliament Vote Unites Arab Palestine and Transjordan, *New York Times*, 25 April 1950, at A1. Decision of the Council of Representatives and the Council of Notables in Joint Session on April 24, 1950, concerning the Union of Eastern and Western Jordan (where English translation varies slightly), in Helen Miller Davis, *Constitutions, Electoral Laws, Treaties of States in the Near and Middle East* (Durham: Duke University Press 1953), at 265.

³⁷ G. Feuer, Les accords passés par les Gouvernements de Jordanie et du Liban avec les Organisations palestiniennes (1968-1970), *Annuaire Français de Droit International*, vol. 16, 177, at 189 (1970).

³⁸ Allan Gerson, *Israel, The West Bank and International Law* (London: Frank Cass 1978), at 79.

- On 26 May 1948, the Egyptian Minister of Defense issued Order No. 153 of 1948, formalizing Egypt's military control. Egypt characterized Gaza as the "areas subject to the supervision of the Egyptian forces in Palestine."³⁹
- An administrative governor issued Order No. 6 on 1 June 1948, providing that the courts of Gaza should continue to apply the law that had been in force up until 15 May 1948.⁴⁰ Law No. 621 of 12 December 1953, titled "On the Organic Status of the Region under Egyptian Military Occupation in Palestine", provided again for the continuing validity of Palestine laws in force. This provision was repeated in Law No. 255 of 11 May 1955.⁴¹ Palestine law was preserved, administered by the courts of Palestine.⁴² Court judgments were issued in the name of Palestine. The law of Palestine remained the law in force in Gaza.⁴³
- In Order No. 274, issued 8 August 1948 by the Minister of War and Navy, the administrative governor was granted whatever powers had been held by Britain's High Commissioner.⁴⁴ The British Order in Council of 1922, which provided a basis for governance of Palestine, was to be continued in force.

³⁹ Anis F. Kassim, Legal Systems and Developments in Palestine, *Palestine Yearbook of International Law*, vol. 1, 19 (1984), at 28.

⁴⁰ Raja Shehadeh, *From Occupation to Interim Accords: Israel and the Palestinian Territories* (London: Kluwer 1997), at 77.

⁴¹ *Ibid.*, at 29. See also J.L., The International Status of Palestine, *Journal du droit international*, vol. 90, 964 (1963), at 984. Resumé of Pronouncements bearing on the Structure of the Egyptian State, etc., 1952-1954, *Revue Égyptienne de droit international*, vol. 10 (1954), at 133. Resumé of Pronouncements bearing on the Structure of the Egyptian State, etc., 1952-1955, *Revue Égyptienne de droit international*, vol. 11 (1955), at 174 and 181.

⁴² Anis F. Kassim, Legal Systems and Developments in Palestine, *Palestine Yearbook of International Law*, vol. 1, 19, at 29 (1984). J.L., The International Status of Palestine, *Journal du droit international*, vol. 90, 964, at 984 (1963).

⁴³ Radwan Alagha, The Legal System in the Gaza Strip 1948-1967 [Arabic], in: *Which Legal System for Palestine? Conference Proceedings*, (Ramallah: Birzeit University Law Center 1996), at 21.

⁴⁴ Anis F. Kassim, Legal Systems and Developments in Palestine, *Palestine Yearbook of International Law*, vol. 1, 19 (1984), at 29. Raja Shehadeh, *From Occupation to Interim Accords: Israel and the Palestinian Territories* (London: Kluwer 1997), at 77.

- Publication was continued of the *Palestine Gazette*, which had been issued during the mandate era for new legal enactments.⁴⁵
- The All-Palestine Government served as the titular administration of Gaza.

25. In addition, on December 1959, a Palestine National Union was created in Gaza as a transitional entity that was to usher in a new Palestine government.⁴⁶ As explained by the Governor-General, the goal of the Palestine National Union was “to engender cooperation among all Palestinians to liberate the rest of their homeland.”⁴⁷ Egypt claimed no sovereignty in Gaza. Egypt regarded Gaza as part of Palestine.⁴⁸ A Constitution was adopted for Gaza in 1962, replacing the Order in Council of 1922.⁴⁹ The Constitution proclaimed, “[t]he Gaza Strip is an indivisible part of the land of Palestine.”⁵⁰ Under this Constitution, Palestine courts in Gaza, as before, issued their decrees “in the name of the people of Palestine.”⁵¹

c. Palestine statehood continued after 1967

26. Recognition of Palestine statehood continued after 1967 with Israel’s own recognition of that fact. In 1967 Israel entered into belligerent occupation of both the Gaza and the Central Palestine sectors. Israel continued in force the existing law in both sectors. By a proclamation issued by Israel’s Military Governor for the West

⁴⁵ Anis F. Kassim, Legal Systems and Developments in Palestine, *Palestine Yearbook of International Law*, vol. 1, 19 (1984), at 28.

⁴⁶ *Middle East Record*, vol. 1, at 136 (Tel Aviv: Israel Oriental Society 1960). *Ibid.*, vol. 2, at 112 (1961). Carol Farhi, On the Legal Status of the Gaza Strip, in Meir Shamgar, ed., *Military Government in the Territories Administered by Israel 1967-1980: The Legal Aspects* (1982), vol. 1, 61, at 77.

⁴⁷ As quoted in Ilana Feldman, *Governing Gaza: Bureaucracy, Authority, and the Work of Rule, 1917-1967* (Durham NC: Duke University Press 2008), at 9.

⁴⁸ Carol Farhi, On the Legal Status of the Gaza Strip, in Meir Shamgar, ed., *Military Government in the Territories Administered by Israel 1967-1980: The Legal Aspects* (1982), vol. 1, 61, at 75.

⁴⁹ Anis Al-Qasem, Commentary on Draft Basic Law for the Palestinian National Authority for the Transitional Period, in *Palestine Yearbook of International Law*, vol. 7, 187, at 190 (1992-94).

⁵⁰ Constitution of Palestine, art. 1, *Palestine Gazette*, 29 March 1962, reprinted as Republican Decree Announcing Constitutional System of Gaza Sector, March 9, 1962, *Middle East Journal*, vol. 17, at 156 (1963).

⁵¹ *Ibid.*, art. 54.

Bank, “the law in existence in the Region on June 7, 1967, shall remain in force.”⁵² A Military Governor for Gaza issued a similar proclamation to continue in force the existing law.⁵³ Israel did not purport to change the existing sovereignty in either sector.

d. Palestine statehood continued after 1988

i. Palestine has a government

27. Recognition of Palestinian statehood continued after 1988. Palestine statehood was re-confirmed in 1988 with the declaration of the Palestine Liberation Organization (“PLO”) as its government.⁵⁴ At that time Jordan annulled the provisional merger with Central Palestine in deference to the PLO as the Government of Palestine.⁵⁵

ii. Palestinian statehood has been recognized by various roadmaps to peace

28. Palestine statehood was assumed to exist in the Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict, drawn up by the United States, Russia, the European Union, and the United Nations on 30 April 2003. The Roadmap charted three “phases.”

29. “Phase One” was to involve a strengthening of Palestine’s institutions over a period of a few weeks, to be followed by “Phase Two,” to begin in June 2003, which

⁵² Proclamation No. 2, 7 June 1967, *Collection of Proclamations and Orders (Judea and Samaria)*, at 3, reprinted in Meir Shamgar, ed., *Military Government in the Territories Administered by Israel 1967-1980: The Legal Aspects* (1982), vol. 1, at 450.

⁵³ *Ibid.*, at 450.

⁵⁴ Letter dated 9 December 1988 from the Permanent Observer of the Palestine Liberation Organization to the United Nations addressed to the Secretary-General: Annex: Declaration of the formation of the provisional Government of the State of Palestine, 15 November 1988, U.N Doc. A/43/928, 9 December 1988.

⁵⁵ Excerpts from Hussein’s address on abandoning claims to the West Bank, *New York Times*, 1 August 1988, at A4.

would involve the “[c]reation of an independent Palestinian state with provisional borders through a process of Israeli-Palestinian engagement.”⁵⁶ Another element of “Phase Two” was that the four entities would all “promote international recognition of Palestinian state, including possible UN membership.” The “Phase Two” creation of an “independent Palestinian state” implied that a Palestine state already existed. All that remained to be done was to eliminate the belligerent occupation. By saying on 30 April 2003 that they would promote recognition beginning June 2003, the four entities must have considered Palestine already to be a state. The Roadmap was endorsed by the UN Security Council, which, by this endorsement, shared in the view that Palestine was a state.⁵⁷

iii. Israel has recognized Palestine’s status as a state

30. Israel itself has acknowledged Palestine’s statehood. In 1993, it agreed to negotiate borders with Palestine.⁵⁸ One does not negotiate borders with a non-state entity. By agreeing to negotiate borders, Israel acknowledged Palestine’s statehood. In 2009, Israel again acknowledged Palestine’s statehood. In pressing Palestine to recognize Israel as a state “of the Jewish people,” Israel’s Prime Minister, Benjamin Netanyahu, agreed to recognize Palestine as a state of the Palestinian people. He stated, “[i]f we are asked, which we are, to recognize the Palestinian state as the nation-state of the Palestinian people -- and we are willing to do so -- it is only natural that we ask our Palestinian neighbors to recognize the State of Israel as the nation-state of the Jewish people.”⁵⁹ Mr. Netanyahu’s willingness to recognize

⁵⁶ Letter dated 7 May 2003 from the Secretary-General to the President of the Security Council, Annex: A performance-based roadmap to a permanent two-State solution to the Israeli-Palestinian conflict, UN Document S/2003/529.

⁵⁷ UN Security Council, Resolution 1515, 19 November 2003.

⁵⁸ Letter dated 8 October 1993 from the Permanent Representatives of the Russian Federation and the United States of America to the United Nations addressed to the Secretary-General: Annex: Declaration of Principles on Interim Self-Government Arrangements (Israel-P.L.O.), 13 September 1993, UN Doc. A/48/486, S/26560.

⁵⁹ Benjamin Netanyahu, Speech at the National Defense College Graduation Ceremony, 28 July 2009, <http://www.pmo.gov.il/PMOEng/Communication/PMSpeaks/speechmabal280709.htm>.

Palestine if only it sent him a certain message bespeaks his understanding that Palestine was a state.

31. Palestine's statehood is thus acknowledged even by its principal adversary. That acknowledgement stands despite any contrary view that might be attributed to the Government of Israel in political declarations. What matters in international practice is how states act when confronted with real issues. Israel, when confronted with the issue of how to arrange its relations with Palestine, deals with Palestine as a state.

iv. The UN has recognized Palestine's status as a state

32. Successive resolutions by the United Nations recognized Palestine as a state. Palestine had a mission at the United Nations based on General Assembly Resolution 3237 of 22 November 1974. That resolution did not specify whether the PLO was being invited as the Government of a state, or otherwise. However, in 1988, when the PLO formally declared itself to be the Government of Palestine, the General Assembly adopted Resolution 43/177, in which it welcomed the declaration and replaced the designation "Palestine Liberation Organization" with "Palestine" to be used for all purposes within the United Nations. Malcolm Shaw challenged my conclusion that Resolution 43/177 reflects the United Nations' acceptance of Palestine as a state. He claimed that this was a name change, nothing more.⁶⁰ But when the name is changed to that of a state, the obvious significance is that an entity is being accepted as a state. Shaw's view that the name change carried no significance is refuted by what the General Assembly said in the preamble paragraphs of Resolution 43/177. It prefaced the name change by saying that it was "aware of the proclamation of the State of Palestine by the Palestine National Council." It referred to the General Assembly's call in a 1947 resolution for a Jewish

⁶⁰ Malcolm Shaw, The Article 12(3) Declaration of the Palestinian Authority, the International Criminal Court and International Law, <http://ssrn.com/abstract=1782668> (2011).

state and an Arab state in Palestine and then said that the PLO's 1988 proclamation was "in line" with the 1947 resolution. Since the PLO proclamation said that Palestine was a state, the General Assembly, by giving this explanation, was saying that the proclamation of the PLO as the government of a Palestine state was valid.

33. By subsequent action, the UN General Assembly re-affirmed that the name change was more than semantic. By Resolution 52/250 of 7 July 1998, the General Assembly gave Palestine procedural rights at the United Nations that apply only to states. By Resolution 67/19 of 29 November 2012, the General Assembly stated unambiguously that Palestine is a state.

34. Resolution 67/19 clarified that Palestine's existing observer mission was that of a state. It re-confirmed Palestine's status as a state. That re-confirmation was not prospectively only. By stating that the observer mission is that of a state, the General Assembly was saying that it deemed Palestine already to be a state.

35. 138 states voted in favor of Resolution 67/19. Out of the states that abstained, 16 had recognized Palestine, so they too consider Palestine a state (Albania, Bosnia & Herzegovina, Bulgaria, Congo (DRC), Hungary, Malawi, Mongolia, Montenegro, Papua New Guinea, Paraguay, Poland, Romania, Rwanda, Slovakia, Togo and Vanuatu). In total, 154 of the 193 UN member states, or nearly 80%, have publicly stated that Palestine is a state. The remaining 20% cannot be assumed to believe that Palestine is not a state. Indeed, some of them by their actions have dealt with Palestine as a state. The United States, for example, did not vote in favor of Resolution 67/19. But, as indicated above, it was a sponsor of the 2003 Roadmap that assumed Palestine statehood. It was also a co-signatory of the 1993 Declaration of

Principles and was thereby accepting that a border could be negotiated between Israel and Palestine.⁶¹

B. The so-called Montevideo criteria are not a bar to Palestine statehood

36. The Prosecutor declines, correctly, to hold Palestine to the so-called Montevideo criteria. The Convention on the Rights and Duties of States (Montevideo, 1933) is irrelevant in ascertaining whether an entity is a state. In the history of Palestine since 1923, the so-called Montevideo criteria have never been used in international proceedings to question its statehood. The Prosecutor in her Request correctly follows this practice.

a. Article 1 of the Montevideo Convention does not create a test for statehood

37. Those who deem the Montevideo Convention to be a recipe for statehood rely on a single article that reads: “Article 1: The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.”⁶² This listing covers features that one typically finds in a state. Article 1, however, was not written as a set of requirements for statehood, as is apparent when Article 1 is read in the context of the Convention in its entirety.

38. The drafting of the Montevideo Convention was promoted by Latin American states which sought to preclude the United States’ practice of refusing to deal with governments in those states that may have come into power in arguably non-constitutional ways. The Convention came at a time in which these states thought

⁶¹ Letter dated 8 October 1993 from the Permanent Representatives of the Russian Federation and the United States of America to the United Nations addressed to the Secretary-General: Annex: Declaration of Principles on Interim Self-Government Arrangements, UN Document A/48/486, S/26560.

⁶² Convention on Rights and Duties of States, Montevideo, 26 December 1933, *League of Nations Treaty Series*, vol. 165, at 19.

they could take advantage of the fact that a new administration in the United States, under President Franklin Roosevelt, would be favorable to recognition. In particular, Roosevelt adopted a “good neighbor” policy towards Latin America that departed from the United States’ previous practice of frequently intervening in the domestic affairs of Latin states. US Secretary of State Cordell Hull confirmed at the Montevideo conference that the Convention was a product of the “good neighbor” policy.⁶³

39. The aim of protecting Latin states from the more powerful United States is evident from the Convention’s title and from its principal operative articles. Article 3 proclaims: “The political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.” Article 4 proclaims: “States are juridically equal, enjoy the same rights, and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law.” That the purpose of the Montevideo Convention was the Latin concern about United States interference is even more evident from a reservation that the United States entered when signing the Convention. In this reservation, the United States vowed that it had no intention of interfering in the internal affairs of the Latin states.⁶⁴ Article 1 is merely a preface to these essential provisions, requiring acceptance of a state and protecting it from outside political or military intervention.

⁶³ *Some of the Results of the Montevideo Conference: Address by the Honorable Cordell Hull, Secretary of State, before the National Press Club, Washington, February 10, 1934* (Washington: US Government Printing Office 1934), at 4.

⁶⁴ *Report of the Delegates of the United States of America to the Seventh International Conference of American States, Montevideo, Uruguay, December 3-26, 1933* (Washington: US Government Printing Office 1934), at 170.

40. Resolution 67/19 itself makes no mention of the Montevideo criteria despite listing in the “whereas” clauses a great number of considerations that led to the General Assembly’s determination in operative clause 2 that Palestine is a state. Instead, the “whereas” clauses recite circumstances indicating the international community’s acceptance of Palestine as a state and the reasons why it can be deemed a state. These include a reference to the Fourth Geneva Convention of 1949, which makes clear that belligerent occupation does not defeat statehood. It also includes references to several General Assembly and Security Council resolutions going back to 1947.

41. Resolution 67/19, moreover, referred specifically to the fact that the PLO “is entrusted with the powers and responsibilities of the Provisional Government of the State of Palestine.” In Resolution 67/19, the General Assembly referred to legal issues relevant to statehood. The so-called Montevideo criteria were not among them. The Prosecutor is on solid legal ground in declining to invoke the Montevideo Convention and in relying instead on the bases for statehood accepted in international law.

b. The so-called Montevideo criteria are not applied in international relations

42. Ignoring international practice, Shaw erroneously claims that entities purporting to be states are judged by the so-called Montevideo criteria. He refers to “the internationally accepted criteria for statehood as expressed in Montevideo Convention 1933.”⁶⁵ These criteria, however, are not “internationally accepted.” They do not guide the states of the world when deciding which entities to accept as states. The *amicus* parties invoking the so-called Montevideo criteria in this proceeding against Palestine either do not understand the Montevideo Convention or are

⁶⁵ Malcolm Shaw, The Article 12(3) Declaration of the Palestinian Authority, the International Criminal Court and International Law, at 12, <http://ssrn.com/abstract=1782668> (2011).

weaponizing it to negate this Court's jurisdiction over crimes committed in Palestine.

43. In rejecting Shaw's view, a leading international law text states in regard to the so-called Montevideo criteria, and not without understatement, "In practice, global elites have interpreted these criteria quite flexibly."⁶⁶ One simply does not find states invoking the so-called Montevideo criteria.

44. Further, determinations over which entities constitute a state typically do not turn on whether or not those entities meet the so-called Montevideo criteria. Entities that would satisfy the so-called Montevideo criteria are not accepted as states. The Turkish Republic of Northern Cyprus, for instance, is not accepted as a state, even though it satisfies them. The opposite is also true as entities not meeting the Montevideo criteria are nonetheless accepted as states. Ukraine and Belorussia were admitted as original member states of the United Nations while they were constituent republics of the U.S.S.R., and their administrations qualified as no more than regional governments. Under the Soviet constitution of 1936 (Article 14), the U.S.S.R. held authority on war and peace, defense, foreign trade, state security, economic planning, taxation, banking, transportation, communications, and insurance, besides having general legislative power. Even so-called "failed states" are dealt with by the international community as states despite a lack of control by any governmental administration.⁶⁷

45. Entities enjoying a right of self-determination have been accepted as states even as they were under the control of others. India was admitted as a member of the League of Nations and later as an original member of the United Nations in 1945, even though its independence came only in 1947. The Philippines was admitted as

⁶⁶ Jeffrey L. Dunoff, Steven R. Ratner, and David Wippman, *International Law: Norms, Actors, Process* (New York: Aspen 2006), at 115.

⁶⁷ James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press 2006), at 720-723.

an original member of the United Nations even though it had yet to gain independence from the United States. Congo was regarded as a state and was admitted as a UN member state in 1960 while Belgium remained in control.⁶⁸ Guinea-Bissau was admitted as a UN member state in 1974 while Portugal remained in control.

46. States under belligerent occupation are also routinely deemed not to lose statehood. Denmark remained a state during World War II even after its government had been removed by occupying forces of Germany. Kuwait was a state in 1990-91, even as its territory was occupied by Iraq.⁶⁹ The European Union has deemed Estonia, Lithuania, and Latvia to have continued to be states after 1940 even as they were absorbed into the U.S.S.R.⁷⁰ The United States did not purport to extinguish Iraq's statehood when it controlled Iraq as belligerent occupant between 2003 and 2004.

47. Many so-called "micro-states" are regarded as states even though they, like Palestine in the mandate era, exist under an arrangement in which outside states impinge on their freedom of action. Monaco is a UN member state, even though France has substantial control over its political affairs.⁷¹ The same is the case for Andorra, even though the heads of state of Andorra are two co-princes - the President of France and the Bishop of Urgell.⁷²

48. Hypocritically, the European states challenging Palestine's statehood in this proceeding have acquiesced or otherwise accepted the status of other states that possess the same characteristics they deem to be problematic for Palestine. For

⁶⁸ James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press 2006), at 57.

⁶⁹ Eyal Benvenisti, *The International Law of Occupation* (Princeton: Princeton University Press 1993), at 151. Jeffrey L. Dunoff, Steven R. Ratner, and David Wippman, *International Law: Norms, Actors, Process* (New York: Aspen 2006), at 116.

⁷⁰ *British Year Book of International Law*, vol. 62, at 558 (1991).

⁷¹ Admission of the Principality of Monaco to membership in the United Nations, General Assembly Resolution 47/231, 28 May 1993.

⁷² Admission of the Principality of Andorra to membership in the United Nations, General Assembly Resolution 47/232, 28 May 1993.

instance, they have accepted the admission of Monaco and Andorra to the United Nations, as well as the admission of the Marshall Islands and of the Federated States of Micronesia. In the latter two Pacific states, the United States oversees military matters and has a right to bring in troops at any time. The two states are forbidden to allow entry of military troops of any foreign state without permission of the United States.⁷³ The European states similarly acquiesced in the admission to UN membership of Palau, even though its arrangement with the United States imposes similar restrictions on the freedom of action of its Government.⁷⁴ The European states interact on a daily basis with Andorra, Monaco, the Federated States of Micronesia, Marshall Islands, and Palau as fellow members of the United Nations.

49. Israel itself has not referenced the so-called Montevideo criteria when asserting its status as a state. When Israel applied for UN membership in 1948, it did not refer to the Montevideo Convention or anything similar. The way in which it claimed to be a state was to refer to the number of states that had recognized it. It gave the number as 19.⁷⁵ That method of proving statehood was in conformity with international practice. Statehood is proven by acceptance of an entity as a state by the other states of the world. Recognition is not the only way in which other states indicate acceptance, but it is one way. In its application for UN membership, Israel did not assert that the number 19 represented any percentage of the states of the world. There is no agreed percentage. The intent behind Israel's assertion of 19 recognitions was to show that several states deemed Israel to be a state. The number 19 represented about one-third of the number of states in the United Nations as of

⁷³ Admission of the Federated States of Micronesia to membership in the United Nations, UN General Assembly Resolution 46/2, 17 September 1991; Admission of the Republic of the Marshall Islands to membership in the United Nations, UN General Assembly Resolution 46/3, 17 September 1991 (both adopted without vote)

⁷⁴ Admission of the Republic of Palau to membership in the United Nations, UN General Assembly 49/63, 15 December 1994 (adopted without vote).

⁷⁵ UN Security Council, 3rd year, Supplement for December 1948, *Letter dated 29 November 1948 from the Israeli Minister for Foreign Affairs to the Secretary-General concerning Israel's application for membership in the United Nations and declaration accepting the obligations contained in the Charter*, UN Document S/1093.

1948. Palestine is recognised by upwards of 70% of the member states of the United Nations.

*c. Palestine would qualify as a state even under the so-called
Montevideo criteria*

50. Even if one were to apply the so-called Montevideo criteria to Palestine, it would qualify as a state.⁷⁶ Palestine has a “permanent population,” one that dates to ancient times. It has a “defined territory.” It has a government, namely, the one declared by the PLO in 1988 and that set up the Palestinian Authority that functions today. Palestine has the capacity to enter into relations with the other states of the world, as evidenced by its extensive network of recognitions and diplomatic relations.

51. Those who invoke the so-called Montevideo criteria against Palestine argue that it has no “defined territory,” which they claim is required by Article 1 of the Montevideo Convention. They say that borders must be defined. But Article 1 speaks of “defined territory,” not “defined borders.” A “defined territory” need not have “defined borders.” This fact is further confirmed through a comparison of the different translations of the Convention. The Montevideo Convention was concluded in four language texts, each being equally authentic: Spanish, English, Portuguese, and French (Article 16). In the Spanish and Portuguese texts of Article 1, the phrase is “territorio determinado.” The French text reads “territoire déterminé.” Only the English text uses the term “defined.” The Vienna Convention on the Law of Treaties requires that in the event of divergence among authentic texts, one must seek “the meaning which best reconciles the texts, having regard to the object and purpose of the treaty.”⁷⁷ The French, Spanish, and Portuguese texts mean simply a “given”

⁷⁶ John V. Whitbeck, *The State of Palestine Exists*, *Middle East Policy*, vol. 18, no. 2, at 62 (2011).

⁷⁷ Vienna Convention on the Law of Treaties, Vienna, May 23, 1969, art. 33(4), *United Nations Treaty Series*, vol. 1155, at 331.

territory. In other words, there should be some territory. If “defined territory” in the English text meant “defined borders,” that would be hard to reconcile with the other three texts. The English term “defined territory,” on the other hand, can be read consistent with “determined territory.”

52. Reconciling the four texts in light of the Convention’s object and purpose shows even more clearly that borders were not at issue. The object and purpose of the Montevideo Convention, as shown above, was to secure agreement that the United States would not interfere in Latin states. It would not matter if a Latin state had ill-defined borders, or a border dispute with a neighboring state.

53. Finally, Article 1 was not intended to say that a state under belligerent occupation was not a state. Those who say that a state under belligerent occupation is not a state per Article 1 ignore the fact that most of the state parties to the Montevideo Convention were also party to the Laws and Customs of War on Land (Hague Convention IV) of 1907 and its accompanying Regulations. The Regulations govern belligerent occupation and indicate that belligerent occupation does not negate the statehood of the occupied state. These states could not have intended to repudiate the obligation they accepted in the Hague Convention.

C. Palestine is a State Despite a Separation of Administrations

54. The Prosecutor notes that the Gaza sector of Palestine and the West Bank sector have been separately administered since 2007. She finds this separation presents no impediment to concluding that Palestine is a state. Her position on this point is consistent with the law relating to statehood when sectors of a state are separately administered.

55. A split in administration inside a state does not impair an entity’s status as a state. Currently, Libya is under two administrations, each one holding one territorial

sector of the country. But Libya as a state remains a member of the United Nations and is universally regarded as a state. It was under two separate administrations when the Security Council referred the situation in Libya to the Court in Resolution 1970 of 26 February 2011.

56. China is a state even though the governments of the People’s Republic of China and of the Republic of China hold separate sectors of its territory, each claiming to be the legitimate government of the entirety of China. In Vietnam after the Paris accords of 1954, two separate administrations formed. Each claimed to be the government of the entirety of Vietnam. The 1960 constitution of the Democratic Republic of Vietnam recited “that Viet Nam is an entity indivisible from China to Camau.” The 1956 constitution of the Republic of Vietnam claimed sovereignty “from the point of Ca-Mau to the Gate of Nam-Quam.” Nam-Quam is on the Vietnam-China border. Camau is the southern-most point of Vietnam. Vietnam continued to be regarded as a state by both administrations, and by the international community.

57. In both China and Vietnam, the separate administrations maintain (and maintained) their own relations with foreign states. The two administrations in Palestine reflect far less separation than the two administrations of either China or Vietnam. Since Hamas’ assertion of control in the Gaza sector in June 2007, the Ramallah-based administration continues to function for Palestine at the international level. In March 2008, the two administrations affirmed in writing the “unity of the Palestinian people, territory and authority.”⁷⁸ Hamas regards itself as coming under the umbrella of those representative bodies that function for Palestine at the international level. A federal appeals court in the United States confirmed this fact in a 2019 case in which an insurance claim turned on the status of Palestine. In analyzing the relationship between the two Palestine administrations, the court

⁷⁸ Michael Jansen, Fatah and Hamas agree on reconciliation plan, *Irish Times*, 24 March 2008, at 10.

pointed out that “ Hamas does not engage in formal relations on behalf of Palestine (or even Gaza),”⁷⁹ and that “ Gaza is part of Palestine and not its own sovereign state. [...] Hamas has not declared itself independent from Palestine.”⁸⁰ The Ramallah-based administration, the court concluded, was “ the de jure government of Palestine.”⁸¹

58. Palestine’s territory encompasses the territory that was Palestine in the mandate era, minus the territory involved in the 1948 secession by Israel. The extent of the secessionist territory is broadly accepted by all parties, with the exception of a few territorial sectors on the border between the two states. The UN General Assembly defined the territory of Palestine in Resolution 67/19 of 29 November 2012 as that occupied in 1967 by Israel. That definition coincides with the territory of mandate-era Palestine minus the territory of Israel. Confirmation was given by the UN Security Council in Resolution 2334 of 23 December 2016, in which it said that “ it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations.” UNESCO has confirmed on three occasions that localities in the West Bank are in Palestine. This action has come in filings by Palestine as a member state of UNESCO for designation of cultural heritage sites. A site is designated only with the consent of the state in whose territory it is located.⁸² UNESCO accorded world heritage status to sites in Bethlehem (Church of the Nativity, 2012), in Battir (an olive grove cultural landscape, 2014), and in Hebron/Al-Khalil (Old Town, 2017).⁸³

⁷⁹ *Universal Cable Productions LLC v. Atlantic Specialty Insurance Company*, 929 F.3d 1143, at 1157 (9th Cir. 2019).

⁸⁰ *Ibid.*, at 1158.

⁸¹ *Ibid.*, at 1158.

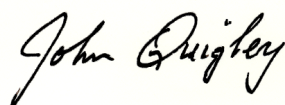
⁸² Convention concerning the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972, <http://whc.unesco.org/en/conventiontext>.

⁸³ UNESCO World Heritage Centre, The State Parties, Palestine, <http://whc.unesco.org/en/statesparties/PS>.

III. CONCLUSION

59. The issue of Palestine statehood is a legal matter unrelated to political considerations. To say that Palestine is a state is to take no position on the equities of the Israel-Palestine situation. It implies no position on how the two parties should resolve their differences. It implies no position on whether Palestine and Israel should merge into a single state, or whether they should remain as two separate states, or whether they should form a federation with each other. It implies no position on the controversies relating to Israel's settlements in Palestinian territory or other such issues. The issue of Palestine statehood needs to be analyzed based on the rules followed by the international community in accepting entities as states. The issue is not the domain of analysts who fetishize an article in an 85-year-old regional treaty to create requirements for statehood that international practice simply does not reflect.

60. If Palestine's status is relevant, this Court must decide. The federal appeals court in the United States, when confronted with an issue of Palestine's status that was relevant to an insurance claim, said that the Palestinian administration in the West Bank was "the de jure government of Palestine."⁸⁴ The PCIJ did the same when the issue of Palestine's status was relevant to the suit of the Greek concessionaire. Political expediency should not cause this Chamber to shirk its responsibility of equally assessing Palestine's status as a state



John Quigley

Dated this 3rd day of March 2020
At Columbus, Ohio

⁸⁴ *Universal Cable Productions LLC v. Atlantic Specialty Insurance Company*, 929 F.3d 1143, at 1158 (9th Cir. 2019).