

SITUATION IN PALESTINE

Ambassador Tiina Intelmann
President
Assembly of States Parties to the Rome Statute
International Criminal Court
3 Dag Hammarskjold Plaza
305 East 47th Street, Unit 6B
New York
NY 10017
United States of America

7 August 2012

Dear Ambassador Intelmann

RE PALESTINE'S DECLARATION UNDER ARTICLE 12(3) OF THE ROME STATUTE

The former Prosecutor of the International Criminal Court, Mr Moreno Ocampo, issued a statement on 3 April 2012 in response to the Declaration submitted by the Government of Palestine on 22 January 2009 recognizing the jurisdiction of the International Criminal Court under Article 12(3) of the Rome Statute in respect of "acts committed in the territory of Palestine since 1 July 2002". In this statement the former Prosecutor stated that the Office of the Prosecutor had no authority under the Rome Statute to make a decision on whether Palestine qualified as a "State" under Article 12(3) of the Rome Statute. He declared:

"competence for determining the term 'State' within the meaning of Article 12 rests, in the first instance, with the United Nations Secretary General who, in case of doubt, will defer to the guidance of the General Assembly. The Assembly of States Parties of the Rome Statute could also in due course decide to address the matter in accordance with article 112(2)(g) of the Statute.

In interpreting and applying Article 12 of the Rome Statute, the Office has assessed that it is for the relevant bodies of the United Nations *or the Assembly of States Parties* to make the legal determination whether Palestine qualifies as a State for the purpose of acceding to the Rome Statute and thereby enabling the exercise of jurisdiction by the Court under article 12(1) " (emphasis added).

We, the undersigned scholars and teachers of international law and international criminal law, are “not only passively compliant, but actively supportive” friends of the International Criminal Court (to quote from your article in the *Guardian* of 2 July 2012). We believe that it is in the interests of international criminal justice and the reputation of the International Criminal Court that the question of the statehood of Palestine for the purposes of Article 12(3) of the Rome Statute be properly resolved as soon as possible.

We therefore request the Bureau of the Assembly of States Parties of the International Criminal Court to place this issue on the agenda of the Assembly of States Parties for its November 2012 session in The Hague. We make this request in accordance with the above statement of the Prosecutor that the Assembly of States Parties has the competence to decide this matter in terms of Article 112(2)(g) of the Rome Statute.

From 2009 to 2012 the former Prosecutor gave the impression that it was for his Office to decide the question of Palestinian statehood for the purposes of Article 12(3) of the Rome Statute and encouraged international jurists to express their views on the statehood of Palestine for the purposes of making such a determination. We are disappointed that after three years the Prosecutor should decline to answer this question and instead refer it to the United Nations or the Assembly of States Parties. But he has so decided and we therefore respectfully request you to place this matter on the agenda of the Assembly of States parties for consideration.

Yours sincerely

John Dugard (South Africa), Professor of International Law, Universities of Leiden and Pretoria; Former Member of International Law Commission; Former UN Special Rapporteur on the Human Rights Situation in the Occupied Palestinian Territory; Chair of League of Arab States Independent Fact-Finding Committee on Gaza (2009); Member of the Institut de droit international.

William Schabas (Canada and Ireland), Professor of International Law, University of Middlesex, London; Professor of International Criminal Law and Human Rights, University of Leiden; Professor of Human Rights Law, National University of Ireland, Galway.

Georges Abi-Saab (Egypt), Emeritus Professor of International Law, Graduate Institute of International and Development Studies, Geneva; Former Judge of ICTY; Former Member of the Appellate Body of the WTO; Member of the Institut de droit international.

Susan Akram (United States), Clinical Professor, Human Rights Program, Boston University School of Law; Former Senior Fulbright Scholar Al-Quds University, Palestine of School of Law; co-author of Arab-Israeli Conflict, *Max Planck Encyclopedia of International Law*.

Ove Bring (Sweden), Professor Emeritus of International Law, Stockholm University and Swedish National Defence College.

Marcel Brus (Netherlands), Professor of International Law, University of Groningen.

Eric David (Belgium), Professor Emeritus of International Law and President of the Centre of International Law at the Free University of Brussels; Member of the International Humanitarian Law Fact-Finding Committee.

Anton du Plessis (South Africa), Head, International Crime in Africa Programme, Institute for Security Studies, South Africa.

Max du Plessis (South Africa), Associate Professor of Law, University of KwaZulu –Natal; Senior Research Associate, International Crime in Africa Programme, Institute for Security Studies, South Africa; Advocate of High Court of South Africa.

Mathias Forteau (France), Professor of International Law, University of Paris -Quest, Nanterre - La Défense; Member of International Law Commission.

Vera Gowlland Debbas (Switzerland), Emeritus Professor of Public International Law, Graduate Institute of International and Development Studies, Geneva; Visiting Professor University College, London; author of “ Note of the Legal Effects of Palestine’s Declaration under Article 12(3) of the ICC Statute”, presented at Roundtable of the Office of the Prosecutor of the ICC on Palestine on 20 October 2010, published on ICC website and in *Is There a Court for Gaza? A Test Bench for International Justice* (eds C Meloni & G Tognoni) (Asser Press, Springer 2012) p 513.

Larissa van den Herik (Netherlands), Professor of Public International Law, University of Leiden.

Victor Kattan (United Kingdom), School of Oriental and African Studies, University of London; author of *From Coexistence to Conquest. International Law and the Origins of the Arab-Israeli Conflict, 1891-1949* (Pluto Press 2009).

Michael Kearney (Ireland), Fellow in Law, London School of Economics; author of “ Why Statehood Now: A Reflection on the ICC’s Impact on Palestine’s Engagement with International Law” in *Is There a Court for Gaza? A Test Bench for International Justice* (eds C Meloni & G Tognoni) (Asser Press, Springer 2012) p 391.

Marcelo Kohen (Argentina), Professor of International Law, Graduate Institute of International and Development Studies, Geneva; Associate Member Institut de droit international.

Chantal Meloni (Italy), Università degli Studi di Milano; Alexander Von Humboldt Research Fellow in International Criminal Law at the Humboldt University, Berlin ; co-editor of *Is there a Court for Gaza? A Test Bench for International Justice* (Asser Press, Springer, 2012).

André Nollkaemper (Netherlands), Professor of Public International Law, University of Amsterdam.

Roger O' Keefe (Australia), Senior Lecturer in Law and Fellow of the Lauterpacht Centre for International Law, University of Cambridge.

Alain Pellet (France), Professor of International Law, University of Paris-Ouest, Nanterre-La Défense; Former Chairperson, International Law Commission; Associate Member Institut de droit international.
Author of " The Palestinian Declaration and the Jurisdiction of the International Criminal Court", submitted to the Office of the Prosecutor of the ICC and published in (2010) 8 *Journal of International Criminal Justice* 981.

John Quigley (United States), Professor of international Law , The Ohio State University; author of *The Statehood of Palestine: International Law in the Middle East Conflict* (Cambridge University Press, 2010); " The Palestine Declaration to the International Criminal Court" published in *Is There a Court for Gaza ? A Test Bench for International Justice* (eds C Meloni & G Tognoni)(Asser Press, Springer, 2012) p 429.

John Reynolds (Ireland), Government of Ireland Scholar in International Law, National University of Ireland, Galway.

Jean Salmon (Belgium), Professeur émérité de l'Université Libre de Bruxelles; Former Legal Officer to UNRWA; membre de la Cour Permanente d'Arbitrage; membre de l'Institut de droit international.

Ben Saul (Australia), Professor of International Law, Australian Research Council Future Fellow, University of Sydney; Barrister.

Nico Schrijver (Netherlands), Professor of International Law and Academic Director, Grotius Centre for International Legal Studies, University of Leiden; Member of Senate, Dutch Parliament; Associate Member Institut de droit international.

Iain GM Scobbie (United Kingdom), Sir Joseph Hotung Research Professor in International Law, Human Rights and Peace Building in the Middle East, School of Oriental and African Studies, University of London.

Carsten Stahn (Germany), Professor of international Criminal Law and Global Justice, Grotius Centre for International Legal Studies, University of Leiden.

Sébastien Touzé (France), Professor of International Law, University of Strasbourg; Secretary General of the International Institute of Human Rights, Strasbourg (Founded by René Cassin); Member of the Council of the Société française pour le droit international.

Paul de Waart (Netherlands), Professor Emeritus of International Law, Vrije Universiteit, Amsterdam; Former Chair Academic Project Dynamics of Self-Determination of Israeli, Palestinian and Western Researchers (1988-1993); member of League of Arab States Independent Fact-Finding Committee on Gaza (2009).

William Thomas Worster (United States), Lecturer in Public International Law, The Hague University of Applied Sciences, Netherlands.: author of “ The Exercise of Jurisdiction by the International Criminal Court over Palestine “ (2012) 26 *American University International Law Review* 1153.

Liesbeth Zegveld (Netherlands), Professor of International Humanitarian Law, University of Leiden; partner, Böhler Advocate, Amsterdam.

THE ABOVE PERSONS HAVE ALL ENDORSED THIS LETTER BY EMAIL. THE EMAILS ARE AVAILABLE FROM JOHN DUGARD : john@dugard.nl

CORRESPONDENCE SHOULD BE ADDRESSED TO JOHN DUGARD (john@dugard.nl) AND WILLIAM SCHABAS (w.schabas@mdx.ac.uk).

OR TO : JOHN DUGARD,
JOZEF ISRAELSPLEIN 24,
2596 AT THE HAGUE, NETHERLANDS