



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

**Submissions Pursuant to Rule 103
(Professor Hatem Bazian)**

Source: Professor Hatem Bazian

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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**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

The competent authorities of the State of
Palestine

Amicus Curiae

All *amicus curiae* parties

REGISTRY

Registrar

Mr Peter Lewis, Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach, Chief

Other

I. INTRODUCTION

1. Law is born out of social-political-economic-religious conditions and the Palestine issue is most illustrative of these entanglements. This Chamber is asked to determine whether it has territorial jurisdiction in the Occupied Palestinian areas, which is a question born of over 100 years of major powers entanglements with Palestine and the destiny of its indigenous population. Before examining the merits of the argument, key contexts must be understood which bear on how the issue should be approached and ultimately determined.

II. PALESTINE'S STATEHOOD MUST BE VIEWED IN CONTEXT

2. Palestine's claim to statehood and this Court's exercise of jurisdiction over its territory comes from the right of its indigenous population to control their own fate, governance, and well-being. All contrary arguments by the States, entities, and persons, who seek to foreclose those claims and deny an investigation into crimes committed in Palestine, are grounded in denying indigenous communities agency over their fate and in propelling colonial theories of sovereignty that have historically benefitted Western powers and their hand-selected allies to the expense of other communities.

3. This Court has never adopted that narrative of sovereignty and doing so now, by rejecting the wishes and demands of the indigenous community of Palestine, would endorse a colonial view of international law that would undermine the Court's claim of impartiality and neutrality and transform it into a neo-colonialist construct. It would subject the rule of law to certain circumstances, described below, that have impacted the way States have engaged Palestine in recent years.

A. The impact of prevailing global events on Palestine's statehood

4. Palestine's statehood status, past and present, has been intimately connected to the ebb and flow of global events and the divergent interests of powers, near and far, that disrupted and ultimately denied Palestinians rights to a State and with-it sovereignty and the embedded rights to self-determination. At present, the on-going regional conflicts in Afghanistan, Yemen, Syria, Iraq, Libya, Sudan and Somalia has eroded long-established foundations for addressing the rights of the Palestinians centering on a call for an independent State of Palestine, implementation of UN Resolution 181, 194 (the Right of Return) and 242 and negotiations to address borders and Jerusalem. The pro-occupation of regional and global actors with the current chaos in the region results in the Palestinians paying the price of delay in actualizing their rights to an independent sovereign state. Furthermore, in its effort to delay, deny and frustrate Palestinian pursuit of statehood, the current Israeli leadership has managed to link itself to regional and global actors and play the role of a power broker, which results in further erosion of support for Palestine. The ongoing conflicts have created the context of pursuing stability through delaying what must not be delayed, Palestine's sovereignty and independence.

5. More alarming on this front, is that the Israeli leadership has exploited conflict in the region to make erroneous claims and comparisons to argue that the lives and conditions of Palestinians are much better than what is present in war-torn countries. The use of comparisons with the on-going civil and regional wars misses the fundamental difference between a settler colonial project intent on the dispossession of an indigenous population, transfer of the part or the whole population as part policy and conflicts that will come to an end and whose populations will be able to get back to their cities and villages and rebuild their shattered lives. Palestinians are denied the right to even use the name of their "State" and country of origin in official documents and communication. The mere fact of writing an *amicus* brief to establish

the right to be considered a state due to settler colonial dispossession is the utmost contradiction in the framework of international law. Palestinians express sympathy and completely understand the suffering underway in all the conflict zones mentioned above and others in the past but attempt by Israel's leadership to instrumentalize the pain and suffering of others to score political points against the Palestinians is yet another transgression to be added to the war crimes charge.

B. The impact of racial and religious nationalism on Palestine's statehood

6. The rising tide of White Nationalism, White Supremacy and ultra-nationalism across the globe has brought atrocious actors into the Palestine-Israel conflict. Recent elections around the Western world, Asia and South America have brought a new cluster of political leaders that are beholden to dreadful and highly discredited ideas, including a heavy dose of ethno-nationalism and various articulations of supremacy based on religious and racial affiliations. What is extremely odd and concerning is the deliberate stance taken by these governments to engage Israel and its leadership while embracing a hostile and dismissive attitude toward the Palestinians and their allies. The domestic context of these newly minted political leaders across the globe who are apt at expressing veil forms of anti-Semitism, Islamophobia and racism should be closely examined. Here, expressing support for Israel, on the one hand, hostility and denial of Palestinians rights, on the other, is a utilitarian enterprise intended to shore up their domestic standing at the expense of both Jews and Muslims at home and abroad.

7. Embracing Prime Minister Netanyahu and Israel is used as a fig leaf to cover up the increasing rise of racism, anti-Semitism, Islamophobia and anti-immigrant discourses domestically. That is precisely the domestic circumstance States who have appeared before this Chamber—Hungary, Germany, the Czech Republic, Australia, Austria, and Brazil—find themselves in and for which they have chosen to make

submissions against Palestinian statehood. For these rightwing political actors, supporting Israel and denying Palestinian rights to statehood and sovereignty is deployed as the detergent to cleanse away the foul odor of racism, real White Supremacist and White Nationalist anti-Semitism and Islamophobia, within their own territories. The unfortunate and deeply troubling aspect of all of this is the fact that the Israeli leadership embraces these figures and provides them a public stage at a time where ethical and moral clarity is badly needed.

C. The impact of millenarianism on Palestine's statehood

8. The rise and intensification of millenarianism, which views the establishment of Israel as a needed stepping-stone for the Second Coming of Jesus has impacted how States address Palestine. Zionism and Israel, as a settler colonial movement, is used as an instrument for American and European attempts at reconstituting or claiming a lost imperial dominion in the "Holy Land" and rationalization of a most distorted speculative theological teachings. Religion has always been used as a tool to justify imperial projects and one should make a difference between religion that uplifts and liberates people and imperial religious movements that comes on top of a tank and on the wings of fighter jets. God and all religious traditions are abused when it comes to the dispossession of the Palestinians and the eraser of Palestine.

9. In Europe, Zionism historically served as the needed bridge to control the passageway to the Indian Ocean but more importantly to situate it within a longer discourse that claims Palestine as a key center or foundation for Western Christian thought. In this way, European colonialism, the incubating womb for Zionism, was at once a strategic project to control passageways for trade and a claim over the "Holy Land" as the rightful inheritance for Western Christianity with an embedded vision of the Second Coming of Christ made operative in policy and action. Israel or as it is framed for many in the rightwing camp and the evangelical Christians as the return

of the Jews to Palestine, should be seen as the West's working to hasten the Second Coming and through it affirming its superiority both in racial and material terms.

10. Indeed, American and European irredentism towards Palestine and West Asia, as the taproot for Western civilization, has constantly been a point of political, social, economic and religious anguish. The loss of these areas from Western Christianity created the epistemic foundation for the Crusades in the 11th century, a hostile and rejectionist entanglement with Muslim powers over the generations and the renewed effort at winning back the "Holy Land." Not surprising to witness these types of thoughts in action and policy when President Trump moved the US embassy to Jerusalem. For Western Christianity, controlling Palestine and the "Holy Land," were symbolic and for some a divine affirmation of the veracity of Christianity, which also includes the setting-up of Israel as a stepping-stone for Jesus' return to the world. Defeating and pushing Muslims out of Palestine brings Western Christianity into a state of arrival at true self-actualization and its claims to the asserted universalism are supported by controlling the Holiest of Holies.

11. "Losing the East" to Muslims has not been reconciled by American and European Christianity and rather than see the transformation as a possibility of willful and open conversion, it problematized, demonized and racialized the outcome in the areas since the 15th century and up to the present. The goal of reclaiming the "Holy Land" never stopped for it represented America's and Europe's religious and political identity in the face of past territorial and population losses to Islam according to the few who conceived colonialism and later-on supported Zionism and Israel as a response to these historically constructed grievances.

12. Certain groupings in the US and Europe are in the throngs of identity formation and a massive self-differentiation project centered on Jews and Muslims as well as those who had mixed with them to create an impure or tainted White American and

European blood line. Thus, the context of supporting Israel has less to do with Jews, Zionist, Palestinians, Arabs and Muslims; rather it is a way to reconstitute and affirm the exceptionalism and veracity of the Euro-Centric and Christian epistemic opposite all others. Failing to recognize this context will lead to missing a foundational piece that militate against recognizing Palestine as a state and continued denial of Palestinians rights to sovereignty and self-determination on their own land.

13. Indeed, the mobilization in support of Israel among the Christian Right in the US is a key factor that often militates against exploring solutions to the political problems on the ground since the theological foundation behind this support is disruptive to alternative discourses. In addition, we find the most fervent support for the ongoing settlement and violent settler activities in Occupied Palestine is coming from this decidedly anti-Semitic religious grouping, which can be understood only in the light of theological and end-of-time views held by this important segment in the US and parts of Europe. One should not underestimate the power of racism and anti-Semitism that continues to inform and mobilize people for decidedly harmful and destructive policies to the core. Europe's Jewish question should always be understood as Europe's racist and intolerant attitude and policies, past and present, directed at Jews because they are Jews, the theologically constructed, feared and despised other in Europe. We should accurately speak of Europe's question about its identity and constant rejection of the Jewish "other" and we can add at present Muslims and ex-colonial subjects that are accorded similar treatment.

14. The same can be said about Europe's attitude and treatment of the Muslim "other" in the past and present, which continues to inform and regulate the conceptualization of the modern European state, conditions of membership and the views on Palestine's statehood. Solving Europe's Jewish question went through expulsion in 1492, the Inquisition, many pogroms, constituting ghettos, and the

Holocaust but denying Palestine's statehood to atone for this horrific past is a criminal depravity knowing no limits.

III. THE BALFOUR DECLARATION MUST BE VIEWED IN CONTEXT

15. The Balfour Declaration is the first public document that established Zionist settler colonial "claims" over Palestine while making it possible to erase the Palestinians. Discussing Palestine's statehood without appreciating the impact and the consequences of Balfour Declaration would miss the first crime committed against the Palestinians, which they are still living its consequences. Colonial history is not in the past but it continues to inform and determine the present circumstances of Palestinians. Lord Balfour expressed the reason that we are the Court today: "in Palestine we do not propose even to go through the form of consulting the wishes of the present inhabitants of the country. Zionism, be it right or wrong, good or bad, is rooted in age-long traditions, in present needs, in future hopes, of far profounder import than the desire or prejudices of the 700,000 Arabs who [do] not inhabit that ancient land."

16. Annually and precisely on November 2, Palestinians mark the actual date for the beginning of their dispossession, the Balfour Declaration, a letter from British foreign secretary Lord Arthur James Balfour to Lord Walter Rothschild that committed Britain to the establishment of a Jewish homeland in Palestine. In 67 words, Balfour and London dispossessed the Palestinians and incubated Zionism, imperial Europe's last settler colonial project, in their homeland. Certainly, the ongoing conflict in that tormented land is not isolated from the broader colonial legacies in the Global South, and its effects continue to be witnessed to this day. One can't approach the subject of Palestine without taking account of European colonization, past and present. If the approach focuses on the daily comings and goings in Palestine then we will miss the

operating structure that informs and regulates the examination of the past and the unfolding of the destructive present.

17. British colonial policies and political machinations across the globe were designed to aggravate ethnic, religious, economic and political conflicts to keep imperial interests intact by other means. Divide and rule was the strategy of choice. The Balfour Declaration and the adoption of Zionism by the British ruling-class was carried out with an eye toward a broader regional divide-and-rule strategy as well as a global plan centered on protecting its colonial possessions of Egypt and India.

18. The Balfour Declaration is akin to the “Doctrine of Discovery,” which was utilized as a “legal” basis to nullify the sovereignty of indigenous populations across the Americas while elevating and affirming the rights of the newly arriving settler colonialist. The Papal Bull issued by Pope Alexander VI on 4 May 1493, played a central role in the Spanish conquest of the New World. The document supported Spain’s strategy to ensure its exclusive right to the lands “discovered” by Columbus the previous year. This “Doctrine of Discovery” was the basis of all European claims in the Americas as well as the foundation for the United States’ western expansion. In the 1823 US Supreme Court case *Johnson v. McIntosh*, Chief Justice John Marshall’s opinion in the unanimous decision held “that the principle of discovery gave European nations an absolute right to New World lands.” In essence, indigenous nations in the United States had only a right of occupancy, which could be abolished and are subject to US law since they are not sovereign. The rights of the robbers were upheld at the expense of the victims, which was enshrined in US laws all the way up to the present.

19. The Balfour Declaration reads: “His Majesty’s Government view with favor the establishment in Palestine of a national home for the Jewish people, and will use their best endeavors to facilitate the achievement of this object, it being clearly understood

that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine or the rights and political status enjoyed by Jews in any other country.” While Pope Alexander VI on 4 May 1493 used slightly different language than Balfour’s own framing; nevertheless, the intent of dispossession, exploitation and removing the indigenous people’s rights to sovereignty and independence over their own land was embedded in it.

20. In succinct terms, the Declaration is a colonial legalism that reeks of exploitation, dishonesty in each word used for the sole purpose of covering up the outright “civilized” thievery of Palestine and violating the principle of self-determination articulated by none other than the then US President Woodrow Wilson. Why does this colonial legalism attempt to masquerade as a type of civilized international law and continue to provide legitimacy to the denial and rejection of Palestinian rights to statehood? No one asked whether Britain had jurisdiction over Palestine and the “legal” rights to grant it to another group that at the time did not reside or had any status in the country.

21. The Balfour Declaration, just like the Doctrine of Discovery, is problematic on several fronts. First, the Declaration was issued on 2 November 1917, when the British had not become the occupying power—the Ottoman Empire surrendered Jerusalem and Palestine on 9 December 1917. In other words, the British promised a territory over which they had neither sovereign power nor control to a third party that did not exist or had any legal standing in Palestine.

22. Second, the Declaration is contained in a letter to a private citizen, Rothschild, a leader of the British Jewish community, who lacked any national or international legal standing to claim Palestine let alone establish rights to deny the indigenous Palestinians their rights for the foreseeable future. This British promise concerning a land and country that was inhabited and belonged to its own people, namely, the

Palestinians, represents the highest form of illegality and the continued adherence to its outcome and support of it today by the global community is a separate illegal action that only delays the recognition of Palestinians statehood and sovereignty.

23. Third, the letter was intended to be transmitted to the Zionist Federation of Great Britain and Ireland, which likewise lacked the legal standing to receive and represent claims over Palestine. Clearly, Balfour communicated and granted to British subjects a territory to which, at that time, Britain had no legal rights. Also, the Zionist Federation did not represent a legal body that could speak on behalf of all Jews inside and outside of Palestine on this subject.

24. Fourth, the indigenous Palestinians, who made up 97% of historical Palestine's population was not consulted or even considered. Fifth, the local Palestinian Jewish population was not consulted about the Zionist settler colonial project, which they forcefully rejected on several occasions when Theodor Herzl sought their support. Sixth, the Declaration's actual text is problematic on several fronts. For example, it contains no precise meaning for "a national home," which is not the same thing as the already established concept of a nation-state. More critically, it introduces the concept of "the Jewish people," a singular national identity that was, at the time, opposed by most of Jewish populations living as citizens in various Arab and European countries as well as in the U.S. Precisely on this point, the Declaration stated at the end that "the rights and political status enjoyed by Jews in any other country" —a way to create a "peoplehood" out of a diverse religious community in order to usher in the Zionist settler colonial project.

25. Seventh, the Declaration completely erased the Palestinians, referenced as "non-Jewish", which was the only defined characteristic included in the text. Affirming the non-Jewish communities' "civil and religious rights" is a mockery masquerading as a form of legal protection to a soon-to-be dispossessed indigenous population. The

Palestinians, despite constituting 97% of historical Palestine's population, are only defined as being "non-Jewish." There is no reference to their political rights. On the other hand, the Declaration granted "a national home" to the Zionists and called for the protection of "the rights and political status enjoyed by Jews in any other country." Here, the inclusion of "civil and religious rights" for the non-Jewish population translates into a British government intent on denying political and national rights to the indigenous Palestinians. The Declaration begins the long and torturous process for Palestinians to affirm and establish their national and political rights, an independent state, in the face of Zionist settler colonialism, which was aided and abetted by Britain's imperial power. Just as today's context is impacting the discussions on Palestine and Palestinians, the British issuing of the Declaration was made possible by political forces that brought it into existence.

26. Certainly, the Declaration fits into British colonial plans that started much earlier than 1917 and involved colonial expansion into Ottoman territories. The fomenting of the 5 June 1916 Arab Revolt and the Sykes-Picot Agreement are two pieces that fitted perfectly into London's colonial plans. At present, it is taken for granted that the Arab world's current borders were drawn by British and French colonial administrators and not the region's various indigenous peoples. What passport an Arab carries, the type of citizenship and the name of the State he/she belongs to in the Global South is shaped in large part by the former British, French, Dutch and other colonial powers. Consequently, this colonial-era Declaration was specifically issued to dispossess the majority population, the indigenous Palestinians, and replace them with a client European Zionist settler state. We discuss and look at similar dynamics in South Africa, Australia, New Zealand, and the Americas but totally reject it when it comes to Palestine and the Palestinians.

27. In his "History of the Peace Conference in Paris" (1920), H.W.V. Temperly (ed.) states, "Before the British Government gave the Declaration to the World, it had been

closely examined in all its bearings and implications, and subjected to repeated change and amendment." In his two-volume "History of Zionism: 1600-1918" (1919), Nahum Sokolov, who served as president of the World Zionist Federation from 1931-35, writes that "every idea born in London was tested by the Zionist Organization in America, and every suggestion in America received the most careful attention in London." Lastly, "The Balfour Declaration was in process of making for nearly two years," writes Stephen Wise, chairman of the Provisional Zionist Committee in New York, while adding that "its authorship was not solitary but collective." Important to note that the indigenous Palestinians were nowhere to be found in these drafts, discussions and debates taking place in Europe and the United States—the Doctrine of Discovery is not about the dispossessed but the rights of the dispossessor to do so and cloak it in "legal" legitimacy.

28. As far as the British government's reasons behind issuing the Declaration are concerned, the then-Prime Minister Lloyd George, whose legal firm Lloyd George, Roberts and Co. had represented Zionist interests in terms of securing Uganda as a possible homeland, testified before the Royal Commission in 1937 that "stimulating the war effort of American Jews was one of the major motives" for issuing it. In addition, it was also issued to counter the changes brought about by the Czar's overthrow and the decreased "bitterness of the Jews in Russia," who were increasingly turning toward supporting more revolutionary movements and less inclined to continue to support the war effort. More importantly Prime Minister Lloyd thought of constituting a "Jewish 'garrison colony' in Palestine as a buffer for Egypt and the Suez Canal."

29. Critically, the British had interests and needs in the region. Among these were (1) securing the *status quo* in Egypt (occupied and administered since 1882); (2) creating a buffer protection for the Suez Canal, a vital strategic asset that provided both access to and control of the region's newly discovered oil fields; (3) retaining its

commercial and military advantages, as well as (4) maintaining broader links with its other colonial possessions in Asia and Africa. Furthermore, the incubation of a client Zionist colony would counter the threat of major powers having similar designs or contesting British supremacy in that part of the world.

30. The Zionists and Weizmann did not shy away from making explicit offers to connect themselves to British interests and proclaim that a Jewish Palestine was “an essential link in the chain of the British empire.” Britain, the Zionists asserted, needed “somewhere in the countries abutting on to the Suez Canal, a base on which, in case of trouble, she can rely to keep clear the road to Imperial communication.” Here is the idea of the Zionist state function of securing for Britain the “vital Cape-to-Cairo and Cairo-to-India routes.”

31. Even at this early stage, the discovery of oil played an important role in British designs, as can be seen in the idea of an Iraq-Haifa pipeline passing through trans-Jordan, which was already on the drawing board. Interestingly, this idea was revived during and in the aftermath of the 2003 American invasion of Iraq, as well as the additional and new imperial design of a water supply channel to satiate Zionist settler demand in Occupied Palestine. Indeed, to a large extent the British viewed a Zionist state in Palestine as constituting a buffer state that would protect imperial interests in the region with emphasis on Egypt, a critical gate to the empire’s vast trade network and territories. In comparison to India, which was thought to have a set of natural buffer zones in the north, Egypt, with its strategic position, lacks such protection and, as such, a buffer state allied to or incubated by Britain would provide better strategic protection.

32. The Balfour Declaration must be situated both within the broader British imperial designs intended to create buffer zones to protect its interests and the Zionist leadership’s machinations to secure a foothold in Palestine. As such, Zionism and the

Zionist project were born in the imperial womb and functioned within its epistemic foundations. According to the German-American political theorist Hannah Arendt (1906-75), when it came to London's colonial alliance and machinations, Zionism "sold out at the first moment to the powers-that-be." Theodor Herzl, the founder of modern political Zionism, wrote a letter to Great Britain's Minister of Colonies Cecil Rhodes seeking support for the Zionist settler colonial project in Palestine: "You are being invited to help make history. It doesn't involve Africa, but a piece of Asia Minor; not Englishmen but Jews... How, then, do I happen to turn to you since this is an out-of-the-way matter for you? How indeed? Because it is something colonial."¹

33. The British promise to the Zionists must be examined within the broader strategy laid out by Herzl some years earlier. Essentially, the Declaration itself, while approved by London, was to all intents and purposes a Zionist authored document that involved more than Englishmen before the Cabinet adopted it and made it the effective policy of successive governments. Being a Zionist authored and debated document, a critical question arises as to its significance for the Zionist settler colonial project. Answering this question takes us back to 29-31 August 1897, and in particular Herzl's declared intent for his movement: "to obtain for the Jewish people publicly recognized, legally secure homeland in Palestine." The Declaration was the first public document sanctioned by the major Western powers and established the needed framework for securing an internationally sanctioned foothold in Palestine. The international community embrace of the Balfour Declaration is the first act in the long history of Palestinian dispossession and continued contestation of its rights to sovereignty, state and self-determination. While its text is rather short, its implications and inclusion in all subsequent legal documents pertaining to Palestine made it a trans-historical knife directed at the heart of the Palestinians' right to sovereignty, an independent state and self-determination. Asking the question whether ICC has territorial jurisdiction is one

¹ Theodor Herzl, *The Complete Diaries of Theodor Herzl*, New York, Herzl Press and Thomas Yoseloff, 1960. Vo. III, p. 1194.

direct outcome of the Balfour Declaration and over 100 years since its' issuing the legal status of the indigenous Palestinians is contested!

34. Indeed, the Declaration created "legal colonial facts" on paper that were then mobilized to create settler colonial facts on the ground by encouraging and facilitating Zionist immigration, building settlements, unrestrained Israeli violence and systematically dispossessing the Palestinians, denying them sovereignty, statehood and independence. In the years following World War I, representatives of the World Zionist Organization were included and became parties to the negotiations and agreements pertaining to the status of Palestine and other parts of the Arab world. All the Palestinians' efforts in this regard were either curtailed or blocked up to the present case in front of Court. The issue in front of this Chamber is determine whether Palestine is a state or not, which can't be answered without tackling the legitimacy of the Balfour Declaration and all the subsequent developments emerging from it. This is not a history lesson but examining the consequences of history.

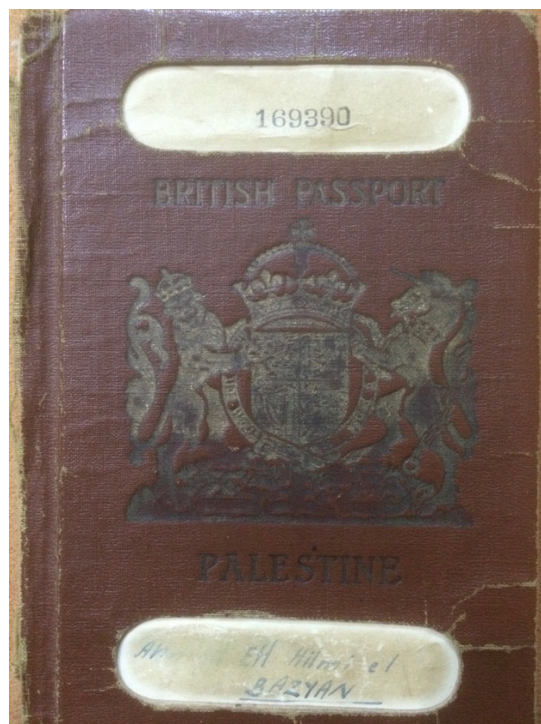
IV. THE BRITISH MANDATE AND DENIAL OF PALESTINIAN RIGHTS

35. Palestinian statehood was denied and disrupted by the British during the Mandate period and all subsequent developments should be viewed in regard to its impact on Palestine. Starting with the present conditions and asking whether Palestine is a state or not fails to consider the fundamental problem of how statehood was denied and who benefited from it. Approaching Palestine statehood is contingent on understanding the impact of the Mandate on it.

36. Following the end of World War I, the British Occupation of Palestine shifted into what is known as the British Mandate (1922-1948), a period the facilitated the dispossession and eventual expulsion of vast numbers of indigenous Palestinians. The Mandate provided the opportunity for the arrival of Zionist settlers, and the systematic development of Zionist infrastructure that led to the eventual

establishment of a "Jewish homeland" while denying Palestine to the Palestinians. The British Government is responsible for denying the Palestinians their political rights, preventing an independent sovereign Palestinian state from emerging and imposing Zionist settler colonialism on the region.

37. The actual Mandate was adopted by the League of Nations on 24 July 1922, and came into effect on 29 September 1923. The Mandate map followed on the heels of the Sykes-Picot Agreement and the Balfour Declaration, which brought the machinery that denied Palestinians their rights to an independent state and sovereignty over their lands. It is imperative to re-center the discussion of Palestine around colonial discourses and place as much emphasis on British, European, and the major Western powers' contribution to the dispossession of the Palestinians as we do on the Zionists in this regard, since the British government policy was the colonial knife used to dispossess the Palestinians in the first place. In reality and under the British Mandate, Palestine as a Mandate State existed since my father had a Palestine passport number 169390, which was recognized as a valid document for travel.



38. The Mandate was a major crime against the Palestinians. The British never intended to grant the Palestinians independence and the Mandate was an instrument to prevent the indigenous population from achieving this goal since Palestine was deemed a strategic area that served to protect imperial interests in Egypt and the trade routes to India. Indeed, the discussion at the highest levels in Britain expressed this position years before as in the case of Lloyd George instructing Churchill, the Minister of Colonies: “You mustn’t give representative government to Palestine.”² In a report to the parliament, the then British Colonial Secretary, William Orsmby-Gore expressed the reasons behind Palestinian political activism: “The Arabs demand a complete stoppage of all Jewish immigration, a complete stoppage of all sales of land, and the transfer of the Government of Palestine [...] to what they call a National Government responsible to an elected democratic assembly. Those are their three demands, and quite frankly, those demands cannot possibly be conceded.”³

39. Not only that I urge the court to recognize Palestine, as a State, but the time is right for London to publicly admit that the Balfour Declaration was a major historical crime against the Palestine, was illegal, led to ethnic cleansing and created a 12-million member Palestinian diaspora. Achieving peace is contingent on justice and can begin to take shape only when this original sin is admitted and recognized as such.

40. This Chamber must correct the record and begin by recognizing Palestinians statehood as a first step toward addressing the systematic denial and obfuscation of their rights. Furthermore, Israel and its allies should not be given a veto power based on Zionism’s “Doctrine of Discovery” and the embedded notion of “manifest destiny” that erases Palestine and the Palestinians to usher-in and celebrate modern settler colonial discourses.

² Richard Toye, Lloyd George and Churchill, p. 220

³ Commons Debates, Fifth Series, Vol. 313, Column 1324, 19th June 1936.

V. PALESTINE AND THE DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLE (“UNDRIP”)

41. Certainly, the United Nations adoption on 13 September 2007, of the Declaration on the Rights of Indigenous People (“UNDRIP”) is a long time coming and the rights of the Palestinians should be examined within its scope. In this context, article 46 of the UNDRIP declares that “[i]ndigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights(4) and international human rights law.” The power and efficacy of the UNDRIP is meaningless as far as human rights and fundamental freedoms are concerned if violations of these rights are carried out and denial of recourse for indigenous populations—the Palestinians are an indigenous population—is restricted due to the denial of standing as a State. It is my firm opinion that this Court would be on the right side of history if it takes the just and badly needed step of recognizing Palestine standing as a State that is able to resort to the body of international law that can protect the lives of Palestinians who are living under occupation. Occupation is an exception and does not negate the sovereignty and fundamental indigenous people's rights, the Palestinians.

42. Approaching Palestine and Palestinians rights should be undertaken within the framework of indigenous people rights and enforceability of UNDRIP articles. Israel's grotesque attacks in 2014, on Gaza and the destruction visited upon the population and the infrastructure under the pretext of self-defense is at the core of indigenous people experience with violence, past and present. One can make a comparison with the ongoing discussions of global warming and environmental destruction. Often, we fail to consider the modern, industrial, technological, fossil fuel and obscene forms of capitalism from that led the way in putting the planet on fire but the effects on indigenous populations who faced the brunt of this over the generations and continue

to be assassinated for protecting what is left rarely gets mentioned. The indigenous communities across the globe faced the environmental destruction with the Doctrine of Discovery and the wholesale theft of lands and resources to give birth to the polluted world we all are inhabiting. What is interesting and at the same time insulting is the emergence of the organic and natural movement. This global movement seeks to learn from the indigenous populations their ancestral ways that was/is far more protective and concerned for sustainability than what many of our modern universities department teachings over the generations, which bought into the modern-progressive unfolding of history. The corrective movement toward the environment should be considered in relations to Palestine and centering their concerns and issues as a first step toward healing the world they inhabit.

43. This Court is being asked to determine its jurisdiction due the basic fact that Israel was mercilessly punching a defenseless indigenous Palestinian population anew after it had already dispossessed and expelled this same population in 1948, the overwhelming majority of Gaza's residents are refugees. This Court and the international community must move away approaching Palestine through what I call, the imperial-colonial problem-solving lens and how best to respond to settler colonial paradoxes and resultant crises from lack of success in the total elimination of an indigenous population. What the imperial problem-solving approach dictates is a pre-occupation with the needs and challenges faced by the colonial power, which boils down to constantly focusing on Israel's security and demographic threats that stem from the refusal of the indigenous and colonized Palestinian population to be permanently and frequently dispossessed, murdered, and removed from its own land.

44. More than once, and after giving a talk about what the Palestinians face daily, from violence to dispossession, the questions are focused again and again on Israel's security, demographic threats and the need to protect the right of the settler colonial power to continue to colonize and brutalize the occupied population. Consequently, I

concluded that the challenge for the Palestinians is not merely one of speaking of what happened, the listing of facts and the chronology of the ebbs and flows of events but the need to reconfigure the approach altogether to disrupt the existing imperial-colonial problem solving paradigm. This reconfiguration moves away from framing the issue in terms of are you for or against occupation, two-states or one state, settlements expansion or freeze, and apartheid or equality in Palestine.

45. Palestine and the Palestinians are an indigenous population that have been subjected to a modern, settler colonial, violent, Western supported and religiously rationalized project that caused and continue to cause its dispossession, destruction and death. If the Court has within its power to bring a change that is rooted in undoing the painful sins of Major Powers of the past and present while centering the rights of the indigenous Palestinians' then we might move a step closer to resolving this long-standing conflict.

46. I completely understand the task in front of the Court is monumental, but the time is right to make the right decision by affirming Palestine's State status and accepting the territorial jurisdiction over a never-ending stream of violence directed at the Palestinians by a state actor, Israel. Failing to do so has ramification beyond the Palestinian territories. Not making the right decision would give other state actors around the world the Court's imprint and rationalization to use unrestrained violence to treat their own indigenous populations, occupied regions and stateless people. Even without the Court's decision on this critical matter, the world is experiencing such a slide into massive violations and violence directed at marginalized and indigenous populations.

47. We all inhabit the same world and what we do on the moral and ethical front has ramification across the globe. I do believe that the Court's role is to set the tune and direction for the global community on such critical issues and allow for a uniform

international legal standard to be applied to all. Palestinians are the canary in the global mines of unrestrained state violence, dispossession and upending the international legal system. In the balance sets the efficacy of the international system, and the Court's decision on this matter will possibly play a role in reconstituting restrained on the use of violence by state and non-state actors across the globe.



Hatem Bazian

Dated this 16th day of March 2020
At Berkeley, California