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Annex 1

C. Greenwood, 'Judicial Integrity and the Advisory Jurisdiction of the International Court of Justice'

Judicial Integrity and the Advisory Jurisdiction of the International Court of Justice

Christopher Greenwood

Introduction

The advisory jurisdiction conferred on the International Court of Justice by Article 96 of the United Nations Charter and Article 65 of the Statute of the Court represents a significant part of the overall work of the Court. During its first 67 years, the Court has given 26 advisory opinions,¹ compared to 116 judgments in contentious cases (67 of which were judgments on the merits), covering a broad range of subjects, which included not only the predictable issues of United Nations law and international civil service staff cases but also questions of international humanitarian and human rights law, acquisition of territory and decolonisation, the law of treaties and declarations of independence. Many of these broader questions also arose in contentious cases before the Court.

There are, of course, important differences between the advisory and contentious jurisdictions. Contentious cases take place between the States parties to a dispute, whereas the advisory jurisdiction can be invoked only by the Security Council, the General Assembly or one of the other UN organs or specialised agencies duly authorised by the General Assembly in accordance with Article 96, paragraph 2, of the Charter and there are no 'parties' in the sense in which that term is used in the contentious jurisdiction. Moreover, while Article 59 of the Statute makes the judgment of the Court in a contentious case binding on the parties to that case, no provision of the Statute or the Charter imposes an obligation of compliance with an advisory opinion. It is true that advisory opinions are sometimes binding on the organization which requests them but in such cases the binding quality results from the provisions

* Judge at the International Court of Justice.

1 It should be noted, however, that the Permanent Court was kept far busier by its advisory jurisdiction. In the 18 years of its active existence, the Permanent Court delivered 27 advisory opinions.

of a legal instrument other than those under which the Court operates;² so far as the Court is concerned, advisory opinions are 'advisory'. Nevertheless, it is important to recall what Judge Gros said in his declaration in the *Western Sahara* case: "when the Court gives an advisory opinion on a question of law it states the law" and "the absence of binding force does not transform the judicial operation into a legal consultation, which may be made use of or not according to choice".³

That reminder is but one reflection of a principle which the Court and its predecessor have stressed from the outset, namely that in the exercise of its advisory jurisdiction it must be careful to maintain its integrity as a judicial institution. As the Permanent Court put it, "the Court, being a Court of Justice, cannot, even in giving advisory opinions, depart from the essential rules guiding [its] activity as a Court".⁴ The Court has various means open to it to ensure that its judicial integrity is not compromised by a request for an advisory opinion. In the last resort, it can exercise its discretion to decline to give an opinion if it considers that this course is necessary to protect its judicial integrity. The existence of that discretion was asserted by the Permanent Court in the *Eastern Carelia* case and has been repeated on numerous occasions by the present Court.⁵ Although the Court has always insisted that "the exercise of its advisory jurisdiction represents its participation in the activities of the

2 See, e.g., Article XII, paragraph 2, of the Statute of the International Labour Organization Administrative Tribunal relating to review of the decisions of the ILOAT, which was recently considered by the Court in *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint filed against the International Fund for Agricultural Development*, Advisory Opinion, ICJ Reports 2012, p. 10 (the "*IFAD Opinion*"). The Court there repeated what it had said in *Judgments of the Administrative Tribunal of the ILO upon Complaints made against the UNESCO*, Advisory Opinion, ICJ Reports 1956, p. 84, that "that effect goes beyond the scope attributed by the Charter and the Statute of the Court to an advisory opinion". In both the *UNESCO* and *IFAD* cases, the Court held that this additional effect derived from the ILOAT Statute "does not affect the way in which the Court functions; that continues to be determined by its Statute and Rules" (*IFAD Opinion*, ICJ Reports 2012, p. 23, para. 28). Advisory opinions are also treated as binding under a number of treaties; see, e.g., *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, ICJ Reports 1999, p. 62, applying Article VIII, Section 30 of the 1946 Convention on the Privileges and Immunities of the United Nations.

3 *Western Sahara*, Advisory Opinion, Declaration of Judge Gros, ICJ Reports 1975, p. 73, para. 6.

4 *Status of Eastern Carelia*, Advisory Opinion of 23 July 1923, PCIJ, Series B, No. 5, p. 29. For application of this principle by the current Court, see *IFAD Opinion*, ICJ Reports 2012, p. 25, para. 34.

5 See, e.g., *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 156, para. 44.

[United Nations] Organization and, in principle, should not be refused”⁶ and “compelling reasons” are required if the Court is to refuse a request,⁷ there is no doubt that if the Court considered that it could not respond to a request for an advisory opinion without compromising its judicial character, then it would exercise its power to refuse.⁸

That power has, however, never been used by the present Court. It is, therefore, perhaps of more interest to consider some of the other, less drastic, ways in which the Court has attempted to ensure that its judicial integrity is preserved in the exercise of its advisory jurisdiction. To that end, I propose to examine three matters: the Court’s willingness to depart from the terms of the question put to it by the requesting body; the difficulties of fact-finding in the advisory jurisdiction; and the difficulties of ensuring due process in hearing certain types of advisory request.

The Willingness of the Court to Depart from the Terms of the Question

The Court has never considered itself bound to adhere to the precise terms of the question on which it is asked to give an opinion. Thus, it has considered itself free to reformulate questions which were badly drafted⁹ and to simplify questions which were unnecessarily complicated or repetitive.¹⁰ More importantly, in the *Interpretation of the Agreement of 25 March 1951*

6 *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase)*, Advisory Opinion, ICJ Reports 1950, p. 71.

7 *UNESCO Opinion*, ICJ Reports 1956, p. 86.

8 The power to refuse to respond to a request is not, however, limited to the preservation of the judicial integrity of the Court; see the discussion in *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, ICJ Reports 2010, pp. 415–423, paras. 29–48, and the separate opinion of Judge Keith, pp. 482–490. The present Court has never actually exercised its discretion to refuse to give an advisory opinion; the decision in *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, ICJ Reports 1996, p. 66 was based on the finding that the request did not arise within the scope of the activities of the WHO, so that an essential condition for the jurisdiction of the Court was not satisfied (see p. 84, para. 31).

9 See, e.g., *Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal*, Advisory Opinion, ICJ Reports 1982, p. 325.

10 In the *IFAD Opinion*, the Court was confronted with a set of nine questions, essentially raising the same point, and decided that it need answer only two; ICJ Reports 2012, p. 48, para. 96.

between the WHO and Egypt, the Court stated that “if it is to remain faithful to the requirements of its judicial character in the exercise of its advisory jurisdiction, it must ascertain what are the legal questions really in issue in questions formulated in a request”.¹¹ A similar approach may be seen in the opinion on *Admissibility of Hearings of Petitioners by the Committee on South West Africa* and, even more clearly, in the trenchant comments by Judge Lauterpacht in his separate opinion, where he remarked that “the General Assembly, although actually desirous of an answer of the Court bearing upon a specific situation, cast its request in an apparently general form unrelated to that situation” and warned that “it is a matter of common experience that a mere affirmation or a mere denial of a question does not necessarily result in a close approximation to truth”.¹²

In this connection, the reformulation by the Court of the question posed by the General Assembly in *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* is of particular interest. The General Assembly had asked the following question:

Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?¹³

Whether the authors of the declaration of independence were in fact the Provisional Institutions of Self-Government of Kosovo was, however, disputed. The Court held that this was a matter which the Court had to decide and, after considering the evidence before it, concluded that

the authors of the declaration of independence of 17 February 2008 did not act as one of the Provisional Institutions of Self-Government within the Constitutional Framework, but rather as persons who acted together in their capacity as representatives of the people of Kosovo outside the framework of the interim administration.¹⁴

11 *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, ICJ Reports 1980, p. 88, para. 35.

12 *Admissibility of Hearings of Petitioners by the Committee on South West Africa*, Advisory Opinion, Separate Opinion of Sir Hersch Lauterpacht, ICJ Reports 1956, p. 37.

13 Advisory Opinion, ICJ Reports 2010, p. 407, para. 1.

14 *Ibid.*, pp. 447–448, para. 109.

The Court therefore proceeded to give an opinion on the accordance with international law of the declaration made by those representatives thus, in effect, reformulating the question put to it so as to remove the reference to the Provisional Institutions of Self-Government.

That decision has attracted some controversy.¹⁵ To the extent that the controversy concerns whether the Provisional Institutions were in fact the authors of the declaration, it falls outside the scope of this paper. What is of immediate concern, however, is whether the Court was entitled to investigate that matter for itself and, having come to the conclusion that the declaration was not the work of the Provisional Institutions as such, to depart from the terms of the question put to it. The Court considered that it was the protection of the judicial function which required it to examine the identity of the authors of the declaration for itself, rather than treating that matter as settled by the terms of the question. The Court observed:

The identity of the authors of the declaration [...] is capable of affecting the answer to the question whether that declaration was in accordance with international law. It would be incompatible with the proper exercise of the judicial function for the Court to treat that matter as having been determined by the General Assembly.¹⁶

That is surely right. It is difficult to see how, without compromising its judicial integrity, the Court could provide an answer to a question regarding the legality of an action while considering that the terms of that question precluded it from inquiring into an issue which had a bearing on whether or not that action was lawful. Having conducted its own inquiry and concluded that the Provisional Institutions were not the authors of the declaration, the Court could not then have answered the question as originally formulated. In those circumstances, the only response it could have given to the question as originally formulated would have been that there had been no such declaration, an answer which would have been wholly unhelpful to the General Assembly.

15 See the dissenting opinions and Mohamed Bennouna, "The Advisory Function of the International Court of Justice in the Light of Recent Developments," in *The Global Community: Yearbook of International Law and Jurisprudence*, ed. M. Cherif Bassiouni et al. (New York: Oceana, 2013), 98.

16 Advisory Opinion, ICJ Reports 2010, p. 424, para. 52.

The Difficulties of Fact-finding in the Advisory Jurisdiction

Since requests for advisory opinions are frequently (as Judge Lauterpacht emphasised in the opinion quoted above) bound up with specific situations, it will be necessary for the Court to have a clear picture of that specific situation if it is to give an answer which is helpful to the requesting body and is compatible with the Court's judicial function. That can present problems if the facts are not easy to establish.

In many cases, no real problem arises because the Court finds that the body requesting an advisory opinion has supplied all the elements necessary for the Court to give a reply to the question. Moreover, Article 66, paragraph 2, of the Statute provides for all States entitled to appear before the Court and any international organization considered by the Court "as likely to be able to furnish information on the question" to be notified of the request and to be afforded the opportunity to make written and, if oral proceedings are held, oral submissions to the Court.¹⁷ The Court has interpreted this provision as giving it a broad power to seek information from those who might be in a position to provide it. Thus, in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court decided that Palestine could submit observations and in *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, it considered that the authors of the declaration of independence were likely to be able to furnish information on the question and invited them to make written and oral submissions. While the Court will, therefore, usually have a substantial dossier of information available to it, resolving disputed points of fact may still prove problematic.

Determining the facts relevant to a particular case can, of course, present serious problems in contentious cases but the difficulties which arise in the contentious jurisdiction are greatly reduced by the effect of the burden of proof. As the Court has repeatedly held, "it is the duty of the party which asserts certain facts to establish the existence of such facts",¹⁸ and if that party fails to establish the existence of those facts, the Court can give judgment on the basis that the relevant allegation has not been proved. In advisory proceedings,

¹⁷ While no State or organization is obliged to respond to this invitation, in several cases many have done so. Thus, in *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, a total of forty-two States and the authors of the declaration took part.

¹⁸ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 71, para. 162.

however, subject to one qualification which will be considered in the next section, there are no parties and thus no burden of proof as such.

The result is that if the Court considers that it does not have sufficient information before it to enable it to resolve a particular issue of fact, it cannot fall back upon considerations of burden of proof and may, therefore, be unable to answer the question in whole or in part if it is to remain faithful to its judicial function. While the Court has never held that it lacked sufficient information to give an opinion, in *Legality of the Threat or Use of Nuclear Weapons*, it considered that it lacked sufficient information to return a full answer. Thus, in the critical paragraph 2(E) of its conclusions in that case, the Court stated:

It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;

However, *in view of the current state of international law, and of the elements of fact at its disposal*, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.¹⁹

On any analysis, this paragraph is less than satisfactory. It was adopted by seven votes to seven on the casting vote of President Bedjaoui, with the dissenting votes including those of judges who criticised the Court for pronouncing what was in effect a *non liquet* and contended that the Court should have ruled that there were—or at least might be—circumstances in which a nuclear weapon might lawfully be used, as well as judges who criticised the Court for leaving any possibility that nuclear weapons could ever lawfully be employed. Moreover, the idea that “an extreme circumstance of self-defence” might legitimise what would otherwise be a violation of international humanitarian law (if that was indeed what the paragraph implies, which is not entirely clear) suggests that *jus ad bellum* may prevail over *jus in bello*, something which was not advocated by any State participating in the proceedings and is contrary to decades of doctrine and jurisprudence.²⁰ The second part of operative paragraph 2(E) also has the uneasy appearance of having been bolted onto

19 *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p. 266, para. 105, subpara. 2(E) (emphasis added).

20 See Christopher Greenwood, “*Jus ad bellum* and *jus in bello* in the Nuclear Weapons Advisory Opinion,” in *International Law, the International Court of Justice and Nuclear*

the opinion at a late stage. The only basis for it in the reasoning of the Court is a short section of the opinion, culminating in paragraph 97, which echoes the language of paragraph 2(E) but with one significant difference. Whereas paragraph 2(E) speaks of the use of nuclear weapons “in an extreme circumstance of self-defence, in which the very survival of *a* State would be at stake”, paragraph 97 refers to the use of nuclear weapons “by a State in an extreme circumstance of self-defence, in which *its* very survival would be at stake”. In a world with few nuclear powers but many States connected by alliances of one kind or another to a nuclear-armed State, this is a nuance of language which has the potential to be of considerable importance. Finally, paragraph 2(E) blends a complaint about the lack of factual information with a curious reference to “the current state of international law”, which invites the criticism of a *non liquet*.

Nevertheless, for present purposes, the important point is that the Court did consider that it lacked the factual information necessary for it to give a full answer to the question put to it. That emerges most clearly from paragraph 94, in which the Court stated:

The Court would observe that none of the States advocating the legality of the use of nuclear weapons under certain circumstances, including the “clean” use of smaller, low yield, tactical nuclear weapons, has indicated what, supposing such limited use were feasible, would be the precise circumstances justifying such use; nor whether such limited use would not tend to escalate into the all-out use of high yield nuclear weapons. This being so, the Court does not consider that it has a sufficient basis for a determination on the validity of this view.²¹

Whether any State (or organization) could have supplied that kind of information is open to question.

The Difficulties of Ensuring Due Process

A central concern in relation to the preservation of judicial integrity in any proceedings must be that those proceedings properly respect the principles of due process and, in particular, of equality of arms, as those principles have evolved over time. That presents particular problems in relation to one type

Weapons, ed. Philippe Sands and Laurence Boisson de Chazournes (Cambridge: Cambridge University Press, 1999), 247–267.

21 Advisory Opinion, ICJ Reports 1996, p. 262, para. 94.

of advisory proceeding, namely that in which an international organization requests an advisory opinion from the Court regarding the validity of a ruling by a staff tribunal.²² Five of the 26 advisory opinions given by the International Court of Justice have concerned this kind of request.²³

Formally speaking, the position before the Court is that, as these are advisory proceedings, there are no parties. However, the subject on which the Court is asked to rule in this type of case is the validity of a decision given by a tribunal in proceedings between two parties, namely the staff member initiating those proceedings and the international organization against whom the complaint is made. In effect, the Court acts as a review body in relation to the outcome of proceedings which were contentious. Moreover, its advisory opinion has a binding effect, so that if it rules that the tribunal's decision was invalid, the staff member will lose the benefit of the judgment in his or her favour which had been given by the administrative tribunal. The reality, therefore, is that the Court has to consider the rights and interests of both the parties to the original proceedings. That gives rise to concern in two respects.

First, only one of those parties, the international organization, may invoke the advisory jurisdiction of the International Court of Justice; the individual staff member has no right to seek an advisory opinion. In the case of judgments of the United Nations Administrative Tribunal, the inequality of access to the Court was ameliorated by the fact that staff members were given access to a review process which could lead to a request for an opinion from the Court. Three of the staff cases before the Court concerned judgments of UNAT. Provision for either party to challenge a judgment of UNAT by means of advisory proceedings in the Court was, however, brought to an end in 1995. The situation with judgments of the International Labour Organization Administrative Tribunal is different. Under Article XII of the ILOAT Statute, there is no comparable provision giving access for the staff member to a review procedure, with the result that the international organization which is the respondent before the ILOAT may challenge the validity²⁴ of a judgment given in favour of a staff

22 Concerns about ensuring due process may, however, arise in other types of advisory proceedings where the conduct of one State or international organization may be at the heart of the issue in respect of which an opinion is sought.

23 *UNESCO Opinion*, ICJ Reports 1956, p. 77; *Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal*, Advisory Opinion, ICJ Reports 1973, p. 166; *Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal*, Advisory Opinion, ICJ Reports 1982, p. 325; *Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal*, Advisory Opinion, ICJ Reports 1987, p. 18; and *IFAD Opinion*, ICJ Reports 2012, p. 10.

24 Article XII, para. 1, of the ILOAT Statute provides for a challenge on the basis that the tribunal exceeded its jurisdiction or committed a fundamental error of procedure.

member but there is no scope for a staff member to bring about a challenge to a judgment in favour of the respondent organization. Secondly, the staff member has no standing before the Court. It is the responsibility of the international organization to supply the Court with the relevant factual material and to communicate to the Court any submissions which the staff member may wish to put before the Court. In both respects, the Court is asked to exercise its advisory jurisdiction under conditions in which the equality of the parties to the original proceedings is absent in the proceedings before the Court.

Whether such proceedings are compatible with the judicial function was first considered by the Court in 1956. The Court, while recognising the concerns regarding inequality of access, considered that they were not sufficient to justify it in declining to respond to the request for an advisory opinion. It stated that the inequality of access was not an inequality before the Court but something antecedent to the examination of the question by the Court. In addition, it thought that the inequality was more apparent than real, since the staff member would have no interest in challenging the judgment of the tribunal as that judgment was in the staff member's favour.²⁵ The first consideration is formalistic to say the least. The second is frankly bizarre. Of course, if the respondent organization challenges a tribunal judgment it will be because that judgment was in favour of the staff member and the latter will therefore have no interest in bringing a challenge against that judgment, but that fact does not obviate the inequality of access. Staff members commencing proceedings do so in the knowledge that a judgment in their favour may be challenged but that they cannot challenge a judgment against them.

This matter has recently been reconsidered by the Court in its advisory opinion in *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint filed against the International Fund for Agricultural Development*. The Court there drew attention to the fact that concepts of due process and equality of arms had undergone considerable development in the years since the 1956 opinion. It referred, *inter alia*, to the General Comments of the United Nations Human Rights Committee on Article 14 of the International Covenant on Civil and Political Rights, which guarantees equality before courts and tribunals, a principle which the Court, in its 1956 opinion, described as following from "the requirements of good administration of justice".²⁶ The Court concluded that:

²⁵ *UNESCO Opinion*, ICJ Reports 1956, p. 85.

²⁶ *Ibid.*, p. 86.

That principle must now be understood as including access on an equal basis to available appellate or similar remedies unless an exception can be justified on objective and reasonable grounds [...]. [...] questions may now properly be asked whether the system established in 1946 meets the present-day principle of equality of access to courts and tribunals.²⁷

The Court also considered that it had a duty to ensure as far as possible equality in the proceedings before it. To that end it had required IFAD to transmit statements from the staff member (Ms Saez Garcia) and declined IFAD's request for oral proceedings in which Ms Saez Garcia would not have been entitled to take a direct part. The Court noted that "the process was not without its difficulties".²⁸ IFAD had required several requests before it had supplied all the information requested by the Court, had failed to inform Ms Saez Garcia in a timely way of certain procedural requests which it made to the Court and had initially failed to transmit to the Court certain communications from Ms Saez Garcia. In the end the Court concluded that the proceedings had been fair but only as a result of its own insistence.²⁹

The formal position cannot be allowed to mask the reality of this type of advisory proceeding. That reality is that there *are* two parties and that the Court is asked to give an opinion which will act as a final decision on the rights and obligations of those two parties towards one another. Recognition of that fact has at least two implications. First, it is incompatible with the integrity of the Court as a judicial body for it to proceed in a case of this kind without ensuring the equality of arms between those two parties. Secondly, this type of case is one in which the burden of proof may be applied in the event of a factual dispute, although care is needed if it is to be applied to the detriment of the staff member, given that the staff member lacks direct access to the Court.

There is, however, a more important concern, namely whether such proceedings should be brought at all. In *IFAD*, the Court took the view that since it had ensured equality of arms in the proceedings themselves, it would be wrong to refuse to respond to the question and thus withdraw without warning from a system which had been in place for several decades. The warning for the future is nonetheless clear. It is to be hoped that it is heeded and that the *IFAD* case is the last of its kind.

²⁷ *IFAD Opinion*, ICJ Reports 2012, p. 29, para. 44.

²⁸ *Ibid.*, p. 30, para. 46.

²⁹ See also Judgment No. 3152 of the ILOAT given on 6 February 2013, which is sharply critical of the approach of IFAD.

Annex 2

Bill Clinton, *My Life* (2005) 944-945

Bill Clinton

My Life

HUTCHINSON
LONDON

First published in the United Kingdom in 2004 by Hutchinson

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20 Alfred Street, Milsons Point, Sydney
New South Wales 2061, Australia

Random House New Zealand Limited
18 Poland Road, Glenfield
Auckland 10, New Zealand

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dodge assassins' bullets, all the countless hours on airplanes, all the endless hours of tension-filled talks. Perhaps he simply couldn't make the final jump from revolutionary to statesman. He had grown used to flying from place to place, giving mother-of-pearl gifts made by Palestinian craftsmen to world leaders and appearing on television with them. It would be different if the end of violence took Palestine out of the headlines and instead he had to worry about providing jobs, schools, and basic services. Most of the young people on Arafat's team wanted him to take the deal. I believe Abu Ala and Abu Mazen also would have agreed but didn't want to be at odds with Arafat.

When he left, I still had no idea what Arafat was going to do. His body language said no, but the deal was so good I couldn't believe anyone would be foolish enough to let it go. Barak wanted me to come to the region, but I wanted Arafat to say yes to the Israelis on the big issues embodied in my parameters first. In December the parties had met at Bolling Air Force Base for talks that didn't succeed because Arafat wouldn't accept the parameters that were hard for him.

Finally, Arafat agreed to see Shimon Peres on the thirteenth after Peres had first met with Saeb Erekat. Nothing came of it. As a backstop, the Israelis tried to produce a letter with as much agreement on the parameters as possible, on the assumption that Barak would lose the election and at least both sides would be bound to a course that could lead to an agreement. Arafat wouldn't even do that, because he didn't want to be seen conceding anything. The parties continued their talks in Taba, Egypt. They got close, but did not succeed. Arafat never said no; he just couldn't bring himself to say yes. Pride goeth before the fall.

Right before I left office, Arafat, in one of our last conversations, thanked me for all my efforts and told me what a great man I was. "Mr. Chairman," I replied, "I am not a great man. I am a failure, and you have made me one." I warned Arafat that he was single-handedly electing Sharon and that he would reap the whirlwind.

In February 2001, Ariel Sharon would be elected prime minister in a landslide. The Israelis had decided that if Arafat wouldn't take my offer he wouldn't take anything, and that if they had no partner for peace, it was better to be led by the most aggressive, intransigent leader available. Sharon would take a hard line toward Arafat and would be supported in doing so by Ehud Barak and the United States. Nearly a year after I left office, Arafat said he was ready to negotiate on the basis of the parameters I had presented. Apparently, Arafat had thought the time to decide, five minutes to midnight, had finally come. His watch had been broken a long time.

Arafat's rejection of my proposal after Barak accepted it was an error

of historic proportions. However, many Palestinians and Israelis are still committed to peace. Someday peace will come, and when it does, the final agreement will look a lot like the proposals that came out of Camp David and the six long months that followed.

On January 3, I sat in the Senate with Chelsea and the rest of Hillary's family as Al Gore administered the oath of office to New York's new senator. I was so excited I almost jumped over the railing. For seventeen more days we would both be in office, the first couple to serve in the White House and the Senate in American history. But Hillary was on her own now. About all I could do was ask Trent Lott not to be too hard on her and offer to be Hillary's caseworker for Westchester County.

The next day we held a White House event that for me was about Mother: a celebration of the Breast and Cervical Cancer Protection and Treatment Act of 2000, which allowed women without health insurance who were diagnosed with these cancers to have full Medicaid benefits.

On the fifth, I announced that we would protect sixty million acres of pristine national forest in thirty-nine states from road-building and logging, including the Tongass National Forest in Alaska, the last great temperate rain forest in America. The timber interests were against the move and I thought the Bush administration might try to undo it on economic grounds, but only 5 percent of the nation's timber came from national forests, and only 5 percent of that amount came from roadless areas. We could do without that tiny amount of logging to preserve another priceless national treasure.

After the announcement I drove out to Fort Myer to receive the traditional farewell tribute from the armed forces, a fine military ceremony that included the presentation of an American flag, a flag with the presidential seal, and medals from each of the service branches. They gave Hillary a medal, too. Bill Cohen noted that in appointing him I became the only President ever to ask an elected official of the opposite party to become secretary of defense.

Being President carries no greater honor than being Commander in Chief of men and women of every race and religion who trace their ancestry to every region on earth. They are the living embodiment of our national creed, *E pluribus unum*. I had seen them cheered in refugee camps in the Balkans, helping the victims of disasters in Central America, working against narco-traffickers in Colombia and the Caribbean, welcomed with open arms in the former Communist nations of Central Europe, manning distant outposts in Alaska, standing guard in the deserts of the Middle East, and patrolling the Pacific.

Americans know about our forces when they go into battle. There

Annex 3

Condoleezza Rice, *No Higher Honor: A Memoir of My Years in Washington* (2011) 724

NO HIGHER HONOUR

A Memoir of My Years in Washington



Condoleezza Rice



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ONE LAST CHANCE FOR A PALESTINIAN STATE

IN THE WANING MONTHS of our time in Washington, we tried one last time to secure a two-state solution. The Olmert proposal haunted the President and me. In September the prime minister had given Abbas a map outlining the territory of a Palestinian state. Israel would annex 6.3 percent of the West Bank. (Olmert gave Abbas cause to believe that he was willing to reduce that number to 5.8 percent.) All of the other elements were still on the table, including the division of Jerusalem. Olmert had insisted that Abbas sign then and there. When the Palestinian had demurred, wanting to consult his experts before signing, Olmert refused to give him the map. The Israeli leader told me that he and Abbas had agreed to convene their experts the next day. Apparently that meeting never took place. But I knew what had been proposed, and I asked Jonathan Schwartz, a State Department lawyer with many years of experience in the issue, to construct an approximation of the territorial compromise. I wanted to preserve the Olmert offer.

I talked to the President and asked whether he would be willing to receive Olmert and Abbas one last time. What if I could get the two of them to come and accept the parameters of the proposal? We knew it was a long shot. Olmert had announced in the

summer that he would step down as prime minister. Israel would hold elections in the first part of the next year. He was a lame duck, and so was the President.

Still, I worried that there might never be another chance like this one. Tzipi Livni urged me (and, I believe, Abbas) not to enshrine the Olmert proposal. "He has no standing in Israel," she said. That was probably true, but to have an Israeli prime minister on record offering those remarkable elements and a Palestinian president accepting them would have pushed the peace process to a new level. Abbas refused.

We had one last chance. The two leaders came separately in November and December to say good-bye. The President took Abbas into the Oval Office alone and appealed to him to reconsider. The Palestinian stood firm, and the idea died.

Now, as I write in 2011, the process seems to have gone backward. The Palestinians are speaking in the UN General Assembly of unilaterally declaring statehood. There are familiar squabbles about Israeli settlement activity. I certainly know the frustration of Israeli announcements of building new housing on disputed land; it often felt as though those bulletins were issued just after the secretary of state had traveled there. It happened to me several times. Not only would I call Olmert and Livni to complain, but I would also publicly denounce what Israel had done, reminding everyone that the United States would not recognize unilateral alterations of the status quo at the time of negotiation. But I never let progress on the settlement issue become a U.S. precondition for negotiations. I believed that once there was an agreement, the question of settlements would be moot.

In the end, the Palestinians walked away from the negotiations—and soon a new Israeli prime minister would walk away too. Abbas was told by numerous Israelis, including some of Olmert's closest advisors, that the lame-duck prime minister did not have the legitimacy to deliver the deal. But had he expressed a willingness to accept the extraordinary terms he'd been offered, it might have been a turning point in the long history of the intractable conflict. It might be a long time before another Israeli prime minister offered anything as dramatic again. I turned over the negotiating file to

Annex 4

‘Full Transcript: Prince Bandar bin Sultan's interview on Israel-Palestine Conflict’, *Al Arabiya*, 5 October 2020



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Exclusive interview - Part 1 | Prince Bandar bin Sultan on Israel, Palestine and Washington



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Full transcript: Prince Bandar bin Sultan's interview on Israel-Palestine conflict

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Published: 05 October ,2020: 07:26 PM GST

Updated: 07 October ,2020: 09:55 PM GST

In the first part of a three-part series exclusive interview with Al Arabiya, Prince Bandar bin Sultan discusses the Kingdom's position on the Palestinian cause, calling out the Palestinian leadership for its historical and ongoing “failures,” including its criticism of Gulf states following the UAE-Israel peace deal.

Prince Bandar is Saudi Arabia's former ambassador to the US and served as director general of the Saudi Intelligence Agency from 2012 to 2014 and the head of the National Security Council from 2005 to 2015.

Latest: Part two of the interview was aired at 6 p.m. GMT on Tuesday. In it, Prince Bandar bin Sultan discussed how Palestinian leader Yasser Arafat had frustrated efforts to find a peace deal, despite offers from two US presidents.

Full transcript of Prince Bandar bin Sultan's tell-all interview below:

Prince Bandar bin Sultan: After writing down everything we have discussed yesterday and then reading it, I said to myself, it might be best to improvise and speak frankly.

The reason why I decided to speak tonight was that in recent days, I have heard shocking statements quoted from the Palestinian leadership. At first, I refused to believe what I heard, then a day or two later I saw it with my own eyes on TV.

Advertisement

Palestinian news anchor: The Palestinian leadership announces its strong rejection and condemnation of the surprising American-Israeli-Emirati trilateral declaration.

Palestinian President Mahmoud Abbas: They have turned their backs on everything: the rights of the Palestinian people, the Palestinian state, the two-state solution, and the holy city of Jerusalem which was already annexed and it was already declared. They deny all this and say “we come to you with a stop to annexations, be happy Palestinians.”

Palestinian official Saeb Erekat: A poisoned stab in the back of the Palestinian people and an attempt to try and get around international legitimacy.

Prince Bandar bin Sultan: What I heard from Palestinian leadership in recent days was truly painful to hear. This low level of discourse is not what we expect from officials who seek to gain global support for their cause. Their transgression against the Gulf states' leadership with this reprehensible discourse is entirely unacceptable.

However, if we want to look at it from a different perspective, it is not surprising to see how quick these leaders are to use terms like “treason,” “betrayal,” and “back stabbing,” because these are their ways in dealing with each other. Gaza Strip leaders [Hamas], who have seceded from the PA [Palestinian Authority] to govern Gaza independently, accuse the West Bank leadership of treason, while at the same time, West Bank leadership accuses separatist Gaza Strip leaders of stabbing them in the back.

Efforts in the past years would have been better focused on the Palestinian cause, peace initiatives, and protecting the rights of the Palestinian people to reach a point where this just, albeit robbed, cause can finally see the light, and when I say robbed, I mean both by Israel and Palestinian leaders equally.

My first reaction was anger. However, after giving it some thought, my anger turned into sadness and hurt. I recalled events I was witness to related to the Palestinian cause from 1978 to 2015. I would like to give a short overview of the positions of the Saudi leadership and the Saudi State towards Palestine in the period from 1939 to 1978.

These events I want to talk about today.

And frankly my words today are directed at my brothers and sisters, Saudi Arabian citizens, because they are my priority and they are the priority for their country and our guardian King Salman, God bless him, and his Crown Prince, Prince Mohammed [bin Salman].

But these are the customs of the Saudi leadership from the time of the founder, King Abdulaziz, and the kings who followed him up until the current King Salman.

But I would like to give a brief overview of the positions of the Saudi leadership, of the Saudi state, toward Palestine during the period between 1939 to 1978.

It is the right of the Palestinian people, and the right of the Arab people, for Israel to withdraw from the Arab lands it occupied in the year 1967, and for the Palestinian people to return to their homeland

They highlight that peace is the basis, but [it should not be] at the expense of the rights of the Palestinian people.

A single drop of Palestinian blood is more precious than the earth's treasures and all that they contain.

We reaffirmed our firm position towards the restoration of all legitimate rights of the Palestinian people.

I was not a direct witness to that period or involved in it by virtue of my work. However, this brief covering the period from 1939 to 1978 is all documented and well known. The knowledge I have about that period is from documents that I had access to after I entered the diplomatic and political service to serve my country. I have also heard it from people who lived through that period, such as the late King Fahd, King Abdullah, Prince Sultan and Prince Naif, may God have mercy on them all, and other Saudi officials. I also heard it directly from the Custodian of the Two Holy Mosques, King Salman, who has close ties with all Palestinian officials, because we are all concerned with the Palestinian cause, which we consider both a national and a just cause.

However, allow me to start by saying some things that can give context to my words and why I am saying them.

The Palestinian cause is a just cause, but its advocates are failures and the Israeli cause is unjust, but its advocates have proven to be successful. That sums up the events of the last 70 or 75 years. There is also something that successive Palestinian leadership historically share in common; they always bet on the losing side, and that comes at a price.

Amin al-Husseini in the 1930s was betting on the Nazis in Germany, and we all know what happened to Hitler and Germany. He was recognized by Germany, Hitler, and the Nazis for standing with them against the Allies when Berlin's radio station broadcast recordings by him in Arabic, but that was all he got, which was no good as far as the Palestinian cause was concerned.

Moving forward in time, no one, especially us in the Gulf states, can forget the image of Abu Ammar [Yasser Arafat] as he visited Saddam Hussein in 1990 after the occupation of Kuwait. An Arab people occupied and Kuwait, alongside the other Gulf states, had always welcomed the Palestinians with open arms and was home to Palestinian leaders. Yet we saw Abu Ammar in Baghdad, embracing Saddam, and laughing and joking with him as he congratulated him for what had happened. This has had a painful impact on all the peoples of the Gulf, especially on our Kuwaiti brothers and sisters, specifically the Kuwaitis who stayed in Kuwait and resisted the occupation.

Months later, as another example of failure in choosing sides, the battle for the liberation of Kuwait begins and Saddam Hussein strikes the capital of Saudi Arabia with missiles. That was the first time anybody launched missiles at the capital of Saudi Arabia. Even Israel did not launch missiles at the Kingdom. We were the ones, by the way, who bought these missiles for Saddam to support him in his war against the Persians.

Another shock followed when we saw deluded youths in Nablus dancing joyfully in celebration of the missile attack on Riyadh, holding pictures of Saddam Hussein. These incidents cannot be forgotten, but we rose above them, not for the sake of the Palestinian leaders, but for the Palestinian people.

From 2011 to date, our dear neighbor, Egypt, and the Egyptian leaders, from the time of Hosni Mubarak, may God rest his soul, to His Excellency President Sisi, have held conference after conference to reconcile the West Bank and Gaza, and the Palestinian authority and Hamas. How can this be? How can we speak in the name of all Palestine, and convince others to support our cause, when we ourselves are not united, and when the Palestinians are divided amongst themselves? However, history repeats itself and the facts are hard to ignore. This is not the first time they have disagreed, stabbed each other in the back, and accused each other of being traitors.

King Abdullah, may he rest in peace, while Prince Sultan was Crown Prince, brought Abu Mazen and his followers, and Khaled Mashal and his Hamas followers, to Mecca in order to reconcile them and form a unified Palestinian leadership to achieve positive results. They stayed at the official residence for guests in Mecca. Picture this: The Saudi delegation, headed by the late Prince Saud bin Faisal, and its members: Prince Muqrin, the late Ghazi Al Gosaibi, Mr. Ibrahim Al-Assaf and myself. We were going back and forth, visiting Abu Mazen and his group on the one hand and the Hamas delegation on the other. But our visits were not like [US former Secretary of State Henry] Kissinger's between Damascus and Tel Aviv or Cairo and Tel Aviv, we were going up and down between the hotel's twelfth and fourteenth floors. It took a day and a half until we were able to reach an agreement that satisfied both parties.

Then, they went to meet King Abdullah. After he checked what they had written and read it in front of everyone and asked them to vow before God and in front of everyone that they agree to this deal, he asked them to shake hands and congratulated them, saying, "God is our witness, and we are in his holy land. Saud, take the brothers to the Kaaba and let them pledge their word before God and before the Palestinian people."

Only a few days after they left Saudi Arabia, we received news they had already gone back on their word and started conspiring and plotting against each other once again.

I believe that we in Saudi Arabia, acting on our good will, have always been there for them. Whenever they asked for advice and help, we would provide them with both without expecting anything in return, but they would take the help and ignore the advice. Then they would fail and turn back to us again, and we would support them again, regardless of their mistakes and of the fact that they knew they should have taken our advice. We even went further as a state and justified to the whole world the actions of the Palestinians, while we knew that they, indeed, were not justified, but we did not wish to stand with anyone against them, nor did we wish to see the consequences of their actions reflected on the Palestinian people. This has always been the policy of the Saudi leadership. I think this

has created a sense of indifference on their side, and they have become convinced that there is no price to pay for any mistakes they commit towards the Saudi leadership or the Saudi state, or the Gulf leaderships and states.

I think the circumstances and times have changed, and I think it is only fair to the Palestinian people to know some truths that have not been discussed or have been kept hidden.

Who are the allies of the Palestinians now? Is it Iran, which is using the Palestinian cause as a pretext at the expense of the Palestinian people? Is it Iran and Khomeini, who want to liberate Jerusalem through Yemen, Lebanon, and Syria? The path to Jerusalem is known, that is if they truly wish to take it. Or is it Turkey, which Hamas leaders have thanked for its stance in support of Hamas and the Palestinian cause? That is simply because Erdogan announced that he was withdrawing his ambassador from the UAE in support of the Palestinian cause. Can anyone explain to me why Hamas leaders, instead of asking Erdogan to withdraw the Turkish ambassador from the UAE and pay to fly him back home, why they did not ask him to expel the Israeli ambassador from Ankara and call back the Turkish ambassador from Tel Aviv?

These people, as I have said before, are disillusioned, and in the undisputed words of God the Almighty: “Indeed, Allah will not change the condition of a people until they change what is in themselves.” So far, they are undoubtedly a major reason behind the setbacks the Palestinian cause has faced.

In 1939, the British Mandate decided to hold a conference in London and invited the Jews who were in Palestine, alongside the Palestinian leadership and some Arab countries, including Saudi Arabia. Our delegation was headed by Prince Faisal and included Prince Khalid, may their souls rest in peace. Both the Jews and the Palestinians rejected the offer made by the English. The Arab States, including Saudi Arabia, supported the Palestinians in their rejection.

Shortly after, Britain entered World War II, and Palestine became a secondary issue to them. Meanwhile, armed groups, which we call

armed gangs, were formed in Israel and were attacking Palestinian civilians, assassinating and murdering them, and carrying out acts of terrorism. Palestinian resistance groups were also struggling for the freedom of their country.

In 1945, shortly before the end of World War II, the late King Abdulaziz met with the late President Roosevelt and, and the Palestinian cause took up much of the discussion. This was in February 1945. A couple of weeks later, in March 1945, King Abdulaziz sent a lengthy letter to President Roosevelt to put down in writing what he had said to him verbally, and to get an answer. President Roosevelt replied. All these documents exist, and I am presenting them to the Saudi citizens so as to inform them of how Saudi Arabia's stance towards Palestine was formed before all the events that have happened.

Two more events took place in 1945. The first was the founding of the League of Arab States with five or six members, including Saudi Arabia.

Newsreader: "To lay the foundations for an alternative Islamic state to the Ottoman caliphate."

The second was the founding of the United Nations after the end of World War II. From 1945 to 1947, the English decided to withdraw and end the Mandate in Palestine. They began trying to find a compromise between the Jews and the Palestinians, one that the Arabs would support in order to bring some calm to the region. They could not reach a solution agreeable to all sides. So they resorted to the United Nations Security Council that had been formed only two years earlier. At that time, the Security Council was comprised of the US, the Soviet Union, France and Britain. The permanent members have the power to enforce any decision they make, and their veto is absolute. They voted on the partition Resolution 181, and from there on out, a certain way for dealing with events related to the Palestinian issue started taking shape and being repeated time and again.

The Jewish delegation was divided into two parts. One part officially agreed to the resolution, because it would establish two states in

Palestine, one Palestinian and one Jewish. It was not a resolution that would completely guarantee Palestinian rights, but it would establish two internationally recognized states to become members of the General Assembly of the United Nations. The second part of the Jewish delegation rejected Resolution 181 and was planning to continue to carry out terrorist and subversive operations against Palestinian citizens. The two groups were in agreement, and one of them accepted the resolution and as a result, a Jewish State called Israel was recognized, which became a Member of the United Nations. As for the Arab side, the Palestinians rejected the resolution, and as usual, we supported their rejection.

Many years later, the main demand of our Palestinian brothers has been UN resolution 181, which is no longer on the table. No one is discussing it now. This was the beginning, and such events, as I mentioned, were repeated once, twice, and three times.

Then, the 1948 war took place as a result for the suffocation of the Palestinian people, and the Arab League countries decided to help them.

King Abdulaziz had specific advice to the brothers in the Arab League based on two points:

The first point was that Arab countries neighboring Palestine must not allow Palestinians to immigrate. Palestinians must remain on their land because if they immigrate, they will end up in refugee camps. King Abdulaziz believed that even if there was a need for camps, they should be on Palestinian soil, not anywhere else, and history has proven his opinion correct. Now, Egypt, Syria, Lebanon and Jordan are full of refugee camps. What if these refugee camps were inside Palestine? Just imagine how different the situation would have been in the country over time.

The second point on which King Abdulaziz, God rest his soul, based his opinion was that the Arab countries have a duty to support the Palestinians at home with money and arms, and to open the door to those of their citizens who wished to join the resistance. This was in

an effort to encourage Arab immigration to Palestine similar to the Jewish immigration to Palestine.

Both points were rejected. Since the Kingdom of Saudi Arabia is of the principle that God stands with those who are united, and those who stand divided are doomed to fail, we followed them down this tragic path and their decisions led everyone into the fire.

Between 1948 and 1956, two powerful permanent members of the Security Council, Britain and France, and a third power being Israel, led the tripartite aggression against Egypt. The aggression failed for two reasons.

The first reason is that the US and President Eisenhower rejected this aggression and demanded the withdrawal of the attacking forces and cessation of the attack. The Soviet Union had the same stance, so the attackers had no choice but to withdraw.

The second reason is Egyptian national resistance at home. President Abdel Nasser, God rest his soul, chose to back the resistance in the cities of the Canal, instead of pushing the Egyptian army into an uneven war against two superpowers.

A piece of information often left out is that a result of the Tripartite Aggression and the occupation of the Suez Canal by France and Britain was Israel occupying all of Sinai. Britain and France withdrew, and Israel insisted that it would only withdraw at a price. What did it demand? First, lifting the embargo imposed by the Arab countries, especially Egypt as the largest country, and opening the Gulf of Aqaba so ships can move to and from the Israeli port of Eilat. Second, having international emergency forces monitor the Egyptian-Israeli borders. This point is important because one of the sparks that set off the 1967 war, besides Israel's intent to go on an all-out war, was when Egypt closed the Gulf of Aqaba and the emergency forces were withdrawn. The result was the Six-Day War, which was a great catastrophe for the Arab nation and Egypt, in particular, as well as the Palestinian people and their cause.

Why did the Nakba of 1967 happen? Because President Abdel Nasser, God rest his soul, made a strategic decision that was based

on inaccurate or false information from the military leadership that existed at the time. He had an inaccurate idea about the situation of his troops on the ground. The result of that is known. The result of 1967: Sinai was occupied by Israel, Gaza was occupied by Israel, the West Bank was occupied by Israel, the Golan was occupied by Israel and, most importantly, Jerusalem was lost. So, if this is not a historical disaster and a terrible defeat in every sense, then I do not know what is. However, Abdel Nasser, may God have mercy on his soul, from the day the Six-Day War ended until he died in 1970, did two things:

The first is that he did everything in his power to rebuild the Egyptian military.

The second thing was the effort he exerted to save the Palestinians from themselves, because the Palestinians were largely present in Jordan, with Abu Ammar's leadership based there, and they decided for one reason or another that it was time to liberate not Palestine, but Jordan. They decided to take over Jordan. Among those who defended Jordan was the King, the Jordanian army, the Jordanian people, and the Saudi army. Yes, the Saudi army, which has participated in all Palestinian-Arab wars with Israel.

In 1948, although we advised that it was better for the Palestinians to remain in their land while we provided them with arms, money, and men; it did not come to be. They decided to go to war and King Abdulaziz ordered the Saudi Army to enter the war with them on the Egyptian front. Fighting alongside their Egyptian brothers, the Saudi Army entered Palestinian land and did very well. Egyptian leaders commended their bravery at the time as well.

Three thousand Saudi soldiers were on the Egyptian front and inside Palestine. In this war, 150 Saudis were martyred. At the time, the Saudi army had just been established and had limited capabilities, but the armies that had been created before it had limited capabilities as well. As a result of all this, Palestinians were forced to immigrate again from Jordan to Lebanon. They had only been in Lebanon a few years when they began to behave as they did in Jordan, and Lebanon became the new target. With the Palestinians in Lebanon, the

Palestinian war led to the civil war, the price of which Lebanon is paying to this day. The war resulted in the Israeli invasion, and for the first time, they reached an Arab capital.

In 1967 ... despite in the early 1960s, there was a strong disagreement between the Kingdom and Egypt regarding Yemen, and when the aggression against Egypt took place in 1967, Egyptian airplanes had been striking Jizan and Najran in the Kingdom from Yemeni land only weeks earlier. When the aggression took place, the Kingdom offered to support Egypt with anything in our power. They asked us to host the Egyptian Air Force units that were in Yemen and for some of the airplanes that they sent to Sudan to be hosted in Jeddah, and we agreed.

I remember an incident that would highlight to the Saudi citizens the ethics of their leaders, in contrast with some unethical members of the Palestinian leadership. The late Mansour Shuaibi, the Jeddah district commander, suggested to Prince Sultan, the then minister of defense, that we take pictures and record the presence of Egyptian planes in the Kingdom, so that if a second dispute with Egypt should take place, we would publish the evidence of the help we extended to them. Prince Sultan replied that he would ask King Faisal, God rest his soul. King Faisal was very angry at the request and refused to do such a thing while our Egyptian brothers were facing an Israeli aggression. He refused to gloat and he made sure General Mansour was informed that if any of the men was caught taking a picture; his hand would be cut off. This is how Saudis stand by their Arab brothers.

The Saudi army was mobilized in Tabuk and moved to the Jordanian front, which is the closest area to us. We wanted to aid our Arab brothers within our capabilities. By the time they entered Jordan, the war was over.

King Hussein and Abdel Nasser requested that Saudi troops remain in Jordan and they did remain from 1967 to 1973. So, you see, we took part in every battle. When the war of 1973 took place, Jordan took a sovereign decision not to enter the war. The last time it entered the war, the West Bank and Jerusalem were lost, they did not

want to take any more risks. Egypt and Saudi Arabia respected King Hussein's decision. King Faisal said that our forces could stand by on the front and simply observe what is happening. He ordered that the forces be sent to Syria. Indeed, the forces in Jordan went to Syria and fought alongside their Syrian brothers on the Golan front in the 1973 war and clashes until the cease-fire. The Saudi forces remained in the Golan from 1973 to 1978 or 1979. We do not need anyone to patronize us about aiding the Arab nations and helping to carry the weight of their misfortunes. We share with our brothers and help them achieve success for the Arab nation, and we also stand with them in their dark times, through words as well as actions. This is what Saudi citizens need to understand.

Why do I say this, and why now particularly? Because at this time, the situation has changed completely from what it used to be. Now in the information age, the majority of the world's citizens get their news from Facebook, the Internet, social media, and so on. No one reads newspapers anymore except a few, and television programs are sometimes dishonest, and just as a reminder, some channels give messages that are false and that direct hatred against the Gulf countries and their leaders, such as Al Manar and the other Iranian channels such as Al-Jazeera, which represents Qatar. Qatar, to be honest, is on the margins. The Qatari people are our dear and beloved brothers. The state, however, is not worth a mention or a reaction whatsoever. The best thing is to do is to ignore it. Surely, you all know that they say ticks can drive camels mad. That is true, but my brothers and sisters, ticks are ticks and camels will always be camels, and that sums it up from my point of view.

In 1967, there were zero settlements in the West Bank, Gaza, the Golan, and Sinai.

In 1970, three years later, there were about 30,000 in the West Bank.

In 1973, the year of the Ramadan War and the October War, there were over 100,000.

In 1978, when the Camp David peace treaty was signed, there were about 300,000, according to various data sources.

Today, there are more than 600,000 settlers.

While the Arabs were preparing for war, such as the war in which the Arab dignity and honor were restored by the Egyptian army, and Egypt went to Camp David, meanwhile, the initiative of UN Resolution 242 was presented and rejected by the Palestinians. The Camp David agreement was rejected by the Palestinians and by the Arabs. It became the mistake that played a major role in deepening the Palestinian tragedy, as the Arab nation boycotted Egypt, the mother of the world, because the Palestinians rejected the autonomy provisions in the Camp David Treaty and considered this peace treaty a betrayal to the Arab nation.

What was Israel doing during this period? It built settlements, occupied more land, and strengthened itself and its army. They were fighting us on all fronts, paying attention to major details and leaving the minor issues behind. Who cares for the support of North Korea? Israel was working on increasing its influence, while the Arabs were busy with each other. The Palestinians and their leaders led these disputes among the Arabs.

After the Oslo Accord, I asked Abu Ammar, God rest his soul - and as they say remember the virtues of your dead - what he thought of the autonomy provisions in the Camp David Treaty. He said, "Bandar, Camp David's autonomy provisions were ten times better than the Oslo Accord." I said, "Well, Mr. President, why did you not agree to it?" He said, "I wanted to, but Hafez al-Assad threatened to kill me and to drive a wedge among the Palestinians, turning them against me." I thought to myself, so he could have been one martyr and given his life to save millions of Palestinians, but it was as God willed it.

Interview transcript part two

Extract from part one: "My first reaction was anger. The Palestinian cause is a just cause, but its advocates are failures, and

the Israeli cause is unjust, but its advocates have proven to be successful – I recalled events I was witness to.”

“Between late 1977 and early 1978, the late Prince Fahd (at that time) visited President Carter, where they discussed the Palestinian cause, as Saudi leaders became accustomed to not meeting anybody without the Palestinian cause dominating half, if not three quarters, of the discussions. King Fahd was trying to encourage President Carter to do something and get the Palestinian cause moving. Carter expressed his readiness to recognize the Palestine Liberation Organization (PLO) as the representative of the Palestinian people, open a PLO office in Washington, and allow US diplomatic officials to start holding talks with Palestinian officials. In exchange, the PLO had to recognize the United Nations Resolutions 242 and 338 and declare that all the countries of the region have the right to live in peace.

King Fahd, who was the Kingdom’s Crown Prince at that time, returned home and asked Abu Ammar [Yasser Arafat] to visit him in Taif, and he did. King Fahd told him about President Carter’s offer, saying that they were just four lines that needed to be written down and signed by Abu Ammar before being handed to the American ambassador, while a specific time will be set the day after for both parties to announce the agreement at the same time.

Then something happened which I saw with my own eyes ... I did not witness these discussions but I was later told about them directly by King Fahd, Prince Saud and President Carter. I saw Abu Ammar dancing, laughing, and saying, “Palestine is free.” Prince Fahd told him that “we were just getting started and Palestine will hopefully be free,” then asked him if he was ready to sign. Abu Ammar said that he is ready but asked for some time to fly to Kuwait and discuss with his comrades before coming back the second day for the announcement.

Prince Fahd told him that he could simply use the phone to call and inform them but Abu Ammar preferred to go meet them directly in person. Prince Fahd then suggested asking the Emir of Kuwait to fly them on board an airplane to Saudi Arabia the same night so Abu

Ammar could discuss with them and get moving the second day but, once again, Abu Ammar asked for a chance to go to Kuwait and Prince Fahd agreed. So, he went to Kuwait and no one heard from him for several days, while the American ambassador was calling Prince Saud and informing him that Washington was waiting. At the end, he informed him that all of President Carter's advisers were against the offer, while Carter insisted on keeping his word as this opportunity should not be lost. Ten days later, Abu Ammar's written response arrived. In it, he thanked King Fahd, and attached to it was the official written letter sent to President Carter as agreed. Prince Fahd reviewed the letter and noticed that Abu Ammar had included 10 conditions the US had to accept in order for him to approve the UN resolutions 242 and 338 and recognize that all the countries of the region have the right to live in peace. Prince Fahd said to himself that even the Soviet Union did not set any conditions for the US; does he really believe that the US will agree to his conditions?

One of the officials present with King Fahd then told him that he had done his part and that this was the response of the Palestinian brothers, which he should pass to the US and see what happens. Prince Fahd disagreed and said that: "If this letter is delivered to the Americans, it will be leaked to everyone, the press and congress, which will push the anti-Palestinian groups to attack them and make the situation worse, while we are trying to make a positive change. Let's keep Abu Ammar's letter here and write a letter from me to Carter, saying 'The Saudi government has studied the offer and considered it from all sides but your offer did not convince us, Mr. President, and therefore we will not hand it over to the Palestinians.' Give the letter to the American ambassador so he can deliver it to President Carter. Because we are ready to take responsibility vis-a-vis the Americans for not facilitating the process; we do not want the Palestinians to be held responsible for the failure."

This happened time and time again but you have never heard a Saudi official discussing it. Did you ever hear any Saudis talking about what that happened in 1977, 1978 through 1990 when the Palestinians supported Saddam's occupation of Kuwait, or as a response for them going out in the street and waving photos of

Saddam Hussein in Nablus when Riyadh was hit with missiles? No, because we have an objective, which is to serve the Palestinian people because we believe that their cause is a just one. However, it is not our fault that God gave them such leaders. As I already mentioned, we are dealing with a just cause with bad advocates, while the Israelis are dealing with an unjust cause with successful advocates, whether we like it or not. This is the reality and the results on the ground.

In 1985, as I was the Saudi ambassador to the US, President Reagan asked me to ask Prince Fahd for a favor for him. The favor was that they had a problem in Nicaragua, where Congress was supporting the Contras but had to cut their aid due to partisan disputes between the Republicans and the Democrats. This took place during a sensitive stage of the war in Nicaragua and the Americans thought that Saudi Arabia could help fill this gap for two months. They asked me to pass the request on to King Fahd, who told me to convey his approval and express our readiness to help. He said, “Bandar, this is an investment with Reagan, and one day I’ll withdraw my investment.” I did as I was told and Reagan was very happy. A lot of people may ask, “What does Saudi Arabia have to do with Nicaragua and the Contras?” The truth is that we had nothing to do with them, but we had interests. If you asked anybody back then in the streets of Riyadh, Jeddah or Al-Jouf about the Contras or Nicaragua, they would tell you that they are the names of diseases or something else. They had nothing to do with us, but there was a strategic relation that only a person who thinks strategically could see.

For King Fahd, Afghanistan was occupied by the Soviet Union and we supported the Jihadis there, while the Americans approved of this position. So, we had to make sure the Americans would continue to support us until the Soviet Union left Afghanistan. We had interests here, they had interests there. We wanted to secure their continued support in Afghanistan.

In 1986, King Fahd asked me to propose to President Reagan to do something to help the Palestinian cause. I went and met with President Reagan. I informed him that the Palestinians now agreed to UN Resolution 242, which they had rejected in 1973. This took

place during the period between King Fahd's initiatives in 1981 and 1982. They did not agree to the 1981 initiative in Fez because they objected to the point that expressed "the right of all regions to live in peace", which was later approved in Oslo. As I have told you, history repeats itself. They've always say that we do not support them but we know that we are protecting them. Then they come and say that they accept an offer that is no longer on the table and so on. The grey hair that I have is because of them and their lost opportunities, and thinking how we had certain circumstances and we had a strong influence that could have enabled us to do something.

Anyway, President Reagan agreed but the Secretary of State [George] Shultz did not. I later learned that Shultz was not aware of the arrangement we had made with Reagan concerning the Contras so I told him about it. I took a letter saying that if the Palestinians recognize UN Resolution 242, just like in Carter's offer, denounce terrorism and recognize the right of the region's states to live in peace, Reagan was ready to recognize the PLO and hold talks with it. I left and called King Fahd and told him about the offer. "Are you sure?" He asked. I told him that I had the letter written and signed so he told me to go ahead with the plan and asked me to head to Tunisia to deliver the letter to Abu Ammar directly. I went there and met Abu Ammar, may God have mercy on his soul, where I saw what they told me had happened after Carter's offer. Abu Ammar stood up as usual, and said, "Palestine is free!" and he started dancing and kissing and hugging me. It is well known to everyone that Abu Ammar always loved to kiss people. I asked him about the announcement date so he can go meet with [Jordan's] King Hussein to hold a joint declaration and so on. "Not possible," he replied. "How is it not possible? This is what you asked for and we got it for you," I said. He replied, "I follow an Arab code of ethics." I said, "Absolutely, now go for it and don't waste another opportunity." He then proceeded to tell me that he first needed to go to Saudi Arabia to thank King Fahd for what he had done before going to King Hussein. I assured him that King Fahd did not doubt his feelings and if he went to King Hussein, made the declaration first and got the desired response from the Americans, King Fahd would warmly

welcome him. This he refused. I agreed to let him go to the Kingdom, and when he requested a plane I told him he could use the plane I came on to go to Jeddah. He took the plane and we did not see him for a month. He went to South Yemen and North Korea, with whom we did not even have ties. He also visited countries in Africa and Asia before arriving in the Kingdom. After all this time, the Americans said that they were no longer interested. Many things had happened and their focus had shifted.

In Lebanon, there was an attack targeting the Palestinians in South Lebanon, while the Syrian Army in Tripoli surrounded Abu Ammar. King Fahd was upset by the Israelis attacking and killing Palestinians in South Lebanon. He ordered me to go and deliver an urgent letter to President Reagan, saying that the US must take a stand. I went and met with the Secretary of State Shultz to tell him that the King wanted this message quickly delivered to President Reagan that same night. He said he would do it but also informed me that according to Reagan's policy, Shultz had the authority to directly go to the pressroom at the State Department and condemn Israel and its operations against the Palestinians and ask them to stop. I was overjoyed, however, he said he would do so on the condition that I accompany him and condemn the Syrians for targeting the Palestinians and ask them to stop. I thought to myself, this cause is so unfortunate, every time there's a glimmer of hope, something new comes up, just as [Saudi Arabia's] Prince Khalid Al-Faisal once said. I told Shultz that we were asking the US to take a stand against Israel and that we would work things out with the Syrians. What I am trying to say is that there were always new opportunities but they were always lost.

During King Fahd's visit to the US in 1985, two incidents took place:

The first incident happened on the first day of the visit. King Fahd's meetings with President Reagan were all positive and an official banquet was scheduled that night. We were happy because they had launched a new initiative and were exerting efforts that later resulted in Shultz meeting with Abu Ammar in Geneva. When the king got back to his residence that day, President Reagan's National Security

Adviser [Robert McFarlane] called me asking for a copy of the speech King Fahd was going to deliver that night. I agreed to send him the speech and asked if it is possible for them to send us a copy of the president's speech. He apologized saying that in line with the tradition of the US government, the president's speech cannot be circulated and will later be distributed to the press. To be honest, I wasn't that concerned, but doubt started to creep in. When I told King Fahd about the entire exchange, he agreed to me sending them a copy of his speech. We attended the dinner, the entire Saudi delegation, and the president was sitting with King Fahd at the table. As I was seated to the right of the vice-president, George Bush senior at the time, King Fahd started waving at me. Bush saw him and told me. So, I stood up and walked over to the king. It was an official dinner attended by around 150 guests, half of whom were journalists. I was wearing the Saudi national dress, and when I stood up people noticed and were wondering why I was going to speak with the king. King Fahd then asked me to go outside, call for the national security adviser and tell him that the king wanted the president to delete the entire paragraph related to the Middle East from his speech. "If he refuses, I will say something in response to that paragraph. The president will not like it and this visit will turn into something negative," he added. I was about to ask him what he meant but he told me to just go. I went outside and started trying to get McFarlane's attention before stopping one of the attendants, who went in and told him to meet me outside. He came to me, asked if everything was OK, and I conveyed the king's request. "What happened? How did the king know about this paragraph in the speech?" he asked me. "I do not know. The king did not tell me anything," I replied. He then asked me if it was serious and I assured him it was because King Fahd does not joke in serious times, he only smiles, but beware his smile when he is upset. McFarlane went back to his table, took a menu, wrote something on the back and passed it to one of the attendants to give to President Reagan. The president read it, gave his speech to the same attendant to pass it to McFarlane who took a pen and started crossing out the relevant paragraph before passing the speech back to Reagan. As I was still standing outside, McFarlane looked at me to signal me that it was done, and I passed the message to King Fahd, who just nodded his head. The

vice-president asked me what had happened but I told him that I had no idea. President Reagan delivered his speech. He thanked the king and praised the bilateral relations that date back to President Roosevelt and King Abdulaziz, in line with the usual speech between the US and Saudi. He then added that “I know that the king encourages the youth and sports and that you have football teams visiting other countries. I wish you a successful visit and that you feel comfortable in our country.” People applauded. Then the king stood up, and without taking his speech out of his pocket, said the same things, thanked the president for his hospitality and spoke of the bilateral relations since the time of King Abdulaziz and Roosevelt’s mandate, and then paused before adding “You are right Mr. President. We love to encourage the youth and sports, especially football. We have two young teams, one in Beijing, China and the other in Moscow, in the Soviet Union. The truth is that young people should be encouraged to be athletic. Thank you for the hospitality.” He sat back down, while the whole Saudi delegation including Prince Saud, was looking at me as if they were asking me about what had happened because the speech was originally full of talk of the Middle East! I said nothing. We finished and King Fahd asked Prince Saud Al-Faisal and myself to accompany him. We got in the car, he did not say a word. When we arrived at the residence, he turned towards Prince Saud and asked him if he had liked his speech. Prince Saud replied, “You are always right.” He did not ask me anything.

When the king got to the residence, he asked for me. He wondered if I was curious to know what had happened and I said yes. He explained by saying that “The Minister of Media told me that the speech will be broadcast live in the Kingdom and I wanted to give you guidance as to what your first reaction should be because as soon as you leave here you will receive many phone calls, the first of which will be from Prince Abdullah, Prince Sultan, Prince Salman and Prince Naif. You tell them that you do not know anything and I will talk to them when I come back. All I can tell you is that this is because of you, it has been on my mind ever since you told me that they refused to give us the president’s speech in advance. When we attended the dinner, I asked the interpreter how he would interpret my speech and he told me that the Embassy had provided him with

an English version. I said ‘Ok, but what about the president? How will you translate his speech into Arabic?’ He told me that he had an Arabic version of the president’s speech. I asked him if I could see it but he apologized saying that he had instructions and no one was allowed to see the speeches until after they were delivered. Then I changed my mind and spoke with Reagan in my limited English, but which got the message across. He asked them to give me a copy of the speech. He turned to the interpreter and asked him if he had an Arabic version of the speech and to show it to me.” This was not a sensitive matter for Reagan. It was normal for him.

The paragraph on the Middle East started as such: “President Carter, President Sadat and Prime Minister Begin made history with the Camp David agreement. I hope that the Israeli Prime Minister, you, and I can make history once again.” This was the paragraph the king wanted removed. The king’s speech had parts about the Palestinian cause saying that it was a political one and that we wanted justice and peace through UN resolutions. The king said that since they had omitted their paragraph, we omitted ours. Everybody was wondering why King Fahd was talking about football and the Saudi teams in China and Russia under these sensitive circumstances. If the reasons were known, these questions would subside. As soon as I left, I was informed that the crown prince had called me along with Prince Sultan, Prince Naif and Prince Salman. I went and replied to all of them that I did not know anything. We had a speech, but then the king spoke in his own words.

What I mean to say is that we do not have false promises and empty slogans to sell to the people. We have positions and actions. If we look at the years from 1985 to 1993, the Palestinians were negotiating the Oslo Accords without informing the Egyptians. The late Hosni Mubarak told me in person that “After they had reached an agreement and before going to the Americans to set a date for the signature ceremony and the mutual recognition between the Palestinians and the Israelis, Rabin requested to meet me and I was made aware of the agreement by Rabin before the Palestinians even told us. I told Rabin that what is important is that they had reached an agreement. Can you believe that Bandar?” I replied by telling him

that we have a saying that means that the leaders are wiser, “You are a president and those are also leaders. I cannot comment on what happened.”

The Oslo Accords took place, and Abu Ammar said the Camp David agreement was ten times better than Oslo. A lost opportunity. He asked them to go back to the self-rule agreement but they said that it was off the table and there was a new deal. What’s so painful is that it was the Palestinian people who suffered the most from this tragedy. I say this now for the Saudi citizens, our young men and women, so they can be aware of what happened. They should be proud of the positions taken by their nation and leadership. History shows and documents bear witness to what happened, and now I have shared it with you.

Interview transcript part three

The third part began with extracts from the second part: "After writing down everything we have discussed yesterday and then reading it, I said to myself, it might be best to improvise and speak frankly, the grey hair that I have is because of them... I told him he could use the plane I came on to go to Jeddah and we did not see him for a month... there were always new opportunities but they were always lost... They've always said no, and we've always supported them although we knew their rejection would backfire... but Hafez al-Assad threatened to kill me and to drive a wedge among the Palestinians, turning them against me... Saudi citizens should be proud of the positions taken by their nation and leadership.”

Next came the Oslo Accords in 1993. What happened in Oslo is well known. Ammar [Yasser Arafat], [Israeli former Prime Minister Yitzhak] Rabin, and [former President Simon] Peres went to Washington and signed the Oslo Accords and recognized each other, the thing that everybody was forbidden to do before. But we should not forget that that moment was an important stage during the period in which there was no positive movement toward the Palestinian cause, and despite all the events I mentioned, whether it was Abu

Ammar going to Saddam [Hussein], or the dancing in Nablus in celebration of Riyadh being hit, and so on ... After all this, we had no relations, all relations with Abu Ammar and his people were cut, but we did not cut off our relations with the Palestinian cause. Palestine is not its leaders, Palestine is Palestine. They are the ones causing harm, not us, and if something happened like the boycott after the liberation of Kuwait and so on, they were the reason.

Immediately after the war, King Fahd ordered me to work with President Bush Sr. and Secretary of State [James] Baker to quickly achieve something for peace. Then Prince Saud, Baker, and I sat together in 1991. Discussions took place with [Soviet former President Mikhail] Gorbachev at the time, and there was an agreement to hold a peace conference in Madrid in October 1991. It was very important because it was sponsored by the two superpowers: the US and the Soviet Union. So we started planning for the Madrid conference, as I said, given its importance due to the fact that it was held under the auspices of the two superpowers and would be attended by President Bush and President Gorbachev.

[Syria's] President [Hafez] al-Assad decided not to attend, so King Fahd asked me to go and meet him. I met President al-Assad at his palace in Latakia, and after a long dialogue, I made clear to him King Fahd's stance and that it served Syria and did not harm it, and served Arab influence vis-a-vis the Palestinian cause.

I said, "Mr. President, you have a burden which is the occupied Golan Heights, and we want to see it liberated, God willing, and the burden of the Palestinian cause. It is not possible for the entire Arab world to go, and the important Arab countries are the Gulf states as represented by their secretary general, whom I will accompany, then Egypt, the Palestinians, Jordan and Lebanon. The Lebanese said they would only go if you go. You are the Syrian President, and Syria would be absent while the two superpowers attended."

He thought for a while, we were sitting in his salon opening out onto a large balcony overlooking the sea. On the balcony, I could see a young man from his security forces carrying a Kalashnikov and walking back and forth. May God have mercy on Hafez al-Assad, he had bad deeds and good deeds, but one thing about him that I recall is that he never lied to me. But for him to agree was one of the most

difficult things, getting his approval... but once he agreed, he was committed.

He said to me, "I agree, and I will send our delegation headed by [former Foreign Minister] Faruq al-Sharaa, and of course if our Lebanese brothers want to go they can go." I said, "Mr. President, if you go, the Lebanese will go." He said OK, and the Lebanese foreign minister at the time was [Fares] Boueiz. He then said something to me I will never forget, he said, "Listen carefully, do you see that young man over there?" I said yes. He said, "After we announce that we are going to attend a face-to-face meeting in which Israel is present, I do not trust that I can turn my back to him." I then understood the size of the problem for him internally, security-wise and partisan-wise. Later, I thought about it, and it is actually not strange, you fill people's heads and hearts with a certain idea, and suddenly an opportunity arises without you having the chance to convince the people with the wisdom and the public interest that this opportunity presents. Like what I am trying to do now with Saudi citizens.

I told him, "Mr. President, on the contrary, you are a role model for your people and they trust you. If you decide to do this, they will understand, God willing." We went to Madrid and the rest is history. A minor incident took place in Madrid. There was a Palestinian young man wearing a Palestinian keffiyeh [traditional scarf] over his shoulder, and as Abdullah Bishara and I were going to enter the meeting room, we heard a heated discussion inside. We asked what was going on, and we were told that the Israeli delegation was objecting to this Palestinian wearing a keffiyeh over his shoulder. We asked why. They said, "He can't come in wearing that, he needs to take it off and then come in." I saw the whole discussion was over nothing, but I was moved... first, their land was taken, and then he is told he cannot wear his keffiyeh over his shoulder... I said, "Wait, if this Palestinian youth cannot come in wearing what he wants, something he considers patriotic, then I and Abdullah Bishara and the Gulf delegation will withdraw." When you stop to think after a decisive moment, you must be prepared and must be logical. As the saying goes, if you want to be gratified, request what is possible. So, I said "But I will remove this young man's keffiyeh from his shoulder if the members of the Israeli delegation who are wearing

head coverings remove them." The people we were talking to fell silent. Spanish security, American security and it appears there were Israelis as well. Anyway, then Jim Baker came and they told him what was going on, and he said, "Now I know why there is a problem in the Middle East. If you cannot agree if someone can wear their national dress then we have a bigger problem than I imagined." I said, "Jim, welcome to the Middle East." We laughed. Then he said, "Do not waste time. Presidents Bush and Gorbachev are on the way. Everyone should just go in and sit down however they want." So, we went in. Some people may think that this is a silly story, but it has a deeper meaning for anyone who wants to understand it.

After that event and after Oslo, in 1995 they began to negotiate with each other, and they no longer needed a mediator to sit with them or secret meetings. They started meeting publicly and so on.

In 1995, there were meetings attended by the Syrians, the Palestinians, and the Israelis, but the Syrians insisted that this would not be a joint Arab-Israeli meeting. The Palestinians meet with the Israelis and the Syrians meet with the Israelis. When they first started, they would not sit in the same room, but then afterwards the meetings became face-to-face and so on. The negotiations went on from 1995 to 2000 but did not yield anything tangible.

In 2000, President al-Assad died, may God have mercy on him, and the Syrians stopped their activity for a certain period. The new president was a young man, he was trying to see what the next steps should be, and he did not have the same presence as his father in the country. A Palestinian-American meeting took place at Camp David in December 2000 where President Clinton presented his final plan. But by January, a month later, Clinton's term ended and a new president took office. The offer the Americans presented was rejected by the Palestinians, and after I was briefed on it and informed Prince Saud, and then Prince Abdullah, may they rest in peace, I got instructions that we also were rejecting it and to tell the Americans that we could not support this agreement.

As part of the mental games and manipulation of the Palestinian cause, Abu Ammar used to say that they had offered us something

that we could not accept at Camp David, but what he did not say is that the Americans agreed that there was something wrong with it and that the offer needed to be improved. In January, there was a meeting between Abu Ammar and Clinton in which the final offer was presented, that - in my opinion - could have changed the shape of the whole map. The Palestinians were initially convinced, but others convinced them otherwise - or it was a lack of success from God – since he is the son of Bush Sr., who is said to have been a friend of the Saudis, then surely his son would also be their friend. Why would we make an agreement during the term of an outgoing president? We reach an agreement, then reject it and stop it, then when the new president comes, we accept the agreement.

I told the Palestinians that the idea they had was wrong, and that the new person who will come into office had an opinion on foreign policy that is different from what they expect, and that anything that they could secure from the Americans now was a commitment and was in their interest. They asked us to confirm this from the president-elect. I called president-elect Bush Jr. and told him, "The Palestinians believe they should not sign the agreement with President Clinton and are waiting for you to take office and sign the agreement during your term." George W. Bush said to me, "Bandar, you know me well, I want to tell you three things, the first you can say to the Palestinians, and the second and third points, you are free to say them or not. The first point is that America only has one president at a time. Tell them not to discuss with me what they plan to do after I become president. The other two points are for you, and if you want to tell them you can, which is that Camp David is not a hotel. I go to Camp David with my family to relax, or I go to meet with American officials. I am not opening Camp David as a hotel like Clinton used to do. The last thing is that I do not like to speak on the phone. I have been informed that Clinton used to talk with Abu Ammar for four hours on the phone. I do not even talk to my own mother for more than half an hour, so how would I talk to him for that long? Whatever I find signed by the American President, I am committed to it, and beyond that I have nothing for you."

I conveyed this to the Palestinians, who said, "But there is another problem." I asked what it was. I want to show how they did not want

to reach a solution, to free the Palestinian people from their suffering. They said it was about Colin Powell, then designated secretary of state, who had an office already in preparation of the new president's term. They said "We have been informed that he received an Israeli delegation already. This is bias. Whereas we asked him and he said he did not have time to see us." I said to them, "I know Colin personally very well, and I am sure that his view will not be negative towards you, so do not bother him until after he becomes secretary of state." They insisted. So I called Secretary Powell, I implored him, "Please meet with the Palestinians, seeing as you met the Israelis, and it will not look good if you do not meet them." He thought for a minute and said, "OK, let them come, but just for fifteen minutes." I said, "Two minutes." They were happy, they went and saw him and came back. The Americans told me about their new offer, and they told me that the Palestinian delegation was happy with it.

I no longer trusted them not to let us down again, so I sought permission from Prince Abdullah and Prince Saud, may they rest in peace, and I went on my annual vacation at the end of the year. I was in Colorado, when Prince Abdullah called me and said "Abu Ammar is in Washington, and he asked me for you to return to Washington to be with them." I said, "With all due respect, if they agree, there is no reason for me to be there, and if they disagree then I am sure that my presence will not have any effect." But he said "Abu Ammar insisted, so I told him OK. And I coordinated with Hosni Mubarak that you and your colleague, the Egyptian ambassador, would go and see Abu Ammar."

I returned from Aspen and met with Abu Ammar at my house, along with the Egyptian ambassador, and we talked about the matter at hand, and how grateful and appreciative he was. I asked how things were going. He said "Things are good. There is just one little detail. Tomorrow morning we have a meeting at the White House, and after that the announcement will take place, but I have a request from you." He meant me and my colleague Egyptian Ambassador Fahmy. We asked what the request was, and he said, "I want you to make sure that Prince Abdullah, King Hassan, and President Hosni Mubarak - right after we announce the agreement between Clinton

and Ehud Barak, the Prime Minister of Israel - immediately declare their support so that it balances things out for us. And so that Syria does not give us trouble." The Egyptian ambassador said to him, "Mr. President, if you announce it, not only will they declare their support they will come here and support it if you like." I said, "I agree, once Morocco, Saudi Arabia and Egypt declare support, I assure you that the Gulf states will support you, and Jordan will support you, no problem in this regard." He said OK, and left.

The next day I asked my friend, the Egyptian ambassador, "What do you think?" He said, "I am starting to have doubt." I said, "You call through your channels and I will call the Americans through my channels, and we will see how things are, and if needed, you and I can intervene quickly, and if we cannot, then at least we can inform our leaders to move quickly, there will not be other chances, tomorrow is decisive." The next day we got a call mid-morning, saying that Abu Ammar wanted to see me and the Egyptian ambassador right away at the hotel he was staying at. We went in to him, greeted him and sat down. He did not seem like his usual self, so I asked him, "Abu Ammar, please reassure us." He said, "Good news, it went through." I said, "Are you sure?" He said yes. "Why did you not announce it?" He said, "There is just a small matter related to security, I am waiting now for the head of the CIA - George Tenet at the time - because there is a simple amendment to be made, maybe linguistic or something, and after we finish, I will return to the White House." I said, "Thank you for the great news." Fahmy said, "Congratulations, Mr. President."

At that moment, the Saudi accompanying officer, Major General Nayef Al-Muzaini, came in and gave me a piece of paper. I opened it, it was a message saying "We would like Bandar to contact the White House as soon as possible because the president's national security adviser wants to talk with him." I closed the paper and looked at Abu Ammar, and said "With your permission, Mr. President, I need to go out and take a call." He said, "No, take the phone call from here." I said, "No, I want to speak outside." He said, "Why when there is a phone in the room?" I said, "Abu Ammar, this is a personal family issue, I will go out and make the call and be

right back." I went out, and phoned the national security advisor who told me "Abu Ammar is late, there is no time left, and we need to know his response." I said, "Abu Ammar says that you have agreed and that is that." He said, "What he is saying is not true." I said, "How so? He said, "It is not true." Then the voice changed, it was President Clinton, he was in the room, and he took the receiver and talked to me. He said, "Listen, Bandar, I offered an agreement that no one before me ever offered the Palestinians, and two days ago Ehud Barak called and said, "I cannot go through this agreement because I do not have support for it in Israel and in my government." And I told Barak, "This agreement that we reached with you will not be changed, and if you withdraw from it or reject it, I will publicly declare that Israel has failed in the peace agreement that was proposed and previously approved." So I told Abu Ammar the same thing and now he wants to change some paragraphs; I do not accept changing them and we cannot change them. And I have Israeli approval now, if Abu Ammar came here I will make this announcement with him, Barak will come here and the three of us will meet and announce the agreement." I said, "But Abu Ammar says that he agrees, Mr. President." He said, "He is lying, he said he would be back in half an hour, and we have been waiting for him for two hours."

I wanted to cry, my heart was burning at how the opportunity was lost again and perhaps for the last time, as if I was seeing a movie playing in front of my eyes. An opportunity comes, and it is lost. After it is lost, we agree on what we rejected, and we put it on the table. Then people say that there is nothing on the table, and so on over and over. As the saying goes, with repetition you become cleverer. With all due respect to our viewers, the Saudi people and the Palestinian people.

But this is what happened. I went back to the room. I said, "Abu Ammar, I am going to ask you a question for the last time. Have you and President Clinton agreed?" He said yes. I said, "Congratulations." He stood up and hugged us. Then I asked for his permission to leave. He said, "No, do not go. Stay here with us until we are done." I said, "But you are done." He said, "No, please, you

must stay and celebrate with us." I told him, "Listen Abu Ammar, the ambassador of Egypt, the largest Arab country, is here, my brother and colleague Fahmy who represents all Arabs will stay here with you." The Egyptian ambassador looked at me as if to say, 'What is happening?', and then I added "but I must go because my family is in the place I left them on vacation. I wholeheartedly congratulate you, and I will watch it on TV and share in your joy. And at the first opportunity, I will tell Prince Abdullah, Prince Saud, and our officials that, praise God, Palestine has been liberated, just as Abu Ammar said it would be." He insisted that I do not go, he took hold of me and pulled me, and I kept pulling away, all the way to the elevator, he would not let go of me. Finally, I said to him, "Abu Ammar, I need to travel. What do you want? If you are telling the truth and you have reached an agreement, then what do you need me for?"

The officers who were with me and the American security opened the elevator, and I got in and went down, and got into my car. I said, "Head for the airport, we will leave tonight as soon as the plane is ready." I called Prince Abdullah, who said "So, Bandar, is it a lion or a hyena?" I said, "By God, I did not expect a lion, just a hyena, I do not know." He said, "How come?" I said, "Abu Ammar is saying, 'We have reached an agreement,' and Clinton just talked to me and he says, 'We have not reached an agreement, and if he does not sign, I will withdraw the entire agreement and I will not transfer it to the next president, because he does not want us to leave unfinished business for him.'" He said, "For goodness sakes, Bandar." I said, "As you can see, this is what's happening." He said, "What will you do?" I said, "I want to go back to my family if you give me permission." He told me to go ahead. And that was that. Despite all that happened, I received directives to ask Clinton not to hold Palestine fully responsible. After some back and forth and calls from Prince Abdullah himself to President Clinton, he said, "Ok, I will declare that we have not reached a solution."

After the new president, George W. Bush, came to office, Prince Abdullah made a second attempt and a great effort. He visited the US and visited the president on his ranch, and important points were

reached. Bush agreed that in late August, early September, when he was going to give a speech in front of the UN, that he would include a paragraph on the Palestinian cause, and that he would recognize both the Palestinian and Israeli states, and that work was being done to achieve this goal, and to add some paragraphs that the Palestinians were demanding. President Bush assigned Secretary of State Colin Powell, Head of the CIA George Tenet, and his National Security Adviser Condoleezza Rice to meet with me and to write this paragraph in the speech in the way that we agreed upon. And after lots of back and forth, referring back to Riyadh and to the Palestinians, we finally arrived at a semi-agreed upon text.

On September 8, Colin called me and said, "Tomorrow I have to go to Latin America, there is a meeting of the countries of South America, and I have to give a speech there. I return on the night of September 10, on September 11 let us meet and finish this. Then I'll send it to the President for final approval, and we'll go to New York." I agreed. We called the others to meet on the 11th in order to activate the Palestinian cause in the first year of the new president's term. Unfortunately, this was not meant to be.

The day of September 11 requires no explanation. The Palestinian cause became the least concern for America and for much of the world, until some other attempts were made later on.

Going back to the reason why I bring all this up now, it is because our dear Saudi citizens and our brothers and sisters in neighboring Gulf countries need to know what their leaders and countries have done in service of the Palestinian issue, with complete dedication. And that if there is now a denial of this on behalf of the Palestinian leaders, this will not affect our attachment to the cause of the Palestinian people. But with these people [the leaders] it is difficult to trust them and to do something for the Palestinian cause with them around.

In my personal opinion, with all the events that have taken place around the world, we are at a stage in which rather than being concerned with how to face the Israeli challenges in order to serve the Palestinian cause, we have to pay attention to our national

security and interests. New players came into the picture, claiming that they are serving the Palestinian cause and that the Palestinian cause is their priority, and that Jerusalem is their first goal. These are countries such as Iran and Turkey, and the Palestinian leaders have come to regard Tehran and Ankara higher than they regard Riyadh, Kuwait, Abu Dhabi, Dubai, Manama, Oman, Muscat, and Cairo.

As I said before, God says in the Holy Book, "My Lord, forgive me and my parents." Knowing that Heaven is under the feet of mothers. We never made any violations, and never violated God's law. We are followers, given that we live in this challenging era, and the duty of our leaders is to preserve our national security and the security, economic, welfare, and social interests of our peoples. We are surrounded by a stormy sea all around us, and we are one of the few [stable] countries - islands in the middle of this sea. We owe it to our peoples to maintain this situation that we live in.

Egypt is the largest Arab country and a great nation, and works day and night to lift the Palestinians up from all the challenges and restrictions imposed on the people of Gaza by Israel, [but] is facing a hotspot for terrorism from which terrorists enter Sinai and Egypt and commit crimes. O people, we do not see God with our eyes but we believe in Him with our minds. Neither the Egyptian people, nor the people of the Gulf and many Arab nations are pleased with what we see.

Turkey occupies Libya and wants to liberate Jerusalem by withdrawing its ambassador from Abu Dhabi.

Iran wants to liberate Jerusalem through the Houthis in Yemen or through Hezbollah in Lebanon and Syria.

Things are clear and we are at our limit with those guys. And now, I have conveyed what was in my heart and spoken directly to the audience that concerns me and to our citizens. Everything that I said is documented and known, and I am going to start a social media account, Twitter, etc., and I will post all these documents and everything I talked about on this account. Anyone who wants more details can find them there, otherwise I could spend ten hours telling you all the details, which I will not do.

I hope and ask God Almighty that I have faithfully fulfilled my obligation, so that we do not allow liars, cheaters, those who are disloyal and who deny what was done for them, to impose their traditions and their way of dealing with each other on us. We also have our own history, we know it and we know theirs, and this is what I wanted to explain to my fellow citizens, given the crucial importance of this stage and the circumstances we are experiencing now. And Allah is the grantor of success.

Thank you for giving me the time to talk about this with you.
Good night.

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Saudi Arabia

Prince Bandar bin Sultan

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Annex 5

Security Council Resolution 242 (22 November 1967)

Decisions

At its 1373rd meeting, on 9 November 1967, the Council decided to invite the representatives of the United Arab Republic, Israel and Jordan to participate, without vote, in the discussion of the item entitled "The situation in the Middle East: Letter dated 7 November 1967 from the Permanent Representative of the United Arab Republic addressed to the President of the Security Council (S/8226)".¹¹

At its 1375th meeting, on 13 November 1967, the Council decided to invite the representative of Syria to participate, without vote, in the discussion of the question.

Resolution 242 (1967)

of 22 November 1967

The Security Council,

Expressing its continuing concern with the grave situation in the Middle East,

Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. *Affirms* that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

- (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;
- (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

2. *Affirms further* the necessity

(a) For guaranteeing freedom of navigation through international waterways in the area;

(b) For achieving a just settlement of the refugee problem;

(c) For guaranteeing the territorial inviolability and political independence of every State in the area,

¹¹ *Ibid.*

Décisions

A sa 1373^e séance, le 9 novembre 1967, le Conseil a décidé d'inviter les représentants de la République arabe unie, d'Israël et de la Jordanie à participer, sans droit de vote, à la discussion de la question intitulée "La situation au Moyen-Orient : Lettre, en date du 7 novembre 1967, adressée au Président du Conseil de sécurité par le représentant permanent de la République arabe unie (S/8226)".¹¹

A sa 1375^e séance, le 13 novembre 1967, le Conseil a décidé d'inviter le représentant de la Syrie à participer, sans droit de vote, à la discussion de la question.

Résolution 242 (1967)

du 22 novembre 1967

Le Conseil de sécurité,

Exprimant l'inquiétude que continue de lui causer la grave situation au Moyen-Orient,

Soulignant l'inadmissibilité de l'acquisition de territoire par la guerre et la nécessité d'œuvrer pour une paix juste et durable permettant à chaque Etat de la région de vivre en sécurité,

Soulignant en outre que tous les Etats Membres, en acceptant la Charte des Nations Unies, ont contracté l'engagement d'agir conformément à l'Article 2 de la Charte,

1. *Affirme* que l'accomplissement des principes de la Charte exige l'instauration d'une paix juste et durable au Moyen-Orient qui devrait comprendre l'application des deux principes suivants :

- i) Retrait des forces armées israéliennes des territoires occupés lors du récent conflit;
- ii) Cessation de toutes assertions de belligérance ou de tous états de belligérance et respect et reconnaissance de la souveraineté, de l'intégrité territoriale et de l'indépendance politique de chaque Etat de la région et de leur droit de vivre en paix à l'intérieur de frontières sûres et reconnues à l'abri de menaces ou d'actes de force;

2. *Affirme en outre* la nécessité

a) De garantir la liberté de navigation sur les voies d'eau internationales de la région;

b) De réaliser un juste règlement du problème des réfugiés;

c) De garantir l'inviolabilité territoriale et l'indépendance politique de chaque Etat de la région, par

¹¹ *Ibid.*

through measures including the establishment of demilitarized zones;

3. *Requests* the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;

4. *Requests* the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.

Adopted unanimously at the 1382nd meeting.

Decision

On 8 December 1967, the following statement which reflected the view of the members of the Council was circulated by the President as a Security Council document (S/8289):¹²

"As regards document S/8053/Add.3,¹² brought to the attention of the Security Council, the members, recalling the consensus reached at its 1366th meeting on 9 July 1967, recognize the necessity of the enlargement by the Secretary-General of the number of observers in the Suez Canal zone and the provision of additional technical material and means of transportation."

THE CYPRUS QUESTION¹³

Decision

At its 1362nd meeting, on 19 June 1967, the Council decided to invite the representatives of Cyprus, Turkey and Greece to participate, without vote, in the discussion of the item entitled "Letter dated 26 December 1963 from the Permanent Representative of Cyprus addressed to the President of the Security Council (S/5488):¹⁴ report of the Secretary-General on the United Nations Operation in Cyprus (S/7969)".¹⁵

¹² *Ibid.*

¹³ Resolutions or decisions on this question were also adopted in 1963, 1964, 1965 and 1966.

¹⁴ See *Official Records of the Security Council, Eighteenth Year, Supplement for October, November and December 1963.*

¹⁵ *Ibid.*, *Twenty-second Year, Supplement for April, May and June 1967.*

des mesures comprenant la création de zones démilitarisées;

3. *Prie* le Secrétaire général de désigner un représentant spécial pour se rendre au Moyen-Orient afin d'y établir et d'y maintenir des rapports avec les Etats intéressés en vue de favoriser un accord et de seconder les efforts tendant à aboutir à un règlement pacifique et accepté, conformément aux dispositions et aux principes de la présente résolution;

4. *Prie* le Secrétaire général de présenter aussitôt que possible au Conseil de sécurité un rapport d'activité sur les efforts du représentant spécial.

Adoptée à l'unanimité à la 1382^e séance.

Décision

Le 8 décembre 1967, le Président a fait distribuer, en tant que document du Conseil (S/8289¹²), la déclaration ci-après qui reflétait l'avis des membres du Conseil :

"En ce qui concerne le document S/8053/Add.3¹², soumis à l'attention du Conseil de sécurité, les membres de celui-ci, rappelant le consensus intervenu à sa 1366^e séance, le 9 juillet 1967, reconnaissent la nécessité de l'accroissement, par le Secrétaire général, du nombre des observateurs dans le secteur du canal de Suez et de la mise à la disposition de ceux-ci de matériel technique et de moyens de transport supplémentaires."

LA QUESTION DE CHYPRE¹³

Décision

A sa 1362^e séance, le 19 juin 1967, le Conseil a décidé d'inviter les représentants de Chypre, de la Turquie et de la Grèce à participer, sans droit de vote, à la discussion de la question intitulée "Lettre, en date du 26 décembre 1963, adressée au Président du Conseil de sécurité par le représentant permanent de Chypre (S/5488¹⁴) : rapport du Secrétaire général sur l'Opération des Nations Unies à Chypre (S/7969¹⁵)".

¹² *Ibid.*

¹³ Question ayant fait l'objet de résolutions ou décisions de la part du Conseil en 1963, 1964, 1965 et 1966.

¹⁴ Voir *Documents officiels du Conseil de sécurité, dix-huitième année, Supplément d'octobre, novembre et décembre 1963.*

¹⁵ *Ibid.*, *vingt-deuxième année, Supplément d'avril, mai et juin 1967.*

Annex 6

Security Council Resolution 338 (22 October 1973)

At its 1736th meeting, on 13 August 1973, the Council decided to invite the representatives of Lebanon, Israel, Egypt and Iraq to participate, without vote, in the discussion of the item entitled "The situation in the Middle East: Letter dated 11 August 1973 from the Permanent Representative of Lebanon to the United Nations addressed to the President of the Security Council (S/10983)".²⁴

At its 1737th meeting, on 14 August 1973, the Council decided to invite the representative of Democratic Yemen to participate, without vote, in the discussion of the question.

Resolution 337 (1973)

of 15 August 1973

The Security Council,

Having considered the agenda contained in document S/Agenda/1736,

Having noted the contents of the letter from the Permanent Representative of Lebanon addressed to the President of the Security Council (S/10983),

Having heard the statement of the representative of Lebanon concerning the violation of Lebanon's sovereignty and territorial integrity and the hijacking, by the Israeli air force, of a Lebanese civilian airliner on lease to Iraqi Airways,²⁵

Gravely concerned that such an act carried out by Israel, a Member of the United Nations, constitutes a serious interference with international civil aviation and a violation of the Charter of the United Nations,

Recognizing that such an act could jeopardize the lives and safety of passengers and crew and violates the provisions of international conventions safeguarding civil aviation,

Recalling its resolutions 262 (1968) of 31 December 1968 and 286 (1970) of 9 September 1970,

1. *Condemns* the Government of Israel for violating Lebanon's sovereignty and territorial integrity and for the forcible diversion and seizure by the Israeli air force of a Lebanese airliner from Lebanon's air space;

2. *Considers* that these actions by Israel constitute a violation of the Lebanese-Israeli Armistice Agreement of 1949, the cease-fire resolutions of the Security Council of 1967, the provisions of the Charter of the United Nations, the international conventions on civil aviation and the principles of international law and morality;

3. *Calls* on the International Civil Aviation Organization to take due account of this resolution when considering adequate measures to safeguard international civil aviation against these actions;

²⁴ *Ibid.*, Supplement for July, August and September 1973.

²⁵ *Ibid.*, Twenty-eighth Year, 1736th meeting.

4. *Calls* on Israel to desist from any and all acts that violate Lebanon's sovereignty and territorial integrity and endanger the safety of international civil aviation and solemnly warns Israel that, if such acts are repeated, the Council will consider taking adequate steps or measures to enforce its resolutions.

Adopted unanimously at the 1740th meeting

Decisions

At its 1743rd meeting, on 8 October 1973, the Council decided to invite the representatives of Egypt, Israel and the Syrian Arab Republic to participate, without vote, in the discussion of the item entitled "The situation in the Middle East: Letter dated 7 October 1973 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/11010)".²⁶

At its 1745th meeting, on 11 October 1973, the Council decided to invite the representatives of Nigeria and Saudi Arabia to participate, without vote, in the discussion of the item.

Resolution 338 (1973)

of 22 October 1973

The Security Council

1. *Calls upon* all parties to the present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the positions they now occupy;

2. *Calls upon* the parties concerned to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all of its parts;

3. *Decides* that, immediately and concurrently with the cease-fire, negotiations shall start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East.

*Adopted at the 1747th meeting by 14 votes to none*²⁷

²⁶ *Ibid.*, Twenty-eighth Year, Supplement for October, November and December 1973.

²⁷ One member (China) did not participate in the voting.

Annex 7

Declaration of Principles on Interim Self-Government Arrangements, 13
September 1993



General Assembly
Security Council

Distr.
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11 October 1993

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Forty-eighth session
Agenda item 10
REPORT OF THE SECRETARY-GENERAL ON
THE WORK OF THE ORGANIZATION

SECURITY COUNCIL
Forty-eighth year

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

As co-sponsors of the peace process launched at Madrid in October 1991 and witnesses to the signing at Washington, D.C., on 13 September 1993 of the Declaration of Principles on Interim Self-Government Arrangements, including its Annexes, and its Agreed Minutes, by the Government of the State of Israel and the Palestine Liberation Organization, we have the honour to enclose the above document (see annex).

We would be grateful if you would have the present letter and its attachment circulated as an official document of the forty-eighth session of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Madeleine K. ALBRIGHT
Ambassador
Permanent Representative
to the United Nations of the
United States of America

(Signed) Yuliy M. VORONTSOV
Ambassador
Permanent Representative
to the United Nations of
the Russian Federation

Letter dated 8 October 1993 from the Permanent
Representative of Israel to the United Nations
addressed to the Secretary-General

I have the honour to enclose the Declaration of Principles on Interim Self-Government Arrangements, including its Annexes, and its Agreed Minutes, signed at Washington, D.C., on 13 September 1993 by the Government of the State of Israel and the Palestine Liberation Organization and witnessed by the United States of America and the Russian Federation (see annex).

I would be grateful if you would have the present letter and its attachment circulated as an official document of the forty-eighth session of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Gad YAACOB
Ambassador
Permanent Representative

Letter dated 8 October 1993 from the Permanent
Observer of Palestine to the United Nations
addressed to the Secretary-General

I have the honour to enclose the Declaration of Principles on Interim Self-Government Arrangements, including its Annexes, and its Agreed Minutes, signed at Washington, D.C., on 13 September 1993 by the Government of the State of Israel and the Palestine Liberation Organization and witnessed by the United States of America and the Russian Federation (see annex).

I would be grateful if you would have the present letter and its attachment circulated as an official document of the forty-eighth session of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Dr. Nasser AL-KIDWA
Permanent Observer of Palestine
to the United Nations

ANNEX

Declaration of Principles on Interim
Self-Government Arrangements

The Government of the State of Israel and the PLO team (in the Jordanian-Palestinian delegation to the Middle East Peace Conference) (the "Palestinian Delegation"), representing the Palestinian people, agree that it is time to put an end to decades of confrontation and conflict, recognize their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process. Accordingly, the two sides agree to the following principles:

Article I

AIM OF THE NEGOTIATIONS

The aim of the Israeli-Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian Interim Self-Government Authority, the elected Council (the "Council"), for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council resolutions 242 (1967) and 338 (1973). It is understood that the interim arrangements are an integral part of the whole peace process and that the negotiations on the permanent status will lead to the implementation of Security Council resolutions 242 (1967) and 338 (1973).

Article II

FRAMEWORK FOR THE INTERIM PERIOD

The agreed framework for the interim period is set forth in this Declaration of Principles.

Article III

ELECTIONS

1. In order that the Palestinian people in the West Bank and Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council under agreed supervision and international observation, while the Palestinian police will ensure public order.

2. An agreement will be concluded on the exact mode and conditions of the elections in accordance with the protocol attached as Annex I, with the goal of holding the elections not later than nine months after the entry into force of this Declaration of Principles.

/...

3. These elections will constitute a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements.

Article IV

JURISDICTION

Jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations. The two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period.

Article V

TRANSITIONAL PERIOD AND PERMANENT STATUS NEGOTIATIONS

1. The five-year transitional period will begin upon the withdrawal from the Gaza Strip and Jericho area.
2. Permanent status negotiations will commence as soon as possible, but not later than the beginning of the third year of the interim period, between the Government of Israel and the Palestinian people's representatives.
3. It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest.
4. The two parties agree that the outcome of the permanent status negotiations should not be prejudiced or preempted by agreements reached for the interim period.

Article VI

PREPARATORY TRANSFER OF POWERS AND RESPONSIBILITIES

1. Upon the entry into force of this Declaration of Principles and the withdrawal from the Gaza Strip and the Jericho area, a transfer of authority from the Israeli military government and its Civil Administration to the authorized Palestinians for this task, as detailed herein, will commence. This transfer of authority will be of a preparatory nature until the inauguration of the Council.
2. Immediately after the entry into force of this Declaration of Principles and the withdrawal from the Gaza Strip and Jericho area, with the view to promoting economic development in the West Bank and Gaza Strip, authority will be transferred to the Palestinians in the following spheres: education and culture, health, social welfare, direct taxation and tourism. The Palestinian side will commence in building the Palestinian police force, as agreed upon.

Pending the inauguration of the Council, the two parties may negotiate the transfer of additional powers and responsibilities, as agreed upon.

Article VII

INTERIM AGREEMENT

1. The Israeli and Palestinian delegations will negotiate an agreement on the interim period (the "Interim Agreement").
2. The Interim Agreement shall specify, among other things, the structure of the Council, the number of its members, and the transfer of powers and responsibilities from the Israeli military government and its Civil Administration to the Council. The Interim Agreement shall also specify the Council's executive authority, legislative authority in accordance with Article IX below, and the independent Palestinian judicial organs.
3. The Interim Agreement shall include arrangements, to be implemented upon the inauguration of the Council, for the assumption by the Council of all of the powers and responsibilities transferred previously in accordance with Article VI above.
4. In order to enable the Council to promote economic growth, upon its inauguration, the Council will establish, among other things, a Palestinian Electricity Authority, a Gaza Sea Port Authority, a Palestinian Development Bank, a Palestinian Export Promotion Board, a Palestinian Environmental Authority, a Palestinian Land Authority and a Palestinian Water Administration Authority and any other Authorities agreed upon, in accordance with the Interim Agreement, that will specify their powers and responsibilities.
5. After the inauguration of the Council, the Civil Administration will be dissolved, and the Israeli military government will be withdrawn.

Article VIII

PUBLIC ORDER AND SECURITY

In order to guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip, the Council will establish a strong police force, while Israel will continue to carry the responsibility for defending against external threats, as well as the responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order.

Article IX

LAWS AND MILITARY ORDERS

1. The Council will be empowered to legislate, in accordance with the Interim Agreement, within all authorities transferred to it.

/...

2. Both parties will review jointly laws and military orders presently in force in remaining spheres.

Article X

JOINT ISRAELI-PALESTINIAN LIAISON COMMITTEE

In order to provide for a smooth implementation of this Declaration of Principles and any subsequent agreements pertaining to the interim period, upon the entry into force of this Declaration of Principles, a Joint Israeli-Palestinian Liaison Committee will be established in order to deal with issues requiring coordination, other issues of common interest and disputes.

Article XI

ISRAELI-PALESTINIAN COOPERATION IN ECONOMIC FIELDS

Recognizing the mutual benefit of cooperation in promoting the development of the West Bank, the Gaza Strip and Israel, upon the entry into force of this Declaration of Principles, an Israeli-Palestinian Economic Cooperation Committee will be established in order to develop and implement in a cooperative manner the programmes identified in the protocols attached as Annex III and Annex IV.

Article XII

LIAISON AND COOPERATION WITH JORDAN AND EGYPT

The two parties will invite the Governments of Jordan and Egypt to participate in establishing further liaison and cooperation arrangements between the Government of Israel and the Palestinian representatives, on the one hand, and the Governments of Jordan and Egypt, on the other hand, to promote cooperation between them. These arrangements will include the constitution of a Continuing Committee that will decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder. Other matters of common concern will be dealt with by this Committee.

Article XIII

REDEPLOYMENT OF ISRAELI FORCES

1. After the entry into force of this Declaration of Principles, and not later than the eve of elections for the Council, a redeployment of Israeli military forces in the West Bank and the Gaza Strip will take place, in addition to withdrawal of Israeli forces carried out in accordance with Article XIV.
2. In redeploying its military forces, Israel will be guided by the principle that its military forces should be redeployed outside populated areas.

3. Further redeployments to specified locations will be gradually implemented commensurate with the assumption of responsibility for public order and internal security by the Palestinian police force pursuant to Article VIII above.

Article XIV

ISRAELI WITHDRAWAL FROM THE GAZA STRIP AND JERICHO AREA

Israel will withdraw from the Gaza Strip and Jericho area, as detailed in the protocol attached as Annex II.

Article XV

RESOLUTION OF DISPUTES

1. Disputes arising out of the application or interpretation of this Declaration of Principles, or any subsequent agreements pertaining to the interim period, shall be resolved by negotiations through the Joint Liaison Committee to be established pursuant to Article X above.
2. Disputes which cannot be settled by negotiations may be resolved by a mechanism of conciliation to be agreed upon by the parties.
3. The parties may agree to submit to arbitration disputes relating to the interim period, which cannot be settled through conciliation. To this end, upon the agreement of both parties, the parties will establish an Arbitration Committee.

Article XVI

ISRAELI-PALESTINIAN COOPERATION CONCERNING REGIONAL PROGRAMMES

Both parties view the multilateral working groups as an appropriate instrument for promoting a "Marshall Plan", the regional programmes and other programmes, including special programmes for the West Bank and Gaza Strip, as indicated in the protocol attached as Annex IV.

Article XVII

MISCELLANEOUS PROVISIONS

1. This Declaration of Principles will enter into force one month after its signing.
2. All protocols annexed to this Declaration of Principles and Agreed Minutes pertaining thereto shall be regarded as an integral part hereof.

DONE at Washington, D.C., this thirteenth day of September 1993.

For the Government of Israel:

(Signed) Shimon PERES

For the PLO:

(Signed) Mahmud ABBAS

Witnessed By:

The United States of America

(Signed) Warren CHRISTOPHER

The Russian Federation

(Signed) Andrei V. KOZYREV

ANNEX I

Protocol on the Mode and Conditions of Elections

1. Palestinians of Jerusalem who live there will have the right to participate in the election process, according to an agreement between the two sides.
2. In addition, the election agreement should cover, among other things, the following issues:
 - (a) The system of elections;
 - (b) The mode of the agreed supervision and international observation and their personal composition;
 - (c) Rules and regulations regarding election campaigns, including agreed arrangements for the organizing of mass media, and the possibility of licensing a broadcasting and television station.
3. The future status of displaced Palestinians who were registered on 4 June 1967 will not be prejudiced because they are unable to participate in the election process owing to practical reasons.

ANNEX II

Protocol on Withdrawal of Israeli Forces
from the Gaza Strip and Jericho Area

1. The two sides will conclude and sign within two months from the date of entry into force of this Declaration of Principles an agreement on the withdrawal of Israeli military forces from the Gaza Strip and Jericho area. This agreement will include comprehensive arrangements to apply in the Gaza Strip and the Jericho area subsequent to the Israeli withdrawal.

2. Israel will implement an accelerated and scheduled withdrawal of Israeli military forces from the Gaza Strip and Jericho area, beginning immediately with the signing of the agreement on the Gaza Strip and Jericho area and to be completed within a period not exceeding four months after the signing of this agreement.

3. The above agreement will include, among other things:

(a) Arrangements for a smooth and peaceful transfer of authority from the Israeli military government and its Civil Administration to the Palestinian representatives;

(b) Structure, powers and responsibilities of the Palestinian authority in these areas, except: external security, settlements, Israelis, foreign relations and other mutually agreed matters;

(c) Arrangements for the assumption of internal security and public order by the Palestinian police force consisting of police officers recruited locally and from abroad (holding Jordanian passports and Palestinian documents issued by Egypt). Those who will participate in the Palestinian police force coming from abroad should be trained as police and police officers;

(d) A temporary international or foreign presence, as agreed upon;

(e) Establishment of a joint Palestinian-Israeli Coordination and Cooperation Committee for mutual security purposes;

(f) An economic development and stabilization programme including the establishment of an Emergency Fund, to encourage foreign investment and financial and economic support. Both sides will coordinate and cooperate jointly and unilaterally with regional and international parties to support these aims;

(g) Arrangements for a safe passage for persons and transportation between the Gaza Strip and Jericho area.

4. The above agreement will include arrangements for coordination between both parties regarding passages:

(a) Gaza - Egypt;

(b) Jericho - Jordan.

5. The offices responsible for carrying out the powers and responsibilities of the Palestinian authority under this Annex II and Article VI of the Declaration of Principles will be located in the Gaza Strip and in the Jericho area pending the inauguration of the Council.

6. Other than these agreed arrangements, the status of the Gaza Strip and Jericho area will continue to be an integral part of the West Bank and Gaza Strip, and will not be changed in the interim period.

ANNEX III

Protocol on Israeli-Palestinian Cooperation in Economic and Development Programmes

The two sides agree to establish an Israeli-Palestinian Continuing Committee for Economic Cooperation, focusing, among other things, on the following:

1. Cooperation in the field of water, including a Water Development Programme prepared by experts from both sides, which will also specify the mode of cooperation in the management of water resources in the West Bank and Gaza Strip, and will include proposals for studies and plans on water rights of each party, as well as on the equitable utilization of joint water resources for implementation in and beyond the interim period.
2. Cooperation in the field of electricity, including an Electricity Development Programme, which will also specify the mode of cooperation for the production, maintenance, purchase and sale of electricity resources.
3. Cooperation in the field of energy, including an Energy Development Programme, which will provide for the exploitation of oil and gas for industrial purposes, particularly in the Gaza Strip and in the Negev, and will encourage further joint exploitation of other energy resources. This Programme may also provide for the construction of a petrochemical industrial complex in the Gaza Strip and the construction of oil and gas pipelines.
4. Cooperation in the field of finance, including a Financial Development and Action Programme for the encouragement of international investment in the West Bank and the Gaza Strip, and in Israel, as well as the establishment of a Palestinian Development Bank.
5. Cooperation in the field of transport and communications, including a Programme, which will define guidelines for the establishment of a Gaza Sea Port Area, and will provide for the establishing of transport and communications lines to and from the West Bank and the Gaza Strip to Israel and to other countries. In addition, this Programme will provide for carrying out the necessary construction of roads, railways, communications lines, etc.
6. Cooperation in the field of trade, including studies, and Trade Promotion Programmes, which will encourage local, regional and interregional trade, as well as a feasibility study of creating free trade zones in the Gaza Strip and in Israel, mutual access to these zones and cooperation in other areas related to trade and commerce.
7. Cooperation in the field of industry, including Industrial Development Programmes, which will provide for the establishment of joint Israeli-Palestinian Industrial Research and Development Centres, will promote Palestinian-Israeli joint ventures, and provide guidelines for cooperation in the textile, food, pharmaceutical, electronics, diamonds, computer and science-based industries.

8. A Programme for cooperation in, and regulation of, labour relations and cooperation in social welfare issues.

9. A Human Resource Development and Cooperation Plan, providing for joint Israeli-Palestinian workshops and seminars, and for the establishment of joint vocational training centres, research institutes and data banks.

10. An Environmental Protection Plan, providing for joint and/or coordinated measures in this sphere.

11. A Programme for developing coordination and cooperation in the field of communications and media.

12. Any other programmes of mutual interest.

ANNEX IV

Protocol on Israeli-Palestinian Cooperation
concerning Regional Development Programmes

1. The two sides will cooperate in the context of the multilateral peace efforts in promoting a Development Programme for the region, including the West Bank and the Gaza Strip, to be initiated by the Group of Seven. The parties will request the Group of Seven to seek the participation in this Programme of other interested States, such as members of the Organisation for Economic Cooperation and Development, regional Arab States and institutions, as well as members of the private sector.

2. The Development Programme will consist of two elements:

(a) An Economic Development Programme for the West Bank and the Gaza Strip;

(b) A Regional Economic Development Programme.

A. The Economic Development Programme for the West Bank and the Gaza Strip will consist of the following elements:

- (1) A Social Rehabilitation Programme, including a Housing and Construction Programme;
- (2) A Small and Medium Business Development Plan;
- (3) An Infrastructure Development Programme (water, electricity, transportation and communications, etc.);
- (4) A Human Resources Plan;
- (5) Other programmes.

B. The Regional Economic Development Programme may consist of the following elements:

- (1) The establishment of a Middle East Development Fund, as a first step, and a Middle East Development Bank, as a second step;
- (2) The development of a joint Israeli-Palestinian-Jordanian Plan for coordinated exploitation of the Dead Sea area;
- (3) The Mediterranean Sea (Gaza) - Dead Sea Canal;
- (4) Regional desalinization and other water development projects;
- (5) A regional plan for agricultural development, including a coordinated regional effort for the prevention of desertification;

- (6) Interconnection of electricity grids;
- (7) Regional cooperation for the transfer, distribution and industrial exploitation of gas, oil and other energy resources;
- (8) A Regional Tourism, Transportation and Telecommunications Development Plan;
- (9) Regional cooperation in other spheres.

3. The two sides will encourage the multilateral working groups and will coordinate towards their success. The two parties will encourage inter-sessional activities, as well as pre-feasibility and feasibility studies, within the various multilateral working groups.

Agreed Minutes to the Declaration of Principles
on Interim Self-Government Arrangements

A. GENERAL UNDERSTANDINGS AND AGREEMENTS

Any powers and responsibilities transferred to the Palestinians pursuant to the Declaration of Principles prior to the inauguration of the Council will be subject to the same principles pertaining to Article IV, as set out in these Agreed Minutes below.

B. SPECIFIC UNDERSTANDINGS AND AGREEMENTS

Article IV

It is understood that:

1. Jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, military locations and Israelis.
2. The Council's jurisdiction will apply with regard to the agreed powers, responsibilities, spheres and authorities transferred to it.

Article VI (2)

It is agreed that the transfer of authority will be as follows:

1. The Palestinian side will inform the Israeli side of the names of the authorized Palestinians who will assume the powers, authorities and responsibilities that will be transferred to the Palestinians according to the Declaration of Principles in the following fields: education and culture, health, social welfare, direct taxation, tourism and any other authorities agreed upon.
2. It is understood that the rights and obligations of these offices will not be affected.
3. Each of the spheres described above will continue to enjoy existing budgetary allocations in accordance with arrangements to be mutually agreed upon. These arrangements also will provide for the necessary adjustments required in order to take into account the taxes collected by the direct taxation office.
4. Upon the execution of the Declaration of Principles, the Israeli and Palestinian delegations will immediately commence negotiations on a detailed plan for the transfer of authority on the above offices in accordance with the above understandings.

Article VII (2)

The Interim Agreement will also include arrangements for coordination and cooperation.

Article VII (5)

The withdrawal of the military government will not prevent Israel from exercising the powers and responsibilities not transferred to the Council.

Article VIII

It is understood that the Interim Agreement will include arrangements for cooperation and coordination between the two parties in this regard. It is also agreed that the transfer of powers and responsibilities to the Palestinian police will be accomplished in a phased manner, as agreed in the Interim Agreement.

Article X

It is agreed that, upon the entry into force of the Declaration of Principles, the Israeli and Palestinian delegations will exchange the names of the individuals designated by them as members of the Joint Israeli-Palestinian Liaison Committee. It is further agreed that each side will have an equal number of members in the Joint Committee. The Joint Committee will reach decisions by agreement. The Joint Committee may add other technicians and experts, as necessary. The Joint Committee will decide on the frequency and place or places of its meetings.

ANNEX II

It is understood that, subsequent to the Israeli withdrawal, Israel will continue to be responsible for external security, and for internal security and public order of settlements and Israelis. Israeli military forces and civilians may continue to use roads freely within the Gaza Strip and the Jericho area.

DONE at Washington, D.C., this thirteenth day of September 1993.

For the Government of Israel:

(Signed) Shimon PERES

For the PLO:

(Signed) Mahmud ABBAS

Witnessed By:

The United States of America

(Signed) Warren CHRISTOPHER

The Russian Federation

(Signed) Andrei V. KOZYREV

Annex 8

Interim Agreement on the West Bank and the Gaza Strip, 28 September
1995



General Assembly
Security Council

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GENERAL ASSEMBLY
Fifty-first session
Agenda item 10
REPORT OF THE SECRETARY-GENERAL
ON THE WORK OF THE ORGANIZATION

SECURITY COUNCIL
Fifty-second year

Letter dated 27 December 1995 from the Permanent Representatives
of the Russian Federation and the United States of America to
the United Nations addressed to the Secretary-General

As co-sponsors of the peace process launched at Madrid in October 1991, and witnesses to the signing at Washington, D.C., on 28 September 1995, of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, by the Government of Israel and the Palestine Liberation Organization, we have the honour to enclose the above document (see annex).

We would be grateful if you would have the present letter and its attachment circulated as an official document of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Madeleine K. ALBRIGHT
Ambassador
Permanent Representative
of the United States of
America to the United Nations

(Signed) Sergey V. LAVROV
Ambassador
Permanent Representative
of the Russian Federation
to the United Nations

Letter dated 28 December 1995 from the Permanent Representative of
Israel to the United Nations addressed to the Secretary-General

I have the honour to enclose the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed at Washington, D.C., on 28 September 1995, by the Government of the State of Israel and the Palestine Liberation Organization and witnessed by the United States of America, the Russian Federation, Egypt, Jordan, Norway and the European Union (see annex).

I would be grateful if you would have the present letter and its attachment circulated as an official document of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Gad YAACOB
Ambassador
Permanent Representative of
Israel to the United Nations

/...

Letter dated 19 December 1995 from the Permanent Observer
of Palestine to the United Nations addressed to the
Secretary-General

I have the honour to enclose the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed at Washington, D.C., on 28 September 1995, by the Government of the State of Israel and the Palestine Liberation Organization and witnessed by the United States of America, the Russian Federation, Egypt, Jordan, Norway and the European Union (see annex).

I would be grateful if you would have the present letter and its attachment circulated as an official document of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Dr. Nasser AL-KIDWA
Permanent Observer of
Palestine to the United Nations

ANNEX

Israeli-Palestinian Interim Agreement on the West Bank
and the Gaza Strip*

Washington, D.C., 28 September 1995

* The original annexes to the Agreement, including the maps, have been placed in the Treaty Section of the Office of Legal Affairs, and are available for consultation by interested Member States.

/...

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The Government of the State of Israel and the Palestine Liberation Organization (hereinafter "the PLO"), the representative of the Palestinian people;

PREAMBLE

- WITHIN** the framework of the Middle East peace process initiated at Madrid in October 1991;
- REAFFIRMING** their determination to put an end to decades of confrontation and to live in peaceful coexistence, mutual dignity and security, while recognizing their mutual legitimate and political rights;
- REAFFIRMING** their desire to achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process;
- RECOGNIZING** that the peace process and the new era that it has created, as well as the new relationship established between the two Parties as described above, are irreversible, and the determination of the two Parties to maintain, sustain and continue the peace process;
- RECOGNIZING** that the aim of the Israeli-Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian Interim Self-Government Authority, i.e. the elected Council (hereinafter "the Council" or "the Palestinian Council"), and the elected Ra'ees of the Executive Authority, for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years from the date of signing the Agreement on the Gaza Strip and the Jericho Area (hereinafter "the Gaza-Jericho Agreement") on May 4, 1994, leading to a permanent settlement based on Security Council Resolutions 242 and 338;
- REAFFIRMING** their understanding that the interim self-government arrangements contained in this Agreement are an integral part of the whole peace process, that the negotiations on the permanent status, that will start as soon as possible but not later than May 4, 1996, will lead to the implementation of Security Council Resolutions 242 and 338, and that the Interim Agreement shall settle all the issues of the interim period and that no such issues will be deferred to the agenda of the permanent status negotiations;
- REAFFIRMING** their adherence to the mutual recognition and commitments expressed in the letters dated September 9, 1993, signed by and

/...

exchanged between the Prime Minister of Israel and the Chairman of the PLO;

DESIROUS of putting into effect the Declaration of Principles on Interim Self-Government Arrangements signed at Washington, DC on September 13, 1993, and the Agreed Minutes thereto (hereinafter "the DOP") and in particular Article III and Annex I concerning the holding of direct, free and general political elections for the Council and the Ra'ees of the Executive Authority in order that the Palestinian people in the West Bank, Jerusalem and the Gaza Strip may democratically elect accountable representatives;

RECOGNIZING that these elections will constitute a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements and will provide a democratic basis for the establishment of Palestinian institutions;

REAFFIRMING their mutual commitment to act, in accordance with this Agreement, immediately, efficiently and effectively against acts or threats of terrorism, violence or incitement, whether committed by Palestinians or Israelis;

FOLLOWING the Gaza-Jericho Agreement; the Agreement on Preparatory Transfer of Powers and Responsibilities signed at Erez on August 29, 1994 (hereinafter "the Preparatory Transfer Agreement"); and the Protocol on Further Transfer of Powers and Responsibilities signed at Cairo on August 27, 1995 (hereinafter "the Further Transfer Protocol"); which three agreements will be superseded by this Agreement;

HEREBY AGREE as follows:

CHAPTER 1 - THE COUNCIL

ARTICLE I

Transfer of Authority

1. Israel shall transfer powers and responsibilities as specified in this Agreement from the Israeli military government and its Civil Administration to the Council in accordance with this Agreement. Israel shall continue to exercise powers and responsibilities not so transferred.
2. Pending the inauguration of the Council, the powers and responsibilities transferred to the Council shall be exercised by the Palestinian Authority established in accordance with the Gaza-Jericho Agreement, which shall also have all the rights, liabilities and obligations to be assumed by the Council in this regard. Accordingly, the term "Council" throughout this Agreement shall, pending the inauguration of the Council, be construed as meaning the Palestinian Authority.
3. The transfer of powers and responsibilities to the police force established by the Palestinian Council in accordance with Article XIV below (hereinafter "the Palestinian Police") shall be accomplished in a phased manner, as detailed in this Agreement and in the Protocol concerning Redeployment and Security Arrangements attached as Annex I to this Agreement (hereinafter "Annex I").
4. As regards the transfer and assumption of authority in civil spheres, powers and responsibilities shall be transferred and assumed as set out in the Protocol Concerning Civil Affairs attached as Annex III to this Agreement (hereinafter "Annex III").
5. After the inauguration of the Council, the Civil Administration in the West Bank will be dissolved, and the Israeli military government shall be withdrawn. The withdrawal of the military government shall not prevent it from exercising the powers and responsibilities not transferred to the Council.
6. A Joint Civil Affairs Coordination and Cooperation Committee (hereinafter "the CAC"), Joint Regional Civil Affairs Subcommittees, one for the Gaza Strip and the other for the West Bank, and District Civil Liaison Offices in the West Bank shall be established in order to provide for coordination and cooperation in civil affairs between the Council and Israel, as detailed in Annex III.
7. The offices of the Council, and the offices of its Ra'ees and its Executive Authority and other committees, shall be located in areas under Palestinian territorial jurisdiction in the West Bank and the Gaza Strip.

ARTICLE II

Elections

1. In order that the Palestinian people of the West Bank and the Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council and the Ra'ees of the Executive Authority of the Council in accordance with the provisions set out in the Protocol concerning Elections attached as Annex II to this Agreement (hereinafter "Annex II").
2. These elections will constitute a significant interim preparatory step towards the realization of the legitimate rights of the Palestinian people and their just requirements and will provide a democratic basis for the establishment of Palestinian institutions.
3. Palestinians of Jerusalem who live there may participate in the election process in accordance with the provisions contained in this Article and in Article VI of Annex II (Election Arrangements concerning Jerusalem).
4. The elections shall be called by the Chairman of the Palestinian Authority immediately following the signing of this Agreement to take place at the earliest practicable date following the redeployment of Israeli forces in accordance with Annex I, and consistent with the requirements of the election timetable as provided in Annex II, the Election Law and the Election Regulations, as defined in Article I of Annex II.

ARTICLE III

Structure of the Palestinian Council

1. The Palestinian Council and the Ra'ees of the Executive Authority of the Council constitute the Palestinian Interim Self-Government Authority, which will be elected by the Palestinian people of the West Bank, Jerusalem and the Gaza Strip for the transitional period agreed in Article I of the DOP.
2. The Council shall possess both legislative power and executive power, in accordance with Articles VII and IX of the DOP. The Council shall carry out and be responsible for all the legislative and executive powers and responsibilities transferred to it under this Agreement. The exercise of legislative powers shall be in accordance with Article XVIII of this Agreement (Legislative Powers of the Council).
3. The Council and the Ra'ees of the Executive Authority of the Council shall be directly and simultaneously elected by the Palestinian people of the West Bank, Jerusalem and the Gaza Strip, in accordance with the provisions of this

Agreement and the Election Law and Regulations, which shall not be contrary to the provisions of this Agreement.

4. The Council and the Ra'ees of the Executive Authority of the Council shall be elected for a transitional period not exceeding five years from the signing of the Gaza-Jericho Agreement on May 4, 1994.
5. Immediately upon its inauguration, the Council will elect from among its members a Speaker. The Speaker will preside over the meetings of the Council, administer the Council and its committees, decide on the agenda of each meeting, and lay before the Council proposals for voting and declare their results.
6. The jurisdiction of the Council shall be as determined in Article XVII of this Agreement (Jurisdiction).
7. The organization, structure and functioning of the Council shall be in accordance with this Agreement and the Basic Law for the Palestinian Interim Self-Government Authority, which Law shall be adopted by the Council. The Basic Law and any regulations made under it shall not be contrary to the provisions of this Agreement.
8. The Council shall be responsible under its executive powers for the offices, services and departments transferred to it and may establish, within its jurisdiction, ministries and subordinate bodies, as necessary for the fulfillment of its responsibilities.
9. The Speaker will present for the Council's approval proposed internal procedures that will regulate, among other things, the decision-making processes of the Council.

ARTICLE IV

Size of the Council

The Palestinian Council shall be composed of 82 representatives and the Ra'ees of the Executive Authority, who will be directly and simultaneously elected by the Palestinian people of the West Bank, Jerusalem and the Gaza Strip.

ARTICLE V

The Executive Authority of the Council

1. The Council will have a committee that will exercise the executive authority of the Council, formed in accordance with paragraph 4 below (hereinafter "the Executive Authority").
2. The Executive Authority shall be bestowed with the executive authority of the Council and will exercise it on behalf of the Council. It shall determine its own internal procedures and decision making processes.
3. The Council will publish the names of the members of the Executive Authority immediately upon their initial appointment and subsequent to any changes.
4.
 - a. The Ra'ees of the Executive Authority shall be an *ex officio* member of the Executive Authority.
 - b. All of the other members of the Executive Authority, except as provided in subparagraph c. below, shall be members of the Council, chosen and proposed to the Council by the Ra'ees of the Executive Authority and approved by the Council.
 - c. The Ra'ees of the Executive Authority shall have the right to appoint some persons, in number not exceeding twenty percent of the total membership of the Executive Authority, who are not members of the Council, to exercise executive authority and participate in government tasks. Such appointed members may not vote in meetings of the Council.
 - d. Non-elected members of the Executive Authority must have a valid address in an area under the jurisdiction of the Council.

ARTICLE VI

Other Committees of the Council

1. The Council may form small committees to simplify the proceedings of the Council and to assist in controlling the activity of its Executive Authority.
2. Each committee shall establish its own decision-making processes within the general framework of the organization and structure of the Council.

ARTICLE VII

Open Government

1. All meetings of the Council and of its committees, other than the Executive Authority, shall be open to the public, except upon a resolution of the Council or the relevant committee on the grounds of security, or commercial or personal confidentiality.
2. Participation in the deliberations of the Council, its committees and the Executive Authority shall be limited to their respective members only. Experts may be invited to such meetings to address specific issues on an *ad hoc* basis.

ARTICLE VIII

Judicial Review

Any person or organization affected by any act or decision of the Ra'ees of the Executive Authority of the Council or of any member of the Executive Authority, who believes that such act or decision exceeds the authority of the Ra'ees or of such member, or is otherwise incorrect in law or procedure, may apply to the relevant Palestinian Court of Justice for a review of such activity or decision.

ARTICLE IX

Powers and Responsibilities of the Council

1. Subject to the provisions of this Agreement, the Council will, within its jurisdiction, have legislative powers as set out in Article XVIII of this Agreement, as well as executive powers.
2. The executive power of the Palestinian Council shall extend to all matters within its jurisdiction under this Agreement or any future agreement that may be reached between the two Parties during the interim period. It shall include the power to formulate and conduct Palestinian policies and to supervise their implementation, to issue any rule or regulation under powers given in approved legislation and administrative decisions necessary for the realization of Palestinian self-government, the power to employ staff, sue and be sued and conclude contracts, and the power to keep and administer registers and records of the population, and issue certificates, licenses and documents.
3. The Palestinian Council's executive decisions and acts shall be consistent with the provisions of this Agreement. /...

4. The Palestinian Council may adopt all necessary measures in order to enforce the law and any of its decisions, and bring proceedings before the Palestinian courts and tribunals.
5.
 - a. In accordance with the DOP, the Council will not have powers and responsibilities in the sphere of foreign relations, which sphere includes the establishment abroad of embassies, consulates or other types of foreign missions and posts or permitting their establishment in the West Bank or the Gaza Strip, the appointment of or admission of diplomatic and consular staff, and the exercise of diplomatic functions.
 - b. Notwithstanding the provisions of this paragraph, the PLO may conduct negotiations and sign agreements with states or international organizations for the benefit of the Council in the following cases only:
 - (1) economic agreements, as specifically provided in Annex V of this Agreement,
 - (2) agreements with donor countries for the purpose of implementing arrangements for the provision of assistance to the Council ;
 - (3) agreements for the purpose of implementing the regional development plans detailed in Annex IV of the DOP or in agreements entered into in the framework of the multilateral negotiations; and
 - (4) cultural, scientific and educational agreements.
 - c. Dealings between the Council and representatives of foreign states and international organizations, as well as the establishment in the West Bank and the Gaza Strip of representative offices other than those described in subparagraph 5.a above, for the purpose of implementing the agreements referred to in subparagraph 5.b above, shall not be considered foreign relations.
6. Subject to the provisions of this Agreement, the Council shall, within its jurisdiction, have an independent judicial system composed of independent Palestinian courts and tribunals.

CHAPTER 2 - REDEPLOYMENT AND SECURITY ARRANGEMENTS

ARTICLE X

Redeployment of Israeli Military Forces

1. The first phase of the Israeli military forces redeployment will cover populated areas in the West Bank - cities, towns, villages, refugee camps and hamlets - as set out in Annex I, and will be completed prior to the eve of the Palestinian elections, *i.e.*, 22 days before the day of the elections.
2. Further redeployments of Israeli military forces to specified military locations will commence after the inauguration of the Council and will be gradually implemented commensurate with the assumption of responsibility for public order and internal security by the Palestinian Police, to be completed within 18 months from the date of the inauguration of the Council as detailed in Articles XI (Land) and XIII (Security), below and in Annex I.
3. The Palestinian Police shall be deployed and shall assume responsibility for public order and internal security for Palestinians in a phased manner in accordance with Article XIII (Security) below and Annex I.
4. Israel shall continue to carry the responsibility for external security, as well as the responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order.
5. For the purpose of this Agreement, "Israeli military forces" includes Israel Police and other Israeli security forces.

ARTICLE XI

Land

1. The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.
2. The two sides agree that West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations, will come under the jurisdiction of the Palestinian Council in a phased manner, to be completed within 18 months from the date of the inauguration of the Council, as specified below:
 - a. Land in populated areas (Areas A and B), including government and Al Waqf land, will come under the jurisdiction of the Council during the first phase of redeployment.

/...

- b. All civil powers and responsibilities, including planning and zoning, in Areas A and B, set out in Annex III, will be transferred to and assumed by the Council during the first phase of redeployment.
 - c. In Area C, during the first phase of redeployment Israel will transfer to the Council civil powers and responsibilities not relating to territory, as set out in Annex III.
 - d. The further redeployments of Israeli military forces to specified military locations will be gradually implemented in accordance with the DOP in three phases, each to take place after an interval of six months, after the inauguration of the Council, to be completed within 18 months from the date of the inauguration of the Council.
 - e. During the further redeployment phases to be completed within 18 months from the date of the inauguration of the Council, powers and responsibilities relating to territory will be transferred gradually to Palestinian jurisdiction that will cover West Bank and Gaza Strip territory, except for the issues that will be negotiated in the permanent status negotiations.
 - f. The specified military locations referred to in Article X, paragraph 2 above will be determined in the further redeployment phases, within the specified time-frame ending not later than 18 months from the date of the inauguration of the Council, and will be negotiated in the permanent status negotiations.
3. For the purpose of this Agreement and until the completion of the first phase of the further redeployments:
- a. "Area A" means the populated areas delineated by a red line and shaded in brown on attached map No. 1;
 - b. "Area B" means the populated areas delineated by a red line and shaded in yellow on attached map No. 1, and the built-up area of the hamlets listed in Appendix 6 to Annex I; and
 - c. "Area C" means areas of the West Bank outside Areas A and B, which, except for the issues that will be negotiated in the permanent status negotiations, will be gradually transferred to Palestinian jurisdiction in accordance with this Agreement.

ARTICLE XII

Arrangements for Security and Public Order

1. In order to guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip, the Council shall establish a strong police force as set out in Article XIV below. Israel shall continue to carry the responsibility for defense against external threats, including the responsibility for protecting the Egyptian and Jordanian borders, and for defense against external threats from the sea and from the air, as well as the responsibility for overall security of Israelis and Settlements, for the purpose of safeguarding their internal security and public order, and will have all the powers to take the steps necessary to meet this responsibility.
2. Agreed security arrangements and coordination mechanisms are specified in Annex I.
3. A Joint Coordination and Cooperation Committee for Mutual Security Purposes (hereinafter "the JSC"), as well as Joint Regional Security Committees (hereinafter "RSCs") and Joint District Coordination Offices (hereinafter "DCOs"), are hereby established as provided for in Annex I.
4. The security arrangements provided for in this Agreement and in Annex I may be reviewed at the request of either Party and may be amended by mutual agreement of the Parties. Specific review arrangements are included in Annex I.
5. For the purpose of this Agreement, "the Settlements" means, in the West Bank - the settlements in Area C; and in the Gaza Strip - the Gush Katif and Erez settlement areas, as well as the other settlements in the Gaza Strip, as shown on attached map No. 2.

ARTICLE XIII

Security

1. The Council will, upon completion of the redeployment of Israeli military forces in each district, as set out in Appendix I to Annex I, assume the powers and responsibilities for internal security and public order in Area A in that district.
2. a. There will be a complete redeployment of Israeli military forces from Area B. Israel will transfer to the Council and the Council will assume responsibility for public order for Palestinians. Israel shall have the overriding responsibility for security for the purpose of protecting Israelis and confronting the threat of terrorism.

/...

b. In Area B the Palestinian Police shall assume the responsibility for public order for Palestinians and shall be deployed in order to accommodate the Palestinian needs and requirements in the following manner:

- (1) The Palestinian Police shall establish 25 police stations and posts in towns, villages, and other places listed in Appendix 2 to Annex I and as delineated on map No. 3. The West Bank RSC may agree on the establishment of additional police stations and posts, if required.
- (2) The Palestinian Police shall be responsible for handling public order incidents in which only Palestinians are involved.
- (3) The Palestinian Police shall operate freely in populated places where police stations and posts are located, as set out in paragraph b(1) above.
- (4) While the movement of uniformed Palestinian policemen in Area B outside places where there is a Palestinian police station or post will be carried out after coordination and confirmation through the relevant DCO, three months after the completion of redeployment from Area B, the DCOs may decide that movement of Palestinian policemen from the police stations in Area B to Palestinian towns and villages in Area B on roads that are used only by Palestinian traffic will take place after notifying the DCO.
- (5) The coordination of such planned movement prior to confirmation through the relevant DCO shall include a scheduled plan, including the number of policemen, as well as the type and number of weapons and vehicles intended to take part. It shall also include details of arrangements for ensuring continued coordination through appropriate communication links, the exact schedule of movement to the area of the planned operation, including the destination and routes thereto, its proposed duration and the schedule for returning to the police station or post.

The Israeli side of the DCO will provide the Palestinian side with its response, following a request for movement of policemen in accordance with this paragraph, in normal or routine cases within one day and in emergency cases no later than 2 hours.

- (6) The Palestinian Police and the Israeli military forces will conduct joint security activities on the main roads as set out in Annex 1.
- (7) The Palestinian Police will notify the West Bank RSC of the names of the policemen, number plates of police vehicles and serial numbers of weapons, with respect to each police station and post in Area B.

/...

- (8) Further redeployments from Area C and transfer of internal security responsibility to the Palestinian Police in Areas B and C will be carried out in three phases, each to take place after an interval of six months, to be completed 18 months after the inauguration of the Council, except for the issues of permanent status negotiations and of Israel's overall responsibility for Israelis and borders.
- (9) The procedures detailed in this paragraph will be reviewed within six months of the completion of the first phase of redeployment.

ARTICLE XIV

The Palestinian Police

1. The Council shall establish a strong police force. The duties, functions, structure, deployment and composition of the Palestinian Police, together with provisions regarding its equipment and operation, as well as rules of conduct, are set out in Annex I.
2. The Palestinian police force established under the Gaza-Jericho Agreement will be fully integrated into the Palestinian Police and will be subject to the provisions of this Agreement.
3. Except for the Palestinian Police and the Israeli military forces, no other armed forces shall be established or operate in the West Bank and the Gaza Strip.
4. Except for the arms, ammunition and equipment of the Palestinian Police described in Annex I, and those of the Israeli military forces, no organization, group or individual in the West Bank and the Gaza Strip shall manufacture, sell, acquire, possess, import or otherwise introduce into the West Bank or the Gaza Strip any firearms, ammunition, weapons, explosives, gunpowder or any related equipment, unless otherwise provided for in Annex I.

ARTICLE XV

Prevention of Hostile Acts

1. Both sides shall take all measures necessary in order to prevent acts of terrorism, crime and hostilities directed against each other, against individuals falling under the other's authority and against their property, and shall take legal measures against offenders.
2. Specific provisions for the implementation of this Article are set out in Annex I. /...

ARTICLE XVI

Confidence Building Measures

With a view to fostering a positive and supportive public atmosphere to accompany the implementation of this Agreement, to establish a solid basis of mutual trust and good faith, and in order to facilitate the anticipated cooperation and new relations between the two peoples, both Parties agree to carry out confidence building measures as detailed herewith:

1. Israel will release or turn over to the Palestinian side, Palestinian detainees and prisoners, residents of the West Bank and the Gaza Strip. The first stage of release of these prisoners and detainees will take place on the signing of this Agreement and the second stage will take place prior to the date of the elections. There will be a third stage of release of detainees and prisoners. Detainees and prisoners will be released from among categories detailed in Annex VII (Release of Palestinian Prisoners and Detainees). Those released will be free to return to their homes in the West Bank and the Gaza Strip.
2. Palestinians who have maintained contact with the Israeli authorities will not be subjected to acts of harassment, violence, retribution or prosecution. Appropriate ongoing measures will be taken, in coordination with Israel, in order to ensure their protection.
3. Palestinians from abroad whose entry into the West Bank and the Gaza Strip is approved pursuant to this Agreement, and to whom the provisions of this Article are applicable, will not be prosecuted for offenses committed prior to September 13, 1993.

CHAPTER 3 - LEGAL AFFAIRS

ARTICLE XVII

Jurisdiction

1. In accordance with the DOP, the jurisdiction of the Council will cover West Bank and Gaza Strip territory as a single territorial unit, except for:
 - a. issues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis; and
 - b. powers and responsibilities not transferred to the Council.

/...

2. Accordingly, the authority of the Council encompasses all matters that fall within its territorial, functional and personal jurisdiction, as follows:

- a. The territorial jurisdiction of the Council shall encompass Gaza Strip territory, except for the Settlements and the Military Installation Area shown on map No. 2, and West Bank territory, except for Area C which, except for the issues that will be negotiated in the permanent status negotiations, will be gradually transferred to Palestinian jurisdiction in three phases, each to take place after an interval of six months, to be completed 18 months after the inauguration of the Council. At this time, the jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for the issues that will be negotiated in the permanent status negotiations.

Territorial jurisdiction includes land, subsoil and territorial waters, in accordance with the provisions of this Agreement.

- b. The functional jurisdiction of the Council extends to all powers and responsibilities transferred to the Council, as specified in this Agreement or in any future agreements that may be reached between the Parties during the interim period.
 - c. The territorial and functional jurisdiction of the Council will apply to all persons, except for Israelis, unless otherwise provided in this Agreement.
 - d. Notwithstanding subparagraph a. above, the Council shall have functional jurisdiction in Area C, as detailed in Article IV of Annex III.
3. The Council has, within its authority, legislative, executive and judicial powers and responsibilities, as provided for in this Agreement.
 4.
 - a. Israel, through its military government, has the authority over areas that are not under the territorial jurisdiction of the Council, powers and responsibilities not transferred to the Council and Israelis.
 - b. To this end, the Israeli military government shall retain the necessary legislative, judicial and executive powers and responsibilities, in accordance with international law. This provision shall not derogate from Israel's applicable legislation over Israelis *in personam*.
 5. The exercise of authority with regard to the electromagnetic sphere and air space shall be in accordance with the provisions of this Agreement.
 6. Without derogating from the provisions of this Article, legal arrangements detailed in the Protocol Concerning Legal Matters attached as Annex IV to this Agreement (hereinafter "Annex IV") shall be observed. Israel and the Council /... may negotiate further legal arrangements.

7. Israel and the Council shall cooperate on matters of legal assistance in criminal and civil matters through a legal committee (hereinafter "the Legal Committee"), hereby established.
8. The Council's jurisdiction will extend gradually to cover West Bank and Gaza Strip territory, except for the issues to be negotiated in the permanent status negotiations, through a series of redeployments of the Israeli military forces. The first phase of the redeployment of Israeli military forces will cover populated areas in the West Bank - cities, towns, refugee camps and hamlets, as set out in Annex I - and will be completed prior to the eve of the Palestinian elections, i.e. 22 days before the day of the elections. Further redeployments of Israeli military forces to specified military locations will commence immediately upon the inauguration of the Council and will be effected in three phases, each to take place after an interval of six months, to be concluded no later than eighteen months from the date of the inauguration of the Council.

ARTICLE XVIII

Legislative Powers of the Council

1. For the purposes of this Article, legislation shall mean any primary and secondary legislation, including basic laws, laws, regulations and other legislative acts.
2. The Council has the power, within its jurisdiction as defined in Article XVII of this Agreement, to adopt legislation.
3. While the primary legislative power shall lie in the hands of the Council as a whole, the Ra'ees of the Executive Authority of the Council shall have the following legislative powers:
 - a. the power to initiate legislation or to present proposed legislation to the Council;
 - b. the power to promulgate legislation adopted by the Council; and
 - c. the power to issue secondary legislation, including regulations, relating to any matters specified and within the scope laid down in any primary legislation adopted by the Council.
4. a. Legislation, including legislation which amends or abrogates existing laws or military orders, which exceeds the jurisdiction of the Council or which is otherwise inconsistent with the provisions of the DOP, this Agreement, or of any other agreement that may be reached between the two sides during the interim period, shall have no effect and shall be void *ab initio*.

- b. The Ra'ees of the Executive Authority of the Council shall not promulgate legislation adopted by the Council if such legislation falls under the provisions of this paragraph.
5. All legislation shall be communicated to the Israeli side of the Legal Committee.
6. Without derogating from the provisions of paragraph 4 above, the Israeli side of the Legal Committee may refer for the attention of the Committee any legislation regarding which Israel considers the provisions of paragraph 4 apply, in order to discuss issues arising from such legislation. The Legal Committee will consider the legislation referred to it at the earliest opportunity.

ARTICLE XIX

Human Rights and the Rule of Law

Israel and the Council shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law.

ARTICLE XX

Rights, Liabilities and Obligations

1.
 - a. The transfer of powers and responsibilities from the Israeli military government and its civil administration to the Council, as detailed in Annex III, includes all related rights, liabilities and obligations arising with regard to acts or omissions which occurred prior to such transfer. Israel will cease to bear any financial responsibility regarding such acts or omissions and the Council will bear all financial responsibility for these and for its own functioning.
 - b. Any financial claim made in this regard against Israel will be referred to the Council.
 - c. Israel shall provide the Council with the information it has regarding pending and anticipated claims brought before any court or tribunal against Israel in this regard.
 - d. Where legal proceedings are brought in respect of such a claim, Israel will notify the Council and enable it to participate in defending the claim and raise any arguments on its behalf.
 - e. In the event that an award is made against Israel by any court or tribunal in respect of such a claim, the Council shall immediately reimburse Israel the full amount of the award.

/...

- f. Without prejudice to the above, where a court or tribunal hearing such a claim finds that liability rests solely with an employee or agent who acted beyond the scope of the powers assigned to him or her, unlawfully or with willful malfeasance, the Council shall not bear financial responsibility.
2.
 - a. Notwithstanding the provisions of paragraphs 1.d through 1.f above, each side may take the necessary measures, including promulgation of legislation, in order to ensure that such claims by Palestinians, including pending claims in which the hearing of evidence has not yet begun, are brought only before Palestinian courts or tribunals in the West Bank and the Gaza Strip, and are not brought before or heard by Israeli courts or tribunals.
 - b. Where a new claim has been brought before a Palestinian court or tribunal subsequent to the dismissal of the claim pursuant to subparagraph a. above, the Council shall defend it and, in accordance with subparagraph 1.a above, in the event that an award is made for the plaintiff, shall pay the amount of the award.
 - c. The Legal Committee shall agree on arrangements for the transfer of all materials and information needed to enable the Palestinian courts or tribunals to hear such claims as referred to in subparagraph b. above, and, when necessary, for the provision of legal assistance by Israel to the Council in defending such claims.
3. The transfer of authority in itself shall not affect rights, liabilities and obligations of any person or legal entity, in existence at the date of signing of this Agreement.
4. The Council, upon its inauguration, will assume all the rights, liabilities and obligations of the Palestinian Authority.
5. For the purpose of this Agreement, "Israelis" also includes Israeli statutory agencies and corporations registered in Israel.

ARTICLE XXI

Settlement of Differences and Disputes

Any difference relating to the application of this Agreement shall be referred to the appropriate coordination and cooperation mechanism established under this Agreement. The provisions of Article XV of the DOP shall apply to any such difference which is not settled through the appropriate coordination and cooperation mechanism, namely:

/...

1. Disputes arising out of the application or interpretation of this Agreement or any related agreements pertaining to the interim period shall be settled through the Liaison Committee.
2. Disputes which cannot be settled by negotiations may be settled by a mechanism of conciliation to be agreed between the Parties.
3. The Parties may agree to submit to arbitration disputes relating to the interim period, which cannot be settled through conciliation. To this end, upon the agreement of both Parties, the Parties will establish an Arbitration Committee.

CHAPTER 4 - COOPERATION

ARTICLE XXII

Relations between Israel and the Council

1. Israel and the Council shall seek to foster mutual understanding and tolerance and shall accordingly abstain from incitement, including hostile propaganda, against each other and, without derogating from the principle of freedom of expression, shall take legal measures to prevent such incitement by any organizations, groups or individuals within their jurisdiction.
2. Israel and the Council will ensure that their respective educational systems contribute to the peace between the Israeli and Palestinian peoples and to peace in the entire region, and will refrain from the introduction of any motifs that could adversely affect the process of reconciliation.
3. Without derogating from the other provisions of this Agreement, Israel and the Council shall cooperate in combating criminal activity which may affect both sides, including offenses related to trafficking in illegal drugs and psychotropic substances, smuggling, and offenses against property, including offenses related to vehicles.

ARTICLE XXIII

Cooperation with Regard to Transfer of Powers and Responsibilities

In order to ensure a smooth, peaceful and orderly transfer of powers and responsibilities, the two sides will cooperate with regard to the transfer of security powers and responsibilities in accordance with the provisions of Annex I, and the transfer of civil powers and responsibilities in accordance with the provisions of Annex III.

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ARTICLE XXIV

Economic Relations

The economic relations between the two sides are set out in the Protocol on Economic Relations, signed in Paris on April 29, 1994, and the Appendices thereto, and the Supplement to the Protocol on Economic Relations, all attached as Annex V, and will be governed by the relevant provisions of this Agreement and its Annexes.

ARTICLE XXV

Cooperation Programs

1. The Parties agree to establish a mechanism to develop programs of cooperation between them. Details of such cooperation are set out in Annex VI.
2. A Standing Cooperation Committee to deal with issues arising in the context of this cooperation is hereby established as provided for in Annex VI.

ARTICLE XXVI

The Joint Israeli-Palestinian Liaison Committee

1. The Liaison Committee established pursuant to Article X of the DOP shall ensure the smooth implementation of this Agreement. It shall deal with issues requiring coordination, other issues of common interest and disputes.
2. The Liaison Committee shall be composed of an equal number of members from each Party. It may add other technicians and experts as necessary.
3. The Liaison Committee shall adopt its rules of procedures, including the frequency and place or places of its meetings.
4. The Liaison Committee shall reach its decisions by agreement.
5. The Liaison Committee shall establish a subcommittee that will monitor and steer the implementation of this Agreement (hereinafter "the Monitoring and Steering Committee"). It will function as follows:
 - a. The Monitoring and Steering Committee will, on an ongoing basis, monitor the implementation of this Agreement, with a view to enhancing the cooperation and fostering the peaceful relations between the two sides.
 - b. The Monitoring and Steering Committee will steer the activities of the various joint committees established in this Agreement (the JSC, the CAC, the Legal Committee, the Joint Economic Committee and the Standing /...

Cooperation Committee) concerning the ongoing implementation of the Agreement, and will report to the Liaison Committee.

- c. The Monitoring and Steering Committee will be composed of the heads of the various committees mentioned above.
- d. The two heads of the Monitoring and Steering Committee will establish its rules of procedures, including the frequency and places of its meetings.

ARTICLE XXVII

Liaison and Cooperation with Jordan and Egypt

1. Pursuant to Article XII of the DOP, the two Parties have invited the Governments of Jordan and Egypt to participate in establishing further liaison and cooperation arrangements between the Government of Israel and the Palestinian representatives on the one hand, and the Governments of Jordan and Egypt on the other hand, to promote cooperation between them. As part of these arrangements a Continuing Committee has been constituted and has commenced its deliberations.
2. The Continuing Committee shall decide by agreement on the modalities of admission of persons displaced from the West Bank and the Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder.
3. The Continuing Committee shall also deal with other matters of common concern.

ARTICLE XXVIII

Missing Persons

1. Israel and the Council shall cooperate by providing each other with all necessary assistance in the conduct of searches for missing persons and bodies of persons which have not been recovered, as well as by providing information about missing persons.
2. The PLO undertakes to cooperate with Israel and to assist it in its efforts to locate and to return to Israel Israeli soldiers who are missing in action and the bodies of soldiers which have not been recovered.

CHAPTER 5 - MISCELLANEOUS PROVISIONS

ARTICLE XXIX

Safe Passage between the West Bank and the Gaza Strip

Arrangements for safe passage of persons and transportation between the West Bank and the Gaza Strip are set out in Annex I.

ARTICLE XXX

Passages

Arrangements for coordination between Israel and the Council regarding passage to and from Egypt and Jordan, as well as any other agreed international crossings, are set out in Annex I.

ARTICLE XXXI

Final Clauses

1. This Agreement shall enter into force on the date of its signing.
2. The Gaza-Jericho Agreement, except for Article XX (Confidence-Building Measures), the Preparatory Transfer Agreement and the Further Transfer Protocol will be superseded by this Agreement.
3. The Council, upon its inauguration, shall replace the Palestinian Authority and shall assume all the undertakings and obligations of the Palestinian Authority under the Gaza-Jericho Agreement, the Preparatory Transfer Agreement, and the Further Transfer Protocol.
4. The two sides shall pass all necessary legislation to implement this Agreement.
5. Permanent status negotiations will commence as soon as possible, but not later than May 4, 1996, between the Parties. It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest.
6. Nothing in this Agreement shall prejudice or preempt the outcome of the negotiations on the permanent status to be conducted pursuant to the DOP. Neither Party shall be deemed, by virtue of having entered into this Agreement, to have renounced or waived any of its existing rights, claims or positions.

/...

7. Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations.
8. The two Parties view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.
9. The PLO undertakes that, within two months of the date of the inauguration of the Council, the Palestinian National Council will convene and formally approve the necessary changes in regard to the Palestinian Covenant, as undertaken in the letters signed by the Chairman of the PLO and addressed to the Prime Minister of Israel, dated September 9, 1993 and May 4, 1994.
10. Pursuant to Annex I, Article IX of this Agreement, Israel confirms that the permanent checkpoints on the roads leading to and from the Jericho Area (except those related to the access road leading from Mousa Alami to the Allenby Bridge) will be removed upon the completion of the first phase of redeployment.
11. Prisoners who, pursuant to the Gaza-Jericho Agreement, were turned over to the Palestinian Authority on the condition that they remain in the Jericho Area for the remainder of their sentence, will be free to return to their homes in the West Bank and the Gaza Strip upon the completion of the first phase of redeployment.
12. As regards relations between Israel and the PLO, and without derogating from the commitments contained in the letters signed by and exchanged between the Prime Minister of Israel and the Chairman of the PLO, dated September 9, 1993 and May 4, 1994, the two sides will apply between them the provisions contained in Article XXII, paragraph 1, with the necessary changes.
13. a. The Preamble to this Agreement, and all Annexes, Appendices and maps attached hereto, shall constitute an integral part hereof.
b. The Parties agree that the maps attached to the Gaza-Jericho Agreement are:
 - a. map No. 1 (The Gaza Strip), an exact copy of which is attached to this Agreement as map No. 2 (in this Agreement "map No. 2");
 - b. map No. 4 (Deployment of Palestinian Police in the Gaza Strip), an exact copy of which is attached to this Agreement as map No. 5 (in this Agreement "map No. 5"); and
 - c. map No. 6 (Maritime Activity Zones), an exact copy of which is attached to this Agreement as map No. 8 (in this Agreement "map No. 8");

are an integral part hereof and will remain in effect for the duration of this Agreement.

14. While the Jiftlik area will come under the functional and personal jurisdiction of the Council in the first phase of redeployment, the area's transfer to the territorial jurisdiction of the Council will be considered by the Israeli side in the first phase of the further redeployment phases.

Done at Washington DC, this 28th day of September, 1995.

(Signed) Yitzhak RABIN

(Signed) Shimon PERES
For the Government of the
State of Israel

(Signed) Yasser ARAFAT
For the PLO

Witnessed by:

(Signed) William J. CLINTON

(Signed) Warren CHRISTOPHER
The United States of America

(Signed) Amre MOUSSA
The Arab Republic of Egypt

(Signed) Bjørn Tore GODAL
The Kingdom of Norway

(Signed) Andrei V. KOZYREV
The Russian Federation

(Signed) Hussein IBN TALAL
The Hashemite Kingdom of Jordan

(Signed) Felipe GONZALEZ
The European Union

Annex 9

Letter Dated 7 May 2003 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2003/529 (30 April 2003)
(transmitting a text prepared by the Quartet)

**Security Council**

Distr.: General
7 May 2003

Original: English

Letter dated 7 May 2003 from the Secretary-General addressed to the President of the Security Council

I have the honour to transmit to you herewith the text of a road map to realize the vision of two States, Israel and Palestine, living side by side in peace and security, as affirmed in Security Council resolution 1397 (2002) (see annex).

The text has been prepared by the Quartet — consisting of representatives of the United States of America, the European Union, the Russian Federation and the United Nations — and was presented to the Government of Israel and the Palestinian Authority on 30 April 2003.

I should be grateful if you would bring this text to the attention of the members of the Security Council.

(Signed) Kofi A. Annan



Annex**A performance-based road map to a permanent two-State solution to the Israeli-Palestinian conflict**

The following is a performance-based and goal-driven roadmap, with clear phases, timelines, target dates, and benchmarks aiming at progress through reciprocal steps by the two parties in the political, security, economic, humanitarian, and institution-building fields, under the auspices of the Quartet. The destination is a final and comprehensive settlement of the Israel-Palestinian conflict by 2005, as presented in President Bush's speech of 24 June, and welcomed by the EU, Russia and the UN in the 16 July and 17 September Quartet Ministerial statements.

A two state solution to the Israeli-Palestinian conflict will only be achieved through an end to violence and terrorism, when the Palestinian people have a leadership acting decisively against terror and willing and able to build a practicing democracy based on tolerance and liberty, and through Israel's readiness to do what is necessary for a democratic Palestinian state to be established, and a clear, unambiguous acceptance by both parties of the goal of a negotiated settlement as described below. The Quartet will assist and facilitate implementation of the plan, starting in Phase I, including direct discussions between the parties as required. The plan establishes a realistic timeline for implementation. However, as a performance-based plan, progress will require and depend upon the good faith efforts of the parties, and their compliance with each of the obligations outlined below. Should the parties perform their obligations rapidly, progress within and through the phases may come sooner than indicated in the plan. Non-compliance with obligations will impede progress.

A settlement, negotiated between the parties, will result in the emergence of an independent, democratic, and viable Palestinian state living side by side in peace and security with Israel and its other neighbors. The settlement will resolve the Israel-Palestinian conflict, and end the occupation that began in 1967, based on the foundations of the Madrid Conference, the principle of land for peace, UNSCRs 242, 338 and 1397, agreements previously reached by the parties, and the initiative of Saudi Crown Prince Abdullah – endorsed by the Beirut Arab League Summit – calling for acceptance of Israel as a neighbor living in peace and security, in the context of a comprehensive settlement. This initiative is a vital element of international efforts to promote a comprehensive peace on all tracks, including the Syrian-Israeli and Lebanese-Israeli tracks.

The Quartet will meet regularly at senior levels to evaluate the parties' performance on implementation of the plan. In each phase, the parties are expected to perform their obligations in parallel, unless otherwise indicated.

**PHASE I:
ENDING TERROR AND VIOLENCE, NORMALIZING PALESTINIAN LIFE,
AND BUILDING PALESTINIAN INSTITUTIONS
PRESENT TO MAY 2003**

In Phase I, the Palestinians immediately undertake an unconditional cessation of violence according to the steps outlined below; such action should be accompanied by supportive measures undertaken by Israel. Palestinians and Israelis resume security cooperation based on the Tenet work plan to end violence, terrorism, and incitement through restructured and effective Palestinian security services. Palestinians undertake comprehensive political reform in preparation for statehood, including drafting a Palestinian constitution, and free, fair and open elections upon the basis of those measures. Israel takes all necessary steps to help normalize Palestinian life. Israel withdraws from Palestinian areas occupied from September 28, 2000 and the two sides restore the status quo that existed at that time, as security performance and cooperation progress. Israel also freezes all settlement activity, consistent with the Mitchell report.

At the outset of Phase I:

- Palestinian leadership issues unequivocal statement reiterating Israel's right to exist in peace and security and calling for an immediate and unconditional ceasefire to end armed activity and all acts of violence against Israelis anywhere. All official Palestinian institutions end incitement against Israel.
- Israeli leadership issues unequivocal statement affirming its commitment to the two-state vision of an independent, viable, sovereign Palestinian state living in peace and security alongside Israel, as expressed by President Bush, and calling for an immediate end to violence against Palestinians everywhere. All official Israeli institutions end incitement against Palestinians.

SECURITY

- Palestinians declare an unequivocal end to violence and terrorism and undertake visible efforts on the ground to arrest, disrupt, and restrain individuals and groups conducting and planning violent attacks on Israelis anywhere.
- Rebuilt and refocused Palestinian Authority security apparatus begins sustained, targeted, and effective operations aimed at confronting all those engaged in terror and dismantlement of terrorist capabilities and infrastructure. This includes commencing confiscation of illegal weapons and consolidation of security authority, free of association with terror and corruption.
- GOI takes no actions undermining trust, including deportations, attacks on civilians; confiscation and/or demolition of Palestinian homes and property, as a punitive

measure or to facilitate Israeli construction; destruction of Palestinian institutions and infrastructure; and other measures specified in the Tenet work plan.

- Relying on existing mechanisms and on-the-ground resources, Quartet representatives begin informal monitoring and consult with the parties on establishment of a formal monitoring mechanism and its implementation.
- Implementation, as previously agreed, of U.S. rebuilding, training and resumed security cooperation plan in collaboration with outside oversight board (U.S.–Egypt–Jordan). Quartet support for efforts to achieve a lasting, comprehensive cease-fire.
 - All Palestinian security organizations are consolidated into three services reporting to an empowered Interior Minister.
 - Restructured/retrained Palestinian security forces and IDF counterparts progressively resume security cooperation and other undertakings in implementation of the Tenet work plan, including regular senior-level meetings, with the participation of U.S. security officials.
- Arab states cut off public and private funding and all other forms of support for groups supporting and engaging in violence and terror.
- All donors providing budgetary support for the Palestinians channel these funds through the Palestinian Ministry of Finance's Single Treasury Account.
- As comprehensive security performance moves forward, IDF withdraws progressively from areas occupied since September 28, 2000 and the two sides restore the status quo that existed prior to September 28, 2000. Palestinian security forces redeploy to areas vacated by IDF.

PALESTINIAN INSTITUTION-BUILDING

- Immediate action on credible process to produce draft constitution for Palestinian statehood. As rapidly as possible, constitutional committee circulates draft Palestinian constitution, based on strong parliamentary democracy and cabinet with empowered prime minister, for public comment/debate. Constitutional committee proposes draft document for submission after elections for approval by appropriate Palestinian institutions.
- Appointment of interim prime minister or cabinet with empowered executive authority/decision-making body.
- GOI fully facilitates travel of Palestinian officials for PLC and Cabinet sessions, internationally supervised security retraining, electoral and other reform activity, and other supportive measures related to the reform efforts.

- Continued appointment of Palestinian ministers empowered to undertake fundamental reform. Completion of further steps to achieve genuine separation of powers, including any necessary Palestinian legal reforms for this purpose.
- Establishment of independent Palestinian election commission. PLC reviews and revises election law.
- Palestinian performance on judicial, administrative, and economic benchmarks, as established by the International Task Force on Palestinian Reform.
- As early as possible, and based upon the above measures and in the context of open debate and transparent candidate selection/electoral campaign based on a free, multi-party process, Palestinians hold free, open, and fair elections.
- GOI facilitates Task Force election assistance, registration of voters, movement of candidates and voting officials. Support for NGOs involved in the election process.
- GOI reopens Palestinian Chamber of Commerce and other closed Palestinian institutions in East Jerusalem based on a commitment that these institutions operate strictly in accordance with prior agreements between the parties.

HUMANITARIAN RESPONSE

- Israel takes measures to improve the humanitarian situation. Israel and Palestinians implement in full all recommendations of the Bertini report to improve humanitarian conditions, lifting curfews and easing restrictions on movement of persons and goods, and allowing full, safe, and unfettered access of international and humanitarian personnel.
- AIHL reviews the humanitarian situation and prospects for economic development in the West Bank and Gaza and launches a major donor assistance effort, including to the reform effort.
- GOI and PA continue revenue clearance process and transfer of funds, including arrears, in accordance with agreed, transparent monitoring mechanism.

CIVIL SOCIETY

- Continued donor support, including increased funding through PVOs/NGOs, for people to people programs, private sector development and civil society initiatives.

SETTLEMENTS

- GOI immediately dismantles settlement outposts erected since March 2001.
- Consistent with the Mitchell Report, GOI freezes all settlement activity (including natural growth of settlements).

PHASE II: TRANSITION
JUNE 2003-DECEMBER 2003

In the second phase, efforts are focused on the option of creating an independent Palestinian state with provisional borders and attributes of sovereignty, based on the new constitution, as a way station to a permanent status settlement. As has been noted, this goal can be achieved when the Palestinian people have a leadership acting decisively against terror, willing and able to build a practicing democracy based on tolerance and liberty. With such a leadership, reformed civil institutions and security structures, the Palestinians will have the active support of the Quartet and the broader international community in establishing an independent, viable, state.

Progress into Phase II will be based upon the consensus judgment of the Quartet of whether conditions are appropriate to proceed, taking into account performance of both parties. Furthering and sustaining efforts to normalize Palestinian lives and build Palestinian institutions, Phase II starts after Palestinian elections and ends with possible creation of an independent Palestinian state with provisional borders in 2003. Its primary goals are continued comprehensive security performance and effective security cooperation, continued normalization of Palestinian life and institution-building, further building on and sustaining of the goals outlined in Phase I, ratification of a democratic Palestinian constitution, formal establishment of office of prime minister, consolidation of political reform, and the creation of a Palestinian state with provisional borders.

- **INTERNATIONAL CONFERENCE:** Convened by the Quartet, in consultation with the parties, immediately after the successful conclusion of Palestinian elections, to support Palestinian economic recovery and launch a process, leading to establishment of an independent Palestinian state with provisional borders.
 - Such a meeting would be inclusive, based on the goal of a comprehensive Middle East peace (including between Israel and Syria, and Israel and Lebanon), and based on the principles described in the preamble to this document.
 - Arab states restore pre-intifada links to Israel (trade offices, etc.).
 - Revival of multilateral engagement on issues including regional water resources, environment, economic development, refugees, and arms control issues.
- New constitution for democratic, independent Palestinian state is finalized and approved by appropriate Palestinian institutions. Further elections, if required, should follow approval of the new constitution.

- Empowered reform cabinet with office of prime minister formally established, consistent with draft constitution.
- Continued comprehensive security performance, including effective security cooperation on the bases laid out in Phase I.
- Creation of an independent Palestinian state with provisional borders through a process of Israeli-Palestinian engagement, launched by the international conference. As part of this process, implementation of prior agreements, to enhance maximum territorial contiguity, including further action on settlements in conjunction with establishment of a Palestinian state with provisional borders.
- Enhanced international role in monitoring transition, with the active, sustained, and operational support of the Quartet.
- Quartet members promote international recognition of Palestinian state, including possible UN membership.

**PHASE III:
PERMANENT STATUS AGREEMENT
AND END OF THE ISRAELI-PALESTINIAN CONFLICT
2004 – 2005**

Progress into Phase III, based on consensus judgment of Quartet, and taking into account actions of both parties and Quartet monitoring. Phase III objectives are consolidation of reform and stabilization of Palestinian institutions, sustained, effective Palestinian security performance, and Israeli-Palestinian negotiations aimed at a permanent status agreement in 2005.

- **SECOND INTERNATIONAL CONFERENCE:** Convened by Quartet, in consultation with the parties, at beginning of 2004 to endorse agreement reached on an independent Palestinian state with provisional borders and formally to launch a process with the active, sustained, and operational support of the Quartet, leading to a final, permanent status resolution in 2005, including on borders, Jerusalem, refugees, settlements; and, to support progress toward a comprehensive Middle East settlement between Israel and Lebanon and Israel and Syria, to be achieved as soon as possible.
- Continued comprehensive, effective progress on the reform agenda laid out by the Task Force in preparation for final status agreement.
- Continued sustained and effective security performance, and sustained, effective security cooperation on the bases laid out in Phase I.
- International efforts to facilitate reform and stabilize Palestinian institutions and the Palestinian economy, in preparation for final status agreement.

- Parties reach final and comprehensive permanent status agreement that ends the Israel-Palestinian conflict in 2005, through a settlement negotiated between the parties based on UNSCR 242, 338, and 1397, that ends the occupation that began in 1967, and includes an agreed, just, fair, and realistic solution to the refugee issue, and a negotiated resolution on the status of Jerusalem that takes into account the political and religious concerns of both sides, and protects the religious interests of Jews, Christians, and Muslims worldwide, and fulfills the vision of two states, Israel and sovereign, independent, democratic and viable Palestine, living side-by-side in peace and security.
 - Arab state acceptance of full normal relations with Israel and security for all the states of the region in the context of a comprehensive Arab-Israeli peace.
-

Annex 10

Declaration of Principles on Interim Self-Government Arrangements, 13
September 1993, Art. V

3. These elections will constitute a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements.

Article IV

JURISDICTION

Jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations. The two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period.

Article V

TRANSITIONAL PERIOD AND PERMANENT STATUS NEGOTIATIONS

1. The five-year transitional period will begin upon the withdrawal from the Gaza Strip and Jericho area.
2. Permanent status negotiations will commence as soon as possible, but not later than the beginning of the third year of the interim period, between the Government of Israel and the Palestinian people's representatives.
3. It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest.
4. The two parties agree that the outcome of the permanent status negotiations should not be prejudiced or preempted by agreements reached for the interim period.

Article VI

PREPARATORY TRANSFER OF POWERS AND RESPONSIBILITIES

1. Upon the entry into force of this Declaration of Principles and the withdrawal from the Gaza Strip and the Jericho area, a transfer of authority from the Israeli military government and its Civil Administration to the authorized Palestinians for this task, as detailed herein, will commence. This transfer of authority will be of a preparatory nature until the inauguration of the Council.
2. Immediately after the entry into force of this Declaration of Principles and the withdrawal from the Gaza Strip and Jericho area, with the view to promoting economic development in the West Bank and Gaza Strip, authority will be transferred to the Palestinians in the following spheres: education and culture, health, social welfare, direct taxation and tourism. The Palestinian side will commence in building the Palestinian police force, as agreed upon.

/...

Annex 11

Interim Agreement on the West Bank and the Gaza Strip, 28 September
1995, Art. XXXI(6)

CHAPTER 5 - MISCELLANEOUS PROVISIONS

ARTICLE XXIX

Safe Passage between the West Bank and the Gaza Strip

Arrangements for safe passage of persons and transportation between the West Bank and the Gaza Strip are set out in Annex I.

ARTICLE XXX

Passages

Arrangements for coordination between Israel and the Council regarding passage to and from Egypt and Jordan, as well as any other agreed international crossings, are set out in Annex I.

ARTICLE XXXI

Final Clauses

1. This Agreement shall enter into force on the date of its signing.
2. The Gaza-Jericho Agreement, except for Article XX (Confidence-Building Measures), the Preparatory Transfer Agreement and the Further Transfer Protocol will be superseded by this Agreement.
3. The Council, upon its inauguration, shall replace the Palestinian Authority and shall assume all the undertakings and obligations of the Palestinian Authority under the Gaza-Jericho Agreement, the Preparatory Transfer Agreement, and the Further Transfer Protocol.
4. The two sides shall pass all necessary legislation to implement this Agreement.
5. Permanent status negotiations will commence as soon as possible, but not later than May 4, 1996, between the Parties. It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest.
6. Nothing in this Agreement shall prejudice or preempt the outcome of the negotiations on the permanent status to be conducted pursuant to the DOP. Neither Party shall be deemed, by virtue of having entered into this Agreement, to have renounced or waived any of its existing rights, claims or positions.

/...

Annex 12

State of Israel, Office of the Attorney General, 'The International Criminal Court's Lack of Jurisdiction over the so-called "Situation in Palestine"', 20 December 2019



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THE INTERNATIONAL CRIMINAL COURT’S LACK OF JURISDICTION OVER THE SO-CALLED “SITUATION IN PALESTINE”

20 December, 2019

EXECUTIVE SUMMARY

1. The State of Israel has been committed to the cause of international criminal justice from the outset. Established in the aftermath of the catastrophic events of the twentieth century, including the Holocaust perpetrated against the Jewish people, Israel was an early and passionate advocate for the establishment of an international criminal court that would hold accountable the perpetrators of heinous crimes that deeply shock the conscience of humanity. It took an active part in the negotiations leading up to the adoption of the Rome Statute in 1998, and continues to consider that a diligent permanent international criminal tribunal can serve a constructive role in deterring and punishing for mass atrocities.
2. While extending its support to the values that motivated the establishment of the International Criminal Court (ICC), Israel has early on expressed deep concerns, also shared by other States, that the Court could be exposed to political manipulation that might lead it to stray from its mandate. Israel thus decided not to become a party to the Rome Statute at this stage, but has continued to play an active role in various international efforts to put an end to impunity for the gravest international crimes.
3. The Palestinian attempts to draw the ICC into core political aspects of the Israeli-Palestinian conflict have brought into a sharp focus precisely the risk that the Court might be exploited for illegitimate political gain. This is chiefly because – as the following memorandum establishes – the Court manifestly lacks jurisdiction over the so-called “situation in Palestine”. Jurisdiction is, of course, not a mere formality: it plays a critical role in defining judicial competence in order to prevent abuse of the judicial process, guarantee that courts do not stray from the mandates carefully entrusted to them, and insulate the law from both power and populism. Any court departing from such essential rules guiding its activity would be unfaithful to the requirements of its judicial character, and would gravely undermine its judicial integrity.
4. In the case of the “situation in Palestine”, the fundamental precondition to jurisdiction enshrined in the Rome Statute – namely, that a State having criminal jurisdiction over its territory and nationals has delegated such jurisdiction to the Court – is clearly not met. As demonstrated in the memorandum, a substantive legal inquiry into this matter cannot be sidestepped; and any such inquiry must lead to the conclusion that the precondition is indeed not satisfied.
5. A substantive legal inquiry into the precondition of the Court’s jurisdiction cannot be averted primarily because the events surrounding the purported accession of “Palestine” to the Rome Statute in 2015 did not settle the highly controversial question of Palestinian statehood. In fact, the administrative act of circulating the Palestinian purported instrument of accession was accompanied by an explicit clarification that it was carried out without prejudice to the legal



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question of whether a Palestinian State existed. UN General Assembly resolution 67/19, on which the circulation of the Palestinian instrument of accession relied, had concerned a procedural matter of Palestinian representation within the UN alone, and had anyhow referred to Palestinian statehood as a future aspiration. By the same token, the subsequent participation of “Palestine” in the ICC Assembly of States Parties was facilitated on the understanding that the legal question as to whether a Palestinian State existed would be left for others. Against this background, the ICC Prosecutor’s decision of January 2015 to open a preliminary examination into what she termed the “situation in Palestine” was said to be without prejudice to the question of the Court’s jurisdiction, which still remains pending.

6. If a sound assessment of the legal and factual record is undertaken, its inevitable conclusion must be that a sovereign Palestinian State does not exist, and that the precondition to the Court’s jurisdiction thus cannot be fulfilled. This is because sovereignty over the West Bank and the Gaza Strip remains in abeyance, and the Palestinian entity manifestly fails to meet the criteria for statehood under general international law. In particular, the Palestinian Authority lacks effective control over the territory concerned (and in claiming that the territory is occupied by Israel, essentially concedes that that is so). The alleged recognition of “Palestine” by some States cannot compensate for the absence of the established criteria for statehood; and the right of the Palestinians to self-determination must not be conflated with any claim to statehood. The Palestinian claim to existing statehood is indeed fraught with significant contradictions, as senior Palestinian officials themselves acknowledge by continuing to refer to a Palestinian State in future terms.
7. The absence of a sovereign Palestinian State further means that there is clearly no sovereign ability to prosecute that could be delegated to the Court, and that there is no “territory of” a State (within the meaning of the Rome Statute) over which the Court may exercise its jurisdiction. Any delimitation by the Court of the territory concerned would anyhow require it to act in contravention of binding Israeli-Palestinian agreements that expressly leave such matters to direct negotiation between the parties, and to make determinations that are wholly unsuitable for an international criminal tribunal. No reliance can be made in this context on such strictly political terms as “the occupied Palestinian territories”, reference to which is consistently made without prejudice to the fundamentally legal question of sovereign title.
8. Finally, even if the Rome Statute were to be misinterpreted so as to allow non-sovereign entities to confer jurisdiction upon the Court, existing Israeli-Palestinian agreements make it clear that the Palestinians have no criminal jurisdiction either in law or in fact over Area C, Jerusalem and Israeli nationals – and thus cannot validly delegate such jurisdiction to the Court. Here, too, any conclusion that the precondition to the Court’s jurisdiction is fulfilled would not withstand any serious legal and factual scrutiny, and would inevitably run up against the terms of the Rome Statute itself as well as the rules of general international law more broadly.
9. Israel acknowledges that the lack of jurisdiction on the part of international tribunals in respect of any particular disputes does not relieve States of their duty to fulfil their international legal obligations. In the present context, Israel remains willing and able to address any Palestinian



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grievance through various remedial avenues (including multi-layered review mechanisms already in place), and by direct bilateral negotiations. Cynical attempts to manipulate the ICC into acting where its jurisdiction is manifestly lacking threaten to undermine not only the Court's legitimacy and credibility, but also the prospects for achieving the just and lasting settlement long awaited by Israelis and Palestinians alike.



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A. INTRODUCTION

1. On 16 January 2015 the Office of the Prosecutor (“OTP”) of the International Criminal Court (“ICC”) opened a preliminary examination into what it termed the “situation in Palestine” concerning “alleged crimes committed in the occupied Palestinian territory, including East Jerusalem, since 13 June 2014”.¹ This followed a submission by the Palestinians of an *ad hoc* declaration purporting to accept the ICC’s jurisdiction under Article 12(3) of the Rome Statute (the Court’s founding treaty²) as well as a purported instrument of accession thereto. The OTP acknowledged that the decision to open a preliminary examination was without prejudice to the question of the Court’s jurisdiction (which remains pending to this day), and has moreover recognized that this question is not free from difficulties.³
2. As will be explained in the present memorandum, the ICC lacks jurisdiction over the “situation in Palestine”. This is because the fundamental precondition to the exercise of the Court’s jurisdiction – that a State having criminal jurisdiction over its territory and nationals had delegated such jurisdiction to the Court – is clearly not met. As the Prosecutor has herself observed, for the ICC to intervene “where clear jurisdictional parameters have not been met ... is neither good law nor makes for responsible judicial action”.⁴
3. Israel, among other States, objected from the outset to the Palestinian purported accession to the Rome Statute, for the principled reason that only States may accede to the Statute and confer jurisdiction upon the ICC.⁵ Yet the OTP took a different position considering that determining

¹ Office of the Prosecutor, *The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine*, ICC-OTP-20150116-PR1083, 16 Jan. 2015, available at <https://www.icc-cpi.int/Pages/item.aspx?name=pr1083> (last accessed: 19 Dec. 2019).

² Rome Statute of the International Criminal Court, *opened for signature* 17 July 1998, 2187 U.N.T.S. 3 (hereinafter: “Rome Statute”).

³ Office of the Prosecutor, *Report on Preliminary Examination Activities 2015*, 12 Nov. 2015, para. 54, available at <https://www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf> (last accessed: 19 Dec. 2019); Office of the Prosecutor, *Report on Preliminary Examination Activities 2016*, 12 Nov. 2016, para. 119, available at https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf (last accessed: 19 Dec. 2019); Office of the Prosecutor, *Report on Preliminary Examination Activities 2017*, 4 Dec. 2017, paras. 58, 67-68, available at https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf (last accessed: 19 Dec. 2019); Office of the Prosecutor, *Report on Preliminary Examination Activities 2018*, 5 Dec. 2018, para. 268, available at <https://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf> (last accessed: 19 Dec. 2019).

⁴ Office of the Prosecutor, *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda: ‘The Public Deserves to know the Truth about the ICC’s Jurisdiction over Palestine’*, 2 Sep. 2014, available at <https://www.icc-cpi.int/Pages/item.aspx?name=otp-st-14-09-02> (last accessed: 19 Dec. 2019).

⁵ Depositary notification C.N.63.2015.TREATIES-XVIII.10 (Israel: Communication) (23 Jan. 2015): “‘Palestine’ does not satisfy the criteria for statehood under international law and lacks the legal capacity to join the aforesaid Statute under general international law, as well as under the terms of the Rome Statute and of bilateral Israeli-Palestinian agreements”. See also, for example, Depositary notification C.N.64.2015.TREATIES-XVIII.10 (United States of America: Communication) (23 Jan. 2015) (“Accession to the Rome Statute is limited to sovereign States. Therefore, the Government of the United States of America believes that the ‘State of Palestine’ is not qualified to accede to the Rome Statute”); Depositary notification C.N.57.2015.TREATIES-XVIII.10 (Canada: Communication) (23 Jan. 2015) (“‘Palestine’ does not meet the criteria of a state under international law and is not recognized by Canada as a state. Therefore, in order to avoid confusion, the Permanent Mission of Canada wishes to note its position that ... ‘Palestine’ is not able to accede to this convention, and that the Rome Statute of the International Criminal Court does not enter into force, or have an effect on Canada’s treaty relations, with respect to the ‘State of Palestine’”). Australia has



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the validity of an act of accession did not require an inquiry into the highly controversial question of Palestinian statehood when it opened the preliminary examination into the “situation in Palestine”, having considered instead that since “Palestine” was granted by the United Nations General Assembly the status of “non-member observer State” in the United Nations, it should be viewed as a “State” solely for the purposes of acceding to the Rome Statute and lodging an Article 12(3) declaration.⁶ The OTP therefore took the view that accession could not be equated with substantive statehood and distinguished the “status” needed to accede to the Statute, and statehood *per se* under international law – an issue unresolved in the OTP’s view by the act of accession.

4. In light of the position taken by the OTP with respect to accession, when considering the Court’s jurisdiction concerning the “situation in Palestine” and given the jurisdictional requirements prescribed by the Rome Statute, a substantive determination as to the contentious question of Palestinian statehood cannot be averted: jurisdiction is not a mere formal or procedural matter, but lies at the heart of international law and any exercise of judicial competence so as to prevent abuse of the judicial process and insulate the law from both power and populism. More specifically, the question whether there is a State that has criminal jurisdiction over its territory and nationals that may be (and indeed has been) delegated to the Court, must be addressed. As this memorandum will establish, any credible legal analysis will inevitably lead to the conclusion that the reply to this question in the present case must be in the negative.
5. Additional conditions for the exercise of the Court’s jurisdiction, including complementarity, gravity and interests of justice,⁷ are not met either. These significant issues fall outside the scope of the present memorandum, which similarly does not address temporal and subject-matter

similarly written to the Secretary-General of the United Nations to express its concern over the Palestinian Authority’s lodgment of the purported instrument of accession to the Rome Statute, stressing that “[t]he Australian Government does not recognize the ‘State of Palestine’”. As such, Australia does not recognize the right of the Palestinian Authority to lodge instruments of accession under the entry into force provisions of [a range of multilateral treaties, particularly the Rome Statute of the International Criminal Court]. ... Australia’s long-standing position is that a negotiated settlement is the only way to ensure the creation of a future Palestinian state ...”: Letter from Permanent Representative of Australia to the United Nations dated 6 Feb. 2015, enclosed with a letter from the Australian Ambassador to Israel to Israel’s National Security Advisor, 11 Feb. 2015 (on file with the Israeli Government). The Dutch Minister of Foreign Affairs has likewise stated before the Dutch parliament in August 2014, with reference to Palestinian intentions to accede to the Rome Statute, that “... only States can accept the jurisdiction of the ICC by becoming parties to the Rome Statute or by making a statement to that effect in accordance with the provisions of the Rome Statute. The Netherlands does not recognize the Palestinian state”: TWEDE KAMER [Dutch Parliament Website] (22 Aug. 2014), available at <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2014Z13910&did=2014D28652> (translated from Dutch) (last accessed: 19 Dec. 2019). The lack of such explicit statements on behalf of any other State should not be taken to imply that they consider the accession as valid: see also *infra* note 109.

⁶ *Report on Preliminary Examination Activities 2015*, *supra* note 3, at para. 53. See also para. 18 below.

⁷ Rome Statute, *supra* note 2, art. 53.



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jurisdiction, the question whether the Court may exercise jurisdiction over nationals of States not parties to the Rome Statute,⁸ and any other questions that might be implicated.

6. The memorandum proceeds as follows. Following this introduction, Section B explains that the ICC's jurisdiction under Article 12 of the Rome Statute is based on the delegation of criminal jurisdiction over territory and nationals by sovereign States. Section C explains that nothing in the events surrounding the purported accession of "Palestine" to the Rome Statute (much like the purported Palestinian acceptance of the Court's jurisdiction under Article 12(3)) satisfies this essential precondition. Section D then demonstrates that "Palestine" does not meet this precondition for the reasons that no sovereign Palestinian State exists as a matter of international law, and the scope of the territory concerned is anyway undefined. Finally, section E explains that even if the Rome Statute is misinterpreted to allow for non-sovereign entities to confer jurisdiction upon the Court, the Palestinians lack the capacity to validly delegate any jurisdiction over Area C and Jerusalem as well as over Israeli nationals.

B. THE COURT'S JURISDICTION IS BASED ON THE DELEGATION BY SOVEREIGN STATES OF CRIMINAL JURISDICTION OVER THEIR TERRITORY AND NATIONALS

7. It is widely accepted that the jurisdiction of the ICC "is not based on the principle of universal jurisdiction: it requires [under the Rome Statute] that the United Nations Security Council (article 13(b)) or a 'State' (article 12) provide jurisdiction".⁹ Article 12, in particular, is indeed the expression of a hard-fought compromise reached among those States who participated in the negotiations leading up to the adoption of the Rome Statute, and who ultimately rejected proposals for all-encompassing jurisdiction in favor of a more limited jurisdictional regime.¹⁰ Article 12(2) provides that:

"... the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(b) The State of which the person accused of the crime is a national."¹¹

8. Article 12(2) thus enshrines a jurisdictional regime expressly founded on the traditional jurisdictional bases of territoriality and nationality, which establish, in turn, that the jurisdiction of the Court relies on sovereign States delegating to it their criminal jurisdiction over their

⁸ Israel is not a party to the Rome Statute. On 31 December 2000, Israel signed the Rome Statute as an expression of moral support for the basic idea underlying the establishment of the Court, while expressing its concerns over the risk of politicization and rejecting any attempt to interpret provisions of the Statute in a politically motivated manner against Israel and its citizens. On 28 August 2002, Israel informed the UN Secretary-General that "Israel does not intend to become a party to the treaty. Accordingly, Israel has no legal obligations arising from its signature on 31 December 2000": Depositary notification C.N.894.2002.TREATIES-35 (Israel: Communication) (28 Aug. 2002).



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territory and nationals. There are, therefore, three key requirements: first, that the entity constitutes a State under general international law; second, that such a State possesses the jurisdiction that is in the circumstances intended to be delegated; and, third, that such delegation has in fact taken place. These requirements serve to guarantee that the Court would only operate on a firm jurisdictional basis.

9. While the term “State” is not defined in the Rome Statute, there can be no doubt that its meaning is indeed the one commonly accepted and recognized in general international law: a sovereign State.¹² This becomes readily clear when interpreting Article 12(2) in accordance with the customary rules of treaty interpretation reflected in the Vienna Convention on the Law of Treaties, which require that “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose”.¹³

⁹ Office of the Prosecutor, *Situation in Palestine*, 3 Apr. 2012, para. 4, available at <https://www.icc-cpi.int/nr/rdonlyres/c6162bbf-feb9-4faf-afa9-836106d2694a/284387/situationinpalestine030412eng.pdf> (last accessed: 19 Dec. 2019).

¹⁰ The regime that was ultimately incorporated into Article 12 of the Rome Statute was based on a proposal put forward by the Republic of Korea to break an impasse that had developed in the course of the negotiations. That proposal was important for two reasons. First, the Koreans were explicit that their proposal was based on the principle of delegation and said that, under their proposal, “jurisdiction is conferred upon the Court based on State consent”. Second, the Korean proposal shows that the jurisdiction to be delegated to the Court is limited to territorial jurisdiction and active personality jurisdiction. To be sure, as originally submitted, the Korean proposal included language that would have also delegated passive personality jurisdiction (jurisdiction in cases where the victim was a national of the delegating State), or custodial jurisdiction (jurisdiction on the basis that the delegating State had custody of the defendant), but this additional language was deleted and, as a result, the jurisdiction that States delegate under the Rome Statute is limited to territorial and active personality jurisdiction: see Proposal submitted by the Republic of Korea for articles 6 [9],* 7 [6] and 8 [7], A/CONF.183/C.1/L.6 (18 Jun. 1998), available at <https://legal-tools.org/doc/2fba4e> (last accessed: 19 Dec. 2019)). This is depicted in several commentaries on the Rome Statute: see Elizabeth Wilmshurst, *Jurisdiction of the Court*, in *THE INTERNATIONAL CRIMINAL COURT: THE MAKING OF THE ROME STATUTE – ISSUES, NEGOTIATIONS, RESULTS* 127, 127 (Roy S. Lee ed., 1999); Philippe Kirsch and Darryl Robinson, *Reaching Agreement at the Rome Conference*, in *THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY* 67, 83 (Antonio Cassese et al. eds., 2009) (hereinafter: “Cassese et al. Commentary”); Olympia Bekou and Robert Cryer, *The International Criminal Court and Universal Jurisdiction: A Close Encounter?*, 56 INT’L & COMP. L.Q. 49, 50 (2007); WILLIAM A. SCHABAS, *THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY ON THE ROME STATUTE* 345-350 (2nd ed., 2016).

¹¹ Article 12 further establishes that a “State” can confer jurisdiction to the Court by becoming a Party to the Rome Statute (art. 12(1)) or by making an *ad hoc* declaration accepting the Court’s jurisdiction (art. 12(3)).

¹² That the meaning assigned to the terms used in art. 12(2)(a) of the Rome Statute should be consistent with international law has recently been acknowledged by the OTP: see Office of the Prosecutor, *Report on Preliminary Examination Activities 2019*, 5 Dec. 2019, para. 47, available at <https://www.icc-cpi.int/itemsDocuments/191205-rep-otp-PE.pdf> (last accessed: 19 Dec. 2019). See also Harmen van der Wilt, *The Rome Statute: Only States are Invited to Tune In*, 20 QUEST. INT’L L. 5, 7-8 (2015) (observing that Article 12 of the Rome Statute alludes to the criteria of statehood accepted under international law).

¹³ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331, art. 31(1). The Court has had occasion to state that “[t]he interpretation of treaties, and the Rome Statute is no exception, is governed by the Vienna Convention on the Law of Treaties (23 May 1969)”: *Situation in the Democratic Republic of the Congo*, ICC-01/04-168, Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 Mar. 2006 Decision Denying Leave to Appeal, para. 33 (13 July 2006). See also *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, ICC-01/05-01/13, Judgment pursuant to Article 74 of the Statute, para. 17 (19 Oct. 2016).



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10. International law attaches great importance to distinguishing between States and other entities. It consistently reserves the fundamental legal status of statehood only to those entities that meet certain objective criteria prescribed by it and thus attain sovereignty, which is indeed a consequence of statehood. States are, therefore, sovereign by definition. Sovereignty in its turn means that “the State has over it no other authority than that of international law”.¹⁴
11. There is no evidence that the drafters of the Rome Statute intended to give the term “State” any other, special, meaning,¹⁵ as was done, for example, in the case of the Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia.¹⁶ On the contrary, non-States or sub-State entities were not contemplated by the drafters of the Rome Statute in the negotiation of Article 12.
12. The reference in Article 12(2) of the Statute to “territory of” a State further reinforces that the term “State” means a sovereign State, as it is widely accepted that “territory of [a State]” comprises, under international law, all the land, internal waters and territorial sea, and the airspace above them, over which a State has sovereignty.¹⁷ In the same vein, “... sovereignty in relation to a portion of the surface of the globe is the legal condition necessary for the inclusion of such portion in the territory of any particular State”.¹⁸ The OTP has itself acknowledged as recently as in 2019 that the term “territory” of a State, “as used in article 12(2)(a), includes those areas under the sovereignty of the State”.¹⁹

¹⁴ Customs Regime between Germany and Austria, Advisory Opinion, 1931 P.C.I.J. (Ser. A/B) No. 41, at 55, 57 (5 Sep. 1931) (Individual Opinion by M. Anzilotti).

¹⁵ See also Vienna Convention on the Law of Treaties, *supra* note 13, art. 31(4).

¹⁶ The Rules of Procedure and Evidence of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 took care to define the term “State” more expansively in order to bring entities other than sovereign States within the scope of the Tribunal’s activity: Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, IT/32/Rev.50, 8 Jul. 2015, Rule 2. Other international instruments likewise make an explicit reference to such entities where their participation in the treaty regime is sought: see, for example, United Nations Convention on the Law of the Sea, 1982, 1833 U.N.T.S. 397, arts. 305(1) and 307.

¹⁷ ANTHONY AUST, MODERN TREATY LAW AND PRACTICE 178 (3rd ed., 2013). Other provisions in multilateral treaties referring to “territory of [a State]”, such as Article 29 of the Vienna Convention on the Law of Treaties and Article 2 of the International Covenant on Civil and Political Rights (ICCPR), attach this meaning to the term as well: see, respectively, Anthony Aust, *Treaties, Territorial Application*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, para. 2 (Rüdiger Wolfrum ed., 2006); MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 43 (2nd ed., 2005). Needless to add, the debate concerning the ICCPR’s extraterritorial application turns on the interpretation of the phrase “and subject to its jurisdiction”, not the phrase “within its territory”.

¹⁸ *Island of Palmas (Netherlands v. U.S.A.)*, R.I.A.A. Vol II 829, 838 (Perm. Ct. Arb. 1928). The Grand Chamber of the European Court of Justice similarly determined that the term “territory of the Kingdom of Morocco” means “the geographical space over which [the Kingdom of Morocco] exercises the fullness of the powers granted to sovereign entities by international law”: Case C-104/16 P, *Council v. Front Polisario*, 2016 EU:C:2016:973, paras. 16 and 95 (21 Dec. 2016).

¹⁹ *Report on Preliminary Examination Activities 2019*, *supra* note 12 (adding that “[s]uch interpretation of the notion of territory is consistent with the meaning of the term under international law”). See also William A. Schabas and Giulia Pecorella, *Article 12: Preconditions to the exercise of jurisdiction*, in THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT – A COMMENTARY 672, 681-682 (Otto Triffterer and Kai Ambos eds., 3rd ed., 2016) (observing, in



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13. Parts 9 and 10 of the Rome Statute, which deal respectively with international cooperation and judicial assistance and with enforcement, similarly assume (if not require) the existence of sovereign competence.²⁰ So do other provisions of the Statute,²¹ including those referring to the complementarity of the Court to national criminal jurisdiction, which mandates that “the primary jurisdiction belongs to the State with the closest *sovereign connection* to the locus of the crime or the alleged suspect”.²² The reference to national criminal jurisdiction once again indicates that it is only sovereign States that those drafting the Rome Statute had in mind.

reference to art. 12(2)(a), that “territorial jurisdiction is a manifestation of State sovereignty”). Reference in Article 12(2)(b) of the Rome Statute to the term “nationality”, too, indicates that the term “State” means a sovereign State.

²⁰ The decision by the ICC’s Pre-Trial Chamber I with respect to the proceedings against Saif Al-Islam Gaddafi is instructive in this regard, as the Court ordered the Registrar to communicate with the Libyan Government, and not with the militia holding Mr. Gaddafi, for purposes of addressing a request for surrender to that militia: *The Prosecutor v. Saif Al-Islam Gaddafi*, ICC-01/11-01/11, Order to the Registrar with respect to the “Request for an order directing the Registrar to transmit the request for arrest and surrender to Mr al-‘Ajami Al-‘Atiri, Commander of the *Abu-bakr al-Siddiq* Battalion in Zintan, Libya”, paras. 8-9 (2 Jun. 2016). See also Jackson N. Maogoto, *A Giant without Limbs: The International Criminal Court’s State-Centric Cooperation Regime*, 23 U QUEENSLAND LJ 102, 109, 115 (2004) (“The extent to which states, by becoming parties to the *Rome Statute*, take on obligations to assist the ICC in activities on their own territory is very much an issue of sovereignty. As with other areas defining the relationship between the ICC and states, the *Rome Statute*’s final text balances the states’ willingness to make commitments necessary for the ICC to function, with a recognition that the ICC will operate in a world of sovereign states. ... Criminal prosecution is inherently linked to notions of national sovereignty and control over persons and territory”); van der Wilt, *supra* note 12, at pp. 6, 12 (“the acceptance of non-State entities is difficult to reconcile with the system of international criminal law enforcement as envisaged in the Rome Statute. That conclusion is reached on the basis of a teleological interpretation of the concept of ‘state’, in the light of the objectives of the Rome Statute. In view of the principle of complementarity, the International Criminal Court is meant as default option, an instance of last resort, whenever states are unwilling or unable to genuinely investigate or prosecute a case. It is highly questionable whether quasi-states would ever be capable to undertake these commitments. In a similar vein, it is doubtful whether non-state entities would be able to cooperate with the Court, an obligation that is expressly stipulated in Article 12(3) Rome Statute. ... According to Part 9 of the Rome Statute, the duty to cooperate ... requires an institutional and legal framework that is hardly less demanding than the one that would be necessary to conduct a full criminal trial. It is hardly imaginable that a non-state entity that does not exercise ‘effective control’ would be capable of rendering the level of assistance required. For the assessment of the question whether an entity would be qualified to lodge a declaration ex Article 12(3), I would therefore argue that it should meet all the criteria, mentioned in the Montevideo Convention”).

²¹ See, for example, Article 8(3), which refers to “the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State”; and Article 21, which allows the Court to apply, under certain circumstances, the “national laws of States”.

²² Chile Eboe-Osuji, President of the International Criminal Court, Keynote Address at the Annual Meeting of the American Society of International Law (29 Mar. 2019), available at <https://www.icc-cpi.int/itemsDocuments/190329-stat-pres.pdf> (emphasis added) (last accessed: 19 Dec. 2019). In the Situation in Georgia, the OTP (when examining the issue of complementarity as part of its request to open an investigation) thus considered that because South Ossetia was part of the territory of Georgia and not a State within the meaning of the Statute, the South Ossetian *de facto* authorities did not have standing before the Court to lodge an admissibility challenge: Office of the Prosecutor, Situation in Georgia - Corrected Version of “Request for authorisation of an investigation pursuant to article 15”, ICC-01/15-4-Corr, para. 322 (16 Oct. 2015). Pre-Trial Chamber I agreed that “any proceedings undertaken by the *de facto* authorities of South Ossetia are not capable of meeting the requirements of article 17 of the Statute, due to South Ossetia not being a recognized State”: Situation in Georgia, ICC-01/15-12, Decision on the Prosecutor’s Request for Authorization of an Investigation, para. 40 (27 Jan. 2016).



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14. The OTP has recognized that the Court's jurisdiction is indeed derived from the existence of a "sovereign ability to prosecute";²³ and the President of the Court has recently confirmed that "[t]he nature of the ICC's jurisdiction ... actually prides and underscores national sovereignty".²⁴ A commentary to the Rome Statute similarly observes that "Article 12 of the Rome Statute is a manifestation of the principle of state sovereignty, one of the most important principles of public international law governing the international community and the relations between States".²⁵ For purposes of the ICC's jurisdiction, therefore, the term 'State' must be read to mean a sovereign State according to general international law. Attaching to it any other meaning would be incompatible with the generally accepted rules of treaty interpretation, and would do violence to the terms of the Rome Statute altogether.
15. As noted above, Article 12(2) further reflects the foundational principle that the Court operates on the basis of delegated jurisdiction: it does not have unfettered jurisdiction, but rather "exercises its jurisdiction on the basis of competence delegated to it by States Parties" and is only competent to do so "in the same way that the State Party's own domestic courts could".²⁶

²³ Office of the Prosecutor, Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute, ICC-RoC46(3)-01/18-1, para. 49 (9 Apr. 2018) (emphasis added, citing Schabas and Pecorella).

²⁴ Eboe-Osuji, *supra* note 22.

²⁵ Stephane Bourgon, *Jurisdiction Ratione Loci*, in Cassese et al. Commentary, *supra* note 10, at pp. 559, 562. See also Marko Milanovic, *Is the Rome Statute Binding on Individuals (And Why We Should Care)*, 9 J. INT'L CRIM. JUST. 25, 47-48 (2011): "In true international law spirit, the Statute's main concern are sovereign states, who must voluntarily accept the Court's jurisdiction ..."; Yaël Ronen, *ICC Jurisdiction over Acts Committed in the Gaza Strip: Art. 12(3) of the ICC Statute and Non-state Entities*, 8 J. INT'L CRIM. JUST. 3, 26-27 (2010): "Interpreting Article 12(3) more widely to include entities effectively governing non-sovereign territory also seems unwarranted, as such interpretation flies in the face of the ICC Statute's wording and the intention of its drafters. Any involvement in issues of recognition risks exposing the Prosecutor and the Court to accusations of politicization and subjectivity. The ICC's goal of ending impunity is channeled through a state-centred mechanism".

²⁶ Rod Rastan, *Jurisdiction*, in THE LAW AND PRACTICE OF THE INTERNATIONAL CRIMINAL COURT 141, 155 (Carsten Stahn ed., 2015) (referring to delegation in the context of personal jurisdiction; on delegation in the context of territorial jurisdiction, see pp. 163-164). See also Mahmoud Cherif Bassiouni, *The Permanent International Criminal Court*, in JUSTICE FOR CRIMES AGAINST HUMANITY 173, 181 (Lattimer and Sands eds., 2003) ("[the ICC] is not a supra-national body, but an international body similar to existing ones ... The ICC does no more than what each and every state can do under existing international law ... The ICC is therefore an extension of national criminal jurisdiction ..."); The Board of Editors, *The Rome Statute: A Tentative Assessment*, in Cassese et al. Commentary, *supra* note 10, at pp. 1901, 1911 ("Territorial jurisdiction is the primary basis for jurisdiction under international law; indeed, it is an essential attribute of State sovereignty. ... if the State wishes to delegate this jurisdiction to an international criminal court ... this is something it is clearly entitled to do ... The ICC is not premised on universal jurisdiction, but on conventional bases of jurisdiction – territoriality and/or nationality"); Michael A. Newton, *How the International Criminal Court Threatens Treaty Norms*, 49 VAND. J. TRANSNAT'L L. 371, 374-375 (2016) ("the Court's authority is not independent or omnipotent. Treaty-based ICC jurisdiction flows exclusively from the delegation of a State Party's sovereign jurisdictional power. Except for the overarching authority of the United Nations Security Council to convey jurisdiction to the Court through binding resolutions under Chapter VII of the UN Charter, the jurisdiction of the ICC, as embodied in Article 12 of the Rome Statute, is based only on derivative jurisdiction granted by states at the time they ratify the multilateral treaty"); Roger O'Keefe, *Response: "Quid" Not "Quantum": A Comment on "How the International Criminal Court Threatens Treaty Norms"*, 49 VAND. J. TRANSNAT'L L. 433, 439 (2016) ("by way of Article 12(2)(a) of the Rome Statute, a receiving State Party to the Statute delegates to the ICC the exercise of its customary right to entertain criminal proceedings in respect of the crimes specified in Article 5 of the Statute when these crimes are committed in its territory"); Kevin Jon Heller, *What Is an International Crime? (A Revisionist History)*, 58 HARV. INT'L L.J. 353, 375 (2017) ("the Court is based on the delegated jurisdiction of its member states"); Schabas and Pecorella, *supra* note 19, at p. 682 (referring to the jurisdiction of the ICC as being delegated by a territorial State); Yuval Shany,



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In the words of the OTP, Article 12(2)(a) “functions to delegate to the Court the States Parties’ own ‘sovereign ability to prosecute’” the relevant crimes.²⁷ Significantly, the act of delegating criminal jurisdiction to the Court is itself an “exercise of national sovereignty”.²⁸

16. The jurisdictional regime of the ICC is thus founded, by careful and deliberate design, upon the basic notion that there exists a sovereign State that has delegated to the Court its criminal jurisdiction on the basis of territoriality or nationality; and the Court must satisfy itself, in each case, that this fundamental precondition is indeed met as a matter of law. Such an inquiry is no mere formalism: it is essential in order to guarantee that the Court remains loyal both to the terms of the Rome Statute and to basic principles of the broader international legal order within which it operates. For a body seeking to actually assert the criminal jurisdiction of sovereign States that has been delegated to it, a substantive legal inquiry as to whether there is such a sovereign state is thus unavoidable. It cannot be sidestepped or grounded in artificial constructions. Clearly, if the precondition is not satisfied, the Court must conclude that it does not have jurisdiction.

C. THE PURPORTED ACCESSION BY “PALESTINE” TO THE ROME STATUTE (MUCH LIKE ITS PURPORTED ACCEPTANCE OF THE COURT’S JURISDICTION UNDER ARTICLE 12(3)) DOES NOT FULFILL THE SUBSTANTIVE REQUIREMENT FOR THE COURT’S JURISDICTION

17. The Palestinians first attempted to confer jurisdiction upon the ICC in January 2009, when the “Palestinian National Authority” purported to submit a declaration under Article 12(3) of the Rome Statute. The OTP initiated a preliminary examination, but ultimately closed it in April 2012 on the ground that the legal status of “Palestine” within the United Nations was not that of a State.²⁹
18. In opening the preliminary examination into the “situation in Palestine” in January 2015, the OTP sidestepped any substantive inquiry into the logically preliminary question of whether a sovereign Palestinian State exists by relying on UN General Assembly resolution 67/19 of 29 November 2012, which accorded “Palestine” the status of “non-member observer State” in the United Nations. In so doing it adopted the position that “the focus of the inquiry into Palestine’s ability to accede to the Rome Statute has consistently been the question of Palestine’s *status* in

In Defence of Functional Interpretation of Article 12(3) of the Rome Statute: A Response to Yaël Ronen, 8 J. INT’L CRIM. JUST. 329, 331-333 (2010) (“Article 12 referrals, which are conditioned on membership in the Statute or ad hoc consent to ICC jurisdiction by the ‘territorial’ state or the state whose nationality the alleged perpetrator holds, are reflective of the delegation-based approach”).

²⁷ *Supra* note 23. This Request by the Prosecution itself recognizes that only territorial- and nationality-based jurisdiction, as opposed to universal jurisdiction, may be delegated to the Court.

²⁸ MAHMOUD CHERIF BASSIOUNI, *THE LEGISLATIVE HISTORY OF THE INTERNATIONAL CRIMINAL COURT: INTRODUCTION, ANALYSIS, AND INTEGRATED TEXT OF THE STATUTE, ELEMENTS OF CRIMES AND RULES OF PROCEDURE AND EVIDENCE* 136 (2005).

²⁹ *Supra* note 9, at para. 7.



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the UN, given the UNSG's role as treaty depositary of the Statute".³⁰ At the same time, the OTP has made it known that "[t]he preliminary examination of the situation in Palestine raises specific challenges relating to both factual and legal determinations. In the latter respect, the Office has in particular to consider the possible challenges to the Court's jurisdiction, and/or to the scope of any such jurisdiction".³¹ By that, the OTP has itself recognized that the purported accession of "Palestine" to the Rome Statute is distinct from – and does not settle – the question of the Court's jurisdiction over the "situation in Palestine". By the same token, the Court's registrar has emphasized, in a letter sent to Palestinian President Mahmoud Abbas following receipt of the Palestinian declaration purportedly made under Article 12(3) of the Rome Statute, that "[t]his acceptance is without prejudice to any prosecutorial or judicial determinations on this matter".³²

19. The purported accession by "Palestine" cannot therefore itself provide a basis for the ICCs jurisdiction as it did not settle the question of whether a sovereign Palestinian State exists. As will be seen, this is so for at least three reasons: (1) General Assembly resolution 67/19 did not purport to make a legal determination as to whether "Palestine" qualifies as a State, and was explicitly limited in its effect to the UN; (2) the actions of the UN Secretary-General as depositary of multilateral treaties, as he himself has made clear, are not determinative of a "highly political and controversial" question such as that of Palestinian statehood;³³ and (3) the Palestinian participation in the Court's Assembly of States Parties cannot be taken to constitute or demonstrate such statehood either.
20. In these circumstances, even if the Palestinian entity is (erroneously) regarded as a State Party to the Rome Statute by virtue of the technical act of accession under Article 125 thereof, this cannot, of itself, satisfy the substantive precondition that underlies the Court's jurisdictional regime. This has been further acknowledged by the OTP itself when it recently determined that in each case it must be confirmed that the "territory" concerned (within the meaning of art. 12(2)(a) of the Rome Statute) is an area under the sovereignty of a State.³⁴ For the Prosecutor herself, then, the test for the Court's jurisdiction must not be based on mere accession or on the status of "State Party" alone, but on the substantive test of whether the entity concerned is a sovereign State.

³⁰ *Supra* note 1 (emphasis in original). The Prosecutor has clarified that "... the issue of statehood has never been something that my office was using as a determination to intervene or not. It's not been the reason why we have decided to open preliminary examination or not ... we have been very consistent in saying that Palestine, the status of Palestine at the United Nations, is what has determined, for us, whether we should open preliminary examination or not", video available at *Fatou Bensouda: S Africa 'had to arrest Omar al-Bashir'*, ALJAZEERA, 27 Jan. 2015 12:45 GMT), <http://www.aljazeera.com/programmes/talktojazeera/2015/06/fatou-bensouda-africa-arrest-omar-al-bashir-150626132631885.html> (minutes 4:39-5:20) (last accessed: 19 Dec. 2019).

³¹ Office of the Prosecutor, *Report on Preliminary Examination Activities 2017*, *supra* note 3, at para. 67.

³² Letter from the Registrar of the International Criminal Court to H.E. Mr. Mahmoud Abbas (7 Jan. 2015), available at <https://www.icc-cpi.int/iccdocs/PIDS/press/150107-Registrar-Letter-to-HE-President-Abbas-regarding-Palestine-Art-12-3--Declaration.pdf> (last accessed: 19 Dec. 2019).

³³ UN Office of Legal Affairs – Treaty Section, *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*, U.N. Doc. ST/LEG/7/Rev.1 (1999), para. 81.

³⁴ *Report on Preliminary Examination Activities 2019*, *supra* note 12.



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21. ***UN General Assembly resolution 67/19 did not determine the substantive legal question of whether a sovereign Palestinian State exists under international law.*** By its own terms, resolution 67/19 was limited to a procedural upgrade of the Palestinian representation within the UN alone.³⁵ The UN Secretary-General underscored precisely this point by stating that the status accorded to the Palestinians by the resolution “does not apply to organizations or bodies outside the United Nations”,³⁶ the ICC clearly being such a body. Furthermore, the status of “non-member observer State” (much like the name chosen for the entity concerned³⁷) is anyway not determinative of the question whether the relevant entity has the international legal status of a State: inherently political organs are not equipped, nor are they competent, to render definitive decisions on controversial questions of international law that lie outside their own competence.³⁸ In any case, resolution 67/19 itself refers to Palestinian statehood as a future aspiration rather than a current legal reality, and calls for negotiations within the Middle East peace process in order to advance a two-State solution.³⁹ Many States, including those voting in favor of the resolution, took care to explain that their vote was without prejudice to the question of Palestinian statehood under international law.⁴⁰ This is again consistent with the position

³⁵ G.A. Res. 67/19, U.N. Doc. A/RES/67/19 (4 Dec. 2012). The wording “in the United Nations” appearing in the second operative paragraph of the resolution (as well as in its title) was not part of the original text, but was added precisely to highlight this distinction. It may be noted, moreover, that the status of “non-member observer State” is not envisaged under the UN Charter, and has developed merely to facilitate greater participation in the work of the UN: see also Ulrich Fastenrath, *Membership, Article 4, in THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* 341, 355-357 (Bruno Simma et al. eds., 3rd ed., 2012) (hereinafter: “Simma et al. Commentary”).

³⁶ Status of Palestine in the United Nations: Report of the Secretary-General, A/67/738, para. 1 (8 Mar. 2013).

³⁷ The name “State of Palestine” as used within the UN (and beyond) was chosen by the Palestinians themselves as a procedural matter under UN protocol and thus does not – indeed cannot – of itself be determinative of statehood or reflective of any such recognition.

³⁸ See also Jure Vidmar, *Palestine and the Conceptual Problem of Implicit Statehood*, 12 CHINESE J. INT’L LAW 19, 37, para. 60 (2013): “the label ‘non-member State’ in the General Assembly does not necessarily mean that an entity is a State simply because the term ‘State’ is used”.

³⁹ See G.A. Res. 67/19, *supra* note 35, at preambular para. 9 and operative paras. 4, 5, 6: “Reaffirming ... *the need for... the realization* of the inalienable rights of the Palestinian people, primarily the right to self-determination and the right to their independent State”; “Affirms its determination to *contribute to the achievement* of the inalienable rights of the Palestinian people and the attainment of a peaceful settlement in the Middle East that ... *fulfils the vision of two States*”; “Expresses the urgent need for the resumption and acceleration of negotiations within the Middle East peace process based on ... the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict”; “Urges all States and specialized agencies and organizations of the United Nations system to *continue to support* and assist the Palestinian people in the early *realization* of their right to self-determination, independence and freedom” (emphasis added).

⁴⁰ See the statements recorded in U.N. GAOR, 67th Sess., 44th plen. mtg., U.N. Doc. A/67/PV.44 (29 Nov. 2012) and U.N. GAOR, 67th Sess., 45th plen. mtg., U.N. Doc. A/67/PV.45 (29 Nov. 2012) (hereinafter: “Official Records of the General Assembly”). New Zealand, for example, stated that “[t]his resolution is a political symbol of the commitment of the United Nations to a two-State solution. New Zealand has cast its vote accordingly based on the assumption that our vote is without prejudice to New Zealand’s position on its recognition of Palestine ...” (A/67/PV.44, at p. 20, emphasis added); Belgium stated that “the resolution adopted today by the General Assembly *does not yet constitute recognition of a State in the full sense*” (*ibid.*, at p. 16, emphasis added); Italy stated that “Italy stresses that today’s vote in no way prejudices its commitment to a comprehensive negotiated peace settlement, which remains the *only possible path to Palestinian Statehood* and full United Nations membership” (*ibid.*, at p. 19, emphasis added); Norway stated that “[o]ur support of an upgraded status for Palestine in the United Nations *does not prejudice the question of recognition*. The national procedures to formally recognize the State of Palestine are still pending” (*ibid.*, at p. 21, emphasis added); Serbia stated that “we ... have an interest in promoting such a solution, which would bring about



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under international law according to which General Assembly resolutions cannot have an effect which is binding or constitutive or definitive, still less universally determinative, of statehood.⁴¹

22. ***As the UN Secretary-General himself made clear, his actions as depositary of the Rome Statute are not determinative of “highly political and controversial” questions such as that of Palestinian statehood.*** Under the law of treaties, the functions assigned to a treaty depositary are purely administrative.⁴² Precisely in cases in which the question arises whether a certain entity wishing to accede to a treaty is a State, the Secretary-General as depositary does not purport to make a determination to that effect: as the UN Office of Legal Affairs has explained, “[the Secretary-General] would not wish to determine, on his own initiative, the highly political and controversial question of whether or not the areas whose status was unclear were States. Such a determination, he believed, would fall outside his competence”.⁴³
23. It was thus solely in an administrative capacity that, after receiving the Palestinian purported instrument of accession to the Rome Statute, the Secretary-General circulated on 6 January 2015 a standard depositary notification to the Rome Statute signatories, soon clarifying that “[t]his is an administrative function performed by the Secretariat” and emphasizing that “it is for States to make their own determination with respect to any legal issues raised by instruments circulated

statehood for Palestine ... *a nation still in quest for its statehood*” (*ibid.*, at p.17, emphasis added); see also the positions expressed by France (*ibid.*, at p. 14); Greece (*ibid.*, at p. 19); Denmark (*ibid.*, at p. 18); Switzerland (*ibid.*, at p. 16); Finland (*ibid.*, at p. 20); South Sudan (A/67/PV.45, at p. 2); Georgia (*ibid.*, at pp. 4-5); Malaysia (*ibid.*, at p. 21); Mauritius (*ibid.*, at p. 7); and Tunisia (*ibid.*, at p. 24). Other States, which did not vote in favor of the resolution, expressed similar positions, among them Germany (A/67/PV.44, at p. 15, stating that “it must be clear to everybody that a Palestinian State can be achieved only through direct negotiations between Israelis and Palestinians”); Hungary (*ibid.*, at p. 19); the Czech Republic (*ibid.*, at pp. 19-20); Australia (*ibid.*, at p. 20); the United Kingdom (*ibid.*, at p. 15); the United States (*ibid.*, at p. 13); Bulgaria (*ibid.*, at p. 16); the Netherlands (A/67/PV.45, at p. 2); and Romania (*ibid.*, at p. 6).

⁴¹ Crawford has similarly remarked, with regard to the former “observer” status of “Palestine” within the United Nations, that arguments according to which that status was indicative of statehood “... stop far short of the proposition that the General Assembly can recognize Palestine as a state, and not merely for such ‘internal’ purposes of the United Nations as observer status, with an effect which is ‘constitutive, definitive, and universally determinative’”: James Crawford, *The Creation of the State of Palestine: too much too soon?*, 1 EJIL 307, 312 (1990). See also JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 441 (2nd ed., 2006) (hereinafter: “Crawford 2006”). Needless to add, the General Assembly does not have the power to adopt legally binding resolutions (except with respect to the internal management and procedural matters relating to the function of the UN), and cannot create legal obligations for UN Member States or for other international actors such as the Court: see, for example, Eckart Klein and Stefanie Schmahl, *The General Assembly, Functions and Powers, Article 10*, in Simma et al. Commentary, *supra* note 35, at pp. 461, 463, 480; Yaël Ronen, *Recognition of the State of Palestine: Still Too Much Too Soon?*, in SOVEREIGNTY, STATEHOOD AND STATE RESPONSIBILITY – ESSAYS IN HONOUR OF JAMES CRAWFORD 229, 231 (Christine Chinkin and Freya Baetens eds., 2015).

⁴² Vienna Convention on the Law of Treaties, *supra* note 13, art. 77. The commentary by the International Law Commission to the corresponding draft article proposed by it states that the depositary “is not invested with competence to make a final determination” on issues of substance: *Yearbook of the International Law Commission* 1966, Y.B. Int’l L. Comm’n Vol. II, U.N. Doc. A/CN.4/SER. A/1966/Add, at p. 270. See also Fatsah Ouguerouz et al., *Art. 77 1969 Vienna Convention*, in *THE VIENNA CONVENTIONS ON THE LAW OF TREATIES: A COMMENTARY* 1715, 1720-1722 (Olivier Corten and Pierre Klein eds., 2011).

⁴³ *Supra* note 33. It is noteworthy that in a report published in March 2019, the UN Secretary-General himself refers to “a future Palestinian State”: Implementation of Security Council resolution 2334 (2016) – Report of the Secretary-General, S/2019/251, para. 67 (20 Mar. 2019).



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by the Secretary-General”.⁴⁴ In these circumstances, the circulation of the Palestinian purported instrument of accession pursuant to a technical provision common to various international agreements (and the derivative status of being a “State Party”), clearly cannot be relied on as a determination that a sovereign Palestinian State is in existence.⁴⁵ To regard such a technical act as a valid test for the Court’s jurisdiction would be to subvert the intention of its founders and gravely undermine the jurisdictional regime they carefully agreed on.

24. *The Palestinian participation in the work of the ICC Assembly of States Parties does not, and again cannot, constitute or evince statehood for the purpose of Article 12 of the Rome Statute.*

For its part, the Assembly of States Parties (“ASP”) has been careful to avoid taking any legal position on whether “Palestine” constitutes a sovereign State. Thus, as long ago as when the Palestinians were first invited to participate in the Assembly’s annual meeting as an “Invited State”, the President of the ASP explicitly clarified that “the Assembly takes such [procedural] decisions in accordance with the Rules of Procedure of the Assembly, independently of and without prejudice to decisions taken for any other purpose, including decisions of any other organization or organs of the Court regarding any legal issues that may come before them”.⁴⁶ This practice of the ASP is consistent with the provisions of the Rome Statute according to which questions concerning judicial functions of the Court, including those that relate to jurisdiction, are entrusted to the Court and not to the ASP.⁴⁷ Accordingly, mere participation in the work of a political body such as the ASP cannot by sleight of hand and, in disregard of the Court’s own Statute, be interpreted as determining complex and controversial legal questions, still less determine statehood.

25. Thus, to consider that the question of Palestinian statehood was determined by General Assembly resolution 67/19 or the ensuing purported accession to the Rome Statute that relied on it, or by the participation of “Palestine” in the work of the ASP, would be wholly unfounded. A critical legal issue such as that of the Court’s jurisdiction must not be decided on the basis of a vote on a resolution by a political organ; and State creation in international law surely cannot be

⁴⁴ *Note to correspondents – Accession of Palestine to multilateral treaties* (7 Jan. 2015), available at <https://www.un.org/sg/en/content/sg/note-correspondents/2015-01-07/note-correspondents-accession-palestine-multilateral> (last accessed: 19 Dec. 2019). Depositaries of other treaties have dealt with the issue similarly. For example, after the “State of Palestine” submitted a purported instrument of accession to the Convention on the Physical Protection of Nuclear Material, the Director General of the International Atomic Energy Agency clarified that “[t]he designation employed [i.e. “State of Palestine”] does not imply the expression of any opinion whatsoever on the part of the depositary concerning the legal status of any country or territory or of its authorities, or concerning the delimitation of its frontiers”: Depositary notification 170-N5.92.21 Circ of 1 February 2018 (Convention on the Physical Protection of Nuclear Material: Accession by the State of Palestine).

⁴⁵ Nor does the fact that the word “State” in Article 125 of the Rome Statute was apparently interpreted to enable the purported accession by an entity that is not a sovereign State, have an impact on the meaning of the term “State” in other, substantive provisions of the Statute. The OTP itself has recently observed that a term used in the Rome Statute does not necessarily have the same meaning in every provision of the Statute: Office of the Prosecutor, *Situation in the Islamic Republic of Afghanistan - Consolidated Prosecution Response to the Appeals Briefs of the Victims*, ICC-02/17, para. 40 (22 Oct. 2019) (citing RICHARD GARDINER, *TREATY INTERPRETATION* (2nd ed., 2015)).

⁴⁶ Assembly of States Parties to the Rome Statute of the International Criminal Court, Thirteenth Session, Official Records, Vol. 1, ICC-ASP/13/20, p. 5 (8-17 Dec. 2014). See also *infra* note 109.

⁴⁷ Rome Statute, *supra* note 2, art. 119(1); see also art. 119(2).



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implicit or a mere side-effect of procedural provisions such as Article 125 of the Rome Statute.⁴⁸ Accession to the Rome Statute – even when valid – was never intended to serve such a purpose or to carry such weight in a jurisdictional regime explicitly based on the delegation of sovereign ability to prosecute. As noted above, the OTP itself, along with the UN Secretary-General, the Court’s Registrar, and the President of the ASP, have indeed all recognized that such normative shortcuts cannot suffice for purposes of the crucial exercise of establishing the Court’s jurisdiction. The Court, much like the OTP,⁴⁹ would thus be abdicating its duty to resolve the legal question of establishing jurisdiction under Article 12 if it failed to conduct a careful and independent assessment of the law and facts at issue.⁵⁰ Any such assessment, as will now be shown, cannot but lead to the conclusion that no sovereign Palestinian State – let alone one that has title to territory over which it has the requisite criminal jurisdiction that may be delegated to the Court – is in existence.

D. THE PALESTINIAN ENTITY MANIFESTLY FAILS TO SATISFY THE SUBSTANTIVE REQUIREMENT FOR JURISDICTION UNDER ARTICLE 12(2) OF THE ROME STATUTE

26. Having clarified that the purported accession of “Palestine” to the Rome Statute cannot of itself satisfy the jurisdictional requirement under Article 12, it will now be demonstrated that a sound substantive assessment of the legal and factual records would inevitably lead to the conclusion that no jurisdiction exists. This is chiefly because sovereignty over the West Bank and the Gaza Strip is currently in abeyance, and the Palestinian entity does not meet the established criteria for statehood under general international law. The right of the Palestinians to self-determination, or the alleged recognition of “Palestine” by some States, do not alter this reality, which finds expression in the Palestinians’ own statements on the matter. In these circumstances, it is clear that the precondition to the ICC’s jurisdiction, as enshrined in Article 12(2) of the Court’s Statute, is once again not met.

27. ***No Palestinian State has ever been in existence, and sovereignty over the West Bank and the Gaza Strip is in abeyance.*** The territory that in 1922 became known as “Mandatory Palestine” had formed part of the Ottoman Empire until Turkey (as successor to the Ottoman Empire) relinquished sovereignty over it when ceding various territories to the administration of the

⁴⁸ See also Vidmar, *supra* note 38, at para. 72 (adding, at para. 60, with reference to international treaties, that “[t]he object and purpose of these treaties is not State creation or clarification of legal status. It would be a misuse of international treaty law if they were interpreted in this way and the legal status of an entity established by a reverse reading of the term ‘State party’ in multi-lateral treaties”). Vidmar further explains that accession to treaties or international organizations is not constitutive of statehood given the fact that “[b]ecause of the political nature of voting, sometimes non-State entities are given a chance to participate in international forums that are intended to be reserved for States. Yet this does not automatically make them States under international law” (at para. 69).

⁴⁹ Rome Statute, *supra* note 2, art. 42.

⁵⁰ See, in the same vein, the examination by the ICTY of Croatian statehood in *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Motion for Judgement of Acquittal, paras. 85-115 (Int’l Crim. Trib. for the Former Yugoslavia 16 Jun. 2004), http://www.icty.org/x/cases/slobodan_milosevic/tdec/en/040616.htm (last accessed: 19 Dec. 2019).



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Allied Powers following its defeat in the First World War.⁵¹ This disposition, as the arbitral tribunal in *Eritrea v. Yemen* put it, “created for the [territory in question] an objective legal status of indeterminacy pending a further decision of the interested parties”.⁵² Between the years 1917 and 1948, Great Britain administered the territory, first through military control and later as a mandatory power under the League of Nations system. Sovereignty over it remained in abeyance during the British Mandate,⁵³ which was endorsed by the League Council and constituted a binding international instrument.⁵⁴ Recognizing the “historical connection of the Jewish people with Palestine”, the Mandate explicitly entrusted Great Britain with putting into effect the 1917 Balfour Declaration that was made “in favour of the establishment in Palestine of a national home for the Jewish people”.⁵⁵ It further provided that “recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country”, thus acknowledging the indigenous rights of the Jewish people to the land as predating the Mandate.⁵⁶ The establishment of a Jewish national home was to be done without prejudice to “the *civil and religious* rights of existing

⁵¹ This was incorporated in the 1920 Treaty of Sèvres, which was superseded by the 1923 Treaty of Lausanne, wherein Turkey renounced all rights and title over its former territories situated outside its frontiers: Treaty of Peace with Turkey Signed at Lausanne, art. 16, 24 July 1923, 28 L.N.T.S 11. The name “Palestine” was adopted in the 2nd century AD by the Roman Empire ruler of the territory: see Encyclopaedia Britannica, *Palestine* (last updated: 3 October 2019), available at <https://www.britannica.com/place/Palestine> (last accessed: 19 Dec. 2019). This was done “[i]n an effort to wipe out all memory of the bond between the Jews and the land, Hadrian changed the name of the province from Iudaea to Syria-Palestina ...” (S. Safrai, *The Era of the Mishnah and Talmud* (70-640), in *A HISTORY OF THE JEWISH PEOPLE* 307, 334 (H.H. Ben-Sasson ed., 1976)).

⁵² Territorial Sovereignty and Scope of the Dispute (*Eritrea v. Yemen*), R.I.A.A. Vol XXII 209, para. 445 (Perm. Ct. Arb. 1996) (referring to Article 16 of the Treaty of Lausanne and, more specifically, to territories similarly renounced by Turkey).

⁵³ See also Malcolm N. 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?*, 49 ISR. L. REV. 287, 295 (2016). For the observation that “[s]overeignty over a Mandated Territory is in abeyance”, see International Status of South-West Africa, Advisory Opinion, 1950 I.C.J. 128, at 150 (11 Jul. 1950) (Separate Opinion of Judge McNair); JAMES CRAWFORD, *BROWNIE’S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 235 (9th ed., 2019).

⁵⁴ See also South West Africa (*Liberia v. South Africa*), Preliminary Objections, 1962 I.C.J. Rep. 319, p. 330 (21 Dec. 1962).

⁵⁵ *Mandate for Palestine*, 3 League of Nations Official Journal 1007 (1922), preambular para. 2. The Balfour Declaration of 1917 stated that “His Majesty’s Government [of the United Kingdom of Great Britain and Northern Ireland] view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours 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”: Letter from Arthur James Balfour, Secretary of State for Foreign Affairs to Lord Walter Rothschild (2 Nov. 1917). The incorporation of the Balfour Declaration into the Mandate for Palestine was expressly agreed in a resolution of the Principal Allied Powers at the San Remo Conference of 24-25 April 1920. Churchill, as Secretary of State for the Colonies, made it clear that British correspondence dating from 1915 that offered to the Arabs independence in parts of the territories that belonged to the Ottoman Empire (“the McMahon pledge”), had excluded “[t]he whole of Palestine west of the Jordan”: see the Report of the Palestine Royal Commission (the Peel Commission), which was appointed in 1936 by the British government to investigate the causes of unrest among Palestinian Arabs and Jews: PALESTINE ROYAL COMMISSION REPORT, PRESENTED BY THE SECRETARY OF STATE FOR THE COLONIES TO PARLIAMENT BY COMMAND OF HIS MAJESTY, 1937, Cms. 5479 pp. 19-20 (Gr. Brit.).

⁵⁶ *Mandate for Palestine*, *ibid.*, at preambular para. 3.



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non-Jewish communities in Palestine”.⁵⁷ Article 5 of the Mandate, which provided that no part of the territory of Mandatory Palestine would be ceded or leased to any foreign power, and other terms in the Mandate as well as its extensive *travaux préparatoires*, attest to the understanding at the time that the right of the Jewish people to a national home extended to the entire territory of Mandatory Palestine.⁵⁸

28. The rights of the Jewish people under the Mandate were preserved by virtue of Article 80(1) of the UN Charter, the inclusion of which was advanced precisely by those supporting the establishment of a Jewish national home in Palestine⁵⁹ – and under strong opposition from the Arab States. On 29 November 1947, following the announcement of the British Government of its intention to withdraw from Mandatory Palestine, the UN General Assembly adopted resolution 181, recommending the partition of the land into a Jewish State and an Arab State.⁶⁰ This resolution was reluctantly accepted by the representatives of the Jewish community in Palestine, but was explicitly rejected by the Arab States and the Palestinian Arab representatives and thus fell into desuetude.⁶¹ On 14 May 1948 the British Mandate was officially terminated

⁵⁷ *Ibid.*, preambular para. 2 (emphasis added). It is not without significance that the Mandate does not refer to any political rights of those non-Jewish communities in Palestine.

⁵⁸ *Ibid.*, art. 5. This is also implicit in the resolution of the Council of the League of Nations approving the separation of Transjordan from the territory of Mandatory Palestine (as envisaged in art. 25 of the Mandate), in which it was made clear that the establishment of a national home for the Jewish people was “not applicable to the territory known as Transjordan”: see *Article 25 of the Mandate for Palestine*, Eighth Meeting (Public), 3 League of Nations O. J. 1188-9 (1922). In the same vein, the obligation under art. 6 of the Mandate to facilitate Jewish immigration and to encourage “close settlement by Jews on the land” applied to the entire Mandatory Palestine.

⁵⁹ Article 80(1) provides that “Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties”. See also Dietrich Rauschnig, *Article 77*, in Simma et al. Commentary, *supra* note 35, at pp. 1861-1862; Huntington Gilchrist, *Colonial Questions at the San Francisco Conference*, 39(5) AMER. POL. SCI. REV. 982, 990-991 (1945) (referring to Article 80 in saying that “[t]his clause resulted from the fears of mandatory powers lest their legal position in the mandated territories be taken away out of hand by the trusteeship system. There were also fears on the part of minority groups (such as the supporters of the Jewish people in relation to Palestine) lest their privileges under the League Covenant and the mandates should be taken away”); LELAND M. GOODRICH ET AL., CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS 495 (1969); Shaw, *supra* note 53, at p. 303; Eugene V. Rostow, *The Future of Palestine*, in 24 MCNAIR PAPER, INSTITUTE FOR NATIONAL STRATEGIC STUDIES, NATIONAL DEFENSE UNIVERSITY 10-11 (1993).

⁶⁰ G.A. Res. 181 (II), U.N. Doc. A/RES/181(II) (29 Nov. 1947), designating the City of Jerusalem to be placed under a special international regime. The United Nations Special Commission on Palestine had earlier concluded that the “Arabs of Palestine ... have not been in possession of it [Palestine Mandate territory] as a sovereign nation”, and that there were “no grounds for questioning the validity of the Mandate for the reason advanced by the Arab States”: U.N.S.C.O.P., *Question of Palestine/Majority plan (Partition), Minority plan (Federal State)*, paras. 163, 179, U.N. Doc. A/364 (3 Sep. 1947).

⁶¹ See also Crawford 2006, *supra* note 41, at pp. 424-425, 430-432. Needless to say, UN General Assembly resolutions such as resolution 181 are, in any event, without binding effect. Recent claims that Israel had subsequently accepted the territorial delimitation suggested by the UN partition plan through signing the 1949 Lausanne Protocol are misleading, as Israel merely agreed therein to regard the plan as a basis for future discussions on borders. This political willingness in no way indicated any waiver of legal rights or claims. For example, the Director General of the Israeli Ministry of Foreign Affairs, representing Israel in Lausanne, made it there clear that accepting the November 29th frontiers as a “*base de travail*” did not mean acquiescence in them: Letter from W. Eytan (the Director General of the Israeli Ministry of Foreign Affairs) to M. Sharett (Israel’s Minister for Foreign Affairs), 9 May 1949. That Israel did not waive any of



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and the State of Israel was established, only to be invaded on the following day by several Arab States.⁶²

29. The 1948 war, during which Jordan and Egypt took control over the West Bank and the Gaza Strip respectively, ended in 1949 in a series of armistice agreements between Israel and its neighbors. These laid down that the armistice lines (later to be referred to as the “Green Line”) were to be temporary, do not construe “in any sense ... a political or territorial boundary”, and were delineated “without prejudice to rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question”.⁶³ Sovereignty over the West Bank and the Gaza Strip thus remained in abeyance.⁶⁴
30. In June 1967, acting in self-defense, Israel gained control of the West Bank and the Gaza Strip and unified under its sovereignty the city of Jerusalem. Any argument that the West Bank and the Gaza Strip are since then occupied affects neither Israel’s longstanding claim to that territory nor the fact that sovereignty over it remains in abeyance, as belligerent occupation does not invalidate any pre-existing claims to the territory concerned. On 22 November 1967, the UN Security Council unanimously adopted resolution 242, affirming that the fulfillment of the principles of the UN Charter in achieving peace in the Middle East “should include the application of both the following principles”: Israel’s withdrawal from territories, and respect for the right of every State in the area to exist within secure and recognized borders.⁶⁵ This

its territorial rights or claims is further evident in, *inter alia*, the subsequent armistice agreements with Arab States and the agreements concluded between Israel and the Palestinians.

⁶² UN Secretary-General Trygve Lie later described the Arab invasion as “the first armed aggression the world has seen since the end of the [Second World] [W]ar”: TRYGVE LIE, *IN THE CAUSE OF PEACE: SEVEN YEARS WITH THE UNITED NATIONS* 174 (1954).

⁶³ General Armistice Agreement, Egypt-Isr., 24 Feb. 1949, 42 U.N.T.S. 251, arts. V(2), V(3) and XI; see also General Armistice Agreement, Isr.-Jordan, 3 Apr. 1949, 42 U.N.T.S. 303, arts. II(2), IV(2) and VI(9).

⁶⁴ Any argument that when Israel gained control over the West Bank in 1967, that territory had already belonged to a State, is therefore without any merit. In particular, on 15 May 1950, the Arab League agreed that Jordan’s purported annexation of the West Bank that year was illegal: see *Jordan’s annexation in Palestine is called illegal by Arab League*, THE NEW YORK TIMES (16 May 1950); U.S. DEPARTMENT OF STATE – OFFICE OF INTELLIGENCE RESEARCH, INTELLIGENCE REPORT, NO. 6565, *DISUNITY AMONG THE ARAB STATES: THE HASHEMITE CONTROVERSY AND ARAB PALESTINE*, p. 9 (1954), available at https://www.cia.gov/library/readingroom/docs/HUSSEINI%2C%20AMIN%20EL%20%20%20VOL.5_0204.pdf (last accessed: 19 Dec. 2019). Israel, for its part, maintained its claim to the territory, including through the 1949 armistice agreements and by asserting that it did not consider itself bound by the annexation unilaterally proclaimed by the Jordanian Parliament. The official Israeli position was indeed that “[t]his is a unilateral act that is in no way binding on Israel. We have concluded an armistice agreement with the Hashemite Jordan Kingdom and it is our firm intention fully to abide by it. This agreement, however, entails no final political settlement, and no such final settlement is possible without negotiations and the conclusion of a peace treaty between the two parties. It should therefore be clear that the status of the Arab areas west of the Jordan remains an open question as far as Israel is concerned”: *Two areas united by vote in Jordan*, THE NEW YORK TIMES (25 Apr. 1950); see also Letter from M. Sharett (Israel’s Minister for Foreign Affairs) to Sir Alexander Knox Helm (the United Kingdom Minister to Israel), 2 May 1950.

⁶⁵ S.C. Res. 242, U.N. Doc. S/RES/242, para. 1 (22 Nov. 1967). It is noteworthy that the text of the resolution deliberately refers to a withdrawal of Israeli forces “from territories occupied in the recent conflict”, not from “all the territories occupied”. Lord Caradon, who served as Permanent Representative of the United Kingdom to the United Nations between 1964 and 1970 and was the architect of resolution 242, later explained that “[w]e could have said: well, you go back to the 1967 line. But I know the 1967 line, and it’s a rotten line. You couldn’t have a worse line for a permanent international boundary. It’s where the troops happened to be on a certain night in 1948. It’s got no relation to



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resolution was later accepted by Israel, Egypt, and Jordan, as well as the Palestine Liberation Organization (PLO, as the representative of the Palestinian people), as the basis for permanent settlement of their respective disputes.⁶⁶ The 1979 Egypt-Israel Peace Treaty and the 1994 Jordan-Israel Peace Treaty were concluded without prejudice to the status of territories that came under Israeli control in 1967,⁶⁷ thus again leaving sovereignty over them in abeyance.

31. In 1993, Israel and the Palestinians agreed to settle their dispute – including their competing claims to the West Bank and the Gaza Strip – through bilateral negotiations leading to a just and lasting peace. The Interim Agreement concluded between the parties with the encouragement of the international community in 1995 stipulates that no side may “change the status of the West Bank and the Gaza Strip pending the outcome of permanent status negotiations”.⁶⁸ The Palestinians have systematically and repeatedly violated the agreements reached with Israel, including by supporting terrorism and by the very attempt to unilaterally assert statehood before the ICC, yet this does not absolve them from their obligations thereunder. Permanent status negotiations have not yet been concluded,⁶⁹ and sovereignty over the West Bank and the Gaza Strip thus remains in abeyance to the present day.
32. In these circumstances, it is clear that the Palestinian entity does not now hold, nor has it ever held, sovereign title over the West Bank and the Gaza Strip, a territory that in fact has always been under the effective control of others. Recent revisionist attempts to argue otherwise simply cannot be sustained by the legal and historical record, including the Palestinians’ own narrative over the decades.⁷⁰

the needs of the situation. ... We meant that the occupied territories could not be held merely because they were occupied, but we deliberately did not say that the old line, where the troops happened to be on that particular night many years ago, was an ideal demarcation line”: *An Interview with Lord Caradon*, 5(3/4) J. Palestine Stud. 142, 144-145 (1976). The resolution itself acknowledges that borders have yet to be determined, and that any such determination ought to be made through “a peaceful and accepted settlement”.

⁶⁶ Peace Treaty between Israel and Egypt, Egypt-Isr., art. II, 26 Mar. 1979, 1138 U.N.T.S. 59, preambular para. 1; Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, Isr.-Jordan, art. 3(1)-(2), 26 Oct. 1994, 2042 U.N.T.S. 351, preambular para. 3; Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 Sep. 1995, at preambular paras. 5 and 6.

⁶⁷ With the exception of the Sinai Peninsula. See Peace Treaty between Israel and Egypt, *ibid.*, art. II; Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, *ibid.*, arts. 3(1) and (2).

⁶⁸ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, *supra* note 66, art. XXXI (7). Israel’s disengagement from the Gaza Strip in 2005 did not mark a renunciation of its claim to the territory, nor did it alter the legal situation by which sovereignty over the Gaza Strip remains in abeyance, and the Interim Agreement applies to it (*mutatis-mutandis*). As was stated by the Israeli Government, “[t]he process set forth in the [disengagement] plan is without prejudice to the relevant agreements between the State of Israel and the Palestinians. Relevant arrangements shall continue to apply”: *Israeli Cabinet Resolution regarding the Disengagement Plan, Government Decision No. 1996, Revised Disengagement Plan, Addendum A*, para. 1(7) (6 Jun. 2004).

⁶⁹ Israel’s willingness to resume permanent status negotiations without further delay has been repeatedly stated, including in recent years and by the highest levels of Government. On the Palestinian approach, see, for example, BILL CLINTON, MY LIFE 944-945 (2005) (“Arafat’s rejection of my proposal after Barak accepted it was an error of historic proportions”); the Palestinians have similarly rejected or refused to respond to other compromise proposals, including those made in the Proximity Talks process (May-September 2010); the Quartet’s 2011 proposal (September 2011); the Amman rounds (January 2012); and the Kerry Framework negotiations (July 2013-April 2014).

⁷⁰ See also *infra* note 106.



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33. ***The Palestinian entity does not meet the established criteria for statehood under international law, including effective control.*** It is well established in international law that the creation of a State requires, *inter alia*, a government with full governmental powers over the territory that it claims.⁷¹ The Palestinian entity, however, has never possessed – and does not now possess, either in law or in fact – key elements of such effective territorial control.
34. The Palestinian Authority (“PA”) is a legal entity created by the bilateral agreements entered into by the PLO and Israel, and possesses only those powers specifically transferred to it under these agreements. The agreements explicitly state that Israel maintains all residual powers and responsibilities not transferred to the Palestinian Authority: “the jurisdiction of the [Palestinian Authority] will cover West Bank and Gaza Strip territory ... except for: ... powers and responsibilities not transferred to [it]”.⁷² Israel is thus “the fount of authority and the retainer of residual powers”,⁷³ which again indicates that the Palestinians do not have sovereignty.
35. More specifically, the bilateral Israeli-Palestinian agreements provide for the transfer to the Palestinians of only limited powers, which do not come close to effective control: the Palestinian Negotiations Support Unit has itself concluded that “[t]he administrative powers accorded to the PA by the Interim Agreements are much more limited than the powers of a government”.⁷⁴ Significantly, Israel retains control over external security, as the Interim

⁷¹ See the rules of international law enshrined in the Montevideo Convention on Rights and Duties of States, art. 1, 26 Dec. 1933, 165 L.N.T.S. 19. This has also been the approach of the International Criminal Tribunal for the former Yugoslavia in *Prosecutor v. Slobodan Milošević*, *supra* note 50, at para. 86: “These four criteria [enumerated in Article 1 of the Montevideo Convention] have been used time and again in questions relating to the creation and formation of states. In fact, reliance on them is so widespread that in some quarters they are seen as reflecting customary international law”. As *Oppenheim’s International Law* puts it, “[a] state proper is in existence when a people is settled in a territory under its own sovereign government. ... There must ... be a *sovereign* government. Sovereignty is supreme authority, which on the international plane means not legal authority over all other states but rather legal authority which is not in law dependent on any other earthly authority. Sovereignty in the strict and narrowest sense of the term implies, therefore, independence all round, within and without the borders of the country”: ROBERT JENNINGS & ARTHUR WATTS, *OPPENHEIM’S INTERNATIONAL LAW: PEACE*, vol. 1, pp. 120, 122 (9th ed., 2008) (emphasis in original). See also Crawford 2006, *supra* note 41, at p. 46 (“the right to be a State is dependent at least in the first instance upon the exercise of full governmental powers with respect to some area of territory”); MALCOLM N. SHAW, *INTERNATIONAL LAW* 157 (8th ed., 2017). Even if some suggest that a more flexible approach to this condition may be adopted when considering the situation of an existing State, it has been applied strictly when considering the possible creation of a new State: Crawford 2006, *supra* note 41, at p. 59; see also para. 41 below.

⁷² Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, *supra* note 66, art. XVII(1). See also art. I(1) (“Israel shall transfer powers and responsibilities as specified in this Agreement from the Israeli military government and its Civil Administration to the Council in accordance with this Agreement. Israel shall continue to exercise powers and responsibilities not so transferred”); art. I(5) (“... The withdrawal of the military government shall not prevent it from exercising the powers and responsibilities not transferred to the Council”); and art. XVII(4)(a) (“Israel, through its military government, has the authority over areas that are not under the territorial jurisdiction of the Council, powers and responsibilities not transferred to the Council and Israelis”).

⁷³ YORAM DINSTEIN, *THE INTERNATIONAL LAW OF BELLIGERENT OCCUPATION* 58 (2009). See also Joel Singer, *The Oslo Peace Process – A View from Within*, in *NEW POLITICAL ENTITIES IN PUBLIC AND PRIVATE INTERNATIONAL LAW WITH SPECIAL REFERENCE TO THE PALESTINIAN ENTITY* 17, 49 (A. Shapira and M. Tabory eds., 1999) (“It is noteworthy that the possession of residual powers is normally an *indicia* of being the source of authority”).

⁷⁴ Internal Memorandum from the Negotiations Support Unit to Dr. Saeb Erekat entitled “Implications of Change in *de facto* Control in Gaza” (19 Jun. 2007), available at <http://www.ajtransparency.com/en/projects/thepalestinepapers/20121822587187346.html> (last accessed: 19 Dec. 2019)



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Agreement specifies that “Israel shall continue to carry the responsibility for defense against external threats, including the responsibility for protecting the Egyptian and Jordanian borders, and for defense against external threats from the sea and from the air, as well as the responsibility for overall security of Israelis and Settlements, for the purpose of safeguarding their internal security and public order, and will have all the powers to take the steps necessary to meet this responsibility”.⁷⁵ The Palestinians also lack any control over other key attributes of sovereignty, such as airspace⁷⁶ and major aspects of tax collection;⁷⁷ and the Palestinian Authority’s criminal jurisdiction is very much limited.⁷⁸ Significantly, the exercise of some powers, such as the use of the electromagnetic sphere and the establishment of telecommunication networks, is subject to Israeli cooperation or consent.⁷⁹ The provision of certain monetary services is similarly dependent upon Israeli authorization.⁸⁰ All of this is certainly not “exclusive and complete authority”, which the OTP itself has found to be required for purposes of exercising the Court’s jurisdiction.⁸¹ Moreover, any limited powers that the Palestinian Authority does hold are anyway confined by the agreements both geographically (to certain designated areas) and *in personam* (only to Palestinians and non-Israelis).⁸²

36. Despite their repeated breaches by the Palestinians, the bilateral Israeli-Palestinian agreements continue to form the applicable legal framework governing the conduct of the parties. This has repeatedly been acknowledged by the parties, including most recently⁸³ and in writing,⁸⁴

(acknowledging also that “[t]he [Occupied Palestinian Territory] should not be treated as a state since it lacks the attributes of statehood”).

⁷⁵ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, *supra* note 66, art. XII(1). Under the Agreement, Israel transferred to the Palestinian Authority certain powers relating only to internal security (arts. XII-XIII and arts. IV-VI of Annex I); it also transferred some powers pertaining to certain civil affairs such as education, municipal matters, and health (for example, Annex III, Appendix I, arts. 9, 17, 20, 36, 37).

⁷⁶ *Ibid.*, Annex I, art. XIII (4): “All aviation activity or use of the airspace by any aerial vehicle in the West Bank and the Gaza Strip shall require prior approval of Israel”.

⁷⁷ See, for example, 1994 Agreement on the Gaza Strip and the Jericho Area, Annex IV: Protocol on Economic Relation between the Government of the State of Israel and the P.L.O., representing the Palestinian people, art. III, VI, April 29, 1994.

⁷⁸ See paras. 56-60 below.

⁷⁹ *Id.*, at Annex III, arts. 28 and 36(A)(2)(a).

⁸⁰ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, *supra* note 66, at Annex III, art. 29.

⁸¹ *Report on Preliminary Examination Activities 2019*, *supra* note 12, at para. 48. The OTP quotes in this context the well-known Award in the *Island of Palmas* case, in which it has also been stated, *inter alia*, that “[s]overeignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State. ... Territorial sovereignty, as has already been said, involves the *exclusive right* to display the activities of a State”: *Island of Palmas*, *supra* note 18, at pp. 838-839 (emphasis added).

⁸² Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, *supra* note 66, art. XVII (2)(a) and Annex III. Israel transferred to the Palestinian Authority certain legislative powers that in any event “shall not derogate from Israel’s applicable legislation over Israelis in personam” (*ibid.*, arts. XVIII (4) and XVII(4)).

⁸³ See, for example, *President Abbas meets Palestinian community in US on sidelines of 74th session of UN General Assembly in New York*, Wafa (23 Sep. 2019), available at <http://english.wafa.ps/page.aspx?id=Crv2Xia113546988159aCrv2Xi> (last accessed: 19 Dec. 2019); *President Abbas: All agreements with Israel will end once it annexes any part of the Palestinian territory*, Wafa (9 Sep. 2019), available at <http://english.wafa.ps/page.aspx?id=hPcYhZa111508333233ahPcYhZ> (last accessed: 19 Dec. 2019); President Mahmoud Abbas’s address to foreign ministers of the Arab League on 21 April 2019, in which he said that



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despite isolated political statements to the contrary by some Palestinian officials.⁸⁵ Current ongoing engagement between Israeli and Palestinian officials is indeed based on the agreements, with bilateral discussions underway in recent months within the framework of joint committees established by the Interim Agreement to facilitate further implementation thereof in various fields such as security, water, and sewage management. Moreover, several agreements have been reached in these fields between the two sides in recent years, with explicit reliance on the terms of the Interim Agreement. The international community, too, has reiterated on numerous occasions its support for the existing bilateral agreements as an applicable legal framework for settling the Israeli-Palestinian conflict and determining the sovereign status of the territory in dispute.⁸⁶

37. Also of note is that the Palestinian Authority does not exercise control over the Gaza Strip,⁸⁷ where more than 40 percent of the Palestinian population resides.⁸⁸ Nor does it exercise control

“we [the PA] are committed to all the agreements” (video recording available at <https://www.youtube.com/watch?v=NsW3gPt9Tio> (minutes 7:45-8:30) (last accessed: 19 Dec. 2019)); *President says he is ready to sever all ties with Israel if it keeps ignoring agreements*, WAFA (3 July 2019), available at <http://english.wafa.ps/page.aspx?id=YKo1zda110829733344aYKo1zd> (last accessed: 19 Dec. 2019) (“If it continues in not honoring them, we will cancel all the agreements between us no matter what will happen”); President Mahmoud Abbas’s address to the UN Security Council: UN S.C., 8183rd meeting, U.N. Doc. S/PV.8183, 9 (20 Feb. 2018) (referring to existing obligations under the Oslo Accords of 1993). Palestinian statements from recent years, claiming that Israel has violated the Agreements, similarly indicate the Palestinians’ view that the Israeli-Palestinian agreements are indeed in force: see *Palestinian cabinet condemns Israel’s decision to cut tax revenues*, WAFA (19 Feb. 2019), available at <http://english.wafa.ps/page.aspx?id=c1pseca108483662199ac1psec> (last accessed: 19 Dec. 2019); *Abbas: Liberman Violated Oslo Accords by Naming PNF a Terror Organization*, THE JERUSALEM POST (17 Mar. 2017), available at <https://www.jpost.com/Arab-Israeli-Conflict/Abbas-Liberman-violated-Oslo-accords-by-naming-PNF-a-terror-organization-484448> (last accessed: 19 Dec. 2019).

⁸⁴ For example, several bilateral agreements signed in 2015, 2016 and 2017 in connection with electricity, water, telecommunications, and postal issues, all refer in explicit terms to the Interim Agreement and are said to be concluded pursuant to it. See also Adam Rasgon, Tovah Lazaroff and Sharon Udasin, *Israel gives Pal. Authority limited water autonomy in West Bank*, THE JERUSALEM POST (17 Jan. 2017), available at <http://www.jpost.com/Arab-Israeli-Conflict/Israel-gives-Pal-Authority-limited-water-autonomy-in-West-Bank-478672> (last accessed: 19 Dec. 2019); *Israel, Palestinians sign 3G mobile network agreement*, REUTERS (19 Nov. 2015), available at <https://www.reuters.com/article/us-israel-palestinians-3g-idUSKCN0T81MS20151119> (last accessed: 19 Dec. 2019); *Israel, PA sign deal on massive Palestinian electricity bill*, THE TIMES OF ISRAEL (13 Sep. 2016), available at <https://www.timesofisrael.com/israel-pa-sign-deal-on-massive-palestinian-electricity-bill/> (last accessed: 19 Dec. 2019).

⁸⁵ Such statements clearly do not amount to a notice of denunciation or withdrawal, and cannot have any such effect. In any event, Israel has never received any such notice.

⁸⁶ See, for example, G.A. Res. 73/19, U.N. Doc. A/RES/73/19, preambular para. 25 and operative paras. 16 and 19 (23 Jan. 2019); G.A. Res. 73/256, U.N. Doc. A/RES/73/256, preambular para. 2 (5 Dec. 2018); S.C. Res. 2334, U.N. Doc. S/RES/2334, para 8 (23 Dec. 2016); G.A. Res. 67/19, *supra* note 35, at para. 5.

⁸⁷ Despite several attempts at unity, the division between Hamas in the Gaza Strip and the Palestinian Authority in the West Bank persists, with different authorities administering those territories. See, for example, the Palestinian position recorded in the Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, U.N. Doc. A/HRC/29/CRP.4, para. 666 (24 Jun. 2015): “The Palestinian Authority claims that its failure to open investigations results from insufficient means to carry out investigations in a territory over which it has yet to re-establish unified control”.

⁸⁸ See also UN Security Council, Report of the Committee on the Admission of New Members Concerning the Application of Palestine for Admission to Membership in the United Nations, para. 12, U.N. Doc. S/2011/705 (11 Nov. 2011): “... it was stated that Hamas was in control of 40 per cent of the population of Palestine; therefore the Palestinian Authority could not be considered to have effective government control over the claimed territory”.



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in as much as 60 percent of the West Bank area claimed by the Palestinians to be theirs. This is quite apart from the fact that the Palestinians neither have nor exercise any powers over Jerusalem.

38. The Palestinians themselves claim that Israel is occupying the Gaza Strip, the West Bank and east Jerusalem,⁸⁹ thus suggesting that Israel has effective control over these territories to the exclusion of others.⁹⁰ Under such circumstances, occurring since 1967, the essential criterion of effective territorial control clearly cannot be met: if the territory is occupied, then the effective control over it must by definition rest with Israel, not with the Palestinians. The Palestinians' own Negotiations Support Unit has indeed recognized that "ending the occupation ... is a basic requirement for creation of a sovereign Palestinian state".⁹¹ In a legal memorandum dealing specifically with Palestinian strategy before the ICC, it thus concluded that the claim that Israel is occupying the West Bank and the Gaza Strip creates an insurmountable obstacle in establishing ICC jurisdiction over the "Situation in Palestine", as "a state will only emerge upon termination of Israeli occupation".⁹²
39. Needless to say, Israel's presence in the West Bank is fully in accordance with international law: Israel gained control over the territory in an act of lawful self-defense;⁹³ it applies the humanitarian provisions of the international law of occupation (despite its principled position that they do not apply *de jure*);⁹⁴ and it has repeatedly expressed its commitment to negotiate with the Palestinians this state of affairs. As recognized in the agreements already concluded between Israel and the Palestinians and Security Council resolution 242,⁹⁵ the withdrawal of Israeli armed forces and the determination of secure and recognized boundaries is a matter for

⁸⁹ See, for example, the official statement entitled *Borders*, found at the Palestinian Liberation Organization – Negotiation Affairs Department website, available at <https://www.nad.ps/en/our-position/borders> (last accessed: 19 Dec. 2019).

⁹⁰ That occupation of a territory requires the exercise of control to the exclusion of others is firmly established in international law and practice. See, for example, Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, art. 42, 18 Oct. 1907, 205 C.T.S. 277; The Prosecutor v. Naletilic et al., IT-98-34-T, Judgement, para. 217 (31 Mar. 2003); The United Kingdom Ministry of Defence, Joint Service Manual of the Law of Armed Conflict, JSP 383, [11.3] (10 Feb. 2004); United States Department of Defense, Law of War Manual, [11.2.2.2] (June 2015). For the view of publicists, see, for example, Adam Roberts, *What is Military Occupation?*, 55(1) BRIT. Y.B INT'L L. 249, 300-1 (1985); Dinstei, *supra* note 73, at pp. 42-43.

⁹¹ Memorandum from the Negotiations Support Unit to Palestinian Leadership entitled "Legal approaches to be advanced at the ICC in order to protect overall Palestinian strategy and realize rights and interests" (25 Mar. 2009), available at <http://www.ajtransparency.com/en/projects/thepalestinepapers/201218205613718519.html> (last accessed: 19 Dec. 2019).

⁹² *Ibid.* The memorandum explains that arguing that the "State of Palestine" came into existence during the occupation is "NOT RECOMMENDED" (emphasis in original), given that "[i]t will be very difficult to meet the Montevideo criteria for statehood (i.e., permanent population, defined territory, effective government and capacity to enter into foreign relations) under current circumstances. This is because a state of occupation arguably negates the effective control required for the emergence of a state".

⁹³ See also YORAM DINSTEIN, *WAR, AGGRESSION AND SELF-DEFENCE* 192 (4th ed., 2004).

⁹⁴ See also Meir Shamgar, *The Observance of International Law in the Administered Territories*, 1 ISRAEL Y.B HUM. RTS. 262 (1971), in which the Israeli Government's position was first presented by the then Attorney General of Israel.

⁹⁵ See para. 30 above.



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peace negotiations between the parties. The continued exercise of authority by Israel in this territory, pending such negotiations, is thus consistent with applicable international law and existing bilateral agreements. Any claim that Israel's presence in the West Bank amounts to "unlawful occupation" is thus without any merit.⁹⁶

40. ***A right of self-determination must not be conflated with statehood.*** International law clearly distinguishes between self-determination and the legal status of statehood: while the former concerns the right of peoples to determine their political condition and to pursue freely their economic, social and cultural development, the latter is merely one possible outcome of the realization of such a right.⁹⁷ Therefore, recognition of the right of the Palestinians to self-determination does not amount to recognition of an already existing sovereign Palestinian State, and cannot of itself establish one. Statements made on the international plane in reference to the right of the Palestinians to self-determination indeed describe Palestinian statehood as an aspiration, and not as an existing legal fact.⁹⁸ Cassese has thus opined, after indicating that "there is no agreement ... on the exact territory in which the [Palestinian] right to self-determination is to be exercised", that "[t]he only indications that can be drawn from the international legal rules and UN resolutions are to the effect that the right must be exercised peacefully, that is, through negotiations between all the parties concerned and on the basis of

⁹⁶ The Israeli presence in the West Bank is indeed markedly different from such situations where an occupation has resulted from a breach of the *jus ad bellum*, as was the case, for example, with the Iraqi occupation of Kuwait, or Uganda's occupation of the DRC (see Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, 2005 I.C.J. Rep. 116, paras. 259, 345, (19 Dec. 2005)). In these cases, as with the occupation of Namibia by South Africa, the illegality of the occupation as a matter of international law was determined by the Security Council, the International Court of Justice, or both. It is noteworthy that even the finding that Namibia was unlawfully occupied did not – and indeed could not – of itself give rise to Namibian statehood: see *infra* note 98.

⁹⁷ See also Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 169, paras. 156-157 (25 Feb. 2019); Crawford 2006, *supra* note 41, at p. 446 ("... international law has distinguished between the right to self-determination and the actual achievement of statehood, and for good reason"); DAVID RAIČ, STATEHOOD AND THE LAW OF SELF-DETERMINATION 444-445 (2002); Shaw, *supra* note 71, at p. 204; Christian Tomuschat, *Secession and Self-Determination*, in SECESSION: INTERNATIONAL LAW PERSPECTIVES 23, 24 (Marcelo G. Kohen ed., 2006). This distinction continues to be upheld in international practice: even in cases where a right of self-determination had garnered considerable international support as a foundation for the establishment of a State, that State only came into being once the legal requirements for statehood had been met. One important example is that of Namibia, the statehood of which was attained only following the end of South Africa's occupation. As may be recalled, South Africa's administration of the territory of South West Africa (that later became Namibia) was authorized by a League of Nations Mandate, which was terminated by the United Nations in 1966. After South Africa's subsequent refusal to withdraw from the territory, its occupation thereof was determined by the UN Security Council to be illegal and was met by international sanctions and by UN General Assembly support for the armed struggle of the Namibian people for independence. Even under these extreme and unprecedented circumstances, Namibia was only established as a State after the conclusion of an agreement between South Africa, Angola and Cuba, which provided that "[a]ll military forces of the Republic of South Africa shall depart Namibia in accordance with UNSCR 435/78", and that South Africa shall "co-operate with the Secretary-General to ensure the independence of Namibia through free and fair elections ..." (Agreement among the People's Republic of Angola, the Republic of Cuba, and the Republic of South Africa, arts. 2, 3, 22 Dec., 1988, A/43/989, S/20346). On this particular matter see also Legal Consequences of States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16, paras. 90-103, 108-116 (21 Jun. 1970); Crawford 2006, *supra* note 41, at pp. 439-440, 595-596.

⁹⁸ See paras. 21 above and 43 below.



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the freely expressed wishes of the population of the territories”.⁹⁹ This is consistent with the approach of the international community, which repeatedly calls for a negotiated solution for purposes of realizing the Palestinian right to self-determination.

41. Any suggestion that the substantive requirement of effective government may be relaxed in favor of State creation in pursuance of self-determination is of no avail. Those advocating this controversial position refer to a handful of cases that do not sufficiently lend themselves to any such generalization. What is more, such cases that have been referred to have no bearing on the present circumstances, as they concern situations where the entity claiming statehood had, at the relevant time, an exclusive claim to the relevant territory (with previous conflicting claims having by then been withdrawn).¹⁰⁰ In the present case, however, Israel has a longstanding claim to the West Bank and the Gaza Strip, and Israel and the Palestinians have explicitly agreed under existing agreements to settle their conflicting claims peacefully through negotiation.¹⁰¹ Furthermore, the cases concerned were such in which the right to self-determination was forcibly prevented, including in the colonial context.¹⁰² This is certainly not the situation in the Israeli-Palestinian case, in which Israel has not only recognized the Palestinian right to self-determination and facilitated Palestinian self-governance through bilateral agreements that established the Palestinian Authority, but has also agreed to further promote Palestinian self-rule and has repeatedly engaged in negotiation efforts for this purpose, to which it remains committed. To argue that Palestinian self-determination has not yet been fully realized as a result of alleged Israeli wrongdoing, would be to ignore repeated international and Israeli offers over the decades to enable the emergence of a Palestinian State that were all rejected by the Palestinian side.¹⁰³ Seeking to label Israel as arbitrarily denying Palestinian self-determination would thus not only be fundamentally untrue, but would require the adoption of a particular political and partisan narrative in a manner clearly inappropriate for any court of law, let alone an international criminal court.
42. ***Palestinian claims regarding recognition are wholly misleading and, in any event, are not constitutive of statehood.*** Under international law, recognition is not constitutive of statehood and cannot supersede or replace the factual and legal requirements of statehood, nor indeed compensate for their absence.¹⁰⁴ A Palestinian claim to statehood based on alleged recognition

⁹⁹ CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 240-241 (1995).

¹⁰⁰ For example, both the Democratic Republic of Congo and Guinea-Bissau, and also Bangladesh, were only established as States, and admitted to the UN, following the express agreement of the State formerly claiming the territory. In the case of the Baltic States, the UN Security Council did not consider their applications for UN membership until after the Soviet Union (that annexed their territories in 1940) agreed to recognize them as States. See also Crawford 2006, *supra* note 41, at pp. 57-58, 140-142, 181, 394-395.

¹⁰¹ See also para. 31 above.

¹⁰² See, for example, the case of Namibia: *supra* note 97.

¹⁰³ *Supra* note 71.

¹⁰⁴ See, for example, Crawford 2006, *supra* note 41, at p. 93 (“[a]n entity is not a State because it is recognized; it is recognized because it is a State”). The Badinter Arbitration Commission on Yugoslavia similarly noted that “a state’s existence or non-existence had to be established on the basis of universally acknowledged principles of international law concerning the constituent elements of a state”, and that “recognition of a state by other states has only declarative



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of “Palestine” by any number of States is thus of no legal significance in the present context. What is more, the claim does not withstand any serious factual scrutiny.

43. First, over two-thirds of the alleged recognitions relied on by the Palestinians were made in connection with the so-called Palestinian Declaration of Independence of 1988, yet the Palestinians have themselves conceded that no Palestinian State had existed either then or decades thereafter.¹⁰⁵ Such recognitions cannot therefore be relied upon. Second, many States that are alleged to have recognized “Palestine” continue to refer to a sovereign Palestinian State as a future aspiration only, and others have made it clear that, in fact, they do not recognize a Palestinian State to be in existence.¹⁰⁶ Needless to say, this is also the position of a significant number of additional States, as the Palestinians would surely acknowledge.¹⁰⁷ All things

value”: Opinion No. 8 of *Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising From the Dissolution of Yugoslavia*, 31(6) I.L.M. 1488, 1522-1523 (Nov. 1992).

¹⁰⁵ In 1998, for example, Yasser Arafat, Chairman of the Palestinian Authority, stated that “The Palestinian people were determined to declare independence ...”: Press Release, General Assembly, Chairman Arafat Says Palestinians Need Worldwide Support More Than Ever to Make Independence a Reality, U.N. Press Release Ga/PAL/788 (30 Nov. 1998). In the same vein, Mahmoud Abbas, then Secretary-General of the PLO Executive Committee, stated in 2000 that “[a] declaration of an independent state is a right our people can execute at any time. In 1988, when we declared our state in exile, more than 100 countries recognized that declaration. But recognition of a state on the ground is different than that of a state in exile. And though many nations have said they are in favor of an independent state many hinted of the necessity to declare once prepared on the ground and or after an agreement between the sides is reached. And so we must now stop and think”: Abu Mazen’s Speech at the Meeting of the PLO’s Central Council, 9 September 2000, UN press release, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/172D1A3302DC903B85256E37005BD90F> (last accessed: 19 Dec. 2019). In their submission to the International Court of Justice in 2004, in the course of the *Wall* advisory proceedings, the Palestinians also explicitly acknowledged that a Palestinian State has yet to emerge: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, Written Statement submitted by Palestine, para. 375 (29 Jan. 2004) (“... the fact is that Israel remains in overall control of this territory and Israeli forces remain in occupation of the West Bank, including East Jerusalem, and the Gaza Strip. These areas are together referred to as the ‘Occupied Palestinian Territory’, because the territory is not part of the territory of the State of Israel; it is territory of the Palestinian people, *destined* for a Palestinian State ...” (emphasis added)).

¹⁰⁶ See, for example, *Official Records of the General Assembly*, *supra* note 40. For more recent views, see, for example, Narendra Modi, Prime Minister of India, Speech Delivered During a Joint Conference With President Mahmoud Abbas (10 Feb. 2018), available at <https://www.diplomaticsquare.com/india-hopes-that-palestine-will-soon-be-a-sovereign-country-achieved-in-a-peaceful-manner/> (last accessed: 19 Dec. 2019) (“India hopes that soon Palestine will become a sovereign and independent country in a peaceful manner”); *President Xi’s Speech at Arab League Headquarters: Full Text*, CHINA DAILY (22 Jan. 2016), available at http://www.chinadaily.com.cn/world/2016xixisitmiddleeast/2016-01/22/content_23191229.htm (last accessed: 19 Dec. 2019) (“China firmly supports the Middle East peace process and supports the establishment of a State of Palestine enjoying full sovereignty ...”); Adam Withnall, *Vladimir Putin says Russia will fight for right of Palestinians to their own State*, THE INDEPENDENT (29 Mar. 2015), available at <https://www.independent.co.uk/news/world/middle-east/vladimir-putin-says-russia-will-fight-for-the-right-of-palestinians-to-their-own-state-10141902.html> (last accessed: 19 Dec. 2019) (quoting the Russian President as saying that “Palestinians have the right to establish an independent and habitable state ...”).

¹⁰⁷ States not recognizing “Palestine” as a State include Australia, Austria, Belgium, Canada, Cameroon, Denmark, France, Germany, Japan, Mexico, Netherlands, New Zealand, Norway, Panama, Singapore, South Korea, Switzerland, the United Kingdom, and the United States. Such positions have sometimes been put on record, *inter alia*, in communications with the UN Secretary-General as depositary, and in the context of United Nations debates or international statements and instruments: see, for example, Depositary Notification, C.N.363.2018.TREATIES-X.10 (Canada: Communication) (27 Jul. 2018) available at <https://treaties.un.org/doc/Publication/CN/2018/CN.363.2018-Eng.pdf> (last accessed: 19 Dec. 2019); Depositary notification C.N.295.2018.TREATIES-XXVI.3 (United States of America: Communication) (18 Jun. 2018), available at <https://treaties.un.org/doc/Publication/CN/2018/CN.295.2018-Eng.pdf> (last accessed: 19 Dec. 2019); Diplomatic Note of the Federal Republic of Germany to the Implementation



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considered, it is clear that Palestinian statehood has not won even the quasi-unanimous support (even among States Parties to the Rome Statute) that may arguably be said to be indicative of the existence of a Palestinian State, and the claim concerning recognition of “Palestine” simply cannot stand.

44. In the same vein, any participation of “Palestine” in multilateral treaties neither implies nor constitutes recognition of Palestinian statehood by any or all of the other parties to those treaties: “it is generally accepted that participation in the same multilateral treaty does not signify mutual recognition, even implicit”.¹⁰⁸ This is because being a nominal “State Party” by virtue of a procedural or political act is not the same as being a State as a matter of international law. The same may be said of participation in international fora, and States have indeed noted expressly that Palestinian participation in the ASP is without prejudice to the question of Palestinian statehood.¹⁰⁹
45. ***The Palestinian claim to statehood is legally incoherent and often self-contradictory.*** The Palestinian claim to statehood is routinely exposed as untenable by the Palestinians themselves. Palestinian officials not only contradict themselves in claiming that the West Bank and the Gaza Strip are occupied by Israel and at the same time are under Palestinian effective control,¹¹⁰ but also frequently refer to Palestinian statehood as a future event. Three years after “Palestine’s” purported accession to the Rome Statute, for example, President Abbas stated in explicit terms that “[i]n due time there will be a Palestinian State but this will not happen soon. We are building the Palestinian State one step at a time, and this takes time”.¹¹¹ Palestinian

Support Unit for the Biological Weapons Convention within the Geneva Branch of the United Nations Office for Disarmament Affairs, No. 27/2018 (11 Dec. 2018); Meeting of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Explanation of Position on the “State of Palestine” Submitted by Australia, Canada, Germany and Netherlands, APLC/MSP.17/2018/MISC.2 (3 Dec. 2018), available at <https://undocs.org/APLC/MSP.17/2018/MISC.2> (last accessed: 19 Dec. 2019).

¹⁰⁸ Report of the International Law Commission, Sixty-third session (26 April-3 June and 4 July-12 August 2011), U.N. Doc. A/66/10/Add.1, pp. 95-96 (2011). See also ROBERT KOLB, *THE LAW OF TREATIES: AN INTRODUCTION* 34 (2016) (“... with regard to multilateral treaties ... ratification or accession does not imply a recognition of the other States parties. ... It is also possible to enter an understanding whereby the ratification or accession to that treaty does not imply recognition of a particular State. ... Even without the statement made in the understanding, recognition would not ensue under international law. The statement is thus merely of a political nature. It is made either on account of ignorance of the law or *ex abundante cautela*, or else to show political correctness”); Jean-François Marchi, *Art.15: 1969 Vienna Convention*, in *THE VIENNA CONVENTIONS ON THE LAW OF TREATIES: A COMMENTARY* 308, 320-321 (Olivier Corten and Pierre Klein eds., 2011) (“The principle is well established that the participation of a State in the treaty will not therefore result in the formal recognition of the aforementioned party as a State”); para. 24 above.

¹⁰⁹ See Statement by Canada, Germany, the Netherlands and the United Kingdom of Great Britain and Northern Ireland in explanation of their position concerning the use of the term ‘State of Palestine’, Bureau of the Assembly of States Parties, 7th meeting, Annex II (15 Nov. 2016), available at https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ICC-ASP-2016-Bureau-07-15Nov2016.pdf (last accessed: 19 Dec. 2019): “... Consistent with our reiterated positions in other international fora we hold the view that the designation ‘State of Palestine’ as used in some of these reports shall not be construed as recognition of a State of Palestine and is without prejudice to individual positions of States Parties on this issue”.

¹¹⁰ See also para. 38 above.

¹¹¹ President Mahmoud Abbas’s interview to the Egyptian Channel CBC (3 Oct. 2017), available at <https://www.youtube.com/watch?v=huVJK5FUf0> (translated from Arabic) (last accessed: 19 Dec. 2019).



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Prime Minister Hamdallah (as he then was) similarly stated as recently as in January 2019 that “the very inception of a sovereign Palestinian state” has yet to happen, and that “... the Palestinians have already prepared the institutional and legislative infrastructure that could be put in service as a basis for the future Palestinian State”.¹¹² Numerous other statements have been made to the same effect,¹¹³ with official Palestinian sources frequently referring to “national aspirations for statehood” and to a “future Palestinian state”.¹¹⁴

46. Similarly, in the Application submitted by the Palestinians to the International Court of Justice in September 2018 concerning the relocation of the United States Embassy to Jerusalem it is argued – in complete contradiction to the position expressed by the Palestinians before the ICC – that Jerusalem and certain parts of the West Bank are *corpus separatum* over which neither Israel nor the Palestinians have sovereignty.¹¹⁵ The former Palestinian Minister for Jerusalem Affairs, Mr. Ziad Abuzayyad, has similarly stated in June 2018 that “the status of Jerusalem under the international law is still defined ... as an area of non-sovereignty”.¹¹⁶
47. Such contradictory positions on the most basic aspects of statehood suggest more than legal confusion. They suggest that the Palestinians are attempting to gain the ICC’s recognition of a sovereign status that they themselves acknowledge cannot credibly be claimed, having turned to

¹¹² AL-HAYAT AL-JADIDA (20 Jan. 2019), available at http://www.alhayat-j.com/arch_page.php?nid=331747 (translated from Arabic) (last accessed: 19 Dec. 2019).

¹¹³ See, for example, the recent speech by Saeb Erakat, Secretary-General of the Palestine Liberation Organization Executive Committee, at the J Street National Conference (28 Oct. 2019), video available at <https://www.youtube.com/watch?v=7U6Wmmt9T4&feature=youtu.be> (minutes 11:48-11:50) (last accessed: 19 Dec. 2019) (“... a Palestinian State will be created”); *President Abbas Welcomes Britain’s Prince William to Palestine*, Wafa (27 Jun. 2018), available at <http://english.wafa.ps/page.aspx?id=TXHJYSa98232330636aTXHJYS> (last accessed: 19 Dec. 2019) (“I hope this will not be the last visit ... and that your next visit will be in the state of Palestine when we have our full independence”); President Mahmoud Abbas’s Statement Before the UN Human Rights Council (UNHRC) at the 34th Session held in Geneva (27 Feb. 2017), available at <https://www.nad.ps/en/media-room/speeches/he-president-mahmoud-abbas-statement-un-human-rights-council-unhrc-34th-session> (last accessed: 19 Dec. 2019) (“The creation of the State of Palestine will undermine the driving force of terror and extremism ...”); and President Mahmoud Abbas’s Statement to the UN General Assembly 72nd Session (20 Sep. 2017), available at <https://www.nad.ps/en/media-room/speeches/he-president-mahmoud-abbas-statement-un-general-assembly-72nd-session-2017> (last accessed: 19 Dec. 2019) (“Our choice is the two-State solution on the 1967 borders, and we will grant every chance for the efforts being undertaken by President Donald Trump and the Quartet and international community as a whole to achieve an historic agreement that brings the two-State solution to reality ...”).

¹¹⁴ See various webpages on the website of the Palestinian Liberation Organization – Negotiation Affairs Department: *Security*, available at <https://www.nad.ps/en/our-position/security> (last accessed: 19 Dec. 2019) (referring to a Palestinian interest “in establishing a Palestinian state that will be recognized, that acts as an independent state and is able to exercise its full rights and responsibilities as a sovereign nation”); *Refugees (position)*, available at <https://www.nad.ps/en/our-position/refugees> (last accessed: 19 Dec. 2019) (“The options for our refugees should be: return to Israel, *return/resettlement to a future Palestinian state*, integration in host states, or resettlement in third-party states” (emphasis added)); *Claims resolution*, available at <https://www.nad.ps/en/our-position/claims-resolution> (last accessed: 19 Dec. 2019) (referring to “our future state”).

¹¹⁵ Relocation of the United States Embassy to Jerusalem (Palestine v. United States of America), Application Instituting Proceedings (28 Sep. 2018), available at <https://www.icj-cij.org/files/case-related/176/176-20180928-APP-01-00-EN.pdf> (last accessed: 19 Dec. 2019).

¹¹⁶ “The Legal Status of Jerusalem Under International Law”, address delivered by Mr. Abuzayyad during an international conference entitled “International Conference on Question of Jerusalem: the Question of Jerusalem after 50 years of Occupation and 25 years of the Oslo Accords” (27 Jun. 2018).



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the Court in a calculated attempt to put to it questions that were explicitly agreed to be resolved through bilateral negotiations.

48. All of the above makes it abundantly clear that no Palestinian State has ever been in existence. Any other finding would strain the bounds of credulity and cannot be sustained either in fact or in law. Given that the Court's jurisdiction under Article 12(2) of the Rome Statute requires there to be a sovereign State, the unavoidable conclusion must be drawn that the Court manifestly lacks jurisdiction over the "situation in Palestine". Needless to say, if no sovereign State exists, there is no "territory of" that State within the meaning of Article 12(2) of the Statute over which the Court may exercise territorial jurisdiction; and there is anyhow no sovereign ability to prosecute that may be delegated to the Court either.
49. ***In any case, the scope of the territory concerned is undefined.*** As has already been noted,¹¹⁷ sovereignty over the West Bank and the Gaza Strip is presently in abeyance, with current Israeli-Palestinian agreements explicitly enumerating "borders" among those issues to be settled through bilateral permanent status negotiations.¹¹⁸ With delimitation of the territory yet to be agreed, any exercise of territorial jurisdiction by the Court would not only require it to make a determination wholly unsuitable for an international criminal tribunal,¹¹⁹ but would also contravene the agreements reached between the parties and jeopardize efforts towards reconciliation. This can be neither lawful nor legitimate.
50. Nor can any reliance be made on such terms as "the occupied Palestinian territory", reference to which, even if frequent in international discourse, is made in strictly political terms and without prejudice to the fundamentally legal question of sovereign title. Indeed, such references are habitually accompanied by an explicit call for negotiations between the parties for purposes of reaching an agreement on territorial issues;¹²⁰ and the texts in which they are contained anyway

¹¹⁷ See above paras. 27-32.

¹¹⁸ Declaration of Principles on Interim Self-Government Arrangements, art. V(3) (13 Sep. 1993).

¹¹⁹ Clearly, the ICC is not the appropriate forum to resolve territorial disputes. For the more general principle that an international court ought not to rule on the rights, obligations and legal interests of a State which is not party to the proceedings in question, see *Jurisdictional Immunities of the State* (Germany v. Italy: Greece intervening), Judgment, 2012 I.C.J. Rep. 99, para. 127 (3 Feb. 2012); *Monetary Gold Removed from Rome in 1943* (Italy v. France; United Kingdom and United States of America), Preliminary Question, 1954 I.C.J. Rep. 19, p. 32 (15 Jun. 1954); *East Timor* (Portugal v. Australia), Judgment, 1995 I.C.J. Rep. 90, para. 34 (30 Jun. 1995); *M/V Norstar* (Panama v. Italy), Case No. 25, Preliminary Objections – Judgement of Nov. 4, 2016, para. 172, available at https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.25/Preliminary_Objections/Judgment/C25_Judgment_04_11.16_orig.pdf (last accessed: 19 Dec. 2019); *Larsen v. Hawaiian Kingdom*, para. 11.22 (Perm. Ct. Arb. 2001) available at <https://pcacases.com/web/sendAttach/123> (last accessed: 19 Dec. 2019).

¹²⁰ See, for example, S.C. Res. 2334, *supra* note 86, at preambular para 10. G.A. Res. 67/19 that specifically mentions that the issue of borders remains an outstanding core issue pending a permanent agreement between the parties (*supra* note 35, at operative para. 5). See also, for example, *Letter Dated 7 May 2003 from the Secretary-General addressed to the Security Council*, Annex: A Performance-Based Road Map to a Permanent Two-State Solution to the Israeli-Palestinian Conflict, U.N. Doc. S/2003/529 (30 Apr. 2003), available at <https://undocs.org/S/2003/529> (last accessed: 19 Dec. 2019) (later adopted by S.C. Res. 1515, U.N. Doc. S/RES/1515 (19 Nov. 2003)); S.C. Res. 1850, preambular para. 4, U.N. Doc. S/RES/1850 (16 Dec. 2008); G.A. Res. 68/15, preambular paras. 21, 25, and operative para. 2, U.N. Doc. A/RES/68/15 (26 Nov. 2013). Israel has consistently made it clear that the term "occupied Palestinian territory" is without legal significance and cannot predetermine the outcome of a territorial dispute that the parties have agreed to



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lack any binding character. They cannot therefore be relied on for purposes of legal determinations such as territorial delimitation or allocation of sovereignty.

51. The International Court of Justice, too, employed the term “Occupied Palestinian Territories” in its *Wall* advisory opinion as it was included in the question put to the Court by the General Assembly, and without making any legal determination as to sovereignty over the territory concerned. Indeed, in briefly analyzing the status of the territory, the Court noted that the 1949 armistice demarcation lines between Israeli and Arab forces were explicitly agreed to be “without prejudice to future territorial settlements or boundary lines or to claims of either Party relating thereto” as well as to “an ultimate political settlement between the Parties”.¹²¹ It then observed that the boundary fixed in 1994 by the peace treaty between Israel and Jordan was “without prejudice to the status of any territories that came under Israeli military government control in 1967”¹²² (as has also been agreed in the 1979 peace treaty between Israel and Egypt¹²³). By focusing next on the international law applicable to territories situated between the Green Line and the former eastern boundary of Mandatory Palestine, the Court was able to refrain from making any determination as to sovereignty over them:¹²⁴ Judge Higgins made it clear that “[t]he Court, wisely and correctly, avoid[ed] what we may term ‘permanent status’ issues”.¹²⁵ Instead, the Court drew attention to the need for achieving “a negotiated solution to the outstanding problems and the establishment of a Palestinian State”.¹²⁶
52. Again, it should not go unnoticed that the Palestinians themselves have recently conceded that the term “occupied Palestinian territory” cannot legally be taken to refer to “Palestinian” territory, by submitting before the International Court of Justice that Jerusalem and significant parts of the West Bank rather have the status of *corpus separatum* under international law.¹²⁷
53. It may also be recalled that the OTP has clarified that any territory over which the Court may exercise territorial jurisdiction must be a geographic area “under the sovereign power of a State – i.e, the areas over which a State exercises exclusive and complete authority”.¹²⁸ In these circumstances, for the Court to arrogate to itself the right to make a finding of territory when the

resolve by negotiation: see, for example, U.N. GAOR 56th Sess., 87th plen. mtg., U.N. Doc A/56/PV.87 (14 Dec. 2001) (Israel’s representative emphasizing “... once again that our having joined the consensus on draft resolution A/56/L.59 should not be interpreted as implicit evidence of any position with respect to the present or future status of occupied Palestinian areas. We stress that a final decision on those areas will be reached through direct bilateral negotiations between the parties”).

¹²¹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, para. 72 (29 Jan. 2004).

¹²² *Ibid.*, at para. 76.

¹²³ Peace Treaty between Israel and Egypt, *supra* note 66, art. II.

¹²⁴ *Supra* note 121, at para. 101.

¹²⁵ *Ibid.*, Separate opinion of Judge Higgins, at p. 211, para. 17.

¹²⁶ *Ibid.*, at p. 201, para. 162. Judge Owada referred in his Separate Opinion to “Palestine” as “an entity which is not recognized as a State for the purpose of the Statute of the Court”: *ibid.*, at p. 267, para. 19.

¹²⁷ Application Instituting Proceedings, *supra* note 115.

¹²⁸ See para. 35 above.



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parties themselves have not yet agreed on the matter, and have not consented to the Court playing that role, is legally untenable.

54. Under these conditions, it is clear that the existence and scope of a territory for purposes of Article 12(2) of the Rome Statute cannot be established, and thus a precondition to the exercise of the Court's jurisdiction once again cannot be met.

E. EVEN IF THE ROME STATUTE IS MISINTERPRETED TO ALLOW FOR NON-SOVEREIGN ENTITIES TO CONFER JURISDICTION UPON THE COURT, THE PALESTINIANS DO NOT HAVE JURISDICTION OVER AREA C AND JERUSALEM AS WELL AS OVER ISRAELI NATIONALS, AND THUS CANNOT VALIDLY DELEGATE IT TO THE COURT

55. As has been demonstrated, the exercise of jurisdiction by the ICC requires that there be a sovereign State that has delegated to the Court its criminal jurisdiction on the basis of territoriality and nationality, a precondition that is clearly not met in the present case. To this it may now be added that even if the Rome Statue were to be misinterpreted so as to allow for non-sovereign entities to confer jurisdiction upon the Court, the latter would still be constitutionally constrained by the limits of delegation and unable to exercise jurisdiction where the delegating entity has no jurisdiction to the extent required. Thus, in the present case, the Court would have to satisfy itself that the Palestinian entity has jurisdiction corresponding to the "situation in Palestine". As is readily clear, however, it does not.
56. The Israeli-Palestinian Interim Agreement of 1995 explicitly stipulates that the Palestinians have no criminal jurisdiction over Israeli nationals. In the part entitled 'Jurisdiction', which defines in specific terms the limited scope of jurisdiction to be held by the Palestinian Authority, the Agreement provides that "The territorial and functional jurisdiction of the [Palestinian Authority] will apply to all persons, *except for Israelis*, unless otherwise provided in this Agreement".¹²⁹
57. The Protocol Concerning Legal Affairs appended to the Interim Agreement further lays down that:

"The criminal jurisdiction of the [Palestinian Authority] covers all offenses committed by Palestinians and/or non-Israelis in the Territory, subject to the provisions of this Article. For the purposes of this Annex, 'Territory' means West Bank territory except for Area C ..., and Gaza Strip territory except for the Settlements and the Military Installation Area".¹³⁰

¹²⁹ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, *supra* note 66, art. XVII(2)(c) (emphasis added). The exception refers to some civil matters as specified in Appendix 4, art. 3(2).

¹³⁰ *Ibid.*, at Annex IV, art. I(1)(a). The Interim Agreement makes it explicitly clear (in art. XVII) that any jurisdiction of the Palestinian Authority within the West Bank and the Gaza Strip does not extend to Jerusalem. It may also be recalled that the Palestinian Authority has not been exercising any jurisdictional powers over the Gaza Strip since Hamas violently took over the territory in 2007: see also *supra* note 87.



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58. As noted above, this and other agreements, which define comprehensively those powers transferred to and vested in the Palestinian Authority, continue to govern the relationship between Israel and the Palestinians to date.¹³¹ Any jurisdiction currently held by the Palestinians derives from these bilateral agreements, under which Israel continues to hold all powers not explicitly transferred to the Palestinians.¹³²
59. To be clear, the Palestinians did not have any jurisdiction – prescriptive, adjudicative or enforcement – prior to entering into the bilateral agreements with Israel. Jurisdiction over Israeli nationals, Area C and Jerusalem is thus not something the Palestinian entity previously possessed and then subsequently agreed to limit the exercise thereof: it never had it to begin with, and certainly does not have it now, either in law or in fact. Even an expansive approach to delegation that emphasizes the possession of prescriptive jurisdiction where the exercise of adjudicative and enforcement jurisdiction is curtailed,¹³³ would thus still run up against the criminal jurisdictional capacity held by the Palestinian entity.
60. As the Palestinian entity has no criminal jurisdiction over either Israeli nationals or over Area C and Jerusalem, it is therefore legally impossible for it to delegate any such jurisdiction to the Court: *nemo plus iuris transferre potest quam ipse habet* (no one can transfer a greater right than he himself has). Again, the fundamental precondition to the Court’s jurisdiction cannot be met.

CONCLUSION

61. For the reasons specified above, the ICC manifestly lacks jurisdiction over the “situation in Palestine”. As has been demonstrated, the necessary precondition to the Court’s jurisdiction under Article 12(2) of the Rome Statute, which requires there to be a sovereign State that has delegated to the Court criminal jurisdiction over its territory and nationals, cannot be met by virtue of the simple fact that no sovereign Palestinian State is in existence. The events surrounding the purely technical act of the purported accession of “Palestine” to the Rome Statute, or the Palestinian purported Article 12(3) declaration, neither alter this conclusion nor substitute for the substantive inquiry required for the establishment of the Court’s jurisdiction. Moreover, even if a conclusion is erroneously reached that a sovereign Palestinian State exists, the scope of the territory concerned is indeterminate and is clearly not for an international criminal court to define; and if the Rome Statute is misinterpreted to allow for non-sovereign entities to confer jurisdiction upon the Court, the latter would still lack jurisdiction over Area C and Jerusalem as well as Israeli nationals.

¹³¹ See para. 36 above.

¹³² Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, *supra* note 66, art. XVII (4) (providing that “(a) Israel, through its military government, has the authority over areas that are not under the territorial jurisdiction of the Council, powers and responsibilities *not transferred to the Council* and Israelis” (emphasis added)).

¹³³ See Office of the Prosecutor, Situation in the Islamic Republic of Afghanistan - Public redacted version of “Request for authorisation of an investigation pursuant to article 15”, ICC-02/17, p. 27, fn. 47 (20 Nov. 2017).



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62. Ultimately, any conclusion that the requirements of Article 12(2) are met in the case of the “situation in Palestine” would indeed require not one, but a series of highly dubious and untenable legal determinations. It would run counter not only to the jurisdictional regime carefully prescribed by the Rome Statute, but also to international law more broadly, both of which serve to ensure that the Court’s competence is not abused or exercised on the basis of arbitrariness or political prejudice. The OTP and the other organs of the Court have repeatedly made it clear that the legitimacy and future of the ICC depend on its commitment to legal impartiality and judicial independence. If these are to be more than mere words, then they must actually guide, and be seen to guide, the decisions of the OTP and the Court itself. If they are more than mere words, then the conclusion regarding the lack of jurisdiction in the present case is not controversial, it is unavoidable.
63. Even if a sound legal analysis unavoidably leading to the conclusion that jurisdiction is lacking may be unpopular with some at a time when the Israeli-Palestinian conflict still awaits its resolution, nothing could be more harmful to the credibility and legitimacy of a court of law than compromising its judicial character and appearing to over-reach. This would especially be the case where consent to jurisdiction has not been given (such as where the conduct of a State not Party to the Rome Statute is concerned), and where matters that are inherently ill-suited to international criminal adjudication are perversely brought before the Court. It is again worth recalling that the ICC Prosecutor herself, in the face of “arguments of some legal scholars that fundamental jurisdictional rules can be made subject to a liberal and selective interpretation”, has unequivocally confirmed in 2014 that where clear jurisdictional parameters are not met, the exercise of jurisdiction “is neither good law nor makes for responsible judicial action.”¹³⁴ That remains ever as true today.

¹³⁴ *Statement of the Prosecutor of the International Criminal Court, supra* note 4.

Annex 13

*Joint Communique from the March 19 meeting in Sharm El Sheikh, 19
March 2023*



U.S. Embassy in Israel

Joint Communiqué from the March 19 meeting in Sharm El Sheikh

MEDIA NOTE

OFFICE OF THE SPOKESPERSON

MARCH 19, 2023

The following text reflects the Joint Communiqué following today's meeting in Sharm El Sheikh Egypt:

At the invitation of the Arab Republic of Egypt, Jordanian, Israeli, Palestinian and U.S. political and security senior officials met in Sharm El Sheikh, Egypt today, 19 March 2023, in furtherance of the understanding reached in Aqaba, Jordan on 26 February 2023.

The five Parties held thorough discussions on ways and means to de-escalate tensions on the ground between Palestinians and Israelis, in order to pave a way forward towards the peaceful settlement between the Israelis and the Palestinians.

Towards achieving this purpose, and beginning implementation, the Parties have agreed to the following:

- 1 – The Parties reaffirmed their commitment to advancing security, stability and peace for Israelis and Palestinians alike, and recognized the necessity of de-escalation on the ground, the prevention of further violence, as well as of pursuing confidence building measures, enhancing mutual trust, creating political horizon, and addressing outstanding issues through direct dialogue.
- 2 – The Government of Israel and the Palestinian National Authority reaffirmed their joint readiness and commitment to immediately work to end unilateral measures for a period of 3-6 months. This includes an Israeli commitment to stop discussion of any new settlement units for 4 months, and to stop authorization of any outposts for 6 months.
- 3 – The two sides reaffirmed, in this regard, their unwavering commitment to all previous agreements between them, in particular, the legal right of the Palestinian National Authority to carry out the security responsibilities in Area (A) of the West Bank, in accordance with existing agreements, and will work together towards realizing this objective.

4 – The two sides agreed to develop a mechanism to curb and counter violence, incitement, and inflammatory statements and actions, which will report to the quintet leadership in April, in a resumed session of the meeting in Sharm El Sheikh.

5 – The two sides reaffirmed their commitment to all previous agreements between them, and reaffirmed their agreement to address all outstanding issues through direct dialogue.

6 – The Parties agreed to establish a mechanism to take the necessary steps towards improving the economic conditions of the Palestinian people, per previous agreements, and to significantly enhance the fiscal situation of the Palestinian National Authority, which will report to the quintet leadership in April, in a resumed session of the meeting in Sharm El Sheikh.

7 – They also reiterated the commitment of upholding unchanged the historic status quo at the Holy Sites in Jerusalem, both in word and in practice, and reaffirmed in this context the importance of the Hashemite Custodianship/special role of the Hashemite Kingdom of Jordan. They emphasized the necessity of both Israelis and Palestinians to actively prevent any actions that would disrupt the sanctity of these sites, inter alia during the upcoming Holy Month of Ramadan, which coincides with Easter and Passover this year.

8 – The Parties reaffirmed the importance of maintaining the meetings under this format, and are looking forward to cooperating with a view to consolidating the basis for direct negotiations between the Palestinians and the Israelis, towards achieving comprehensive, just and lasting peace, and promote cooperation and coexistence between all people of the Middle East. They will convene again in Egypt.

9 – The Parties expressed their appreciation to the Arab Republic of Egypt for organizing and hosting this meeting, as well as their efforts to ensure that it produces positive results, and for its primary role aiming to achieve a peaceful settlement of the Palestinian question and maintain calm and stability in the region. They also thanked the Hashemite Kingdom of Jordan and the United States of America for their crucial and significant role in reaching understandings with a view to preventing escalation and creating a horizon for peace.

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Annex 14

Aqaba Joint Communique, 26 February 2023

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Aqaba Joint Communique

MEDIA NOTE

OFFICE OF THE SPOKESPERSON

FEBRUARY 26, 2023

The following text reflects the Joint Communique following today's meeting in Aqaba, Jordan:

At the invitation of the Hashemite Kingdom of Jordan, Jordanian, Egyptian, Israeli, Palestinian and U.S. Senior Officials met in Aqaba, Jordan today, 26 February 2023.

Following comprehensive and frank discussions, the participants announced the following:

1. The two sides (Palestinian and Israeli sides) affirmed their commitment to all previous agreements between them, and to work towards a just and lasting peace. They reaffirmed the necessity of committing to de-escalation on the ground and to prevent further violence.
2. The five parties recognize the importance of upholding unchanged the historic status quo at the holy sites in Jerusalem in word and practice, and emphasizes in this regard the Hashemite Custodianship / special role of Jordan.
3. The Government of Israel and the Palestinian National Authority confirmed their joint readiness and commitment to immediately work to end unilateral measures for a period of 3-6 months. This includes an Israeli commitment to stop discussion of any new settlement units for 4 months and to stop authorization of any outposts for 6 months.
4. The five parties agreed to convene again in Sharm El Sheikh in March to achieve the goals listed above.

5. The participants also agreed to pursue confidence-building measures and strengthen mutual trust in order to address outstanding issues through direct dialogue. The two parties will work in good faith to assume responsibilities and to enhance mutual trust through this arrangement.

6. Jordan, Egypt and the United States consider these understandings as major progress towards re-establishing and deepening relations between the two sides, and commit to assisting and facilitating as appropriate their implementation.

7. The participants stressed the importance of the Aqaba meeting, the first of its kind in years. They agreed to continue meeting under this formula, maintain positive momentum and expand this agreement towards wider political process leading to a just and lasting peace.

8. The participants thanked Jordan for organizing and hosting this meeting and for its efforts to ensure it produced positive results. They also thanked Egypt for its support and essential role and active participation.

They also thanked the United States for its important role in efforts to reach understandings that led to this agreement today, emphasizing its indispensable role in efforts to prevent deterioration and find horizons for peace.

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