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Beyond a Seat in the United Nations: Palestine's U.N. Membership and International Law

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I. INTRODUCTION

Looking from the speaker's podium, Palestine's seat in the United Nations (U.N.) General Assembly Hall is at the very left corner in the last row for delegations. The wooden desk and ocher-blue chairs are like any other of the interior from the 1950s, including the grey plastic headphones. Only one element is missing: the green, red, and yellow voting buttons, which are replaced with a silver metal plate. Other permanent observers, such as international and non-governmental organizations, are seated in the dark, close to the exit sign. Palestine sits alongside the Holy See and the Vatican, in the same line as Turkey in this sixty-sixth General Assembly session. Although Palestine has a place in the world organization, which was founded "to

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practice tolerance and live together in peace with one another as good neighbours,” it is still not a full member of the United Nations.¹

On September 23, 2011, Palestine’s President Mahmoud Abbas went up to the podium in the morning session during the third day of the General Assembly’s General Debate.² He announced:

I would like to inform you that, before delivering this statement, I, in my capacity as President of the State of Palestine and Chairman of the Executive Committee of the Palestine Liberation Organization, submitted to H.E. Mr. Ban Ki-moon, Secretary-General of the United Nations, an application for the admission of Palestine on the basis of the 4 June 1967 borders, with Al-Quds Al-Sharif as its capital, as a full member of the United Nations.³

Shortly after, Israel’s Prime Minister, Benjamin Netanyahu, stepped in front of the microphone to address the Assembly, and answered: “President Abbas just said on this podium that the Palestinians are armed only with their hopes and dreams The Palestinians should first make peace with Israel and then get their state.”⁴

¹ U.N. Charter pmb1.

² President Mahmoud Abbas’s remarks were given right after the President of Armenia, Serzh Sargsyan, and before the Prime Minister of Japan, Yoshihiko Noda, gave their opening remarks. South Sudan, the newest U.N. member, had just spoken. *General Debate: 66th Session, GENERAL ASSEMBLY OF THE UNITED NATIONS* (Sept. 23, 2011), <http://gadebate.un.org/homepage/2011-09-23>.

³ H.E. Mr. Mahmoud Abbas, President of the State of Palestine, Chairman of the Executive Committee of the Palestine Liberation Organization, President of the Palestinian National Authority, Statement Before the United Nations General Assembly Sixty-Sixth Session General Debate (Sept. 23, 2011), *available at* <http://gadebate.un.org/66/palestine>; *see also* Application of the State of Palestine for Admission to Membership of the United Nations, U.N. Doc. A/66/371–S/2011/592 (Sept. 23, 2011).

⁴ H.E. Mr. Benjamin Netanyahu, Prime Minister of the State of Israel, Statement Before the United Nations General Assembly Sixty-Sixth Session General Debate (Sept. 23, 2011), *available at* http://gadebate.un.org/sites/default/files/gastatements/66/IL_en.pdf [hereinafter Statement by Netanyahu]. He continued:

President Abbas just said on this podium that the Palestinians are armed only with their hopes and dreams. Yeah, hopes, dreams and 10,000 missiles and Grad rockets supplied by Iran, not to mention the river of lethal weapons now flowing into Gaza from the Sinai, from Libya, and from elsewhere. . . . The Palestinians

On October 2011, Palestine was admitted as a member state to the United Nations Educational Scientific and Cultural Organization (UNESCO).⁵ Subsequently, the United States canceled its UNESCO funding, citing restrictions in U.S. laws which prohibit funding to U.N. organizations granting membership to states not internationally recognized and, in particular, forbidding funding of U.N. agencies that admitted the Palestine Liberation Organization (PLO) as a full member.⁶ The withheld payment, of about 80 million U.S. dollars, accounts for almost a fifth of the organization's annual budget.⁷ In January 2012, Israel and Palestine reinitiated direct talks in Jordan, the outcome of which is still unforeseeable.⁸

Despite the political and diplomatic difficulties, and although its reading is ambiguous, international law proposes a distinct framework for understanding the requirements of U.N. membership. This paper explores the poles of the legal debate concerning the Palestinian admission process.⁹ Part II scrutinizes the consequences of a Palestinian U.N. membership as well as the impact of the recent UNESCO vote and the recent

should first make peace with Israel and then get their state. But I also want to tell you this. After such a peace agreement is signed, Israel will not be the last country to welcome a Palestinian state as a new member of the United Nations. We will be the first.

⁵ 107 states voted for and 14 against the admission of Palestine. The other member states abstained or were absent. See Press Release, UNESCO, General Conference Admits Palestine as UNESCO Member State, UNESCO Press (Oct. 31, 2011), available at http://www.unesco.org/new/en/media-services/single-view/news/general_conference_admits_palestine_as_unesco_member_state/.

⁶ See Press Statement, U.S. Dep't of State, Palestinian Admission to UNESCO (Oct. 31, 2011), available at <http://www.state.gov/r/pa/prs/ps/2011/10/176418.htm> (proclaiming that the vote to admit Palestine as a member is "regrettable, premature, and undermines our shared goal of a comprehensive, just, and last peace in the Middle East" and arguing that Palestinian state membership in UNESCO will "compel the United States to refrain from making contributions to UNESCO"); see also Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, Pub. L. No. 101-246, § 414, 104 Stat. 15, 70-71 (1990); Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. No. 103-236, § 410, 108 Stat. 382, 454 (1994).

⁷ Steven Erlanger, *Cutting off UNESCO, U.S. May Endanger Programs in Iraq and Afghanistan*, N.Y. TIMES, Nov. 16, 2011, at A12.

⁸ *Jordan Praises Israeli-Palestinian Talks*, ALJAZEERA, Jan. 3, 2012, <http://www.aljazeera.com/news/middleeast/2012/01/20121365348655749.html>; see also Herb Keinon, *Abdullah: Israeli-Palestinian Talks Not Over*, THE JERUSALEM POST, Feb. 21, 2012, <http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=258802>.

⁹ On the Middle East peace process, see generally Chibli Mallat, *Drafting a Joint Proposal for a U.N. Security Council Resolution on Israel-Palestine with Alan Dershowitz*, 53 HARV. INT'L L.J. ONLINE 74 (2012), http://www.harvardilj.org/wp-content/uploads/2012/01/HILJ-Online_53_Mallat.pdf.

decision of the Prosecutor's Office of the International Criminal Court (ICC) on Palestine. Part III gives an insight into the latest developments in the Security Council and the U.N. Committee on Admission of New Members, which was tasked to assess Palestine's U.N. membership application. Focusing on the history of prior admissions, this part particularly examines the coherency of previous practices in the United Nations. Part IV comments on possible scenarios and options, such as the mistaken proposal of activating *Uniting for Peace* for the Palestinian cause and other more promising possibilities.

The paper argues that whether or not Palestine fulfills the prerequisite criteria to be admitted as a U.N. member state depends also on the legal perspective.¹⁰ In order to maintain the integrity and credibility of the United Nations, it is crucial that the procedures for the admission of Palestine are coherent with the subsequent practice of the organization. For the Palestinian side, it is critical to consider which alternative scenarios are covered by international law. At the same time, the Israeli side needs to be aware of the legal limitations if it aims to prevent membership that might contradict its security interests. Even if Palestine is not admitted as a U.N. member, the refusal does not harm its potential, or existing, statehood. As observed in other cases where states have not been initially admitted as U.N. members, such as Austria, Italy, Finland, and Portugal, this conduct did not undermine the status as a state under international law.¹¹

II. II. PALESTINE'S STATUS IN THE UNITED NATIONS AND CONSEQUENCES OF U. N. MEMBERSHIP

At the moment, Palestine is a permanent observer at the United Nations, which already includes most U.N. membership rights.¹² In 1988, the General Assembly granted the PLO the right to issue and circulate its communications as official U.N.

¹⁰ See Tai-Heng Cheng's impressive analysis of international law, which presents a new framework to guide decision makers and compellingly explains options for bridging competing policies and interests. TAI-HENG CHENG, *WHEN INTERNATIONAL LAW WORKS: REALISTIC IDEALISM AFTER 9/11 AND THE GLOBAL RECESSION* 8 (2012).

¹¹ Austria, Italy, Finland, and Portugal joined the U.N. in 1955. Japan was admitted in 1956. Both parts of Germany entered the U.N. in 1973. See Press Release, United Nations, United Nations Member States (July 3, 2006), available at <https://www.un.org/News/Press/docs/2006/org1469.doc.htm> [hereinafter Member States]. For a full overview see *id.*, Annex Tbl.1.

¹² Observer status was initially granted by the General Assembly to the PLO in 1974. See G.A. Res. 3237, U.N. GAOR, 29th Sess., U.N. Doc. A/RES/29/3237 (Nov. 22, 1974). The same permanent observer rights were, for instance, also granted to the South West Africa People's Organization (SWAPO) as a liberation movement. See G.A. Res. 31/152, U.N. GAOR 31st Sess., U.N. Doc. A/RES/31/152 (Dec. 20, 1976).

documents without an intermediary,¹³ and changed the designation from PLO to “Palestine,” following the proclamation of Palestinian statehood by the Palestine National Council.¹⁴ In 1998, the General Assembly permitted Palestine the right to participate in its General Debate, as well as granted additional rights.¹⁵ To symbolically emphasize the special situation of Palestine, the Palestinian delegation is seated in the General Assembly between non-member states and before other observers.¹⁶ To date, Palestine is in limbo in the world organization.

A. Consequences of U.N. Membership

U.N. membership would allow Palestine to fully participate in the United Nations. As a U.N. member, Palestine would be *ipso facto* party to the International Court of Justice (ICJ) Statute and could independently appeal to the court for the peaceful settlement of disputes with other states without having to make requests to the General Assembly.¹⁷ Accordingly, Palestine would need to contribute to the expenses of the United Nations and could be even elected as a non-permanent member of the

¹³ See G.A. Res. 43/160, U.N. GAOR, 43d Sess., U.N. Doc. A/RES/43/160 (Dec. 9, 1988).

¹⁴ See G.A. Res. 43/177, U.N. GAOR, 43d Sess., U.N. Doc. A/RES/43/177 (Dec. 15, 1988).

¹⁵ These rights would include “the right of inscription on the list of speakers under agenda items other than Palestinian and Middle East issues at any plenary meeting of the General Assembly, after the last Member State inscribed on the list of that meeting” (¶ 2), “the right of reply” (¶ 3), “the right to raise points of order related to the proceedings on Palestinian and Middle East issues, provided that the right to raise such a point of order shall not include the right to challenge the decision of the presiding officer” (¶ 4), “the right to co-sponsor draft resolutions and decisions on Palestinian and Middle East issues” (¶ 5), and “the right to make interventions, with a precursory explanation or the recall of relevant General Assembly resolutions being made only once by the President of the General Assembly at the start of each session of the Assembly” (¶ 6). See G.A. Res. 52/250, Annex, U.N. GAOR 52d Sess., U.N. Doc. A/RES/52/250 (July 13, 1998).

¹⁶ See *id.* ¶ 7. The only non-member State at the moment is the Holy See, which also gained all rights of full U.N. membership except voting and putting forward candidates. See G.A. Res. 58/314, U.N. GAOR 58th Sess., U.N. Doc. A/RES/58/314 (July 1, 2004). Besides Palestine, other non-state observers are international organizations and other entities (e.g., the African Union, the European Union, the Council of Europe, the Inter-Parliamentary Union, the International Criminal Court, the International Tribunal for the Law of the Sea, the International Committee of the Red Cross, but also the University for Peace and the Islamic Development Bank Group). *Permanent Observers*, UNITED NATIONS, <http://www.un.org/en/members/intergovorg.shtml> (last visited Apr. 15, 2012).

¹⁷ *Id.* art 93(1) (stating, “[a]ll Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice”). Art. 93(2) states: “A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.” *Id.* art. 93(2).

Security Council.¹⁸ Palestine could also actually vote on resolutions of the General Assembly, instead of being only subject to them.¹⁹

Most importantly for Israel, Palestine would be collectively obliged as a state entity and member under the U.N. Charter to refrain from the threat or use of force against Israel's territorial integrity and political independence.²⁰ Moreover, if Palestine is admitted as a U.N. member, the U.N. Charter further safeguards a two-state solution as "the Organization is based on the principle of the sovereign equality of all its Members."²¹ Legally, Palestine would also act in contravention of the U.N. Charter if it supported any state against whom the Security Council imposed sanctions, which would additionally serve the security interests of Israel.²² Although Palestine could refer to the right of individual self-defense and would fall into the security system under the United Nations as a member, Israel's position for self-defense would also be strengthened.²³

¹⁸ See *id.* arts. 17(2), 23(2).

¹⁹ See *id.* art. 18(1).

²⁰ *Id.* art. 2(4) (stating, "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations").

²¹ *Id.* art. 2(1). In addition, the Prime Minister of Israel, Benjamin Netanyahu has stated:

President Abbas, stop walking around this issue. Recognize the Jewish state, and make peace with us. In such a genuine peace, Israel is prepared to make painful compromises. We believe that the Palestinians should be neither the citizens of Israel nor its subjects. They should live in a free state of their own. But they should be ready, like us, for compromise. And we will know that they're ready for compromise and for peace when they start taking Israel's security requirements seriously and when they stop denying our historical connection to our ancient homeland.

Statement by Netanyahu, *supra* note 4.

²² "All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action." U.N. Charter art. 2(5). "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures." *Id.* art. 41(1).

²³ For the right of self-defense, see *id.* art. 51. In 2004, the ICJ concluded that article 51 of the Charter had no relevance, as the right of self-defense only comprises an armed attack by

A U.N. membership would not necessarily lead to bilateral diplomatic relations and worldwide recognition of Palestine, as there is neither an international right nor a legal duty to accept a self-proclaimed state.²⁴ Admitted states are not necessarily recognized by all other U.N. member states.²⁵ Although the concept of “universal recognition” has been debated in the context of U.N. memberships, there is no general principle or custom of international law for international organizations

one State against another State, “but Israel did not claim that the attacks against it are imputable to a foreign State.” Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, 139 (July 9).

²⁴ See HERSCH LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW 442 (1947).

²⁵ Israel, for instance, is not recognized as a State by most Arab countries. As the U.S. Congress noted in 2008, the following countries still do not recognize Israel: Afghanistan, Algeria, Bahrain, Bangladesh, Bhutan, Brunei, Chad, Comoros, Cuba, Djibouti, Guinea, Indonesia, Iran, Iraq, Kuwait, Lebanon, Libya, Malaysia, Maldives, Mali, Morocco, Niger, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. See H.R. 1249, 110th Cong. (2008). Though a U.N. member, the Republic of Cyprus is not recognized by Turkey. See, e.g., Republic of Turkey, Ministry of Foreign Affairs, Declaration by Turkey on Cyprus ¶ 4 (July 29, 2005), available at http://www.mfa.gov.tr/declaration-by-turkey-on-cyprus_-29-july-2005.en.mfa. On the other side, both parts of Germany entered the United Nations in 1973 only after they agreed in 1972 on their mutual recognition. See S.C. Res. 335, U.N. SCOR, 28th Sess., 1730th mtg., U.N. Doc. S/INF/29 (June 22, 1973). In the case of Korea, South Korea officially declared that it was not opposing a U.N. membership of North Korea, despite diplomatic difficulties and the aim for a unified Korea. Korean Ambassador Sang Yong Park wrote:

The Republic of Korea believes that the admission of the Republic of Korea and the Democratic People's Republic of Korea to the United Nations, as a *modus vivendi* pending unification, would help to increase opportunities for contacts and co-operation between the two Koreas and create an environment conducive to the sustained inter-Korean dialogue for the peaceful resolution of the Korean question.

Letter Dated 5 September 1989 from the Permanent Observer of the Republic of Korea to the United Nations Addressed to the President of the Security Council, U.N. Doc. S/20830 (Sept. 5, 1989).

enforcing this notion.²⁶ The recognition of a state is a unilateral act by another state, which cannot be replaced by a majority vote of third-party states.²⁷

B. *Impact on ICC Proceedings*

A worry related to Palestinian U.N. membership is the potential of future proceedings against Israel at the International Criminal Court (ICC). The Rome Statute declares that only “states” can be parties for accession.²⁸ Under Article 12(3) of the Rome Statute, “states” that are not party to the Statute can also accept the jurisdiction of the court.²⁹ In January 2009, the Palestinian National Authority declared acceptance of the court’s authority.³⁰ U.N. membership would affirm that Palestine is a state and thus give Palestine the opportunity to sign the Rome Statute or to permit the *ad hoc* applicability of Article 12(3). The ICC could investigate alleged crimes, but it does not generally have jurisdiction over nationals of non-parties.³¹ Israel signed the Rome Statute in 2000 but declared in 2002 that it “has no legal obligations arising from its signature.”³² Although several scholars have argued that the ICC could exercise the “universal jurisdiction” of its member states for certain grave crimes, which could be

²⁶ See, e.g., DAVID RAIČ, STATEHOOD AND THE LAW OF SELF-DETERMINATION 47 (2002). As Raič notes: “There is no such thing as ‘collective recognition’ if this term is used to describe (near) universal recognition Under contemporary international law such an obligation does not exist.” *Id.*

²⁷ Otherwise the sovereignty of a State would be harmed, which is expressed in Article 34 of the Vienna Convention on the Law of Treaties, stating that a treaty cannot create obligations for third parties: “A treaty does not create either obligations or rights for a third State without its consent.” Vienna Convention on the Law of Treaties art. 34, Jan. 27, 1980, 1155 U.N.T.S. 331.

²⁸ Rome Statute of the International Criminal Court art. 125(3), July 17, 1998, U.N. Doc.

A/CONF.183/9, 2187 U.N.T.S. 90 [hereinafter Rome Statute] (noting “This Statute shall be open to accession by all States.”).

²⁹ “If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question.” *Id.* art. 12(3).

³⁰ Declaration Recognizing the Jurisdiction of the International Court from the Palestinian National Authority, Ministry of Justice, Office of Minister (Jan. 21, 2009), <http://www.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4-C8071087102C/279777/20090122PalestinianDeclaration2.pdf>.

³¹ The International Criminal Court Statute stipulates that: “A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court.” Rome Statute, *supra* note 28, art. 12(1).

³² Israel, *Communication Regarding the Rome Statute of the International Criminal Court*, UNITED NATIONS TREATY COLLECTION DATABASES (Aug. 28, 2002), available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en#3 (noting a communication from the Government of Israel, which states that “Israel does not intend to become a party” to the ICC).

collectively enforced by them, state practice has yet to prove whether this theory works in reality and whether it may become a custom in international law.³³

Evaluating whether the Palestinian declaration of accepting ICC jurisdiction meets the statutory requirements concerning statehood, the Office of the Prosecutor (OTP) had to reach its own conclusion on the question of whether Palestine is already a State, regardless of Palestine's U.N. membership application process. One possibility was that the OTP rule on the applicability in light of the Statute's object and purpose, adopting a perhaps broader reading of the term "state" in the context of the ICC Statute.³⁴ Another suggested reading was that entities, which do not qualify as states in the ordinary meaning under public international law, are not eligible.³⁵

In April 2012, the OTP issued its decision regarding the preliminary examination of the "Situation in Palestine," dismissing the Palestinian submission.³⁶ The OTP clarified that "[t]he Court is not based on the principle of universal jurisdiction," as it requires the United Nations Security Council or a "State" to provide jurisdiction.³⁷ Technically, the OTP passed the question of statehood on to "the relevant bodies at the United Nations or the Assembly of States Parties to make the legal determination whether Palestine qualifies as a State."³⁸ The OTP argued that "[t]he Rome Statute provides no authority for the Office of the Prosecutor to adopt a method to define the term 'State.'"³⁹ Moreover, the OTP stated that, though the U.N. admission process has "no direct link with the declaration lodged by Palestine" at the ICC, the internal proceeding within the United Nations "informs the current legal status of Palestine."⁴⁰ Logically, the U.N. admission process is not bound to the OTP decision,

³³ For a summary of the legal dispute, see JENNIFER K. ELSEA, CONG. RESEARCH SERV., RL31495, U.S. POLICY REGARDING THE INT'L CRIMINAL COURT 6 (2006).

³⁴ INT'L CRIMINAL COURT, OFFICE OF THE PROSECUTOR, SITUATION IN PALESTINE: SUMMARY OF SUBMISSION ON WHETHER THE DECLARATION LODGED BY THE PALESTINIAN NATIONAL AUTHORITY MEETS STATUTORY REQUIREMENTS ¶ 3 (2010), *available at* <http://www.icc-cpi.int/NR/rdonlyres/D3C77FA6-9DEE-45B1-ACC0-B41706BB41E5/282852/PALESTINEFINAL201010272.pdf>.

³⁵ *Id.* ¶ 4.

³⁶ *See* INT'L CRIMINAL COURT, OFFICE OF THE PROSECUTOR, SITUATION IN PALESTINE (2012), *available at* <http://www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf> [hereinafter ICC OTP Decision].

³⁷ *See id.* ¶ 4.

³⁸ *See id.* ¶ 6.

³⁹ *See id.*

⁴⁰ *See id.* ¶ 7.

as the assessment of Palestine's statehood has been only for the purpose of Article 12 of the Rome Statute.⁴¹

Most significant is the comment of the OTP that "it is the practice of the Secretary General to follow or seek the General Assembly's directives on the matter."⁴² In other words, if the General Assembly releases a resolution affirming Palestine's statehood, the OTP would need to reconsider its decision.⁴³ This makes the threat of a veto by one of the permanent members less decisive for the ICC admission proceeding. In its conclusion the OTP also euphemistically highlighted that the Security Council could refer the Palestinian submission to the ICC providing jurisdiction.⁴⁴ Such a step could affirm but also rule out alleged international crimes under the Rome Statute during the 2008-2009 Gaza incidents. However, an affirmative decision of the Security Council in this matter is most unlikely.⁴⁵ In any case, the possibility of future ICC investigations is not precluded.⁴⁶

C. *Impact of Palestine's UNESCO Membership*

The admission of Palestine to UNESCO has only an indirect impact on a membership at the United Nations. UNESCO is a specialized agency, which is a part of the U.N. system, but remains an autonomous organization.⁴⁷ The list of member states of UNESCO and the United Nations is not identical.⁴⁸ UNESCO membership

⁴¹ See *id.* ¶ 5.

⁴² The OTP highlighted that the "competence for determining the term 'State' within the meaning of [A]rticle 12 rests, in the first instance, with the United Nations Secretary General who, in case of doubt, will defer to the guidance of General Assembly." *Id.*

⁴³ For elaboration on this matter, see *infra* Part IV.

⁴⁴ Rome Statute, *supra* note 28, art. 13(b). See ICC OTP Decision; *supra* note 36, ¶ 8.

⁴⁵ The U.S. Department of State Spokesperson Victoria Nuland stated in April 2012 that the United States "did not take any position" on the issue yet. See Victoria Nuland, U.S. Department of State Spokesperson, Daily Press Briefing (Apr. 3, 2012), available at <http://www.state.gov/r/pa/prs/dpb/2012/04/187368.htm>.

⁴⁶ Brett Schaefer, *ICC Prosecutor Makes Right Call on Palestinian Declaration, But Grave Concerns Remain*, THE HERITAGE FOUNDATION (Apr. 4, 2012), <http://www.heritage.org/research/reports/2012/04/international-criminal-court-refusal-to-investigate-alleged-israeli-crimes>.

⁴⁷ The various specialized agencies are "established by intergovernmental agreement" for collaborations in "economic, social, cultural, educational, health, and related fields," and are "brought into relationship" with the United Nations but have autonomous "wide international responsibility." U.N. Charter art. 57(1), (2). For the role of specialized agencies in the U.N. system in general, see U.N. Charter arts. 55-60. Other specialized U.N. agencies are, for instance, the Food and Agriculture Organization of the United Nations (FAO), the International Monetary Fund (IMF), and the World Health Organization (WHO).

⁴⁸ UNESCO has 195 member states, and the United Nations has 193 member states. In addition to Palestine, UNESCO members also include the Cook Islands and Niue—two small

is not an automatic entry card for the United Nations, but it strengthens the advocacy for full U.N. membership.⁴⁹ A requirement for membership in UNESCO is statehood, which could be used to bolster the evidence affirming that Palestine is already a state.⁵⁰

To construct an implicit recognition of Palestine by all UNESCO member states is not possible—at least not for those member states which abstained, were absent, or explicitly voted against the admission of Palestine to UNESCO.⁵¹ Again, although the concept of “universal recognition” has been raised in relation to U.N. admissions, it is neither codified in the UNESCO Constitution nor a custom of international law.⁵² Regardless of UNESCO or U.N. membership, other international organizations are unrestricted in permitting, or refusing, Palestinian membership, as they set their own conditions and judge independently whether their own conditions have been met.

island states, which are in free association with New Zealand. On the other hand, Lichtenstein never joined UNESCO, despite being a U.N. member. *Compare* United Nations, Member States, *supra* note 11 *with* List of the 195 Members (and the 8 Associate Members) of UNESCO and the Date on Which They Became Members (or Associate Members) of the Organization, as of 23 November 2011, UNESCO, <http://www.unesco.org/new/en/member-states/countries/> (last visited May 4, 2012).

⁴⁹ Whereas the UNESCO Constitution states that membership in the United Nations “shall carry with it the right to membership” in UNESCO, a reciprocal right to membership of UNESCO members in the United Nations is not enshrined—neither in the U.N. Charter nor in the UNESCO Constitution. *See* UNESCO Constitution art. II(1).

⁵⁰ “Subject to the conditions of the Agreement between this Organization and the United Nations Organization, approved pursuant to Article X of this Constitution, states not members of the United Nations Organization may be admitted to membership of the Organization, upon recommendation of the Executive Board, by a two-thirds majority vote of the General Conference.” *Id.* art II(2).

⁵¹ Out of the permanent members of the Security Council (P5) only the United States voted against Palestine’s admission. The United Kingdom abstained, while France, China, and Russia voted for Palestine. Other countries voting against Palestine’s admission by were Australia, Canada, Czech Republic, Germany, Israel, Lithuania, the Netherlands, Palau, Panama, Samoa, Solomon Islands, Sweden, the U.S., and Vanuatu. *See How UNESCO Countries voted on Palestinian Membership*, THE GUARDIAN, Nov. 1, 2011, <http://www.guardian.co.uk/world/2011/nov/01/unesco-countries-vote-palestinian-membership>.

⁵² *See* RAIČ, *supra* note 26, at 47. *See also* Bengt Broms, *Subjects: Entitlement in the International Legal System*, in THE STRUCTURE AND PROCESS OF INTERNATIONAL LAW: ESSAYS IN LEGAL PHILOSOPHY DOCTRINE AND THEORY 383, 387 (R. St.J. MacDonald & Douglas M. Johnston eds., 1983) (“[E]ven if many states share this view, it is not correct to say that admission to the United Nations signifies universal recognition.”).

III. U.N. MEMBERSHIP CRITERIA, PROCEDURES AND PREVIOUS PRACTICE

From a strictly legal point of view, the U.N. Charter enshrines no right to become a member.⁵³ Membership in an international organization is ordinarily fulfilled by accepting a standing offer.⁵⁴ The conditions for admitting new members to the United Nations are codified in Article 4 of the U.N. Charter, which states that “membership in the United Nations is open to all other peace-loving states.”⁵⁵ The admission depends on “a decision of the General Assembly upon the recommendation of the Security Council.”⁵⁶

The Security Council dealt with Palestine’s application on September 27 and 28, 2011.⁵⁷ Following Rule 59 of the Council’s Provisional Rules of Procedure, the standing Committee on the Admission of New Members was called upon to examine and report on the application.⁵⁸ The Committee first formally met on September 30, 2011 and assessed the membership criteria in regard to Palestine during five informal meetings with experts in October 2011.⁵⁹ In its last formal meeting on November 3, 2011, the Committee prepared a report on Palestine’s application, which was submitted to the Security Council.⁶⁰ From November 2011 to January 2012 the Security Council met once every month on the Palestinian question, but did not take further action.⁶¹ As the last debate on January 24, 2012 showed, the Security Council remains divided and has not yet voted on the matter.⁶²

⁵³ See IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 79 (2008).

⁵⁴ *Id.*

⁵⁵ U.N. Charter art. 4, para. 1.

⁵⁶ *Id.* art. 4(2). In addition, any recommendation for admission must receive the affirmative votes of nine of the fifteen members of the Security Council, provided that none of its five veto-wielding permanent members—China, France, Russia, the United Kingdom, and the United States—have voted against the application. If the Security Council recommends admission, the recommendation is presented to the General Assembly for consideration. Two-thirds of the members present and voting must vote for admission for the application to succeed. *Id.* art. 18(2) (noting that “decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting” and defining “the admission of new Members to the United Nations” as an “important question”).

⁵⁷ See U.N. SCOR, 66th Sess., 6623rd mtg., U.N. Doc. S/PV.6623 (Sept. 27, 2011); U.N. SCOR, 66th Sess., 6624th mtg., U.N. Doc. S/PV.6624 (Sept. 28, 2011).

⁵⁸ Provisional Rules of Procedure of the Security Council Rule 59, U.N. Doc. S/96/Rev. 7 (Dec. 21, 1982).

⁵⁹ See U.N. SCOR, Rep. of the Comm. on the Admission of New Members, U.N. Doc. S/2011/705, ¶¶ 2–3 (Nov. 11, 2011).

⁶⁰ *Id.*

⁶¹ See generally U.N. SCOR, 66th Sess., 6662nd mtg., U.N. Doc. S/PV.6662 (Nov. 21, 2011); U.N. SCOR., 66th Sess., 6692nd mtg., U.N. Doc. S/PV.6692 (Dec. 20, 2011); U.N. SCOR., 67th Sess., 6706th mtg., U.N. Doc. S/PV.6706 (Jan. 24, 2012). The full list of Security Council meetings in 2011 and 2012 are available at *Meetings Conducted/Actions Taken by the Security Council*

A. Disputed Statehood of Palestine and Its “Peace Lovingness”

Whether Palestine has already reached the status of statehood and is “peace-loving” continues to be a matter of heated debate.⁶³ As reflected in the Committee on the Admission of New Members, four elements usually need to be met before a territory is considered a state.⁶⁴ Following the Montevideo Convention on Rights and Duties of States of 1933, a state requires a permanent population, a defined territory, a government, and the capacity to establish diplomatic relations with other states.⁶⁵

As indicated in its final report, the Committee on the Admission of New Members reached a consensus that Palestine’s statehood is problematic, not due to a lack of a permanent population or because of its disputed borders, but rather, concerning whether there is “effective control” by the Palestinian National Authority (PA) over the Palestinian territory.⁶⁶ One of the arguments has been that Hamas, not the PA, factually has full control over the Gaza Strip, and that Israel, as an “occupation power,” factually governs most of the West Bank areas.⁶⁷ The Committee has also stated that the PA could not engage in foreign relations due to restrictions imposed by

in 2011, UNITED NATIONS DOCUMENTATION: RESEARCH GUIDE, <http://www.un.org/Depts/dhl/resguide/scact2011.htm> (last visited May 5, 2012) and *Meetings Conducted/Actions Taken by the Security Council in 2012*, UNITED NATIONS DOCUMENTATION: RESEARCH GUIDE, <http://www.un.org/Depts/dhl/resguide/scact2012.htm> (last visited May 4, 2012).

⁶² See U.N. SCOR., 67th Sess., 6706th mtg., *supra* note 61.

⁶³ Frank L.M. van de Craen argued that the “basic elements of Statehood, e.g., a defined people and an established, though in recent years increasingly questioned authority, can be said to be present.” Frank L.M. van de Craen, *Palestine* (1990), in 3 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 864–65 (Rudolf Bernhardt ed., 1997). He concluded: “However, there is as yet no possibility to vest sovereign title in the Arab Palestinians over Palestinian territory, since this would mean a second partition of Palestine.” *Id.* For a prior summary of the arguments for and against Palestine’s statehood see Martin Waehlich, *Palestine’s UN Membership and International Law*, THE PALESTINE CHRONICLE, July 22, 2011, http://www.palestinechronicle.com/view_article_details.php?id=16998; Martin Waehlich, *Palestine, the UN, and International Law*, ALJAZEERA, July 25, 2011, <http://www.aljazeera.com/indepth/opinion/2011/07/201172584136606884.html>.

⁶⁴ See Rep. of the Comm. on the Admission of New Members, *supra* note 59, at ¶ 9.

⁶⁵ Montevideo Convention on the Rights and Duties of States art. 1, Dec. 26, 1933, 165 L.N.T.S. 19. For a critical analysis of those criteria and a proposed revision see JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 37 (2006).

⁶⁶ See Rep. of the Comm. on the Admission of New Members, *supra* note 59, at ¶ 11. “With regard to the requirements of a permanent population and a defined territory, the view was expressed that Palestine fulfilled these criteria. It was stressed that the lack of precisely settled borders was not an obstacle to statehood.” *Id.* ¶ 10.

⁶⁷ *Id.* ¶¶ 11–12.

the Oslo Accords.⁶⁸ Yet, another opinion in the Committee has been that, whilst occupation does influence statehood, it is not a barrier to it.⁶⁹

Critical points of reference have been reports of the World Bank, the International Monetary Fund (IMF), and the Ad Hoc Liaison Committee for Coordination of the International Assistance to Palestinians, which have concluded that Palestine is ready for statehood.⁷⁰ The report of the Ad Hoc Liaison Committee from April 2011, for instance, stated that in the areas of the rule of law and human rights, livelihoods, education and culture, health, social protection, and infrastructure and water, “governmental functions are now sufficient for a functioning government of a State.”⁷¹ As emphasized in the Security Council in January 2011, the organizing of legislative and presidential elections in Palestine is further evidence of the fact that the Palestinian National Authority is capable of governing itself as a state.⁷² Commentators in the Security Council raised the view that it is the occupation of Israel in the West Bank that actually prevents the Palestinian authorities from exercising and developing public services.⁷³ As for diplomatic ties, and despite restrictions by the Oslo Accords, the Admission Committee has only to evaluate the “capacity to enter into relations with other states”—which is proven due to the fact that over 130 states already recognize Palestine as a state.⁷⁴

⁶⁸ *Id.* ¶ 14.

⁶⁹ “Occupation by a foreign Power did not imply that the sovereignty of an occupied territory was to be transferred to the occupying Power.” *Id.* ¶ 11. About occupation, military authority, and civil administration by Israel see ANTHONY AUST, *HANDBOOK OF INTERNATIONAL LAW* 28 (2010).

⁷⁰ Rep. of the Comm. on the Admission of New Members, *supra* note 59, at ¶ 13.

⁷¹ Office of the U.N. Special Coordinator for the Middle East Peace Process, Ad Hoc Liaison Committee Meeting, Palestine State-Building: A Decisive Period (April 13, 2011), http://www.un.org/depts/dpa/qpal/docs/2011%20Helsinki/UNs%20Report%20to%20the%20AHLC%2013_April_2011.pdf.

⁷² See U.N. SCOR., 67th Sess., 6706th mtg., *supra* note 61 (comment by Ecuador).

⁷³ See U.N. SCOR., 66th Sess., 6636th mtg., U.N. Doc. S/PV.6636 (Oct. 24, 2011). (With Ecuador declaring, “The construction by the occupying military force of the Wall in Jerusalem prevents Palestinians from having access to hospitals, schools and their places of work. The Palestinians also suffer as a result of inadequate public services; schools are few, and the economy is in ruins.” and Norway declaring, “A main obstacle to an effective Palestinian State and full institution-building remains the occupation and the continued building of Israeli settlements on the occupied land.”).

⁷⁴ See Rep. of the Comm. on the Admission of New Members, *supra* note 59, at ¶ 14. Factually, the General Assembly already voted for a Palestinian State by adopting the Partition Plan of Palestine in 1947. In the resolution, an admission to membership in the United Nations was made conditional, depending on whether “the independence of either the Arab or the Jewish State as envisaged in this plan has become effective” and a declaration “signed by either of them.” However, the resolution only favored “sympathetic consideration” for membership admission in the moment of a joint declaration, which did not succeed. G.A. Res.

With regard to the question of whether Palestine is a “peace-loving” state, delegates in the Admission Committee stated that “ Hamas refused to renounce terrorism and violence, and had the stated aim of destroying Israel.”⁷⁵ As on previous occasions, on October 2011 in the Security Council, Israel’s Ambassador, Ron Prosor, understandably demanded that “Palestinians” should acknowledge the “Jewish State” of Israel.⁷⁶ Commentators in the Admission Committee stressed that the Palestinian National Authority expressed their commitment to a just, lasting, and comprehensive resolution of the Israeli-Palestinian conflict, which finds evidence in the supported “U.N. resolutions, the Madrid Principles, the Arab Peace Initiative and the Quartet Roadmap.”⁷⁷ A further positive step towards peace has been the October 2011 prisoner exchange between Israel and Palestine, which led to the freeing of the Israeli soldier, Gilad Shalit, in exchange for 477 Palestinian prisoners.⁷⁸ Brazil’s Ambassador, Maria Luiza Ribeiro Viotti, stated in the Security Council on October 2011: “The ultimate demonstration that Palestine is a peace-loving State is precisely the decision to turn to international law and to the United Nations to realize its legitimate right to self-determination.”⁷⁹ In the end, the discretion for answering the question as to whether an applicant is a peace-loving state remains with the Security Council and the General Assembly.⁸⁰ In the case of Israel’s admission to the United Nations, U.N.

181 (II), U.N. Doc. A/RES/181 (Nov. 29, 1947). Other circumstances for U.N. membership were not excluded, as the admission of Israel showed. Also, the 1993 Oslo Accords do not dismiss U.N. membership for Palestine prior to a peace agreement.

⁷⁵ See Rep. of the Comm. on the Admission of New Members, *supra* note 59, at ¶ 16.

⁷⁶ See U.N. SCOR, 66th Sess., 6636th mtg., *supra* note 73 (“The United Nations recognized Israel as a Jewish State 64 years ago. It is time for the Palestinians and more than 20 Muslim countries around the globe to do the same.”). In response, the Government of Israel “decided to recognize the PLO as the representative of the Palestinian people and commence negotiations with the PLO within the Middle East peace process.” See Letter from Yasser Arafat to Prime Minister Rabin (Sept. 9, 1993), <http://www.jewishvirtuallibrary.org/jsourc/Peace/recogn.html>.

⁷⁷ In the Committee, it was also emphasized that “the Advisory Opinion of the International Court of Justice on Namibia, of 1971, which stated that the only acts that could be attributable to a State were those of the State’s recognized authority.” Rep. of the Comm. on the Admission of New Members, *supra* note 59, at ¶¶ 15, 16.

⁷⁸ See U.N. SCOR., 67th Sess., 6706th mtg., *supra* note 61 (Comment by Ecuador).

⁷⁹ See U.N. SCOR, 66th Sess., 6636th mtg., *supra* note 73 (Comment by Brazil) (“The recognition of the Palestinian people’s legitimate right to sovereignty and self-determination increases the possibilities of peace between Israel and Palestine . . . International recognition of the Palestinian State and its admission in the United Nations as a full Member can help reduce the asymmetry that at present characterizes relations between the parties. No sustainable agreement can be reached if one side is too weak and is constantly undermined by the actions of the other on the ground.”).

⁸⁰ As Hans Kelsen historically re-drew in 1950 from the Report of the Rapporteur of the Committee, which contributed to the drafting of the U.N. Charter, the term “peace-loving” was generally deemed insufficient, but was retained. Interestingly, the Committee Rapporteur had noted that “to declare oneself ‘peace-loving’ does not suffice to acquire membership in

practice suggested that the promise to be peace-loving, in conjunction with regional armistice agreements but without a final settlement of the Israel-Palestine matter, can be enough.

B. Israel's U.N. Membership Admission

Israel's entrance into the United Nations was also a journey with obstacles, but it was a much shorter one. After an unsuccessful first application in fall 1948, the submission failed to win the necessary majority in the Security Council in December 1948.⁸¹ Six months later, in May 1949, and after formally signing armistice agreements with Egypt, Jordan, and Lebanon, Israel was admitted by thirty-seven positive votes versus twelve negative votes, with nine abstentions.⁸²

Ambassador Philip Jessup, who served as the interim representative of the United States to the United Nations in 1948, argued during the Security Council hearings regarding Israel's application that limited sovereignty should not prevent a U.N. admission.⁸³ He was of the opinion that the element of statehood in Article 4 of the U.N. Charter had to be applied less vigorously in the case of Israel,⁸⁴ and even in "anticipation" of its "full development" a U.N. membership "[shall] be possible."⁸⁵

the Organization." However, the practice of the United Nations varied. *See* HANS KELSEN, *THE LAW OF THE UNITED NATIONS: A CRITICAL ANALYSIS OF ITS FUNDAMENTAL PROBLEMS* 69–70 (1950).

⁸¹ For Israel's letter of application to the United Nations, *see* U.N. G.A., Application of Israel for Admission to Membership in the United Nations, Letter dated Nov. 29, 1948 from the Minister for Foreign Affairs of the Provisional Government of Israel to the Secretary-General, U.N. Doc. A/752 (Dec. 2, 1948); *see also* ISRAEL MINISTRY OF FOREIGN AFFAIRS, *HISTORICAL DOCUMENTS 1947–1974*, Vols. 1–2, *available at*

<http://www.mfa.gov.il/MFA/Foreign+Relations/Israels+Foreign+Relations+since+1947/1947-1974/Admission+of+Israel+to+the+United+Nations+-+General.htm>.

⁸² The decision in the Security Council was nine to one, with the U.K. abstaining from the vote. *See* U.N. GAOR, 3d Sess., 207th plen. mtg., at 308–09, U.N. Doc. A/PV.207 (May 11, 1949).

⁸³ U.N. SCOR, 3d Sess., 383d mtg., at 10, U.N. Doc. S/PV.383 (Dec. 2, 1948) (Ambassador Jessup argued that "[w]e already have, among the members of the United Nations, some political entities which do not possess full sovereign power to form their own international policy, which traditionally has been considered characteristic of a State." Furthermore ". . . neither at San Francisco nor subsequently has the United Nations considered that complete freedom to frame and manage one's own foreign policy was an essential requisite of United Nations membership.").

⁸⁴ *Id.* (Ambassador Jessup stated: "The reason for which I mention the qualification of this aspect of the traditional definition of a State is . . . that the term 'State', as used and applied in Article 4 . . . , may not be wholly identical with the term 'State' as used and defined in classic textbooks.").

⁸⁵ *Id.* at 14. (Ambassador Jessup noted that the Security Council is dealing with "the desire of a people, who laboriously constructed a community, an authority and, finally a Government

Although some may have harbored political motivations for refusing Israeli admission to the United Nations, only the legal terms of the U.N. Charter should be guiding, Ambassador Jessup concluded.⁸⁶

The debate mostly revolved around the question of whether Israel would be a peaceful member, something that was questioned by Arab states due to the unsettled issue of Palestine. Finally, the majority of the Assembly decided that “Israel is a peace-loving state,” as the Israeli government committed itself to implement the 1947 Partition Plan.⁸⁷ U.S. Ambassador to the United Nations, Warren R. Austin, stated in 1949 that “the long discussion of Israel’s application was evidence of the general deep-rooted desire for a just solution of questions relating to Palestine.”⁸⁸ He stressed that it was to be hoped that an “agreement would be concluded in the near future . . . inaugurating an era of peace and stability.”⁸⁹ “Israel had solemnly pledged its word” to peace, which gave the United States enough reason to support the resolution.⁹⁰

The then Israeli Foreign Minister, Moshe Sharett, upheld that the admission of Israel would be “the consummation of a people’s transition from political anonymity to clear identity, from inferiority to equal status, from mere passive protest to active responsibility, from exclusion to membership in the family of nations.”⁹¹ Reciprocity has become an important element in the body of international law; a principle that is also often reemphasized by Israeli Prime Minister Benjamin Netanyahu.⁹² During the

operating in an independent State, to see the State which they have thus arduously built take its place among the Members of the United Nations” and looked forward to the “first general elections to be held by the State of Israel . . . [and] await[ed] with anticipation the full development by the State of Israel of political institutions and practices in the best of the democratic tradition.”).

⁸⁶ *Id.* at 13–14. (Ambassador Jessup noted that he discussed Israel’s membership in the U.N. “in terms of legal analysis of the provisions of the Charter which are relevant to this particular situation” but recognized that “something more than questions of legal concepts and of provisions in a document is being dealt with in this case, although we abide and will be guided by the terms of that instrument.”).

⁸⁷ G.A. Res. 273 (III), U.N. Doc. A/RES/3/273 (May 11, 1949).

⁸⁸ U.N. GAOR. 3d Sess., 207th plen. mtg., *supra* note 82, at 313–14.

⁸⁹ *Id.*

⁹⁰ *Id.*; see also U.N. SCOR, 3d Sess., 383d mtg., *supra* note 83, at 12 (Ambassador Jessup noted that “[t]here is no reason for the Security Council to question the solemn assurance of Israel that it does accept the obligations of the Charter . . . The willingness of Israel to carry out these obligations is made clear in its letter of application for membership.”).

⁹¹ U.N. GAOR. 3d Sess., 207th plen. mtg., *supra* note 82, at 332.

⁹² See Benjamin Netanyahu, Prime Minister of Israel, Speech to a Joint Session of the U.S. Congress, Washington, D.C. (July 10, 1996), *available at* http://www.mfa.gov.il/MFA/MFAArchive/1990_1999/1996/7/PM%20Netanyahu-%20Speech%20to%20US%20Congress-%20July%2010-%201996 (“Reciprocity means that every line in every agreement turns into a sinew of reconciliation. Reciprocity means that an

peace talks in 2009, Netanyahu promised: “We want an end to the conflict and we want reciprocity in the demands made of both sides, and in carrying them out.”⁹³ Thus, despite acknowledging Israel’s security interests, granting Palestine U.N. membership could overcome the complaint of a double-standard.⁹⁴

C. *Other Critical Membership Admission Cases*

Even if one denies Palestine’s statehood, there have been several cases where candidates were admitted to the United Nations despite debates about their legal status, as one will see in this section. This demonstrates that U.N. membership admission depends to the utmost on the decision of the General Assembly and the Security Council—in other words, on their mutual interpretation of whether membership criteria are fulfilled or not.⁹⁵

Certainly, denying U.N. membership is not without precedent. In 1972, China objected to the application of Bangladesh.⁹⁶ In 1975, the United States voted against the applications of the Republic of South Vietnam and the Democratic Republic of Vietnam, referring to the principle of universality of membership.⁹⁷ In 1961, the application of Kuwait failed to obtain a recommendation for admission due to a veto of the Soviet Union, which argued that Kuwait was not an independent state.⁹⁸

agreement must be kept by both sides. Reciprocity is the glue of mutual commitments, that upholds agreements.”).

⁹³ Jeffrey Heller, *Netanyahu Cites Reciprocity on Eve of Abbas U.S. Trip*, REUTERS, May 27, 2009, <http://www.reuters.com/article/2009/05/27/us-palestinians-israel-netanyahu-idUSTRE54Q3UZ20090527>.

⁹⁴Indeed, the question of “peace lovingness” is always an uncertain *ex ante* judgment. Some commentators in the Admission Committee stated that “the Charter required more than a verbal commitment by an applicant to carry out its Charter obligations; an applicant had to show a commitment to the peaceful settlement of disputes and to refrain from the threat or the use of force in the conduct of its international relations.” However, neither the U.N. Charter nor State practice bears any proof this demand. As mentioned above, the discretion of the interpretation is ultimately with the Security Council and General Assembly. *See* Rep. of the Comm. on the Admission of New Members, *supra* note 59, at ¶¶ 17–18.

⁹⁵ This interpretation might differ, for instance, from more “objective” interpretation by the ICJ or the International Law Commission (ILC).

⁹⁶ China objected, among others, on the grounds that Bangladesh did not implement two U.N. resolutions concerning the withdrawal of troops and the release of prisoners of war. For an overview, see generally THOMAS D. GRANT, *ADMISSION TO THE UNITED NATIONS: CHARTER ARTICLE 4 AND THE RISE OF UNIVERSAL ORGANIZATION* 149 (2009).

⁹⁷ Similarly, South Korea was denied U.N. membership for many years due to the division of Korea. *See id.* at 160–61.

⁹⁸ *See* U.N. SCOR, 16th Sess., 989th mtg., at 19–22, U.N. Doc. S/PV 984 (Nov. 30, 1961).

An interesting case is the admission of Austria, where critics argued that the occupation at that time imposed such sovereignty limitations that Austria could not qualify for a U.N. membership until a peace treaty was signed.⁹⁹ Contrastingly, the U.S. representative reasoned in 1951 that the absence of a peace agreement did not disqualify Austria from U.N. membership—which is currently the opposite of the U.S. argument against a U.N. admission of Palestine.¹⁰⁰ Similarly, Lebanon argued in October 2011 in the Security Council that the U.N. admission of Palestine cannot be subject to the outcome of negotiations, as Palestinian statehood would otherwise be made dependent on the approval of one country.¹⁰¹

Another comparative case is Bosnia and Herzegovina, which was admitted in May 1992, despite the fact that the Dayton Peace Accords would not be signed until three years later in December 1995.¹⁰² The Security Council nonetheless unanimously recommended the admission of Bosnia and Herzegovina.¹⁰³ Prior to that, the Council had shown itself to be deeply concerned about “the rapid and violent deterioration of the situation in Bosnia and Herzegovina.”¹⁰⁴ The Council had demanded “Bosnia and Herzegovina’s neighbours take swift action” to end “interference and respect the territorial integrity.”¹⁰⁵ During the same General Assembly session that saw Bosnia and Herzegovina being admitted, Croatia and Slovenia also became U.N. members.¹⁰⁶

⁹⁹ See Yuen-Li Liang, *Notes on Legal Questions Concerning the United Nations*, 45 AM. J. INT’L L. 314, 317 (1951).

¹⁰⁰ *Id.*

¹⁰¹ U.N. SCOR, 66th Sess., 6636th mtg., *supra* note 73. In a comment by Lebanon, the state’s representative announced:

More fundamental, the question of the recognition of Palestinian statehood cannot and should not be subjected to the outcome of negotiations between Palestinians and Israelis. Otherwise, Palestinian statehood would be made dependent on the approval of Israel. In other words, the occupying Power would be granted a right of veto over the right to self-determination of the Palestinian people, a right that the General Assembly has recognized as inalienable since 1974.

¹⁰² G.A. Res. 46/237, U.N. GOAR, 46th Sess., U.N. Doc. A/RES/46/237 (May 22, 1992).

¹⁰³ S.C. Res. 755, U.N. SCOR, 47th Sess., 3079th mtg., U.N. Doc. S/RES/755 (May 20, 1992).

¹⁰⁴ S.C. Res. 752, U.N. SCOR, 47th Sess., 3075th mtg., U.N. Doc. S/RES/752 (May 15, 1992).

¹⁰⁵ *Id.*

¹⁰⁶ See U.N. GAOR, 46th Sess., Provisional Rec. of 86th mtg., U.N. Doc. A/46/PV.66 (May 29, 1992).

The President of the General Assembly noted: “Their membership will without any doubts enhance the universality of the world organization.”¹⁰⁷ Ineffective authority over parts of Bosnia and Herzegovina’s territory were not of concern to the U.N. Admission Committee and did not hinder admission.¹⁰⁸

In regard to Palestine, an option for the Security Council could be to include a clause about the ongoing peace process in a resolution, as it did in the case of Macedonia in 1993. Macedonia was admitted, whilst the Security Council acknowledged differences which needed “to be resolved in the interest of the maintenance of peaceful and good-neighbourly relations in the region”¹⁰⁹ Greece had opposed the admission of Macedonia “prior to a settlement of certain outstanding issues.”¹¹⁰ U.S. Ambassador Madeleine Albright upheld that:

The admission of this new State to the United Nations will contribute importantly to the stability of a troubled region. Membership in the United Nations is just a first step, however, in resolving the differences between the two parties. They must continue to show the flexibility which has got them this far.¹¹¹

Indeed, Article 4 of the U.N. Charter has been used as an instrument of the permanent Security Council members to pursue foreign policy interests. Over fifty years ago, the ICJ ruled that political factors are not excluded when deciding upon admitting a state, if the reasons are based on good faith.¹¹² Yet, U.N. membership has

¹⁰⁷ *Id.*

¹⁰⁸ See U.N. SCOR, Rep. of the Comm. on the Admission of New Members, Application of the Republic of Bosnia and Herzegovina for Admission to Membership in the United Nations, U.N. Doc. S/23974 (May 20, 1992).

¹⁰⁹ See S.C. Res. 817, U.N. SCOR, 47th Sess., 3196th mtg., U.N. Doc. S/RES/817 (April 7, 1993); see generally Codification Div., Office of Legal Affairs, United Nations, Repertory of Practice of United Nations Organs Supplement: Article 4 (Supp. 8, vol. 1 2012) (advance version).

¹¹⁰ See Letter from the Permanent Representative of Greece to the United Nations Addressed to the Secretary-General, U.N. Doc. A/47/877, S/25158, ¶ 1 (Jan. 25, 1993).

¹¹¹ Nonetheless, Ambassador Albright also stressed: “We applaud their efforts to resolve their differences through negotiation.” Greece had given up its blockade and became a sponsor of the Assembly resolution in favor of the admission. As a solution for the name dispute, Macedonia was formally admitted as the Former Yugoslav Republic of Macedonia (FYROM). U.N. GAOR, 47th Sess., 98th plen. mtg., U.N. Doc. A/47/PV.98, at 14 (April 13, 1993).

¹¹² Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948 I.C.J. 57, 63 (May 28).

developed to unconditional universality.¹¹³ A U.N. admission of Palestine could potentially aid the peace process in the Middle East, rather than undermine direct talks. Israel could use the Palestinian commitment to U.N. principles for its own benefits and demand adherence to the U.N. Charter and to its obligations of state responsibility.

IV. SCENARIOS AND OPTIONS

Several scenarios have been discussed before and after Palestine's application to the United Nations.¹¹⁴ Whereas some proposed options, such as activating the General Assembly Resolution, *Uniting for Peace*, might be legally ambitious, other solutions are more feasible. An admission of Palestine to other international organizations is, for instance, possible—if those organizations decide that their membership criteria are fulfilled. A collective recognition of the Palestinian State through a General Assembly resolution, which could lead to an extension of Palestine's observer status to a non-member status, is another possibility.

A. U.N. Membership Admission through *Uniting for Peace*?

As a last resort, representatives of the Palestinian National Authority have been calling for utilizing the *Uniting for Peace* Resolution 377(V), which was proposed by their legal advisor, Professor Francis Boyle.¹¹⁵ Introduced during the Korean War and the heat of the Cold War in 1950, the Assembly reserved itself the right to recommend “collective measures” if the Security Council does not fulfill its responsibilities in times when peace needs to be maintained.¹¹⁶ To circumvent a deadlocked Security Council, a quorum of nine members in the Security Council or a majority of the members of the United Nations may call for an Emergency Special Session of the General Assembly.¹¹⁷

¹¹³ See generally Article 4, in 1 THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 177–194 (Bruno Simma et al. eds., 2d ed. 2002).

¹¹⁴ See Martin Waehlich, *Legal Scenarios of Palestine's UN Statehood Bid*, NOW LEBANON (Sept. 10, 2011), <http://www.nowlebanon.com/NewsArchiveDetails.aspx?ID=310122>.

¹¹⁵ See Dori Smith, *Palestinian Statehood, Discussion with Law Prof. Francis A. Boyle, Plan B, Uniting for Peace Resolution*, NATION RADIO (Sept. 30, 2011), <http://www.archive.org/details/PalestinianStatehoodDiscussionWithLawProf.FrancisA.BoylePlanB>.

¹¹⁶ For an insightful overview, see Christian Tomuschat, *Uniting for Peace: Ein Rückblick nach 50 Jahren*, 76 DIE FRIEDENS-WARTE 289 (2001); see also Christian Tomuschat, *Uniting for Peace*, UNITED NATIONS AUDIOVISUAL LIBRARY OF INTERNATIONAL LAW (2008), http://untreaty.un.org/cod/avl/pdf/ha/ufp/ufp_e.pdf (last visited May 13, 2012).

¹¹⁷ See G.A. Res. 377 (V), U.N. GAOR, 5th Sess., Annex para. 1, U.N. Doc. A/RES/377(V), (Nov. 3, 1950) [hereinafter *Uniting for Peace*]. The Secretary General then summons the

Statistically, the majority of special sessions were dedicated to the context of the Israeli-Palestinian conflict.¹¹⁸ Out of ten emergency sessions, five were about the Middle East.¹¹⁹ In 1967, a session focused on the status of the City of Jerusalem and growing tensions in the Middle East.¹²⁰ In 1980, an Emergency Special Session called on Israel to withdraw from all occupied territories.¹²¹ In 1982, another Emergency Special Session passed a resolution on the situation in the Arab occupied territories.¹²² In 1997, following two U.S. vetoes against a resolution condemning Israel's settlement policy in Jerusalem, a session was convened on the question of East Jerusalem and the occupied territories.¹²³ Most recently, the 10th Emergency Special Session from 1997 to 2009 dealt with "Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory."¹²⁴ During the same session period, in December 2003, the General Assembly asked the ICJ for an advisory opinion on the legality of the wall built by Israel in the occupied

General Assembly, as now stipulated in Rule 9(b) of the U.N. General Assembly Rules of Procedure. See Rules of Procedure of the General Assembly rule 9(b), U.N. Doc. A/520/Rev.17 (Sept. 2007).

¹¹⁸ For a list of all the resolutions adopted by the General Assembly at its Emergency Special Sessions see *Resolutions adopted by the General Assembly at its Emergency Special Sessions*, UNITED NATIONS DOCUMENTATION: RESEARCH GUIDE, <http://www.un.org/Depts/dhl/resguide/scact2011.htm> (last visited May 5, 2012).

¹¹⁹ These were the 3rd 5th, 7th, 9th and 10th Emergency Special Sessions of General Assembly. See *id.*

¹²⁰ See U.N. GAOR, 5th Emerg. Spec. Sess., U.N. Doc. A/PV.1559 (Sept. 18, 1967), U.N. GAOR, 5th Emerg. Spec. Sess., U.N. Doc. A/PV.1558 (July 21, 1967), U.N. GAOR, 5th Emerg. Spec. Sess., U.N. Doc. A/PV.1556 (July 17, 1967), U.N. GAOR, 5th Emerg. Spec. Sess., U.N. Doc. A/PV.1554 (July 14, 1967), U.N. GAOR, 5th Emerg. Spec. Sess., U.N. Doc. A/PV.1548 (July 4, 1967).

¹²¹ *Resolutions adopted by the General Assembly at its Emergency Special Sessions*, *supra* note 118, at 5th Emergency Special Session General Assembly.

¹²² See *id.*, at 9th Emergency Special Session General Assembly.

¹²³ See *id.*, at 10th Emergency Special Session General Assembly.

¹²⁴ The United States had previously used its veto in two successive occasions within less than two weeks. Subsequently, the States Members of the League of Arab States decided that it was necessary to convene an emergency special session of the General Assembly, pursuant to the *Uniting for Peace* Resolution 377 A(V). Following a request from Qatar, the 10th Emergency Special Session of the General Assembly was initially convened in April 1997 to debate the issue of Israeli settlement activities in area of East Jerusalem. At the request of the President of the General Assembly, the Emergency Special Session was last resumed in 2009 to consider the crisis in the Gaza Strip. For the initial letter of Qatar citing *Uniting for Peace* see U.N. GAOR, 10th Emerg. Spec. Sess., U.N. Doc. A/ES-10/1 (April 22, 1997). The full repertoire of all documents of this session are available at *Tenth Emergency Special Session: Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory*, GENERAL ASSEMBLY OF THE UNITED NATIONS, <http://www.un.org/en/ga/sessions/emergency10th.shtml> (last visited May 5, 2012).

territories.¹²⁵ Another General Assembly resolution on Palestine would continue the line of motions in the General Assembly concerning the Middle East peace process. Nonetheless, activating *Uniting for Peace* for a U.N. membership admission is devious.

Indeed, *Uniting for Peace* has been highly criticized for undermining the superior decision-making power of the Security Council for the maintenance of international peace and security, as embodied in the U.N. Charter.¹²⁶ With regard to Palestine, the denial of a U.N. admission is not necessarily a threat to peace, which makes the ground for its applicability even more difficult. The wording of the criteria in the resolution does not fully match, given that the Security Council is exercising its responsibility for the maintenance of international peace and security in the Israel-Palestine conflict, as the ongoing efforts of the Middle East Quartet show.¹²⁷ Eric Stein and Richard Morrissey noted the “subsequent use of the Resolution has been relatively limited and not always entirely clear.”¹²⁸ However, none of the resolutions under *Uniting for Peace* ever comprised a case of U.N. membership application.

Advocates could claim that a U.N. admission of Palestine through a General Assembly resolution could be a case *sui generis*, but this argument is even more problematic.¹²⁹ Such a resolution could be viewed as a continuation and culmination

¹²⁵ See G.A. Res. ES-10/14, U.N. GAOR, 10th Emerg. Spec. Sess., U.N. Doc. A/RES/ES-10/14 (Dec. 12, 2003). For a summary of the debate see Press Release, United Nations, General Assembly Adopts Text Requesting International Court of Justice to Issue Advisory Opinion on West Bank Separation Wall, U.N. Press Release GA/10216 (Dec. 8, 2003), available at <http://www.un.org/News/Press/docs/2003/ga10216.doc.htm>.

¹²⁶ For an insight into the debate, see Jean Krasno & Mitushi Das, *The Uniting for Peace Resolution and Other Ways of Circumventing the Authority of the Security Council*, in *THE UN SECURITY COUNCIL AND THE POLITICS OF INTERNATIONAL AUTHORITY* 173 (Bruce Cronin & Ian Hurd eds., 2008).

¹²⁷ Other opinions state “theoretically, the General Assembly could claim that a U.S. veto preventing Palestinian membership in the UN was a threat to international peace and security and therefore move to circumvent its veto via an emergency ‘Uniting for Peace’ session.” International Crisis Group, *Curb Your Enthusiasm: Israel And Palestine After the UN*, MIDDLE EAST REPORT No. 112 (Dec. 12, 2011),

<http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Israel%20Palestine/112%20Curb%20Your%20Enthusiasm%20-%20Israel%20and%20Palestine%20after%20the%20UN.pdf>.

¹²⁸ See Eric Stein & Richard Morrissey, *Uniting for Peace*, in v. 382 *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* 1232, 1234 (Rudolf Bernhardt ed., 1997).

¹²⁹ For the usage of the *sui generis* concept in international law see Lucas Bento, *Toward An International Law of Piracy Sui Generis: How the Dual Nature of Maritime Piracy Law Enables Piracy to Flourish*, 29 *BERKELEY J. INT’L L.* 399 (2011); Richard B. Finnegan, *What Lessons Can Be Drawn From a “Sui Generis” Case?: The Global “War on Terror” and Northern Ireland*, in *COURTS AND TERRORISM: NINE NATIONS BALANCE RIGHTS AND SECURITY* 72 (Richard B. Finnegan ed., 2011); Aidan Hehir, *Microcosm, Guinea Pig or “Sui Generis”?: Assessing International Engagement with*

of participation rights exceptions made in the case of Palestine and the United Nations. Supporters of this idea could argue that the Palestinian case has always constituted a unique situation, which is so exceptional that—in the light of a blockade in the Security Council—an admission through the General Assembly is justified.¹³⁰ The granting of the observer status to Palestine by the General Assembly in 1998—a status lying between non-member states and other permanent observers—has already been a *sui generis* instance; an exceptional uniqueness of its own.¹³¹ The *sui generis* formula might be a tempting legal figure, as it allows the creation of new law, but this is also its hazardous downside.¹³² It provides a conclusive answer where existing legal parameters are insufficient.¹³³ However, in its Advisory Opinion about the “Competence of the General Assembly for the Admission of a State to the United Nations” of 1950, the ICJ established that the General Assembly can only decide to admit a state upon the recommendation of the Security Council.¹³⁴ In the present case of Palestine, international law is not short of rules. Article 4 of the U.N. Charter provides a sound basis for U.N. memberships, which needs to be respected.

Kosovo, in KOSOVO, INTERVENTION AND STATEBUILDING: THE INTERNATIONAL COMMUNITY AND THE TRANSITION TO INDEPENDENCE 185 (Aidan Hehir ed., 2010).

¹³⁰ The United States referred to the *sui generis* concept in the case of Kosovo’s unilateral secession from Serbia, whereas the cited arguments of the U.S. State Department could somehow also fit to the Palestinian cause. See Written Statement of the United States of America Concerning the Request of the United Nations General Assembly for an Advisory Opinion on the Question of the *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo* 35, United States Department of State (Apr. 17, 2009), <http://www.icj-cij.org/docket/files/141/15640.pdf> (citing testimony of Daniel Fried, Assistant Secretary of State for European and Eurasian Affairs, before the Senate Committee on Foreign Relations, in which he commented that “[t]he status quo in Kosovo was unsustainable and undesirable” and that “[i]f left unaddressed, Kosovo would have turned into an incubator for frustrations, extremism and instability, which would then threaten to infect all of southeast Europe.”). However, the U.S. State Department would most likely argue that the sense of a case *sui generis* is particularly its uniqueness, thus the case of Palestine and Kosovo could not be compared.

¹³¹ In discussing the Declaration of the Palestinian Authority, the ICC, and international law, Malcolm Shaw has noted that the argument of Palestine as a *sui generis* case is logically highly likely to fail because there is a “whole range of non-State entities seeking or asserting statehood.” Malcolm N. Shaw, *The Article 12(3) Declaration of the Palestinian Authority, the International Criminal Court and International Law*, 9 J. INT’L CRIM. JUST. 301, 323 (2011).

¹³² The General Assembly has acted as a lawmaker before; *Uniting for Peace* already extended its role beyond the provisions in the U.N. Charter. See, e.g., JOSÉ E. ALVAREZ, INTERNATIONAL ORGANIZATIONS AS LAW-MAKERS 184 (2005).

¹³³ See CARSTEN STAHN, THE LAW AND PRACTICE OF INTERNATIONAL TERRITORIAL ADMINISTRATION 649 (2008).

¹³⁴ See Competence of the General Assembly for the Admission of A State to the United Nations, Advisory Opinion, 1950 I.C.J. 10 (Mar. 3).

From Israel's position, it would be cogent to argue that the activation of 377 (V) for Palestine's United Nations membership actually creates a threat to peace and security.¹³⁵ Above all, legally, General Assembly resolutions are not binding on other U.N. members—which indicates that a membership admission through *Uniting for Peace* could not be reasoned.¹³⁶ As an affirmation of commitment to the U.N. Charter, the Palestinian authorities would presumably rather strengthen their case and standing in the United Nations by adhering to the admission procedures, instead of forcing Palestine into the world organization at any price and violating the framework they are pledging to obey. A U.N. admission of Palestine through a General Assembly Resolution based on *Uniting for Peace* brings with it serious concerns.

B. Collective Recognition by the General Assembly and Non-Member Status

A collective recognition of the Palestinian state through a General Assembly resolution is, legally, the least complicated and arguably the most realistic option, comparatively speaking. The General Assembly could pass a resolution acknowledging Palestinian statehood and recommending the recognition of the State

¹³⁵ Israel's Prime Minister Netanyahu has stated that:

The truth is that Israel wants peace with a Palestinian state, but the Palestinians want a state without peace . . . Without peace, will our planes become targets for antiaircraft missiles placed in the adjacent Palestinian state? And how will we stop the smuggling into the West Bank? I bring up these problems because they're not theoretical problems. They're very real. And for Israelis, they're life-and- death matters. All these potential cracks in Israel's security have to be sealed in a peace agreement before a Palestinian state is declared, not afterwards, because if you leave it afterwards, they won't be sealed. And these problems will explode in our face and explode the peace.

Statement by Netanyahu, *supra* note 4.

¹³⁶ As Articles 10 and 14 of the U.N. Charter state, the General Assembly can only make recommendations to the Members of the United Nations. Exceptions are only made for the approval of the U.N. budget. U.N. Charter arts. 10, 14.

of Palestine.¹³⁷ Such a resolution, as per other resolutions of the General Assembly, would also be non-binding.¹³⁸

Ambassador Miriam Ziv, Israel's Ambassador to Canada, stated prior to the 2011 General Assembly Debate in the *National Post*: "After all, every Israeli government for nearly a decade has explicitly supported the idea of two-state solution and has worked hard to facilitate conditions for the creation of a Palestinian state. So why would Israel be opposed to this initiative?"¹³⁹ Ziv concluded:

A unilateral declaration harms true peace, challenging the most basic principles of Mideast peacemaking. It undermines all internationally accepted frameworks for peace, including UN Security Council Resolutions 242, 338, 1850, the Roadmap for Peace and the principles of the Quartet. All encourage mutually-negotiated and agreed resolution of the conflict. All reject unilateral actions.¹⁴⁰

As Ambassador Ziv emphasized, Israel is in favor of a two-state solution. And certainly, the Roadmap for Peace calls for a negotiated settlement that "will result in the emergence of an independent, democratic, and viable Palestinian state."¹⁴¹

On the other hand, the Roadmap also required Israel to "freeze[] all settlement activity."¹⁴² Ambassador Hikmat Ajjuri, Ambassador of the Mission of Palestine to

¹³⁷ Indeed, the United Nations is neither a State nor a Government, but is instead an organization of independent states and therefore does not possess any authority to recognize either a State or a Government. Nonetheless, the General Assembly may make recommendations with regard to any such questions. U.N. Charter art 11(2).

¹³⁸ *Id.*

¹³⁹ Miriam Ziv, *Declaring a Palestinian State Will Derail the Peace Process*, NATIONAL POST (Aug. 6, 2011), <http://fullcomment.nationalpost.com/2011/08/06/miriam-ziv-declaring-a-palestinian-state-will-derail-the-peace-process/>.

¹⁴⁰ *Id.*

¹⁴¹ The Secretary-General, Letter Dated 7 May 2003 from the Secretary General Addressed to the President of the Security Council, U.N. Doc. S/2003/529 (May 7, 2003), *available at* <http://unispal.un.org/unispal.nsf/0/6129b9c832fe59ab85256d43004d87fa> [hereinafter Roadmap].

¹⁴² *See id.* *See also* Press Release, The White House, Remarks by the President to the United Nations General Assembly, Office of the Press Secretary (Sept. 23, 2009), http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-to-the-United-Nations-General-Assembly ("We continue to call on Palestinians to end incitement against Israel, and we continue to emphasize that America does not accept the legitimacy of continued Israeli settlements . . .").

Ireland, replied in the *Irish Times* that “Israel has continued to flout international laws.”¹⁴³ He continued:

We Palestinians have no option but to seek international recognition at the United Nations for a Palestinian state within the 1967 borders. Israel, since it forced its establishment unilaterally in 1948, has continued to the present day as the most prominent example of a state that forced recognition without having recognized borders or even an internationally recognized capital.¹⁴⁴

Both statements, thus, exemplify that in the subsequent practice of the parties, not all parts of the Roadmap have been consistently applied.¹⁴⁵ Following both lines of thoughts, a recognition of Palestinian statehood by the General Assembly does not necessarily mean an annulment of the Roadmap or an end of bilateral peace talks by the Palestinian side.¹⁴⁶ A two-state solution is not off the table, but rather put into practice. It is rational that Israel has an interest in preserving a solid bargaining stance in any peace agreement in order to safeguard the State of Israel. Equally, the Palestinian move towards an independent state is protected by international law.¹⁴⁷

In his speech at the last General Assembly Debate in September 2011, the French President, Nicolas Sarkozy, suggested granting Palestine the status of a “non-member state” at the United Nations.¹⁴⁸ Being independent in deciding its own affairs, the

¹⁴³ Hikmat Ajjuri, *Palestine and Statehood*, THE IRISH TIMES (July 26, 2011), <http://www.irishtimes.com/newspaper/letters/2011/0726/1224301384329.html>.

¹⁴⁴ *Id.*

¹⁴⁵ The Government of Israel has also emphasized that “[a] settlement based upon the Roadmap will be an autonomous settlement that derives its validity therefrom.” Government of Israel’s Response to the Road Map ¶ 10 (May 25, 2003), http://www.knesset.gov.il/process/docs/roadmap_response_eng.htm.

¹⁴⁶ Interestingly, the Roadmap sees an international recognition of a Palestinian state, including possible U.N. membership, in a stage (Phase II) even before the permanent status agreement and end of the Israeli-Palestinian conflict (Phase III). See Roadmap, *supra* note 141 (“Quartet members promote international recognition of Palestinian state, including possible UN membership . . .”).

¹⁴⁷ For a more recent update on the permanent sovereignty of the Palestinian people see G.A. Res. 66/225, U.N. GAOR, 66th Sess., U.N. Doc. A/C.2/66/L.22–A/RES/66/225 (Oct. 27, 2011).

¹⁴⁸ President Sarkozy stated:

Faut-il pour autant exclure une étape intermédiaire ?
Pourquoi ne pas envisager pour la Palestine le statut
d’Etat observateur aux Nations Unies ? Ce serait un pas

General Assembly could decide to treat Palestine as a non-member state. The procedure for obtaining a permanent observer status as a “non-member state” at the United Nations is neither regulated by the U.N. Charter nor the Rules and Regulations of the General Assembly, but is solely shaped by the practice of the organization.¹⁴⁹ As the custom of the General Assembly has established, permanent observers generally receive a standing invitation to participate in sessions and the Assembly’s work, following the accession of their requests. This non-binding resolution of the General Assembly requires a majority of the votes by the U.N. member states and could not be vetoed by the Security Council.¹⁵⁰

Palestine is already a permanent observer, however, the shift towards gaining the title of “non-member state” would be a diplomatic nuance emphasizing statehood. Yet, as there is no right of recognition, a right to be acknowledged by the General Assembly as a “non-member state” does not exist. The elevation of Palestine’s permanent observer status to non-member state status would also not necessarily be *ultra vires* the

important, nous sortirions après 60 ans de l’immobilisme, l’immobilisme qui fait le lit des extrémistes. Nous redonnerions un espoir aux Palestiniens en marquant des progrès vers le statut final.
[Translation: Should in this regard an intermediate phase be excluded? Why not consider the Observer State status at the United Nations for Palestine? It would be an important step, we would overcome sixty years of deadlock, a stalemate that is the breeding ground for extremists. We would restore hope in Palestinians by marking progress towards the final status.]

ALLOCUTION DE M. NICOLAS SARKOZY, PRÉSIDENT DE LA RÉPUBLIQUE, ASSEMBLÉE GÉNÉRALE, OUVERTURE DE LA 66ÈME SESSION (Sept. 21, 2011), http://gadebate.un.org/sites/default/files/gastatements/66/FR_fr.pdf (translated by the Harvard International Law Journal Staff).

¹⁴⁹ “The Secretary General referred to Permanent Observers of non-members in his report to the fourth session of the Assembly on Permanent Missions (A/939), but no specific action was taken by the Assembly . . . to provide an express legal basis for the institution of Permanent Observers. It therefore rests purely on practice.” Office of Legal Affairs, *Accreditation of Permanent Observers by Non-Members at United Nations Headquarters: Selected Legal Opinion of the Secretariat of the United Nations and Related Inter-Governmental Organizations*, 1962 U.N. JURID. Y.B. 236 (1962).

¹⁵⁰ Principally, decisions in the General Assembly are made by a simple majority of the U.N. members present and voting. See U.N. Charter art. 18(3). Decisions on important questions are made by a two-thirds majority. See U.N. Charter art 18(2). The question of whether or not a Palestine resolution is an important question in this sense is decided by a simple majority of the members present and voting. See U.N. Charter art 18(3). Having 193 U.N. member states at the moment, a two-third majority requires 129 votes.

competence of the General Assembly.¹⁵¹ As Yuen-Li Liang, the former Director of the Division of Development and Codification of International Law at the U.N. Secretariat, pointed out, the definition of which entity can be treated as a non-member states was never fully settled.¹⁵² Throughout the course of U.N. practice, according to Liang, several entities were addressed in such a way as to disregard their debated legal quality of statehood.

C. Application to Other International Organizations

Besides UNESCO, Palestine is already a full member in other international organizations such the League of Arab States and the Organization of Islamic Cooperation (OIC).¹⁵³ The accession to other international organizations, in particular U.N. specialized agencies other than UNESCO, is not explicitly excluded by the Roadmap and depends on the success of reaching the supportive quorums that are necessary in those institutions.¹⁵⁴ In contrast to U.N. admission, Palestine's membership in other international organizations cannot be unilaterally vetoed by members of the Security Council.

¹⁵¹ According to Nigel White, “[s]tates objecting to the General Assembly adopting resolutions often argue that the resolution is ultra vires.” NIGEL WHITE, *THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY* 108 (1990).

¹⁵² For instance, in Austria, Ceylon, Jordan, Nepal, the Mongolian People's Republic, Spain, Morocco, Germany, Japan, and Korea, “it was alleged that the applicants were not fully independent and sovereign states; and all these applicants failed, as they did not receive the concurrent votes of all the permanent members of the Security Council.” See Liang, *supra* note 99, at 314.

¹⁵³ Palestine is also a member of the Economic and Social Commission for Western Asia (ESCWA), which is not an international organization itself, but a part of the United Nations Economic and Social Council (ECOSOC) being an organ of the U.N. organization. Additionally, Palestine joined the Group of 77, which is coalition of developing nations at the United Nations, and the Movement of Non-Aligned Countries, which are both not international organizations in a legal sense. Though, in most of those cases exceptions were made for Palestine in order to overcome the statehood criteria for membership. For example, an admission to ESCWA usually requires being a U.N. member state. In the case of Palestine, ECOSOC admitted Palestine directly. See U.N. Econ. & Soc. Council, Annual Report of the Economic Commission for Western Asia, U.N. Doc. E/RES/2089 (LXIII) (July 22, 1977); see also Terms of Reference and Rules of Procedure of the Economic and Social Commission for Western Asia (2003), Terms of Reference of the Commission ¶ 2.

¹⁵⁴ For example, the Charter of Arab League enshrines that “any independent Arab state has the right to become a member of the League,” yet, Palestine was included considering its “special circumstances.” See Charter of Arab League art. 1(2), Annex Regarding Palestine. For an overview see Annex Table 2 of this article.

Brett Schaefer recently provided a broad analysis about the options for Palestine to join autonomous U.N. specialized agencies and related organizations.¹⁵⁵ He concluded that the easiest possible memberships for the Palestinians are the International Fund for Agriculture Development (IFAD), the United Nations Industrial Development Organization (UNIDO), the World Intellectual Property Organization (WIPO), the United Nations Conference on Trade and Development (UNCTAD), and the United Nations World Tourism Organization (UNWTO).¹⁵⁶ IFAD, UNIDO, WIPO, and UNCTAD are linked to a membership in other U.N. agencies, such as UNESCO. In UNIDO and UNWTO, the United States is not a member, which makes the pressure to end funding a “non-factor.”¹⁵⁷ Other organizations require a two-third majority of the member states (e.g., the Food and Agriculture Organization (FAO), the International Labor Organization (ILO), the International Maritime Organization (IMO), the International Telecommunication Union (ITU), the Universal Postal Union (UPU), or the World Meteorological Organization (WMO), and the conditions are similar to the previous UNESCO admission.¹⁵⁸

Membership in the World Health Organization (WHO) would only require a simple majority, which is what prompted the PLO to apply in 1989. At the time, the PLO saw WHO membership as the sole chance to enter any international organization.¹⁵⁹ Supporting the effort, Arab member states in the WHO offered an end to their call for Israel’s suspension in the ITU, but were not successful in their bargaining.¹⁶⁰ The World Health Assembly (WHA) decided to postpone the application of Palestine facing threats from the United States that it would cancel its WHO funding. In 1998, following Palestine’s wider observer status in the U.N. General Assembly, Palestine was given a similar rank in the WHO. In 2000, the WHA “aligned” the participation of Palestine in the WHO with admission to the United Nations.¹⁶¹

The Palestinian National Authority is also trying to join the International Criminal Police Organization (INTERPOL), which facilitates international police

¹⁵⁵ Brett D. Schaefer, *What Palestinian Membership Means for UNESCO and the Rest of the United Nations*, BACKGROUND: THE HERITAGE FOUNDATION (Dec. 12, 2011), http://thf_media.s3.amazonaws.com/2011/pdf/bg2633.pdf.

¹⁵⁶ See *id.* at 10.

¹⁵⁷ See *id.*

¹⁵⁸ See *id.* at 19.

¹⁵⁹ See Constitution of the World Health Organization arts. 2–8, (Apr. 7, 1948).

¹⁶⁰ See KELLEY LEE, *THE WORLD HEALTH ORGANIZATION (WHO) 23–24* (2008).

¹⁶¹ See *id.*; see also W.H.O., 53rd World Health Assembly, Full Rep. of Comm. B, Aligning the Participation of Palestine in the World Health Organization with its Participation in the United Nations, WHA Res. A53/40 (May 19, 2000).

cooperation.¹⁶² On an optimistic note, the membership could serve cross-border law enforcement. Admission to INTERPOL also requires a two-third majority.¹⁶³ While the applications of Curaçao, Sint Maarten, and South Sudan went through at the INTERPOL General Assembly meeting in Hanoi in October 2011, Palestine's membership did not get on the agenda.¹⁶⁴

As the International Monetary Fund (IMF) notes, it “cannot provide financial support” to Palestine “because it is not a member state.”¹⁶⁵ Ironically, IMF reports in April 2011 also mentioned that the Palestinian Authority is “now able to conduct the sound economic policies expected of a future well-functioning Palestinian state.”¹⁶⁶

¹⁶² Palestinian National Authority, *HOMESTRETCH TO FREEDOM: THE SECOND YEAR OF THE 13TH GOVERNMENT PROGRAM 9* (Aug. 2010).

¹⁶³ “Any country may delegate as a Member to the Organization any official police body whose functions come within the framework The request for membership shall be submitted to the Secretary General by the appropriate governmental authority. Membership shall be subject to approval by a two-thirds majority of the General Assembly.” ICPO-Interpol Constitution and General Regulations art. 4, (June 6, 1956).

¹⁶⁴ To view all the resolutions from the 80th INTERPOL General Assembly see *80th INTERPOL General Assembly – Resolutions, Hanoi, 31 October - 3 November 2011*, INTERPOL, <http://www.interpol.int/News-and-media/Events/2011/80th-INTERPOL-General-Assembly/80th-INTERPOL-General-Assembly-Resolutions> (last visited May 13, 2012).

¹⁶⁵ Int'l Monetary Fund, *Program Note: West Bank and Gaza* (Oct. 25, 2011), <http://www.imf.org/external/np/country/notes/wbg.htm>.

¹⁶⁶ Int'l Monetary Fund, *Macroeconomic and Fiscal Framework for the West Bank and Gaza: Seventh Review of Progress: Staff Report for the Meeting of the Ad-Hoc Liaison Committee* (Apr. 13, 2011), <http://unispal.un.org/UNISPAL.NSF/0/A35B30B2051C33A38525786A006A23F8>.

According to the report:

IMF staff considers that the PA is now able to conduct the sound economic policies expected of a future well-functioning Palestinian state, given its solid track record in reforms and institution-building in the public finance and financial areas. Steady reforms in the public finance management system have enabled the PA to tightly control expenditures, apply rigorous budget preparation and execution practices, and establish fiscal transparency and accountability in line with international standards. These reforms, along with a prudent fiscal policy, have contributed to a rise in the quality of spending and a sharp reduction in donor aid for recurrent spending, from \$1.8 billion in 2008 to \$1.2 billion in 2010, with a view to a further reduction to less than \$1 billion in 2011. The Palestine Monetary Authority (PMA)'s institutional reforms have enabled it to fulfill core functions of a central bank. These functions include the

In June 2009, Kosovo became a member of the IMF in order to increase economic development, whereas Palestine's accession remains blocked.¹⁶⁷ Historically, Kosovo is the only state to have ever joined the IMF without U.N. membership and without full international recognition. Although Serbia and Russia opposed admission of Kosovo, the United States, the United Kingdom, France, and Germany agreed.¹⁶⁸ In the IMF, the voting weight is determined by the member's quota, which is based on the size of a country in the world economy.¹⁶⁹ So far, the United Kingdom and

application of a rigorous banking supervision and regulatory framework, providing a strong credit and payment infrastructure, and monitoring compliance with a governance code and an anti-money laundering law.

¹⁶⁷ According to former IMF Managing Director, Dominique Strauss-Kahn, "Kosovo's decision to join the Fund highlights the enduring importance of multilateralism in today's world." Press Release, IMF, Kosovo Becomes the International Monetary Fund's 186th Member, IMF Press Release No. 09/240 (June 29, 2009), <http://www.imf.org/external/np/sec/pr/2009/pr09240.htm>. James B. Steinberg, U.S. Deputy Secretary of State stated:

This is really a sign of your being a contributor and a participant in some of the most important work that the international community does. This will help you develop a sound budget and sustainable fiscal policies and to work with you. And we stand ready to support your efforts, and have pledged \$150 million to help Kosovo reduce its debt. So you have an opportunity here to use the bank and the fund to help build a strong economic climate for investment in your country, to build transparent rule-of-law institutions that will attract investment and create jobs. And this is something that the United States is very deeply committed to.

James B. Steinberg, Remarks, U.S. Hosts Republic of Kosovo's Signing Ceremony of the Articles of Agreement of the International Monetary Fund and the International Bank for Reconstruction and Development (June 29, 2009), transcript available at: <http://www.state.gov/s/d/former/steinberg/remarks/2009/169335.htm>.

¹⁶⁸ For an overview about the political setting of the voting see Nick Andrews & Bob Davis, Kosovo Wins Acceptance to IMF: Balkan Nation Says It Gains Membership Despite Opposition by Russia and Serbia, *THE WALL STREET JOURNAL* (May 7, 2009), <http://online.wsj.com/article/SB124154560907188151.html>.

¹⁶⁹ See Int'l Monetary Fund, *IMF Members' Quotas and Voting Power, and IMF Board of Governors*, <http://www.imf.org/external/np/sec/memdir/members.aspx> (last visited Apr. 4, 2012) [hereinafter Int'l Monetary Fund, *IMF Members' Quotas and Voting Power*]; see also Press Release, IMF, *supra* note 167, n.1. See Articles of Agreement of the International Monetary Fund art. II(2), Dec. 27, 1945, available at <http://www.imf.org/external/pubs/ft/aa/index.htm>

France have been reluctant to endorse the changes in the voting quota for China, as they would be outvoted.¹⁷⁰ The 14th General Review of Quotas—whereby China will become the third largest member country in the IMF and will form, with Brazil, India, and Russia, the ten largest shareholders in the Fund—will be completed in January 2013.¹⁷¹ With those realigned quota shares, Palestinian membership in the IMF could become likely, but also remains uncertain due to the preponderant votes of the United States in the near future.¹⁷²

With or without U.N. membership, the Palestinian National Authority could declare to abide by international treaties, such as the Nuclear Non-Proliferation Treaty (NPT), thereby signaling its commitment to international law.¹⁷³ Although not all states ratified the NPT, nearly all signed the international agreement limiting the

[hereinafter IMF Statute] (“Membership shall be open to other countries at such times and in accordance with such terms as may be prescribed by the Board of Governors. These terms, including the terms for subscriptions, shall be based on principles consistent with those applied to other countries that are already members.”).

¹⁷⁰ See Sarah Arnott, *Emerging Economies Battle for More Voting Rights at IMF*, THE INDEPENDENT, Sept. 28, 2009,

<http://www.independent.co.uk/news/business/news/emerging-economies-battle-for-more-voting-rights-at-imf-1794358.html>.

¹⁷¹ IMF, *Factsheet on IMF Quotas* (Sept. 13, 2011), <http://www.imf.org/external/np/exr/facts/quotas.htm>.

¹⁷² For an overview about the quota details, see Schaefer, *supra* note 155, at 10–11. He notes that:

Under IMF rules, any change in quotas, which is necessary for admitting new members, requires approval of at least 85 percent of the total voting power in the organization. Currently, the United States controls 16.8 percent of IMF votes and can block any change in quotas. This percentage is scheduled to fall to 16.5 percent by late 2012, but the [United States] will retain its effective veto over changes in IMF quotas for the foreseeable future, and is, therefore, in a position to block Palestinian attempts at joining the IMF. By extension, this effective U.S. veto would also block Palestinian membership in the World Bank, for which IMF membership is a prerequisite.

Id. For the adjustment of quotas, see IMF Statute, *supra* note 169, at art. III(2)(c).

¹⁷³ Within the context of the Vienna Convention on the Law of Treaties, a “treaty” is “an international agreement concluded between States.” Vienna Convention on the Law of Treaties, *supra* note 27, art. 2(1).

spread of nuclear weapons.¹⁷⁴ Only India, Pakistan, and Israel are non-signatory states.¹⁷⁵ Taiwan, being a non-U.N. member with limited recognition of its statehood, signed the treaty in 1968.¹⁷⁶ The ratification was officially deposited by Taiwan, but Taiwan was not listed as a signatory, as the independence of Taiwan is contested by China.¹⁷⁷ Despite its disputed statehood, Palestine could follow Taiwan's approach in the bid to stress its peacefulness.

V. CONCLUSION

What will be truly won through U.N. membership of Palestine? A seat with full voting rights in the world organization will neither bring an immediate answer to the settlement issue nor a guarantee against security fears. U.N. membership does not produce a peace agreement, but it should also not prevent one. However, with Palestine and Israel both being U.N. members, at least the need for a two state solution would be cemented. Facing the lost confidence of both sides over the past decades, the details of a comprehensive peace accord will only evolve gradually. Whether the timing is right is a question of how much one believes in a peace process.

Is Palestine already a State? Although commentators have remarked that Palestine is actually two entities—the Hamas controlled Gaza strip and a “virtually” governed

¹⁷⁴ See *NTP Status*, UNITED NATIONS OFFICE FOR DISARMAMENT AFFAIRS, [http://unhq-appspub-01.un.org/UNODA/Treatystatus.nsf/NPT%20\(in%20alphabetical%20order\)?OpenView](http://unhq-appspub-01.un.org/UNODA/Treatystatus.nsf/NPT%20(in%20alphabetical%20order)?OpenView) (last visited May 13, 2012).

¹⁷⁵ North Korea withdrew in 2003. See Natasha Mozgovaya, *Obama: Israel Should Sign Nuclear Non-Proliferation Treaty*, HAARETZ (Apr. 14, 2010), <http://www.haaretz.com/news/obama-israel-should-sign-nuclear-non-proliferation-treaty-1.284191>.

¹⁷⁶ Taiwan implemented nuclear safeguard provisions and welcomed nuclear safety inspections of the International Atomic Energy Agency (IAEA). See U.N. G.A., Request for Inclusion of an Item in the Provisional Agenda of the Fifty-First Session, U.N. Doc. A/51/142 (July 18, 1996).

¹⁷⁷ The treaty is only open for signature by “states.” See Treaty on the Non-Proliferation of Nuclear Weapons art. IX(1), (2), 729 U.N.T.S. 161 [hereafter Non-Proliferation Treaty]:

This Treaty shall be open to all States for signature
This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.

West Bank—the Palestinian National Authority is working on enhancing state structures.¹⁷⁸ As ongoing “state building” efforts all around the world exemplify, as in Kosovo, Somalia, and Afghanistan, statehood is not born but developed. Whether the outer shell of a state appears is a matter of perspective, depending on the interests and aspirations of the beholder to see categories of international law fulfilled. The question of whether Palestine is a state is eventually contingent upon the will to let Palestine be a state. International law provides criteria, the validity of which are vigorously proven by their application in the ongoing debate. Although the case of Palestine creates a dispute about the interpretation of international law, the hardships should not lead to doubting law as a compelling alternative to an armed struggle.¹⁷⁹

Can the United States veto an admission of Palestine to the United Nations? Yes, as the U.N. Charter requires a recommendation by the Security Council, which can be prevented by any permanent member of the Security Council.¹⁸⁰ Nonetheless, all member states have to act in good faith.¹⁸¹ The U.N. General Assembly could proceed under Rule 137:

¹⁷⁸ See PALESTINIAN NATIONAL AUTHORITY, BUILDING THE STATE OF PALESTINE, REPORT OF THE PALESTINIAN NATIONAL AUTHORITY TO THE AD HOC LIAISON COMMITTEE, (Sept. 18, 2011), available at

<http://www.un.int/wcm/webdav/site/palestine/users/YousefZ/public/PNA%20report%20to%20the%20AHLC%20Sep%202011%20-%20Building%20the%20State%20of%20Palestine-A%20Success%20Story-1.pdf>.

¹⁷⁹ As Professor James Crawford wrote:

It seems to be difficult for international lawyers to write in an impartial and balanced way about the Palestine issue. [But t]hat the language of law is used implies that these claims *can* be assessed, on the basis of values which extend beyond allegiance to a particular party, country, bloc or religion.

James Crawford, *The Creation of the State of Palestine: Too Much Too Soon?*, 1 EUR. J. INT’L L. 307, 307 (1990).

¹⁸⁰ Alternatively, members of the Security Council can abstain. See U.N. Charter art. 27(3) (“Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.”); see also Provisional Rules of Procedure of the Security Council, *supra* note 58, rule 60(1) (“The Security Council shall decide whether in its judgment the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter and, accordingly, whether to recommend the applicant State for membership.”).

¹⁸¹ See U.N. Charter art. 2(2) (“All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.”).

If the Security Council does not recommend the applicant State for membership or postpones the consideration of the application, the General Assembly may, after full consideration of the special report of the Security Council, send the application back to the Council, together with a full record of the discussion in the Assembly, for further consideration and recommendation or report.¹⁸²

The Middle East Quartet envisaged that the recently restarted Israeli and Palestinian talks shall lead to a comprehensive peace proposal on territory and security with an agreement for a two-state solution by the end of 2012.¹⁸³ So far, all deadlines for the Middle East conflict have always expired. In any case, the situation on the ground outside the Assembly hall will remain the same. The “Palestine Question” has been pending in the United Nations for over half a century. As the U.N. is a world organization that was founded on tolerance and equality so that united nations can live “together in peace with one another as good neighbours,” the U.N. membership of Palestine can only be a matter of time. However, the questions are how long it will take before the metal plate on the Palestinian desk is replaced with voting buttons, and whether the consequences of further delay will be beneficial or rather destructive for reaching peace in the region.

¹⁸² See Rules of Procedure of the General Assembly, *supra* note 117, rule 137.

¹⁸³ See U.N. SCOR., 67th Sess., 6706th mtg., *supra* note 61.

VI. ANNEX

Table 1. *Chronology of U.N. Admissions*¹⁸⁴

1945	Argentina, Byelorussian Soviet Socialist Republic (Belarus), Brazil, Chile, China, Cuba, Czechoslovakia (Czech Republic and Slovakia), Denmark, Dominican Republic, Egypt, El Salvador, France, Haiti, Iran, Lebanon, Luxembourg, New Zealand, Nicaragua, Paraguay, Philippines, Poland, Saudi Arabia, Syria, Turkey, Ukrainian Soviet Socialist Republic (Ukraine), Union of Soviet Socialist Republics (Russian Federation), United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia, Greece, India, Peru, Australia, Costa Rica, Liberia, Colombia, Union of South Africa (South Africa), Canada, Ethiopia, Panama, Bolivia, Venezuela, Guatemala, Norway, Netherlands, Honduras, Uruguay, Ecuador, Iraq, Belgium
1946	Afghanistan, Iceland, Sweden, Siam (Thailand)
1947	Pakistan, Yemen
1948	Burma (Myanmar)
1949	Israel
1950	Indonesia
1955	Albania, Austria, Bulgaria, Cambodia, Ceylon (Sri Lanka), Finland, Hungary, Ireland, Italy, Jordan, Laos, Libya, Nepal, Portugal, Romania, Spain
1956	Sudan, Morocco, Tunisia, Japan
1957	Ghana, Federation of Malaya (Malaysia)
1958	Guinea
1960	Cameroon, Togo, Madagascar, Somalia, Congo (DRC), Dahomey (Benin), Niger, Upper Volta (Burkina Faso), Ivory Coast (Côte d'Ivoire), Chad, Congo, Gabon, Central African Republic, Cyprus,

¹⁸⁴ See generally United Nations, *Member States*, <http://www.un.org/en/members/index.shtml> (last visited June 22, 2012).

	Senegal, Mali, Nigeria
1961	Sierra Leone, Mongolia, Mauritania, Tanganyika (Tanzania)
1962	Rwanda, Burundi, Jamaica, Trinidad and Tobago, Algeria, Uganda
1963	Kuwait, Zanzibar (Tanzania), Kenya
1964	Malawi, Malta, Zambia
1965	Gambia, Maldives, Singapore
1966	Guyana, Botswana, Lesotho, Barbados
1967	Democratic Yemen
1968	Mauritius, Swaziland, Equatorial Guinea
1970	Fiji
1971	Bhutan, Bahrain, Qatar, Oman, United Arab Emirates
1973	Federal Republic of Germany, German Democratic Republic, Bahamas
1974	Bangladesh, Grenada, Guinea-Bissau
1975	Cape Verde, Sao Tome and Principe, Mozambique, Papua New Guinea, Comoros, Surinam
1976	Seychelles, Angola, Samoa
1977	Djibouti, Vietnam
1978	Solomon Islands, Dominica
1979	Saint Lucia
1980	Zimbabwe, Saint Vincent and the Grenadines
1981	Vanuatu, Belize, Antigua and Barbuda
1983	Saint Kitts and Nevis
1984	Brunei Darussalam
1990	Namibia, Liechtenstein
1991	Democratic People's Republic of Korea, Republic of Korea, Micronesia, Marshall Islands, Estonia, Latvia, Lithuania

1992	Moldova, Kazakhstan, Kyrgyzstan, Uzbekistan, Armenia, Tajikistan, Turkmenistan, Azerbaijan, San Marino, Slovenia, Bosnia and Herzegovina, Croatia, Georgia
1993	Czech Republic, Slovakia, The former Yugoslav Republic of Macedonia, Eritrea, Monaco, Andorra
1994	Palau
1999	Kiribati, Nauru, Tonga
2000	Tuvalu, Federal Republic of Yugoslavia (Serbia and Montenegro)
2002	Switzerland, Timor-Leste
2006	Montenegro
2011	South Sudan

Table 2. *International Organizations Members (alphabetical, status Feb. 2012)*

Organization	Members	Participation of Palestine
Food and Agriculture Organization (FAO)	194 ¹⁸⁵ Including: <ul style="list-style-type: none"> - EU (Member Organization) - Faroe Islands (Associated Member) - Tokelau (Associated Member) - Cook Islands (Non-UN Member) - Niue (Non-UN Member) 	(-)
International	152 ¹⁸⁶ Including:	(-)

¹⁸⁵ See Food and Agricultural Org. of the United Nations, Legal Office, *FAO Membership*, <http://www.fao.org/Legal/member-e.htm> (last visited Apr. 4, 2012).

Atomic Energy Agency (IAEA)		<ul style="list-style-type: none"> - Holy See (UN Permanent Observer) - Cook Islands (Non-UN Member) - Niue (Non-UN Member) 	
International Civil Aviation Organization (ICAO)	191 ¹⁸⁷	Including: <ul style="list-style-type: none"> - Cook Islands (Non-UN Member) 	(-)
International Criminal Police Organization (INTERPOL)	190 ¹⁸⁸	Including: <ul style="list-style-type: none"> - Vatican City State – here not titled as Holy See (UN Permanent Observer) 	(-)
International Fund for Agricultural Development (IFAD)	167 ¹⁸⁹	Including: <ul style="list-style-type: none"> - Cook Islands (Non-UN Member) - Niue (Non-UN Member) 	(-)
International Labour Organization (ILO)	183 ¹⁹⁰		(-)

¹⁸⁶ See Int'l Atomic Energy Agency, *Member States of the IAEA*, <http://www.iaea.org/About/Policy/MemberStates/> (last visited Apr. 4, 2012).

¹⁸⁷ See Int'l Civil Aviation Org., *Member States*, <http://www.icao.int/MemberStates/Member%20States.Multilingual.pdf> (last visited Apr. 4, 2012).

¹⁸⁸ See INTERPOL, *INTERPOL Member Countries*, <https://www.interpol.int/Public/ICPO/Members/default.asp> (last visited Apr. 4, 2012).

¹⁸⁹ See Int'l Fund for Agricultural Development, *IFAD Member States*, <http://www.ifad.org/governance/ifad/ms.htm> (last visited Apr. 4, 2012).

¹⁹⁰ See Int'l Labour Org., *Alphabetical List of ILO Member Countries*, <http://www.ilo.org/public/english/standards/relm/country.htm> (last visited Apr. 4, 2012).

International Maritime Organization (IMO)	173 ¹⁹¹	Including: – Cook Islands (Non-UN member) – Faroe Islands (Associated Member) – Hong Kong (Associated Member) – Macao (Associated Member)	(-)
International Monetary Fund (IMF)	187 ¹⁹²	Including: – Kosovo (Non-UN Member)	(-)
International Telecommunication Union (ITU)	193 ¹⁹³	Including: – Vatican City State – here not titled as Holy See (UN Permanent Observer)	(+) – Palestine participates as an “observer.” ¹⁹⁴
United Nations Industrial Development Organization (UNIDO)	174 ¹⁹⁵	UNIDO Observer Status: ¹⁹⁶ – Holy See (UN Permanent Observer) – Sovereign Military Order of Malta (UN Permanent	(-)

¹⁹¹ See Int’l Maritime Org., *Member States, IGOs and NGOs*, <http://www.imo.org/About/Membership/Pages/Default.aspx> (last visited Apr. 4, 2012).

¹⁹² See Int’l Monetary Fund, *IMF Members’ Quotas and Voting Power*, *supra* note 169.

¹⁹³ See Int’l Telecommunications Union, *Membership*, <http://www.itu.int/en/about/Pages/membership.aspx> (last visited Apr. 4, 2012).

¹⁹⁴ For details see *Updated Resolutions: Status of Palestine and Assistance & Support for Rebuilding its Telecoms Networks*, ITU NEWSLOG (Oct. 20, 2010),

<http://www.itu.int/osg/blog/2010/10/20/UpdatedResolutionsStatusOfPalestineAndAssistanceSupportForRebuildingItsTelecomsNetworks.aspx> (last visited Apr. 4, 2012).

		Observer)	
United Nations World Tourism Organization (UNWTO)	155 ¹⁹⁷		(+) – The Palestinian National Tourism Authority is admitted as an “affiliated member.” ¹⁹⁸
Universal Postal Union (UPU)	192 ¹⁹⁹	Including: – British Overseas Territories (Joint Membership, besides membership of U.K.) – Aruba, Curaçao, and Sint Maarten (Joint Membership, besides membership of the Netherlands) – Vatican City State – here not titled as Holy See (UN Permanent Observer)	(+) – Palestine participates as an “observer.” ²⁰⁰

¹⁹⁵ See U.N. Industrial Development Org., *Member States*, <http://www.unido.org/index.php?id=o3359> (last visited Apr. 4, 2012).

¹⁹⁶ See UNIDO, General Conf. 13th Sess. Report of the Industrial Development Board on the Work of Its Thirty-Fourth Session, U.N. Doc. GC.13/2/Add.1 (Sept. 19, 2008), available at http://www.unido.org/fileadmin/user_media/PMO/gc13_2add1e.pdf.

¹⁹⁷ See U.N. World Tourism Org., Member States, <http://unwto.org/en/members/states> (last visited Apr. 4, 2012).

¹⁹⁸ See U.N. World Tourism Org., UNWTO Affiliate Members, <http://www.platma.org/index.php/mod.directorio/mem.detalle/id.20454/recategoria.212/re/menu.55/chk.a844a3756cfb1ac49b85e8e4eb345bf6> (last visited Apr. 4, 2012).

¹⁹⁹ See Universal Postal Union, Member Countries, <http://www.upu.int/en/the-upu/member-countries.html> (last visited Apr. 4, 2012).

World Meteorological Organization (WMO)	189 ²⁰¹	Including: <ul style="list-style-type: none"> - Cook Islands (Non-UN Member) - Niue (Non-UN Member) - British Caribbean Territories (besides membership of UK), - Hong Kong (besides membership of China) - Macao (separate from China) - Curaçao and Sint Maarten (besides membership of the Netherlands) - French Polynesia (besides membership of France) - New Caledonia (besides membership of France) 	(+) <ul style="list-style-type: none"> - The Palestinian Meteorological Directorate participates as an “observer.”²⁰²
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²⁰⁰ See PARTICIPATION OF PALESTINE IN THE WORK OF THE UNION, UPU Res. C 115/1999, available at <http://www.ipu.org/cnl-e/163smry.htm>; see also Constitution of the Universal Postal Union commentary to arts. 5, 6 (2010).

²⁰¹ See World Meteorological Org., *Members of the World Meteorological Organization with date of ratification or accession*,

http://www.wmo.int/pages/members/membership/index_en.html (last visited Apr. 4, 2012).

²⁰² See World Meteorological Org., *Other Meteorological or Hydrometeorological Services*,

http://www.wmo.int/pages/members/non_members_en.html (last visited Apr. 4, 2012).