

Palestine Membership in the United Nations

Palestine Membership in the United Nations:
Legal and Practical Implications

Edited by

Mutaz Qafisheh

CAMBRIDGE
SCHOLARS

P U B L I S H I N G

Palestine Membership in the United Nations:
Legal and Practical Implications,
Edited by Mutaz Qafisheh

This book first published 2013

Cambridge Scholars Publishing

12 Back Chapman Street, Newcastle upon Tyne, NE6 2XX, UK

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

Copyright © 2013 by Mutaz Qafisheh and contributors

All rights for this book reserved. No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright owner.

ISBN (10): 1-4438-4656-2, ISBN (13): 978-1-4438-4656-1

This book is dedicated to

My wife, Rana
My daughter, Bana

CONTENTS

Contributors	x
Foreword	xv
<i>Richard Falk</i>	
Introduction	1
<i>Mutaz M. Qafisheh</i>	
Part I. Significance of the Membership of Palestine in the United Nations	
Introduction to Part I.....	11
Chapter One.....	14
Palestine Liberation Organization Legal Brief in Support of Recognition of the State of Palestine <i>Saeb Erikat</i>	
Chapter Two	30
Palestine, UN Membership and Popular Representation: International Legal Challenges and Strategic Options <i>Guy S. Goodwin-Gill</i>	
Chapter Three	45
Citizens of the State of Palestine and the Future of Palestinian Refugees: Legal and Political Scenarios <i>Mutaz M. Qafisheh</i>	
Chapter Four	134
Recognition of Palestinian Statehood: An Interest for All <i>Winston P. Nagan and Aitza M. Haddad</i>	
Chapter Five	162
The <i>de jure</i> State of Palestine under Belligerent Occupation: Application for Admission to the United Nations <i>Basheer Al-Zoughbi</i>	

Part II. Specific Implications of Palestine’s UN Membership

Introduction to Part II	187
Chapter Six	190
The Human Rights Obligations of the State of Palestine: The Case of the International Covenant on Economic, Social and Cultural Rights <i>Mutaz M. Qafisheh</i>	
Chapter Seven.....	234
Legal Implications of the Membership of a Palestinian State in the UN on Civilians in the Light of International Humanitarian Law <i>Floriana Fabbri and Jacopo Terrosi</i>	
Chapter Eight.....	252
Tell it to the Judge: Palestine’s UN Bid and the International Criminal Court <i>Valentina Azarov</i>	
Chapter Nine.....	268
Palestinian Prisoners in Israeli Jails in Light of the Third Geneva Convention: From Jails to Prisoner of War Camps <i>Magdalena A. Pulido</i>	
Chapter Ten	290
The Status of Jerusalem after the Admission of Palestine to the United Nations <i>John Quigley</i>	
Chapter Eleven	308
Water Claims of an Independent Palestine in Practice: Reconciling Conflicting Water Claims in the Region <i>Valentin Jeutner</i>	
Chapter Twelve	345
Palestinian Membership of the World Trade Organization: Breaking International Trade Barriers <i>Nael Sayed-Ahmad</i>	

Part III. The State of Palestine: Past and Future

Introduction to Part III.....	359
Chapter Thirteen.....	361
The Palestinian Citizen vs. the Palestinian National: Past and Present <i>Lauren Banko</i>	
Chapter Fourteen.....	377
Palestinian Independence vs. the Independence of Namibia and the American Foreign Policy <i>Winston P. Nagan and Aitza M. Haddad</i>	
Chapter Fifteen.....	395
Palestine Membership in the United Nations: Opportunities to Create a Justice System that Never Was <i>David F. Chavkin</i>	
Chapter Sixteen.....	415
Thirteen Theses on a Constitution for a Federal Republic of Palestine <i>Uri Davis</i>	
Chapter Seventeen.....	434
A Non Modest Proposal for Resolving the Palestine-Israel Conflict: The Divide and Share Approach <i>Said Zeedani</i>	
Index.....	440

CONTRIBUTORS

Mutaz M. Qafisheh is a Professor of International Law and Legal Clinic Director, Hebron University, Palestine. He holds a PhD in International Law, Graduate Institute of International and Development Studies, Geneva. He is a practising international lawyer, advising a number of international organizations, including the UN and the PLO. He has formerly worked as Human Rights Officer, UN Office of the High Commissioner for Human Rights in Geneva, Beirut and Ramallah; Regional Director, Penal Reform International, Middle East and North Africa, Amman; Director, Security Sector Reform, Birzeit University; Director, Legal Education, Palestinian Law Schools, Jerusalem; Legal Advisor, Palestinian Parliament; Co-Founder, Human Rights Program, Al-Quds-Bard Honors College, Jerusalem and New York. His twenty-five studies include: *The International Law Foundations of Palestinian Nationality* (Leiden and Boston: Brill, 2008); ‘Article 1D: Definition of the Term ‘Refugee,’ in A. Zimmermann, ed., *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary* (Oxford: University Press, 2011); ‘The Dilemma of Legislative Reform in Line with International Standards on Gender Equality in the Islamic World: The Case of Palestine’, *International Journal for Legislative Drafting and Law Reform* (London 2013); ‘The Ability of the Palestinian Legal System to Secure Adequate Standards of Living: Reform or Failed State Duty,’ *Asian Journal of International Law* (Cambridge 2013).

Richard Falk is Professor Emeritus of International Law at Princeton University and the United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. He is the author or co-author of 20 books and the editor or co-editor of another 20 books, and a speaker and activist on world affairs. He obtained a BA in Economics from the Wharton School, University of Pennsylvania, a Bachelor of Laws from Yale University, and a Doctor of Laws from Harvard University.

Saeb Erikat is the Head of the Palestine Negotiations Office, Palestine Liberation Organization. He holds a PhD in peace studies, University of Bradford, UK; a BA and an MA in Political Science, San Francisco State

University, USA; and he is a member of the PLO Executive Committee. He has been a Professor of Political Science at Al-Najah National University; a co-editor of *Al-Quds* newspaper; deputy head of the Palestinian delegation to the Madrid peace conference; Minister of Local Government; Chief Negotiator since 1995; member of the Palestinian Parliament.

Guy S. Goodwin Gill is a Senior Research Fellow, All Souls College, and a Professor of International Refugee Law, University of Oxford. He is also a barrister and a member of Blackstone Chambers, London. He has worked extensively with the UN, including twelve years with UNHCR, has advised the Inter-Parliamentary Union and the Center on elections and international law, has been a member of the Council of the Overseas Development Institute since 2007, a Patron of Asylum Aid since 2008, and from 1997 to 2010 he was President of Refugee and Migrant Justice. He is the Founding Editor of the *International Journal of Refugee Law*. His publications include, 'The Right to Seek Asylum: Interception at Sea and the Principle of *Non-refoulement*,' 23 *International Journal of Refugee Law* 443-57 (2011); 'The Challenge of the Child Soldier,' in Hew Strachan & Sibylle Scheipers, *The Changing Character of War* (Oxford 2011); 'The West Bank and Gaza: Free and Fair Elections, Human Rights and the Transition to Democracy,' in S. Bowen, ed., *Human Rights, Self-Determination and Political Change in the Occupied Palestinian Territories* (Dordrecht: Kluwer, 1997); *Brownlie's Documents on Human Rights*, with I. Brownlie (Oxford 2010); *The Refugee in International Law*, with J. McAdam (Oxford 2007); and *Free and Fair Elections* (Geneva: Inter-Parliamentary Union, 2006).

Winston P. Nagan is Director of the Institute for Human Rights, Peace and Development, University of Florida, USA, Sam T. Dell Research Scholar, Professor of Law, University of Florida; Affiliate Professor of Anthropology; Affiliate Professor of Latin American Studies; Affiliate Professor of African Studies; Chair, Program Committee, World Academy of Art and Science. He holds a BA, University of South Africa; BA and MA, University of Oxford; LL.M., MCL, Duke University; JSD, Yale University. He has widely published in international law and human rights. He is an expert and eyewitness on the apartheid system in South Africa.

Aitza M. Haddad is a PhD candidate at Howard University, Washington, DC. She holds a BA in Political Science from the University of Puerto Rico, Mayagüez, a JD from the Inter American University of Puerto Rico,

Law School, Hato Rey, Puerto Rico, and an LLM in Comparative Law from the University of Florida. She is a Fellow of the University of Florida Institute for Human Rights, Peace, and Development and a Junior Fellow of the World Academy of Art and Science.

Basheer Al-Zoughbi is a Researcher and Project Manager for Middle East HURIDOCS, Geneva. He holds an LLM in European Union Law, Reading, UK, an MA in Human Rights Law, Malta, and an MA in International Relations, Milan, Italy. He worked with Facilitate Global, UK, the Applied Research Institute, Jerusalem, and taught at Birzeit University. His research interests focus on public international law: human rights, humanitarian law, criminal law, State responsibility and diplomatic law.

Floriana Fabbri holds an LLM in International Humanitarian Law and Human Rights from the Geneva Academy of International Humanitarian Law, an MA in International Relations/International Law from the Università degli Studi di Firenze, Italy, and a BA in International Studies from the same university. She has worked for the UN Committee on Economic, Social and Cultural Rights in Geneva.

Jacopo Terrosi holds an LLM in International Humanitarian Law and Human Rights from the Geneva Academy of International Humanitarian Law and a BA in International Studies from the Università degli Studi di Firenze, Italy. He has worked for the UN Committee on Economic, Social and Cultural Rights in Geneva.

Valentina Azarov is a lecturer on the Human Rights and International Law Program at the Al-Quds Bard College, Al-Quds University, Palestine. She formerly worked as a legal researcher with Al-Haq, a Palestinian human rights group, on corporate accountability cases and on the Palestinian statehood initiative file, and with HaMoked, Center for the Defence of the Individual, on Palestinian residency rights in East Jerusalem. She obtained LLB in European Legal Studies (Honours) from the University of Westminster in London, and LLM in International and European Law, University of Geneva. She is currently completing her PhD in Public International Law at the Irish Centre for Human Rights, National University of Ireland, Galway.

Magdalena A. Pulido holds an MA from the Geneva Academy of International Humanitarian Law and Human Rights and a BA in Law from

the Universidad Nacional Autónoma de México, Mexico. She worked at the UN Development Programme in Mexico and at the International Criminal Tribunal for Rwanda.

John Quigley is President's Club Professor of Law, Ohio State University, USA. He is the author of many studies, including: *The Statehood of Palestine: International Law in the Middle East Conflict* (Cambridge 2010); *The Six-Day War and Israeli Self-Defense* (Cambridge 2012); *Flight into the Maelstrom: Soviet Immigration to Israel and Middle East Peace* (Ithaca 1997); *The Case for Palestine* (Duke 2005), *The Genocide Convention: An International Law Analysis* (Ashgate 2006); *Soviet Legal Innovation and the Law of the Western World* (Cambridge 2007); *Consular Law and Practice* (Oxford 2008); and *The Ruses for War: American Interventionism Since World War II* (Prometheus Books 2007).

Valentin Jeutner is a PhD candidate at the Faculty of Law of the University of Cambridge. He holds an LLM from Georgetown University, USA, and a BA in Law, Pembroke College, University of Oxford. His research interests pertain to international water law and the philosophy of international law.

Nael Sayed-Ahmad is a Lecturer at the Faculty of Finance and Management, Hebron University, Palestine. He holds a BSc in Accounting and Finance, Hebron University, an MSc in Accounting and Finance from the University of Westminster, UK. He is currently completing his PhD in accounting in International Islamic University, Malaysia. His research interests range from corporate social responsibility of Islamic Banks, risk appraisal, management and current financial markets trends, to the impact of international polices on the Palestinian economy.

Lauren Banko is a PhD candidate at the Department of History, School of Oriental and African Studies, London University, UK. Her research focuses on the history of citizenship discourses of the populist leadership during the Mandate, and is entitled 'The Invention of Palestinian Citizenship: Discourses and Practices, 1918-1936.'

David F. Chavkin is a Professor of Law, College of Law, American University, Washington, DC. He received a BA in Science from Michigan State University and a JD from the University of California at Berkeley, USA. He has served as a presidential appointee under Jimmy Carter and in numerous other government positions. He is a frequent consultant to

foreign governments and universities and an author of many studies on human rights and clinical legal education.

Uri Davis is an Erstwhile Associate Professor, Israel Studies Track, Institute of Area Studies, Al-Quds University, Jerusalem, Palestine. He is a member of the Middle East Regional Committee of the *International Journal of Citizenship Studies*; Honorary Research Fellow, Institute of Arab and Islamic Studies, University of Exeter, UK, Institute for Middle Eastern and Islamic Studies, University of Durham, UK; and a member of the Palestine National Council. He is the author of *Citizenship and the State: a Comparative Study of Citizenship Legislation in Israel, Jordan, Palestine, Syria and Lebanon* (London: Garnet & Ithaca Press, 1997).

Said Zeedani is a Professor of Philosophy and Vice-President for Academic Affairs, Al-Quds University, Jerusalem, Palestine. He holds a PhD and an MA in Philosophy from the University of Wisconsin, USA, and a BA in Philosophy and English Language from the University of Haifa, Israel. He is a former Director General of the Palestinian Commission for Citizens' Rights; Dean of Students, Al-Quds University, Palestine; Dean, Faculty of Arts, Birzeit University, Palestine; Program Director, Al-Haq Human Rights Group; and Chairman, Department of Philosophy and Cultural Studies, Birzeit University. He has published and edited numerous studies on democracy, human rights, politics, ethics, aesthetics and the Israel/Palestine conflict.

FOREWORD

RICHARD FALK

On 29 November 2012, the UN General Assembly voted (138-9) to upgrade the status of Palestine from being a 'permanent observer entity' to that of 'non-member statehood.' The date had symbolic significance as it is the UN official 'Day of Solidarity with the Palestinian People,' observed in many places around the world, underscoring the plight of millions of Palestinians living under occupation, often as refugees, and many others scattered in an involuntary Palestinian diaspora throughout the world, a set of dismal conditions endured by some of the Palestinian people since the *nakba* of 1948 and for the rest (other than the 1.5 million living as a discriminated against minority within Israel) since the Six Day War of 1967.

The initial reaction among Palestinians was to declare victory, and to celebrate this symbolic recognition as a political step closer to the goal of self-determination, expressed by way of the establishment of a sovereign Palestinian State within secured and acknowledged borders associated with the 1967 'green line,' and including having its capital in Jerusalem, either in joint administration with Israel or in that part of the city known as East Jerusalem occupied by Israel since 1967.

It should be realized that this move by the Palestine Liberation Organization and the Palestinian Authority in the General Assembly was a sequel to the stalled effort in 2011 to achieve full-fledged UN membership. This initiative, eloquently presented to the world community by Mahmoud Abbas in his speech of a year ago to the General Assembly, was blocked, as had been anticipated by the United States, which threatened to cast a veto if necessary to ensure that the membership (which implied statehood) bid did not go forward. The preferred mode of the United States was to bottle up the issue indefinitely in the tangled procedures of the UN bureaucracy, which it succeeded in doing, raising serious questions about the ability of a single powerful State to control the operations of the Organization on matters such as membership, which should not depend on the presence of a geopolitical consensus among the permanent members of the Security Council. Such a threatened use of the

veto power, while technically consistent with the UN constitutional framework, is highly irresponsible, and should signal other countries to circumscribe the use of the veto along with other reforms that would make the UN Security Council more responsive to the needs and values of the organized world community in the early 21st century.

Few on either side of the controversy over Palestinian statehood paused to evaluate its real effects on the long struggle to realize Palestinian rights. On the Palestinian side, many assumed that any measure that was so intensely opposed by Israel and its junior partner, the United States, must be of benefit to the Palestinians. Hamas reinforced this understanding by abandoning its original opposition to the statehood bid to one of political support, part of a renewed politics of reconciliation as between Fatah and Hamas. Although a Hamas spokesperson clarified this show of support by saying that it should not be understood as waiving its objections to the establishment of a Jewish State in historic Palestine, it was nevertheless a momentous step toward achieving a compromise on Palestinian goals that corresponded to the global consensus on a two-State solution as articulated originally in Security Council Resolution 242 adopted unanimously in 1967 and numerous subsequent reaffirmations, including by Israeli and American political leaders. For his part, President Abbas made very clear the realistic scope of Palestinian ambitions when he said in his speech to the General Assembly, ‘. . . we do not seek to delegitimize an existing State—that is Israel: but rather assert the State that must be realized—that is, Palestine.’

More questionably, in contrast with the language of the statehood resolution (A/67/L.28, 29 November 2012), Abbas in a recent interview seemed to imply a waiver of Palestinian rights of return when he said that he made no claim of a right to return to his birthplace in Safed, a town in pre-1967 Israel, although he would look forward in the future to the opportunity for a visit. The UN resolution, in contrast to such an imprudent weakening of refugee rights, refers to the resolution of the refugee problem ‘in conformity with resolution 194(III),’ which unequivocally confirms the Palestinian right of return. Such a right is declaratory of international law on the matter. It is important that the text of the statehood resolution did not foster the impression that the establishment of Palestine as a State was *only* about ‘land for peace,’ with abandonment of non-territorial demands.

Israel and the United States argue without any qualifications that Palestinian statehood can only be achieved by direct negotiations between the parties. Any effort to reach such an outcome by a shortcut or symbolically is, in the words of Susan Rice, US Ambassador to the UN,

‘unfortunate and counterproductive,’ as well as creating ‘further obstacles in the path of peace.’ President Obama and the Secretary of State, Hilary Clinton, all utter this mantra of opposition whenever the Palestinians seek to enhance their status as a political actor. This is a diplomatic posture that seems cruel and unreasonable for at least two principal reasons: (1) there is scant prospect for negotiations, which have been suspended since they collapsed in September 2010 when the Israeli Prime Minister, Benjamin Netanyahu, refused to extend the moratorium on settlement expansion, and since then steadfastly refused to suspend settlement building even while negotiations are in progress while at the same time cynically calling for negotiations ‘without preconditions;’ (2) the reality of an occupation that has lasted since 1967, and shows no credible signs of ending in the foreseeable future, makes it humane and reasonable to take some compensatory steps that might at least offer the protection of the daily rights of the Palestinian people as well as uphold their collective dignity while subject to an occupation that looks more and more like annexation. International humanitarian law, including the Fourth Geneva Convention and the Geneva Protocols of 1977, are deficient to the extent that they do not make special provisions on behalf of a civilian population entrapped in an ordeal of ‘prolonged occupation.’

The Israeli response to the statehood bid is as disproportionate as is their use of force contra Palestinians in the name of security. Israel has announced a series of accelerated and controversial settlement moves that annoyed even Washington, and antagonized Israel’s supporters in Western Europe. So far announced, justified as a reaction to the General Assembly vote, was the approval of 3,000 housing units in the long deferred E-1 settlement that has the effect of isolating Palestinian neighbourhoods in East Jerusalem from the West Bank. Additionally, Israel has also declared that it was moving toward final approval for an additional 1,500 units in the Ramo Shlomo settlement located in north Jerusalem. It is my view that Israel used the statehood vote as a pretext for retaliation so as to proceed with the accelerated expansion of the settlement phenomenon, which was part of its game plan in any event. On another level this form of response is a further expression of Israeli rejection of UN (and international law) authority as it directly flaunts the clear language of the resolution, which calls for the ‘complete cessation of all Israeli settlement activities in the Occupied Palestinian Territories, including East Jerusalem.’

The deeper issues as to the value of this statehood resolution remain uncertain and contested. It does not dramatically alter the role of Palestine within the UN, which since 1998 has extended special privileges not available to other actors with an observer status, including the right to

participate in the general debate at the start of all General Assembly annual sessions as well as the right to cosponsor resolutions. The further rights that membership in the UN would confer include the right to vote and to initiate resolutions and other activities. Depending on how statehood is used in the UN System it could give the Palestinians options to join other actors that determine access by statehood criteria rather than on the basis of UN membership. This includes the International Criminal Court, and such specialized agencies as the International Labour Organization, the World Health Organization, the International Monetary Fund and the World Bank. It also gives Palestine the opportunity to adhere to human rights treaties, and build a stronger normative foundation for their claims to become a truly sovereign State that is a constructive member of international society.

Beyond this, prolonged occupation of a political entity that constitutes a State in the eyes of the United Nations would seem to open Israel to contentions that it is in violation of a series of fundamental rules of international law to the contrary, including Charter Article 2(4), reaffirmed in the Statehood resolution, and Security Council Resolution 242, to the effect that it is inadmissible to acquire territory by force. Especially in light of such extensive and sustained unlawful settlement activity, as well as the separation barrier and ethnic cleansing in Jerusalem, it would seem appropriate for the General Assembly to follow up with a resolution requesting an Advisory Opinion from the International Court of Justice as to the legality of continued Israeli occupation of the West Bank, East Jerusalem, and Gaza in light of Palestinian statehood.

It is against such a background that this collection of contributions to a scholarly appreciation of Palestinian statehood issues is to be welcomed with gratitude by all of us concerned with the protection of Palestinian rights and the strengthening of international law and the United Nations. Complex issues of representation, as well as the confusing situation of Palestinian nationality given the multiple residential circumstances in which Palestinians are forced to live, are explored with unsurpassed clarity and depth. This is an invaluable contribution to the scholarly literature on the Palestinian struggle for self-determination, and offers students of the subject throughout the world an ideal point of departure for understanding the core issues as they exist at this time.

The volume goes beyond the direct implications of Palestinian statehood within the UN to consider the prospects for a resolution of the underlying conflict with Israel. The statehood resolution reaffirms the two-State consensus and the Quartet's endorsement of 'the roadmap,' which to many seems increasingly a desert mirage without any prospect of being

realized. What self-determination might mean in light of this background, where the two-State solution seems to be nearing the end of its sunset phase and the one-State secular democracy alternative is generally put to one side in deference to the strong Zionist commitments of the overwhelming majority of Israelis, is explored in creative ways by several authors in this volume.

In concluding, I congratulate Professor Mutaz Qafisheh for gathering such an outstanding group of scholarly interpreters of the Palestinian reality and so expertly editing this collection in a manner that creates a sense of coherence and comprehensiveness. I can only hope that this volume will receive the readership and critical appreciation that it so richly deserves.

20 December 2012
Santa Barbara, California

INTRODUCTION

MUTAZ M. QAFISHEH

The Palestine Liberation Organization declared in early 2011 that if the peace negotiations with Israel fail, it would apply as an alternative for full statehood membership in the United Nations. On 23 September 2011, Palestinian President Mahmoud Abbas submitted an official letter to the UN Secretary-General Ban Ki-moon requesting membership as a State. Although the process of application for full membership has yielded no result owing to the Security Council's inability to take a decision, the PLO was determined to pursue the matter further. On 31 October 2011, Palestine was admitted as a full member to the United Nations Educational, Scientific and Cultural Organization (UNESCO). It also filed an application to the UN General Assembly to acquire the status of an observer State, which was approved by the Assembly's Resolution 67/19 on 29 November 2012 by a majority of 138 States in favour, 9 against, 41 abstentions and 5 absent States.

There has been a great deal of speculation about the legal and political implications of Palestine's membership of the UN as a State. While positions have been taken by various States, depending on their general political stance with regard to the Palestinian-Israeli conflict, no in-depth analysis has been undertaken to date on the concrete implications of the Palestine UN membership. The media have dealt with the issue extensively, and civil society institutions have held seminars and organized symposia at which opinions, mainly political or personal ones, have been expressed. At the academic level, however, few or no scientific studies exist, although short notes, comments and expert 'talks' have been publicized, chiefly by the media and online blogs, and in many cases have led to misunderstandings at the academic and public levels.

This book aims to bridge the scientific gap that exists in this regard. As international law cannot operate and be understood outside the context of the global political atmosphere, the book focuses on the international legal dimension as well as the practical/political perspectives of Palestine's membership in the world's organization.

The book is largely the outcome of a series of papers presented at an international conference on Palestine membership in the UN organized by the Legal Clinic of Hebron University (Hebron, Palestine), 18-19 April 2012. Papers were discussed by specialists in the fields of law, political science, history and economics from various universities in Palestine and abroad (Hebron, Al-Quds, Al-Azhar, Al-Najah, Istiqlal, Birzeit, Oxford, Ohio, Geneva, Georgetown, Florida, London, and American University Washington DC) and by a number of Palestinian officials and independent experts. The papers offered substantive analysis relating to such a move.

The conference, which was attended by hundreds of people from different countries, including ministers, ambassadors, UN officials, judges, lawyers, professors, and independent experts, urged the PLO to continue its efforts to seek full UN membership by applying to the Security Council or directly to the General Assembly to acquire either full membership based on the Assembly's specific power to determine the status of mandated territories, or the status of a non-member State. The PLO should do so regardless of progress achieved in the negotiation process, since membership of the UN stems from the Palestinian people's right to self-determination, sovereignty and statehood (Erakat, Chapter One).

In order to effectively represent the Palestinian people worldwide, the PLO's role in leading the Palestinians should be strengthened by including representatives of the younger generation in its ranks, elections to the Palestinian National Council should be held in Palestine and abroad, and all Palestinians, wherever they may be, should be given the chance to register, participate in the elections and be represented (Goodwin-Gill, Chapter Two). The experts attending the Conference asked the PLO to grant identity papers, such as passports, identity cards or certificates of citizenship, to all Palestinians, wherever they may be, in order to confirm their Palestinian citizenship through the enactment of a law on Palestinian nationality, and to grant the right of citizenship to every person belonging to historical Palestine, whether born to a Palestinian father or a Palestinian mother (Qafisheh, Chapter Three). In parallel to their efforts to acquire UN membership, the Palestinians are urged to activate popular resistance by peaceful means as a strategic goal in order to achieve actual independence. This could be done, for example, by invoking international law rules, devising an improved media strategy, encouraging movements of solidarity with the Palestinian people, formulating a precise Palestinian strategy relating to American foreign policy and showing that the Palestine statehood is an American interest as it is for the Palestinian as well as Israeli benefit (Nagan and Haddad, Chapter Four).

Notwithstanding the rejection of the Palestinian request for an investigation of Israeli crimes by the Prosecutor of the International Criminal Court on 3 April 2012, Palestine needs to try to accede to the Rome Statute of the International Criminal Court as expeditiously as possible after Palestine's admission to the General Assembly. It can alternatively request the Court to accept Palestine as a member by applying through the Assembly of States Parties to the Rome Statute (Azarov, Chapter Eight). Palestine needs to ratify forthwith the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and other core human rights treaties; as Palestine meets the conditions for accession to these treaties since becoming a member of UNESCO. The State of Palestine should thus modify its domestic legislation and institutional practices to ensure compliance with the provisions of the aforementioned treaties at the local level. Palestine should not hesitate to ratify other available treaties, such as those dealing with protection of the cultural heritage, diplomatic and consular relations, the law of the sea, humanitarian law, refugees, apartheid, and the environment (Qafisheh, Chapter Six).

The book deals in some detail with selected issues arising from the membership of Palestine in the United Nations. It discusses the question of humanitarian law and in particular the applicability of Geneva Convention IV after admission to the UN (Fabbri and Terrosi, Chapter Seven). The situation of Palestinian prisoners, whose status affects hundreds of thousands of families, is explored in connection with the possibility of Palestine becoming a party to Geneva Convention III in order to take advantage of the mechanisms for the protection of prisoners of war envisaged in the Convention (Pulido, Chapter Nine). The status of Jerusalem (Quigley, Chapter Ten) after UN membership or observer status as well as the distribution of water resources between the States of Palestine and Israel (Jeutner, Chapter Eleven) are studied in depth.

Palestine may apply for the membership of other international organizations and UN agencies, such as the World Trade Organization (Sayed-Ahmad, Chapter Twelve), the International Labour Organization, the World Bank, the International Monetary Fund, the World Health Organization, and the Food and Agriculture Organization, since membership of these organizations would serve as an indicator of the existence of the State and might be regarded as a step towards full UN membership (Al-Zoughbi, Chapter Four). To this end, Palestine should reform its diplomatic staff by developing unified rules for its embassies and consulates, and should improve the performance of the Ministry of Foreign Affairs by supplying it with trained staff able to provide

protection for Palestinians abroad effectively and to represent Palestine professionally.

Some chapters adopt historical and comparative approaches in discussing the implications of Palestine's UN membership. In Chapter Thirteen, Banko addresses the creation of Palestinian nationality and citizenship under the British Mandate and its influence on nationality in the future State of Palestine. Nagan and Haddad in Chapter Fourteen compare the experience of other States that engaged in peaceful resistance, particularly the liberation of Namibia from apartheid South Africa, with the independence of Palestine. Chavkin (Chapter Fifteen) discusses the desired legal system of Palestine and ways in which it may offer a model for institution-building based on justice. In Chapter Sixteen, Davis outlines the principles that should underlie the Palestinian constitution in a single bi-national State for Arabs and Jews. Lastly, beyond UN membership, Zeedani in Chapter Seventeen proposes a creative alternative to the two-State solution: a bi-national single land that shares two peoples with two citizenships.

However, these are only some of the key implications of Palestine's membership in the United Nations. The book does not claim to be inclusive or comprehensive or to address all potential dimensions of such membership. Questions relating to the future of negotiations, Israeli settlements within the occupied territory of the State of Palestine, borders, entry into the country, security, economic relations with Israel and other States, diplomatic relations, to name just a few other issues, ought to be considered by scholars.

A note should be added on the aforementioned UN General Assembly Resolution of 29 November 2012, which was adopted after most chapters of this book had been written. This resolution might constitute a historical breakthrough for the Israel-Palestine conflict. But it might also be similar to the hundreds of previous UN resolutions on the conflict if the move is not followed by a series of measures that should be undertaken in the near future by the Palestinians themselves.

At the global level, the Palestinians should as expeditiously as possible approach the International Criminal Court, utilize judicial and diplomatic channels available under international humanitarian law, human rights law, refugee law, diplomatic and consular law, the law of the sea, and join further UN specialized agencies. Equally important, at the local level, the State of Palestine should enact legislation and take measures relating to citizenship and passports, elections, constitution, currency, legal reform, and institution-building. Such global and domestic measures are briefly

highlighted here, while some other issues are more thoroughly explored in various chapters of the book.

The Prosecutor of the International Criminal Court (ICC) would not hesitate as of now to accept Palestine's application to accede to the 1998 Rome Statute that established the Court. The former ICC Prosecutor justified his decision of 3 April 2012 to defer the Palestinian application to the ICC chiefly on the ground that Palestine was not a State then. Now the Prosecutor would be compelled to investigate and might issue arrest warrants, through Interpol, to the police of 121 States members of the Rome Statute who would be under an obligation to deliver accused war criminals to The Hague. This is the main reason why Israeli politicians fear Palestine's UN bid. Once ICC jurisdiction is triggered in the case of Palestine, the Israeli military will think twice before using indiscriminate force against Palestinian civilians, including children, as was the case during the November 2012 offensive on the Gaza Strip. Hence, ICC jurisdiction – either through ratification of the Statute or acceptance by the Court of Palestine's declaration under Article 12(3) of the ICC Statute – might serve as a preventive measure that would contribute to a reduction in the violence and harm caused to civilians.

Yet, more significantly, Israeli politicians, military officers and settler leaders might be accused by the ICC of committing war crimes owing to settlement activity in the West Bank, which is prohibited under Article 49(6) of Geneva Convention IV and considered as a 'grave breach' under Article 147 of the said Convention and a 'war crime' under Article 8(2)(b)(viii) of the ICC Statute. The Palestinians, while resisting the occupation, would likewise be under an obligation to avoid targeting Israeli civilians. This in turn might prompt the Palestinians to invent more peaceful resistance techniques. Besides, Palestinian security personnel might be accused of committing crimes against humanity if they commit acts of torture or other serious human rights abuses against their fellow Palestinians.

Two international humanitarian law instruments should be ratified by Palestine immediately: Geneva Conventions III and IV. The enforcement of Convention III indicates that Palestinian prisoners in Israeli jails – currently treated as ordinary criminals by Israel – would be accorded the status of prisoners of war (POWs) in the eyes of the international community. Such POWs, by virtue of Article 118 of the said Convention, should be released upon cessation of hostilities. In the likely event of Israel's non-compliance, Palestine could resort to remedies available under the Convention, including calling upon the High Contracting Parties, under Article 132, to turn to the ICC, under Article 8(2)(a)(vi) of the

Rome Statute, which considers arbitrary detention or the failure to adhere to fair trial standards as a war crime.

Similarly, Palestine could ratify Geneva Convention IV by sending a request to the Swiss Confederation in Bern (under Articles 152 and 155 of the said Convention), asserting the importance of ensuring proper protection for the civilian population in the occupied State of Palestine. Although the Convention has, in theory, been legally applicable in the past and current state of affairs, ratification of the said Convention would enable victims to file complaints before Palestinian courts that would be able to exercise universal jurisdiction, based on Article 146 of the Convention, to issue arrest warrants and to prosecute war criminals, regardless of their nationality and the place of commission of the crime. Such warrants might be addressed via Interpol to the courts and police of other High Contracting Parties to arrest, extradite and prosecute perpetrators in the local courts of nearly all States.

Palestine could now accede to all human rights treaties. The State was able to become a Party to certain treaties, such as the two human rights covenants as indicated above, after its admission to the UNESCO on 31 October 2012, as per Article 48 of the International Covenant on Civil and Political Rights and Article 26(1) of the International Covenant on Economic, Social and Cultural Rights. Now, all human rights treaties are open to the State for ratification, including the other seven core conventions (i.e. conventions on torture, women, children, disability, disappearance, migrant workers). Article 46 of the Convention on the Rights of the Child, for instance, provides that it 'shall be open for signature by all *States*' (emphasis added). Palestine could thereafter become a party to the UN treaty monitoring bodies, appoint Palestinian experts to such bodies, submit State reports and file complaints against other States, where applicable. The ratification of these legal instruments would also impose certain obligations on Palestine to ensure respect for the provisions of the treaties, including by harmonizing its legislation with the treaty's provisions and undertaking the necessary reforms of its institutions and their legal practice. Individual victims might be able to file complaints against Palestinian authorities as well.

With almost half of Palestinians being refugees, international refugee law would be no less relevant than the other branches of law mentioned above. While the right of return for Palestinian refugees to Israel continues to be applicable notwithstanding Palestine's recognition by the UN (Qafisheh, Annex to Chapter Three), three key points should be stressed: (1) the State of Palestine is obliged to readmit or allow the return of those persons who left or were forced to leave the West Bank or Gaza at any

point from 1948 until today (about 1,200,000 persons); (2) Palestine could accord its citizenship to any refugee originating from the territory of Israel and protect him or her abroad—it should be noted that the admission of such refugees to Palestine would not undermine their right of return to their original places of residence in Israel; (3) Israel, which currently controls the borders of the State of Palestine as an Occupying Power, might deny the return of refugees to the West Bank. At this point, Palestine could become a party to the 1951 Convention relating to the Status of Refugees and automatically resort to the International Court of Justice under Article 38 of the Convention to complain about any of Israel's violations thereof.

International diplomatic and consular law, set out respectively by the Vienna conventions of 1961 and 1963, could provide the State of Palestine, after accession, with the right to send and receive diplomatic and consular missions as it wishes. A problem would arise if Israel prevents certain States from sending diplomatic or consular personnel into Palestine. In such cases, the States concerned, as well as Palestine, would have the right to complain against Israel before the International Court of Justice under the optional protocols to these conventions concerning the compulsory settlement of disputes. The State could, as a matter of right for Palestine and as an obligation in the case of the receiving States, afford diplomatic protection to its citizens abroad and serve them through its consular staff.

The law of the sea is applicable to the coastal area overlooking the Mediterranean in the Gaza Strip as well as to the West Bank, which is landlocked territory. By ratifying the 1982 United Nations Convention on the Law of the Sea, the State of Palestine could claim sovereignty over its territorial waters (12 nautical miles or 22,224 km) and jurisdiction over its contiguous zone (24 nautical miles) and exclusive economic zone (200 nautical miles or just over 370 km at the Gaza coast). If the Israeli navy prevents the Palestinians from using these areas – for any purpose such as transport, fishing, constructing ports or exploring for gas – Palestine may resort to the optional settlement measures recognized in Article 287(1) of the Convention: the International Tribunal for the Law of the Sea in Hamburg, the International Court of Justice, or arbitration. Although Israel is not presently a party to the Convention, Palestine could still use diplomatic means to approach the Convention's 163 State Parties.

Joining international organizations had become possible even before the aforementioned UN General Assembly vote by virtue of the admission of Palestine as a full Member State to UNESCO in October 2011. Palestine was already a member of other intergovernmental organizations

such as the League of Arab States and the UN Economic and Social Commission for Western Asia. The latest vote would make it easier for Palestine to join further UN specialized agencies, including the World Health Organization (WTO), the International Labour Organization (ILO), the World Bank and the World Trade Organization (WTO). Article 3 of the WHO Constitution, for instance, stipulates that ‘Membership in the Organization shall be open to all States.’ Palestine could resort to the Dispute Settlement Body of the WTO to complain against Israel if this State continues to impose restrictions on Palestinian imports, exports, taxes, customs and price control. The WTO is expected to take certain measures against Israel should it continue imposing restrictions on the Palestinian economy and Palestinian freedom to trade.

Enacting a Palestinian citizenship law would have different effects today from those it would have entailed before the General Assembly vote. Palestine may define its population as it deems fit. It could, based on citizenship law, issue Palestinian passports that would *ipso facto* be recognized by other States—or at least by the States that voted in favour of Palestine’s statehood. Palestine could then claim diplomatic protection for its citizens abroad, as mentioned above. Citizenship is a precondition for filing cases concerning violations against citizens under international criminal law, humanitarian law, refugee law and human rights law, including extradition, and for the context of elections to the Palestinian parliament.

It is high time for Palestine to initiate elections to its State institutions in view of the lack of popular legitimacy of the ‘governments’ that are in place in both Ramallah and Gaza. In Ramallah, the term of President Mahmoud Abbas, who was elected in 2004, lapsed in 2008, and the term of the Hamas government in Gaza, which won a parliamentary majority in the 2006 elections, ended in 2010. Elections should be comprehensive and include all Palestinians, who should be defined based on the citizenship law just mentioned, in Palestine and abroad. The elections should include the Palestinian National Council which would represent both the State and the PLO. The Council might well be broken down into two chambers, one representing the State in the West Bank and Gaza and the other representing the Palestinians in the diaspora, with agreed functions for each chamber and general functions for both chambers. The elections should be preceded by a process of reconciliation between the existing governments in order to form a unity government between the West Bank and Gaza. Without elections, effective unity between the West Bank and Gaza cannot be achieved—and this is a precondition for avoiding the situation of a failed State scenario.

The constitution is a fundamental instrument for constructing and sustaining the political system of Palestine and laying the basis for its ability to act as a State. The current 2003 Amended Palestinian Basic Law was drafted for an authority that was expected to function for a transitional period. It is not sufficient to regulate the political system of a State. A committee which was set up to draft the Palestinian constitution has produced a number of bills. These might be considered as a starting point for finalizing a constitutional draft that reflects the establishment of a democratic State of Palestine, which should ultimately be submitted for a referendum to the Palestinian people. The new constitution should avoid the pitfalls that weakened the Basic Law. In particular, it should clearly define the relationships among the three powers, and unequivocally embrace international human rights standards, particularly with regard to the death penalty, women rights, torture, and the declaration of a 'state of emergency'—all of which are issues that are vaguely formulated in the current Basic Law. In this regard, the 'parliamentary system' is the preferred mechanism to be adopted by the constitution. Such a system would permit the parliament to choose a prime minister and a cabinet that might be changed from time to time depending on the coalitions and balances created on the basis of the electoral system and parliamentary groupings. The electoral system should be based, as it is now, on proportional representation.

One of the features of any State is a national currency. According to the Paris Protocol that was signed between the PLO and Israel in 1994 as part of the Oslo Accords (Palestinian-Israeli Interim Agreements), Palestine could have adopted a national currency at an earlier stage. If it had been adopted in the absence of a formally recognized State, the recognition of this currency might have been questionable. This concern has now been diminished, as very few would be able to question the validity of the 'Palestinian pound' after its issuance by a formally sovereign central bank.

Legislative reform is an indispensable tool for the execution of most international and local measures highlighted here. Such reforms would involve ensuring that domestic law is in line with Palestine's international human rights obligations and providing for implementation of the ICC Statute, the Geneva conventions and other legal instruments. Palestine's prospective admission to international organizations would require the amendment of a number of laws. For example, a reform of business and investment law is necessary to adhere to WTO's standards, an improvement in labour law is required for ILO membership, and the adoption of a modern cultural heritage law is important for membership of

UNESCO, which Palestine has already acquired. Reform is also necessary to harmonize the law applicable in the West Bank and Gaza, whose laws differ considerably due to the legal systems that were inherited from the Ottoman, British, Egyptian and Israeli regimes over the past 100 years.

Enacting legislation, ratifying treaties, approaching international tribunals and entering global organizations are all steps that require technical preparation and institutional reform. They similarly require actions to recruit and build the capacity of individuals who can undertake analytical studies, provide reports to international forums, plead before international courts, represent the country in embassies abroad, be hired by global organizations as staff members and experts, offer consular and diplomatic services to citizens overseas and elaborate strategic plans for legislative reform. All these steps demand the allocation of adequate financial resources.

This book consists of three parts. Part I presents the framework of Palestine's UN membership, its legal and political foundations, its implications for PLO representation, Palestinian refugees and population status, and its impact on relevant parties. Part II focuses on selected issues that arise in relation to the Palestine UN membership, including human rights, humanitarian law, international criminal law, prisoners, Jerusalem, water and the accession to the WTO. Part III connects the history with future solutions for Palestinian-Israeli conflict.

I would like to express my deepest gratitude to Patricia Deane for her excellent editing and proofreading work and for correcting the language of significant parts of the volume. I do not know how the book would have been completed without her support. Thanks are also due to Rana Tamim, Carol Koulikourdi, Richard Falk, Saeb Erakat, Said Zeedani, David Chavkin, Guy Goodwin-Gill, Winston Nagan, John Quigley, Uri Davis, Basheer Al-Zoughbi, Magdalena Pulido, Valentin Jeutner, Nael Sayed-Ahmad, Lauren Banko, Aitza Haddad, Valentina Azarov, Jacopo Terrosi, Floriana Fabbri, Hendam Rjoub, Rashad Twam, and Yasin Sayed.

*April 2013
Hebron, Palestine*