

A series  
Of Legal  
Reports

79

الهيئة المستقلة لحقوق الإنسان "ديوان المظالم"  
The Independent Commission for Human Rights

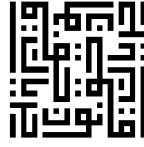


# **Palestine as a Non-Member Observer State at the United Nations**



2013





**الهيئة المستقلة لحقوق الإنسان**

**“ديوان المظالم”**

**The Independent Commission for Human Rights**

# **Palestine as a Non-Member Observer State at the United Nations**

**A series Of Legal Reports ( 79 )**

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# Introduction

This report is complementary to a legal report prepared by the Independent Commission for Human Rights entitled *Palestine and Its Status as a Member State in the United Nations*<sup>1</sup>. We try through this report to address several concerns about the rights and privileges of Palestine, formally a Non-Member Observer State at the United Nations since November 29, 2012. It explores the legal entitlements and obligations of the State of Palestine and the legal status of the Palestine Liberation Organization following this new status, and also sheds light on the impact of the General Assembly (GA) recognition of Palestine as an observer state on Israel as the occupying power. Another issue to be considered concerns the obligations of the State of Palestine to sign and ratify the United Nations' core human rights treaties, as well as the role of the Independent Commission for Human Rights as Ombudsman in light of this development, taking into account the unique circumstances of recognition of Palestine as a non-member observer state, and any special consideration of such status to be accorded to Palestine while it is still under occupation.

A review of international law shows that the UN Charter is lacking in any provisions clarifying the status of observer state at the UN. It was defined and took shape within the bodies of the United Nations through practical experience, and based on some countries joining the United Nations as non-member observer states. We focus much on the experience of the Holy See in our legal and practical analysis to define the rights and privileges which the State of Palestine will encounter with its new status. International law is not a mechanical tool that applies to all cases in the same way, as there are political factors we need to take into account in this context and other factors to which we can have no answer unless we have examples from practical experience.

While looking into international experiences similar to the Palestinian situation, we discuss three applications submitted to the (UNSC) to obtain membership. These applications were submitted by newly independent countries which were able to ultimately achieve full membership (Namibia, Micronesia, Marshall Islands)<sup>2</sup>.

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1 Yaser Alawneh, *Palestine and its Membership as a State at the United Nations*, ICHR, Ramalla, Palestine, September 2011. For more see ICHR's website.

2 See <http://www.un.org/en/members/about.shtml>





## **Part I**

### **Observer Status Rights and Privileges**

This chapter defines what an observer state is and explores its capacity to pursue ratification of international human rights treaties and accede to additional United Nations specialized agencies and its Human Rights Council.



# Chapter 1

## Observer State Accession to International Human Rights Law

This chapter discusses the legal entitlements of Palestine upon being accorded observer state status at the United Nations, Palestine's bid for membership at the UN and Palestine's ability to join the UN's different agencies and bodies.

### 1.1: Observer States in the United Nations<sup>3</sup>

Non-member states of the United Nations which are members of one or more specialized agencies of the UN can apply for permanent observer status at the UN General Assembly. This status is based on practical experience and precedence since the United Nations Charter does not provide any articles in this regard. Such practical experience dates back to 1946, when the Secretary-General of the UN approved of granting the Government of Switzerland the status of permanent observer. There are additional states that applied for observer status and subsequently were granted full membership. For example, Austria was one of these states, becoming a member of the United Nations in December 1955, and since then has participated in various UN activities and missions. It also joined the Council of Europe and the European Convention of Human Rights in 1956. Other states that went through the same experience are: Finland (14\12\1955); Italy (14\12\1955); Japan (18\12\1956<sup>4</sup>); Switzerland (10\9\2002<sup>5</sup>); and the Holy See, accorded observer member status since 6\4\1964<sup>6</sup>.

Permanent observer states at the United Nations are entitled to attend most of the meetings and have access to most of the relevant documents. Several regional and international organizations also enjoy their status as permanent observers in the actions of the General Assembly and its annual meetings. Despite the fact that most of the rights and privileges observer states<sup>7</sup> enjoy are not inscribed in the Charter, three relevant resolutions have been made:

3 Since the creation of the UN, (16) countries went through the experience of being a non-member observer state : Australia, 1952-1955; Bangladesh 1973-74; Popular Democratic Korea 1973-91; Democratic Republic of Vietnam 1975-76; United Republic of Germany 1952-73; Finland 1952-55; Democratic Republic of Germany 1972-73; Italy, 1952-55, Japan 1952-56; Kuwait 1962-63; Monaco 1956-93; Republic of Korea, 1949-1991 Republic of Vietnam 1952-76; Spain 1950-1950; Switzerland 1946-2002; Vietnam 1976-1977.

4 <http://www.bmeia.gv.at/en/austrian-mission/austrian-mission-new-york/about-austria/history.html>

5 <http://www.un.org/ar/members/aboutpermobservers.shtml>

6 A state needs a simple majority of the votes of the GA to achieve member observer status (abstentions are not accounted for in this case) according to paragraph (3) of Article (18) of the UN Charter because status upgrading is considered to be a procedural matter and not a core one.

7 <http://www.un.org/ar/members/aboutpermobservers.shtml>



### **a) Economic and Social Council Resolution 244<sup>8</sup>**

The Economic and Social Council of the United Nations issued Resolution 244 on 22 June 1977, granting the Holy See the right to attend the meetings of the regional commissions, though according to the rules stated under the relevant jurisdictions that applied to the member states, but not members of the regional commissions. Just days previously, it also accorded Switzerland full membership in Europe's Economic Council on 20 June 1971, enabling it to participate in all its meetings and present proposals and public policy statements regarding all the issues of its concern since 1977. The Holy See was able to participate, in its capacity as observer state, in the sessions of the Economic and Social Council in the region on equal footing with the UN member states that were not also members of the regional commissions<sup>9</sup>.

### **b) General Assembly Resolution concerning the Holy See's Contribution to the UN Budget**

General Assembly Resolution No. (58\B1), dated 23 December 2003, states the financial contribution of the Holy See to the General Administration of the United Nations according to the proportion designated to it as a non-member observer state based on the financial rates determined by the GA<sup>10</sup>. Also, Switzerland's contribution to the budget of the United Nations was decided before it assumed full membership.

### **c) General Assembly Resolution concerning the Holy See's Participation in the Work of the UN<sup>11</sup>**

General Assembly Resolution No. (58\314) dated 16 June 2004, and entitled *Participation of the Holy See in the Work of the United Nations*, is the first written resolution of its kind, effecting a milestone change regarding the rights and privileges of States with observer status at the UN. In this resolution, the General Assembly granted these states the right and privilege to participate in the conferences of the United Nations, its work and rounds and the international conferences held under the auspices of the GA or other bodies of the United Nations. Furthermore, it requested the Secretary-General of the United Nations to set forth the relevant bases and procedures to ensure the implementation of the resolution<sup>12</sup>.

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8 See the text of the decision in Appendix (3)

9 ECOSOC resolution 1600 (LI)

10 <http://www.un.org/en/ga/contributions/nonmember.shtml>

11 Content of the resolution in Appendix No. (2).

12 General Assembly Resolution A/58/314, *Participation of the Holy See in the Work of the United Nations*.

## 1.2: Palestine's Application for Non-Member Observer Status <sup>13</sup>

The Palestine Liberation Organization was accorded observer status at the United Nations according to GA Resolution No. 3237, dated 22 November 1974. It received an invitation to attend the sessions and conferences of the GA as an observer, and was also permitted to participate in international conferences held under the auspices of the GA in the same capacity<sup>14</sup>.

On 23 September 2011, Palestine submitted its application to the United Nations Security Council (SC) for full membership at the United Nations, but the application was not subjected to a vote inside the Security Council, as there were conflicting views about the application among the members of the Credentials Committee.

It was on 29 November 2012, and through a number of Arab and other friendly states, that Palestine submitted a draft resolution to the General Assembly in a bid to upgrade its status to observer state at the United Nations. The Palestinian application was titled *Palestine's Status at the United Nations*, and emphasized the various resolutions of the United Nations that affirm the rights of the people of Palestine to self-determination and the principle of equal rights based on GA resolution No. 181, issued exactly sixty-five years earlier, on 29 November 1947. It also emphasized the principles of the United Nations which prohibit occupation of land by force, and specified the following relevant resolutions issued by the Security Council: 242 (1967); 338 (1973); 446 (1979); 478 (1980); 1397 (2002); 1515 (2003); and 1850 (2008). In addition, it highlighted the applicability of Geneva Convention IV of 1949 to the occupied Palestinian territory, including East Jerusalem.<sup>15</sup> The draft resolution also stressed that Palestine should be accorded observer state status at the United Nations without prejudice to the rights, privileges, role and status of the PLO as representative of the people of Palestine, according to the relevant resolutions and practices. Furthermore, it called attention to the right of the people of Palestine to self-determination and independent statehood on the Palestinian land occupied in (1967). It urged member states and United Nations agencies and organizations to continue their support for the people of Palestine to attain their right to self-determination, independence and freedom<sup>16</sup>. The Palestinian application also emphasized that the Palestinian bid to upgrade Palestine's status at the United Nations was not to adversely affect the status of the PLO as the sole representative of the people of Palestine, and also stressed that the new status would neither affect the PLO's ability to promote the legal rights of the people of Palestine and its protection, nor its bylaws and regulations<sup>17</sup>.

Though the submitted draft resolution emphasized the representative status of the PLO, some understand this as putting it at risk. According to international law, the PLO represents the people of Palestine inside Palestine and in exile, making its representation broader and more comprehensive. Thus, the matter of representation should be handled

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<sup>13</sup> See Appendix No. (1).

<sup>14</sup> See [www.un.org](http://www.un.org)

<sup>15</sup> See Appendix (1).

<sup>16</sup> See Appendix (1).

<sup>17</sup> <http://www.nad-plo.org/atemplate.php?id=151>



cautiously due to legal risks, and the PLO's representation as a national liberation movement should be stressed; this is especially so regarding the concept of its representation, which is much broader and more comprehensive than that of the State under international law. International law and international humanitarian law do not allow for national liberation movements to give up or exchange territory with the occupying power, while states, according to international law, do have the power to exchange territory under their jurisdiction. Another relevant problem which could emerge in the future during negotiations between the Israelis and the Palestinians is if Israel refuses to engage with Palestine over certain issues and prefers to negotiate with the PLO instead, and according to its own interest or its own intent to divide the negotiations on the pretext of the jurisdictional claims of Palestine or that of the PLO<sup>18</sup>.

On 27 August 2011, BADIL Resource Center for Palestinian Residency and Refugee Rights dispatched an open letter to the President of the PLO concerning Palestine's bid to the United Nations. The letter explained how such a step would prejudice and challenge the legal and representative status of the PLO as the sole representative of the people of Palestine with observer status at the UN General Assembly. If upgrading the status of Palestine to observer state would practically end up with entrusting the representation of the Palestinian people to Palestine, which would be recognized with the borders of 1967, the status of the PLO at the General Assembly would be nullified, and primarily because the same people cannot be represented by two parties at the UN. Even if the link to the PLO is maintained orally or the same representatives of Palestine's missions in their posts are kept, this would not reduce the risk of prejudicing the inclusiveness of the PLO's representation. Badil Center considers that the new status of Palestine at the United Nations is not likely to change Palestine's status on the ground, though with the exception of joining some international agencies, which cannot be taken for granted. In addition, and based on its understanding of international custom, international humanitarian law and the relevant international resolutions, the center also believes that the facts which Israel is imposing on the ground in the occupied Palestinian territory are illegitimate regardless of Palestine's status at the United Nations. Therefore, what is described as a diplomatic achievement at the international level, even in light of Israel and the United States' opposition to it, will not be of any value compared to the legal, political and representational popular value of the PLO; this is especially since «winds do not blow as the ships wish».

The adverse impacts which could ensue from the new status of Palestine at the United Nations are several: prejudicing the inclusive legal, political and popular representation which the PLO enjoys today as a liberation movement representing all the people of Palestine, both inside and outside Palestine; prejudicing the concept of Palestinian national identity embodied by the PLO, and especially the Palestinian identity which could be linked with actual residency of the Palestinian citizen within the recognized borders of the Palestinian state; prejudicing the refugees' right of return to their original homes by restricting this right to the recognized borders of the state of Palestine according to Israeli and Western conceptions, but in contravention to Security Council Resolution 194; causing prejudice to the inclusiveness of the Palestinian people's right to self-determination

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<sup>18</sup> See Alawneh, «Palestine and Its Membership...».

which cannot be implemented without enabling the refugees to return to their original homes. It is important that this right must be maintained conceptually and practically throughout the national liberation stage without restricting it to the geography of the recognized state<sup>19</sup>.

Despite all the concerns raised by Badil Center, the Palestinian application to the UN maintained the status and achievements of the PLO by including a clear clause in that regard. It stressed that Palestine should be upgraded to a non-member observer state at the United Nations without prejudice to the rights and privileges of the PLO and its role in the United Nations as representative of the Palestinian people and according to the relevant UN resolutions.

Concerning the right of the Palestinian refugees to return, Amnesty International said in its statement on the new Palestinian status at the United Nations that “recognition of Palestine will not cause prejudice to the legal status of the Palestinian refugees as the right of each Palestinian refugee to return is guaranteed and can not be compromised whether Palestine enjoys observer status at the United Nations or not.”<sup>20</sup> In regard to the citizenship issue, the Palestinian state may issue the Palestinian nationality law and define accordingly who qualifies as a citizen.

On 29 November 2012, the General Assembly accorded Palestine non-member observer state status<sup>21</sup> with 138 in favour, 9 against<sup>22</sup> and 41 abstentions .

### 1.3: Observer State Ratification of International Human Rights Treaties

General Assembly Resolution 58 \314, dated 16 June 2004, and titled *Holy See's Participation in the Work of the United Nations*, stated that the Holy See had been an observer state in the United Nations since 6 April 1964, and party to several international human rights treaties, including the following: Vienna Convention on Diplomatic Relations; 1969 Vienna Convention on the Law of Treaties; 1951 Protocol Relating to the Status of Refugees; Convention on the Rights of the Child and its Optional Protocols; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; International Convention on the Elimination of All Forms of Discrimination; Convention for the Protection of Intellectual Property in the Event of Armed Conflict; Paris Convention for the Protection of Industrial Property, Treaty on the Non-Proliferation of Nuclear Weapons; several disarmament treaties; the Geneva Conventions of 1949, and the 1977

19 Open letter to the President and members of PLO's Executive Committee concerning Palestine state draft resolution, for more, see <http://www.badil.org/ar/press-releases/137-press-ara-2001/3222-press-ara-28>

20 <http://www.amnesty.org/ar/library/asset/MDE21/005/2012/en/ff04cbe1-08ce-48e7-8821-9286655c56b2/mde210052012en.pdf>

21 <http://www.un.org/arabic/news/story.asp?newsID=17626>

22 Canada, Czech Republic, Israel, Marshall Islands, Micronesia (Federated States of), Nauru, Panama, Palau, United States Also see Appendix (8), Palestinian application subjected to vote at the GA .



Geneva Protocols<sup>23</sup>.

States with observer status at the UN have the right to ratify and sign international human rights conventions and international treaties through the contracting agencies. In light of the experience of the Holy See and the relevant resolution of the General Assembly, Palestine can, as observer state at the United Nations, ratify the international conventions on human rights depending on the nature of that ratification of the convention or treaty. The ratification of human rights treaties by Palestine would promote the status of human rights in Palestine because the government would be bound to submit reports to the relevant UN organizations about the progress it would have made concerning its commitment to the treaties, and this would be in addition to other obligations. Thus, there should be internal mechanisms on how to implement ratification of these treaties in light of the disruption of the Palestinian Legislative Council, the limited Palestinian experience in this regard, and the extraordinary situation of Palestine being under occupation. As an observer state, Palestine can also ratify the Convention on the Law of the Sea of 1982. As such, Palestine can benefit from such a step in terms of establishing and maintaining Palestinian water rights and sovereignty over its territorial waters and economic region, which comprises about 200 miles of Gaza's coast. Through this, there is also recourse to the International Court of Justice in the event it is subjected to any aggression. Although Israel is not party to that treaty, Palestine can nevertheless still make use of the potential diplomatic means through the 163 States parties to this convention<sup>24</sup>. Palestine may also ratify the Vienna Convention on International Treaties of 1969 and the Vienna Convention on Diplomatic Relations of 1993. In the same vein, Palestine enjoys complete diplomatic immunities and prerogatives granted according to international law.

#### 1.4: Observer State Accession to UN Specialized Agencies

It is worth discussing that observer states in the UN have joined as members of different sub-commissions and specialized agencies and international governmental organizations. These include the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, the UN Conference on Trade and Development, the World Intellectual Property Organization, International Atomic Energy Agency, Organization for the Prohibition of Chemical Weapons, Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, and the International Committee of Military Medicine<sup>25</sup>. Observer states can also participate in several specialized agencies of the United Nations<sup>26</sup>.

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23 <http://www.holyseemission.org/about/treaties-and-conventions.aspx>

24 Palestinian Strategy Conference recommendations following recognition of Palestine as observer state, Hebron University, 10/12/2012.

25 See, for example General Assembly Resolution A/58/314, *Participation of the Holy See in the work of the United Nations*.

26 The Holy See, for example, participates in several specialized agencies such as the Food and Agriculture Organization of United Nations, International Labor Organization, WHO, UNESCO, Industrial Development Organization, International Fund for Agricultural Development, International Tourism Organization and World Trade Organization. It is a full member of the Organization for Cooperation and Security in Europe and Honorary Guest at its Parliamentary Assembly. It also participates in other international gov-



Palestine as an observer state thus will be in a stronger position to join some of these specialized agencies, though not all of them. A state with observer status cannot join some agencies without being a full member of the United Nations. Moreover, other agencies provide that the consensus of member states is required before an observer may join them.

The Israeli newspaper *Maariv* reported that the Israeli Ministry of Foreign Affairs exerted every effort possible to prohibit Palestine from joining four international organizations: World Intellectual Property Organization, United Nations Environment Programme, Universal Postal Union and the World Health Organization<sup>27</sup>. Israel pinned much hope on legislation passed by the US Congress in 2011, stating that if the Palestine Liberation Organization was to join an international organization as a member, the United States would cease financing that organization. It is clear that Israel was well aware that the United States' annual contribution to each organization of the United Nations is 22% of the total budget of that organization, and that the American President may not exceed or cancel this, in accordance with US law. Israel is concerned that acceptance of Palestine by international organizations as a member would weaken its own position in political negotiations; this is especially the case since Palestine as a member can influence the decisions and thus political patterns of these organizations in matters concerning the occupied Palestinian territories. This is borne out by the fact that Palestine's membership to UNESCO and its new status will facilitate its entry into other organizations, and it is especially difficult now for Israel to pressure these organizations to oppose to Palestine's membership after it was recognized by (138) member states<sup>28</sup>.

## 1.5: Observer State Participation in the General Assembly and Human Rights Council <sup>29</sup>

Observer states at the United Nations have the right to participate in the sessions of the Human Rights Council (HRC). The representative of the Holy See, for example, attended the 17<sup>th</sup> session of the HRC<sup>30</sup>, which was held on May 17-30, 2011 in Geneva, Switzerland and was permitted to make an intervention, as did other states. Accordingly, Palestine as an observer also has the right to effectively participate in the sessions of the General Assembly and the Human Rights Council; this includes the right to participate in General Assembly debates<sup>31</sup> and the right to be added to the list of speakers under agenda items at any plenary meeting of the General Assembly, but listed only after the last member state

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environmental organizations including the European Council, the Inaugural Organization of American States, the African Union and it is regularly invited to participate in the main meetings of the Asian African Legal Consultative Organization.

27 <http://www.samanews.com/index.php?act=Show&id=146319>

28 <http://www.samanews.com/index.php?act=Show&id=146319>

29 It is worth mentioning that the Holy See participated in 21<sup>st</sup> session of the HRC for the interactive dialogue with the International Independent Investigation Commission on Syria. It also participated in the 19<sup>th</sup> session of the council. It had contributed to special 7<sup>th</sup> session of the HRC by a presentation about the right to food in Haiti

30 . <http://www.un.org/webcast/unhrc/archive.asp?go=110606>

31 U.N. General Assembly Resolution A/58/314, *Participation of the Holy See in the Work of the United Nations*.



inscribed on the list<sup>32</sup>.

There is a range of rights available to Palestine as an observer state, although all of them have some limitations or restrictions. The right to make interventions is specific, allowing 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. There is also the right of reply, and the right to have its communications relating to the sessions and work of the General Assembly issued and circulated directly, and without an intermediary, as official documents of the General Assembly. Similarly to this is the right to have its communications relating to the sessions and work of all international conferences convened under the auspices of the General Assembly issued and circulated directly, and without intermediary, as official documents of those conferences. Allowing a larger degree of participation and involvement, Palestine also has the right to raise points of order relating to any proceedings involving it, but only provided that it does not include the right to challenge the decision of the presiding officer. Of particular significance is the right to co-sponsor draft resolutions and decisions that make reference to Palestine, though such draft resolutions and decisions can only be put to a vote upon request from a member state. And finally, in regard to seating, the seating for Palestine is to be arranged immediately after member states but before the other observers when it participates as a non-member state observer; this includes an allocation of six seats in the General Assembly hall, but without Palestine having any right to vote or to put forward candidates in the General Assembly.

In spite of some of these limitations, Palestine does have the right to put forward candidates or nominate itself for any conference convened under the auspices of the General Assembly. In the same vein, it also has the right to be seated in any meeting or part of meeting involving the election of permanent judges or ad litem judges; this right was exercised by the Holy See in the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. This right also applies to participation in the sessions of the HRC since the General Assembly's decision concerning the creation of the HRC allows it to follow the action mechanisms of the General Assembly's commissions. With regard to the participation of the non-member observer states, specialized organizations, non-governmental organizations and intergovernmental organizations in the sessions of the HRC, this is to be determined through decisions made by the Economic and Social Council Resolution No. (1996/31) and the practical experience of the HRC itself<sup>33</sup>.

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32 U.N. General Assembly Resolution A/58/314, *Participation of the Holy See in the Work of the United Nations*.

33 Clause (11) of the GA's resolution No. (251/60), on the founding of the HRC.

## I.6: Palestine's Ratification of the Statute of the International Court of Justice

The new status of Palestine as a UN observer state enhances its opportunity to sign up to the International Court of Justice (ICJ) statutes, where Articles 93 and 96 of the UN Charter state:

“All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice, and 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. Also, the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question and other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities”.

Switzerland and Japan have undergone this experience before becoming members of the United Nations. The General Assembly, upon recommendation by the Security Council, recognized the conditions which an applicant state needed to meet in order to sign onto the ICJ statutes. The same conditions were required every time a similar case arose: commitment to the statute of the court, commitment to Article 94 of the United Nations Charter, which states that each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party, and contribution to the expenses of the court according to the rate assessed by the General Assembly. If Palestine takes this step, it will guarantee the same judicial mechanisms to which member states in the United Nations have access<sup>34</sup>, such as recourse to the ICJ. It will also be able to request from the Court advisory opinions on certain matters, such as racial discrimination, without the need for Israel's consent. It can also request from the Court advisory opinions on the status of long term occupation.

It is worth mentioning that the advisory opinion issued by the ICJ on 9 July 2004 on the legal consequences of the construction of the separation wall in the occupied Palestinian territory states that the construction of the wall is contrary to international humanitarian law. Articles 36, 35, 34 of the statute of the ICJ state there is jurisdiction of the Court over all the cases which litigants bring to it, including matters stated particularly in the Charter, conventions and agreements in force and all the legal disputes which break out between it and a state party to it. The court has two forms of jurisdiction:

i) **Contentious** (Optional) Jurisdiction of the Court: this is based on or requires the consent of the parties involved that they agree to the Court's jurisdiction in the matter being brought before the Court.

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34 Dr. Kameel Mansour, Palestinian options in the United Nations, see: [http://www.palestine-studies.org/files/document\\_18.pdf](http://www.palestine-studies.org/files/document_18.pdf)



ii) **Compulsory** Jurisdiction of the Court: this is also based on the consent of the parties, though the extent to which they consent can be specified themselves. Once the terms and conditions of their consent is determined and consent is granted, the States involved are then obligated to the results of the Court's findings, and this includes not only general agreements but also requests for legal interpretation or explanation. Thus, disputes are brought before the Court with the understanding that the decisions of the Court are binding.

The cases which may be brought before the Court include interpretation of conventions, investigating violations of an international obligation, or remedies for such violations. Whether the jurisdiction is optional or compulsory depends on the acceptance of litigation before the Court<sup>35</sup>. In this way, the ICJ can be seen to have two roles; the first role is exemplified in issuing advisory opinions, as Article (65) of the Statute states:

"The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request, and questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question".

The second role is exemplified in the settlement of disputes between two states that accept the jurisdiction of the Court. It is worth mentioning that Israel does neither accept the mandate of the Court nor its jurisdiction.

Palestine's bid to sign on to the Statute of the ICJ might encounter some obstacles, such as the definition of the concept of "state", a recommendation from the Security Council to accept Palestine's bid to sign on, and Israel's acceptance of the jurisdiction of the Court.

## **1.7: Observer State and Universal Periodic Review in the Human Rights Council** <sup>36</sup>

Upon Palestine being upgraded to observer state status, it should be considered for participation in the Universal Periodic Review (UPR), in which national human rights institutions play a very important role. The UPR is a process which involves a review of human rights records at the international level. It is a state-driven process under the auspices of the Human Rights Council, which provides the opportunity for each state to declare what actions they have taken to improve the human rights situations in their countries. As one of the main features of the Council, the Universal Periodic Review is designed to ensure equal treatment for every country when their human rights situations are assessed. It is performed by each member state of the United Nations once every four years to declare what actions have been taken to fulfill its human rights obligations; this provides objective and authentic information relying on cooperative mechanisms based on interactive

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35 [http://www.moqatel.com/openshare/Behoth/Monzmat3/UN/sec08.doc\\_cvt.htm](http://www.moqatel.com/openshare/Behoth/Monzmat3/UN/sec08.doc_cvt.htm)

36 See Appendix (7).

dialogue which take into consideration the concerned state's needs for capacity building. This mechanism is complementary to, and not repetition of, the work and mechanisms of human rights conventions bodies<sup>37</sup>.

The Universal Periodic Review is based on the UN Charter, the Universal Declaration of Human Rights, and other human rights instruments to which a state is party. It also relies on the voluntary undertakings given by states upon applying for the Human Rights Council, as well as within international human rights and humanitarian law. One of the principles of the UPR is to promote the universality of human rights and its indivisibility, affirming the importance of cooperative mechanisms based on authentic information and interactive dialogue and ensuring equal treatment for all states. It is a key rule of the Universal Periodic Review to be a governmental process driven by the UN member states and complementary to human rights mechanisms, performed objectively and transparently away from politics. It also ensures that it would not add to the burden of the state or sacrifice the ability of the HRC to immediately respond to human rights situations. It takes into consideration gender issues and ensures participation of all stakeholders, including non-governmental organizations and national human rights institutions<sup>38</sup>.

Also aiming to prompt, support and expand the promotion of human rights on the ground, it assesses positive developments and the challenges a state encounters. The UPR provides technical assistance to states and enhances their capacity to deal effectively with human rights challenges, sharing best practices in the field of human rights among states and other stakeholders. It also supports cooperation in the area of protecting and promoting human rights and encouraging cooperation with the HRC and other UN bodies.

The Universal Periodic Review is a regular process, reviewing the human rights situations in all the member states of the HRC, beginning with the prior members, especially those who have been elected for one or two years. The human rights situation of observer states is also reviewed, so Palestine will thus be required to submit reports to the HRC<sup>39</sup>. Observer states may participate in the review, including the interactive dialogue. The outcomes of the review are inscribed in a report, including a brief of the review process, conclusions, recommendations, and voluntary obligations by party state, positive developments and challenges encountered by the state, and best practices. The outcomes are adopted by giving the reviewed state the right to fully participate in deciding on the conclusions. Before the outcomes are adopted, time is also allotted to member and observer states who may wish to express their opinion on the outcome of the review. The recommendations accepted by the state under review shall be defined and other recommendations shall be noted. With regard to the steps taken as follow up to the Universal Periodic Review, the reviewed state has the primary responsibility to implement the recommendations contained in the final outcome; other stakeholders could act if need be. During the second review, the state is expected to provide information on what it has been doing to implement the recommendations made during the first review.

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37 <http://www.arabhumanrights.org/countries/upr.aspx>

38 See UNHRC, institution building (UPR) <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

39 See UNHRC, institution building (UPR) <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>



## Chapter Two

### **Consequences of Palestine as Observer State on the Independent Commission of Human Rights<sup>40</sup>**

National human rights institutions (NHRIs) act according to the Paris Principles, which organize and define their mandate, jurisdiction, sphere of competence and roles. The mission of these institutions is to promote and protect human rights by monitoring the human rights situation in their own states. NHRIs enjoy a broad jurisdiction, expressly stated in their statute, which defines the sphere of their competence. Palestine's status as a non-member observer state enables the Independent Commission for Human Rights (ICHR) to fulfill its role as a national human rights institution. ICHR enjoys full membership in the International Coordinating Committee of National Human Rights Institutions with "A" status and it is mandated to give advice, submit proposals and recommendations for Palestine on consultative level in order to fulfill its international human rights obligations. It also gives advice to the government on its decisions which influence the status of human rights. The government refers to the ICHR for consultation about human rights conventions or other human rights related issues. ICHR also fulfills the role of intermediary between official organizations and civil society organizations. In addition, it cooperates with Palestinian Parliament and presents it with proposals and recommendations concerning draft laws' compliance and compatibility with the human rights system. It suggests amendment, omission or addition of articles of the draft law and sometimes suggests that a new law should be enacted. In order for the ICHR to act freely, it has the right to attend all sessions where the promotion and protection of human rights is discussed without reference from a higher authority.

National human rights institutions play a very important role in disseminating the culture of human rights and updating governmental, local and international organizations about the human rights situation in their respective countries. They have the right to publish reports on the situation of human rights in their countries as well as the recommendations, proposals and advice they present to the official organizations and parliaments to shed light on the role they have with these authorities. Furthermore, they have the right to publish all the legislative, administrative and judicial regulations and related provisions which aim to maintain and promote human rights.

The role of national human rights institutions is not restricted to only reviewing draft laws issued by Parliament, as they also have the right to consider laws, administrative provisions and legislation in force, and submit the appropriate proposals and recommendations to guarantee their compliance with basic human rights principles. They also have the right to submit recommendations to the Parliament and the government, when need be, to adopt new legislation, amend an effective legislation or administrative measures. In the

<sup>40</sup> See Appendix (6).



same breath, they have the right to discuss and shed light on any violation of human rights in the way they deem to be right within the sphere of the human rights system.

They commonly write annual reports on the human rights situation in their respective countries as well as reports on more specific issues. The role of the ICHR, for example, is not restricted to documenting violations. Indeed, it draws the government's attention to human rights violations in any part of the homeland by presenting it with proposals for bringing such violations to an end. It also has the right, when necessary, to ask the government to express its opinion about and response to human rights violations.

National human rights institutions play a significant role in ensuring the compliance of national legislatures and practices with the international instruments of human rights to which the state is party. They also exert maximum effort to guarantee their implementation effectively through monitoring draft laws and legislation issued by the Parliament or the regulations issued by the government. In addition, they have a role in encouraging the state to ratify international human rights related instruments and treaties, and to sign on to and implement them. They assist the state or the government in preparing and submitting its reports to the relevant committees. They also prepare shadow reports and cooperate with civil society organizations to set forth such reports.

Being part of contributing to preparing the reports that the states should submit to the United Nations agencies and regional institutions, which is part of party state's obligations towards the treaties, is also permitted and expected. When need be, they may express their opinions concerning these reports without causing prejudice to their independence. NHRIs also cooperate with the United Nations and its different bodies and the regional and national organizations concerned with promotion and protection of human rights. Furthermore, they help the government prepare human rights related curricula and implement these curricula in schools, universities and other institutions as part of their effort to disseminate the culture of human rights. Apart from that, the national human rights institutions shed light on the efforts of their respective governments to combat all forms of discrimination by raising public awareness through the mass media, and monitor economic, social and cultural rights<sup>41</sup>.

ICHR receives, as a national human rights institution, complaints from citizens claiming that their human rights were violated<sup>42</sup>. It also considers the complaints related to

41 This is done through the promotion of media and educational programs aimed at raising public awareness about economic, social and cultural rights, especially among public employees and members of the judicial authority, public sector and unions, including consideration of valid administrative procedures and laws in addition to draft laws to guarantee matching international covenants on economic, social and cultural rights. Making technical advice and investigative studies on economic, social and cultural rights and defining national standards which can be used to measure States' fulfillment of their obligations under covenants. They also are involved in research and making inquiries to ensure they are effecting economic, social and cultural rights inside the State as whole or in certain regions or marginalized groups. Other work includes monitoring the implementation of certain rights stated in the covenants and submitting reports about that to the public authorities and civil society. There is also the consideration of complaints related to alleged contraventions of the standards of effective economic, social and cultural rights in the state.

42 NHRIs principles of promoting human rights; see Human Rights Committee's decision No. 1992/45, dated 3/3/1994.



alleged contraventions of the standards of the economic, social and cultural human rights enforced in the state<sup>43</sup>.

At the international level, ICHR may participate in the work of the Human Rights Council and discuss the items on its agenda, and this includes circulating its communications and issuing documents to the United Nations as official documents. Separate arrangements may also be made in order to attend the rounds of HRC and play a vital role in the Universal Periodic Review.

National human rights institutions may submit and include their own contributions into the reports of competent authorities. Nineteen (19) national human rights institutions, for example, contributed in 2010 to the report of the competent authorities and continued to present statements in writing and orally within the framework of the Universal Periodic Review. Britain, Egypt, Azerbaijan and the Asia Pacific Forum presented written contributions, whereas Portugal, El Salvador, Bolivia and Nicaragua presented oral statements.

The International Coordinating Committee of National Human Rights Institutions granted those institutions with «A» status the right to effectively participate in the Universal Periodic Review (UPR). This right includes, inter alia, the following:

1. Time should be allotted for NHRIs to speak during the review of their respective countries' reports following the presentation of the state under review.
2. NHRIs should have the opportunity to submit a detailed report of their countries during the upcoming rounds of the UPR.
3. NHRIs should have the opportunity to ask questions and present recommendations in writing concerning the UPR of their countries' reports.
4. An NHRI presents its statement following the presentation of the state it belongs to during the HRC's session for general discussion and adoption of the UPR report.
5. NHRIs should have the opportunity to regularly update the council on UPR recommendations.
6. Expanding the services of the UPR Trust Fund to support NHRI attendance at the UPR working group's sessions<sup>44</sup>.

NHRIs help the Office of the High Commission for Human Rights implement the UPR's recommendations on promoting human rights and present it with relevant information. They also cooperate with the Special Rapporteurs and assist in implementing the jurisdictions of special procedures. The NHRI of a state does have the right to present a statement immediately following the presentation of the state under review in a general meeting<sup>45</sup>.

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43 Committee on Economic, Social and Cultural Rights, 19<sup>th</sup> round (1998), General Comment No. 10, NHRI's role in protecting economic, social and cultural rights.

44 GA, UNHRC, clauses (2, 8) of the agenda, annual report of UN's High Human Rights Commission and its other reports in addition to that of the Secretary-General. Also, implementation of Vienna declaration and platform, NHRIs for promotion of human rights 2010, see : [http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-76\\_ar.p](http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-76_ar.p)

45 See UNHRC, institution's building (UPR) see: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPR-Main.aspx>



In light of the new status of Palestine in the United Nations, the ICHR is certain to be influenced by it, and this is especially so since it is the Palestinian national human rights institution with “A” status at the ICC, and committed to the Paris Principles. Its role is to back and support Palestine to ratify and sign international human rights treaties and provide advice to ensure continued compliance with the national human rights related legislation and assist the government in writing reports on the situation of human rights. It shall also prepare shadow reports and contribute to the UPR and the implementation of the recommendations put forward by the UN agencies and bodies. Cooperation with the government, parliament, and judicial authorities’ special rapporteurs and civil society organizations will take place in order to prompt, support, and expand the promotion and protection of human rights.

## Part II

### **Consequences of Palestine's Observer Status regarding International Humanitarian Law and International Criminal Law**

Palestine's new status as an observer state in the United Nations has legal consequences, including transformation from an *entity* in the United Nations to *non-member state* whereby Palestine has become a legal person within the body of international law which governs relations between states. As legal persons of international law, "States" have rights and duties regulated by the rules of the international law. The state can refer to the UN Charter; Article (1) in particular affirms a peoples' right of self-determination, settlement of international disputes or situations which might lead to a breach of the peace; and development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. The states, being subject to international law, have legal responsibilities as members of the UN towards other members, and so these member States have legal obligations towards Palestine, which is still under occupation. With this in mind, Article (6) of the United Nations' Charter states "a member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council."

Part II also discusses the legal consequences of upgrading the status of Palestine to observer state from the perspective of International Humanitarian Law and International Criminal Law. In addition, it discusses Palestine's accession to these two bodies of law.



# Chapter One

## Palestine's Accession to International Humanitarian Law

Palestine's new status as a non-member observer state at the United Nations inevitably has legal consequences at the level of international law, particularly in regard to legal status and the resulting implications. It now can be argued that the legal status of Palestine has transformed in such a way that it presents an unprecedented challenge to the Israeli claims that the Palestinian territory is disputed land, and at the same time reaffirms previous UN resolutions recognizing that the Palestinian territory occupied by Israel in 1967 - including East Jerusalem - is the land of the Palestinian State and that the right of the Palestinian people to self-determination is inalienable<sup>46</sup>. However, this does not change the concurrent status of Palestine as a state under occupation, and it does not exempt Israel as an "occupying power" from its responsibilities towards the occupied territory. Past Israeli claims that the obligations of an occupying authority can not apply because the West Bank was not, in 1967, under the legal jurisdiction of another sovereign state are superseded by subsequent implications of Israeli High Court of Justice decisions upholding the customary nature of the Geneva Conventions.<sup>47</sup>

Related to this is the problem of assuming some degree of sovereignty over the occupied territory, where it has been pointed out that sovereignty cannot simply be transferred from a defeated sovereign state to an occupier, primarily because occupation is assumed to be fundamentally temporary.<sup>48</sup> Regardless of Israel's past legal reasonings, Palestine has been determined to be an occupied state according to international law, and this is supported by Article (42) of the 1907 Hague Convention, which states that " Territory is considered occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised."

The distinguished professor of international law, Bin Cheng, has noted that a core judicial obligation is to bind states to the law, and if it is or has been committing an illegal action, then efforts must be made to eliminate the consequences of that action and return the situation to its original state<sup>49</sup>. This can be applied to Palestinian territory as still under occupation and that the Geneva Conventions are relevant here, particularly Geneva Convention IV<sup>50</sup>, Article (2) of that document, which states:

46 [www.palpress.co.uk/arabic/?action=detail&id=11839](http://www.palpress.co.uk/arabic/?action=detail&id=11839)

47 See for example Hilly Moodrick-Even Khen, "Having It Both Ways: the Question of Legal Regimes in Gaza and the West Bank", *Israeli Studies*, Volume 16, No. 2 (Summer 2011), p. 65, esp. fn. 62.

48 <http://www.jabha-wqs.net/article.php?id=430>; Wadood Fawzi Shams al-Din, "LegalStudy: International Responsibility of the Occupation and Its Tools"; from quote attributed to Francis Boyle.

49 <http://www.jabha-wqs.net/article.php?id=430>

50 Entitled *Relative to the Protection of Civilian Persons in the Time of War*.



“In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”

This is followed up and expanded on in Article (6), which affirms:

“The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2. In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations. In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.”

International law jurists view that the state maintains its international legal status even if it loses control over its region under special conditions and as long as there is a sign that it will retrieve this control once the conditions that destabilized that control over its territory disappear. Belgium, for example, moved its government to France during World War I<sup>51</sup>. In a similar way, international humanitarian law applied to occupied territories and the occupying power must be bound to its legal responsibility growing out from that. More importantly, it must be legally pursued for grave violations of compliance with international humanitarian law; in fact, it is feasible to try the occupying power for those of its practices during occupation which violated or violate international law.

Palestine's accession to the Geneva Conventions places a responsibility on the other parties to the convention. Article (146) of Geneva Convention IV provides for this, stating:

“The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article. Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case. Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article. In all circumstances, the

51 [www.univ-chlef.dz/uhbc/seminaires\\_2010/.../moussahacen2010.pdf](http://www.univ-chlef.dz/uhbc/seminaires_2010/.../moussahacen2010.pdf)

accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.”<sup>52</sup>

With regard to the Israeli apprehensions of such possible actions, and not wanting to appear to accept or acknowledge Palestinian statehood, Israeli Foreign Minister Avigdor Liberman instructed the Israeli embassies and other representative offices throughout the diplomatic world to refuse to receive any letters, cables or official documents titled or sealed with the heading of the State of Palestine. He also instructed them not to address any official letters sent by diplomatic authorities with phrases or terms not acceptable to Israel, such as *occupied Palestine*, *occupied Jerusalem* or *occupied territories*<sup>53</sup>. However, Palestine’s new status as an observer state in the United Nations shall enable it to accede to the treaties relating to international humanitarian law, and especially the Geneva Conventions and their subsequent Protocols.

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52 Grave breaches, according to Article (147) include any of the following actions: “wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

53 <http://www.maannnews.net/arb/ViewDetails.aspx?ID=543041>





## Chapter Two

### Palestine's Accession to the International Criminal Court

Palestine's new status in the UN as an observer state enhances the possibility to pursue Israeli war criminals. This might contribute to Palestine's ratification of the statute of the International Criminal Court in compliance with the Rome Statute. The debate whether Palestine is a state or not came to a close when the General Assembly upgraded its status to an observer state, and so its application to ratify the Rome Statute of the ICC could be accepted. However, the acceptance of Palestine's accession to the ICC are to be subjected to special measures relevant to the court itself, and not by vote. The response of the Chief Prosecutor of the Court to Palestine's formal recognition of the jurisdiction of the court was that the International Criminal Court<sup>54</sup> would allow Palestine to sign on if the General Assembly approved a resolution recognizing Palestine as a non-member observer state.

In order for the ICC to implement its jurisdiction, the Palestinian bid to join the Rome Statute should have met the condition of the court, which is to be a state accepting the jurisdiction of the court with respect to the relevant crime. One expert in international law, John Quigley, views that Palestine should be considered a state pursuant to the General Assembly's recognition of the State of Palestine, which was declared by the Palestinian National Council in 1988. The UN's former Special Rapporteur on the human rights situation in the occupied Palestinian territories, Professor John Dogard, has suggested that since the Rome Statute does not have a specific definition of a state, the Chief Prosecutor of the Court can decide that Palestine does not represent a state for all purposes, but does so for the purpose of the court; he added that the Chief Prosecutor of the Court, Luis Moreno-Ocampo, does not have the right to follow a narrow approach concentrating on the absence of an effective government, and that he should take a more flexible approach that achieves the main purpose of the founding of the ICC. He further reasons that when an entity is recognized by the majority of states as a state, and it applies to join the Rome Statute, the ICC should accept it as a state for the purposes of its statute and objectives<sup>55</sup>. The Chief Prosecutor of the ICC then responded that Palestine was recognized as a state by (130) states and international organizations, and this included some UN bodies bilaterally, though the status given to it by General Assembly is observer "entity" and not non-member state. He also noted that the ICC's Chief Prosecutor's Office could consider in the future the crimes claimed to be committed in Palestine if the specialized UN bodies or the assembly of the member states solve the legal matter relevant to Article (12)<sup>56</sup>, or if

54 <http://www.sify.com/news/ap-interview-ocampo-discusses-palestinians-on-icc-news-international-mefd-KLfhhbj.html>

55 Al-Haq, position paper relative to the PA's recognition of the ICC's jurisdiction according to Article (12)3 of its statute, Ramallah, Palestine, 2010.

56 A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in Article 5. For more, see Article 13, paragraph (a) or (c).



the case is referred to the Chief Prosecutor by the Security Council<sup>57</sup>, according to Article (13) (b)<sup>58</sup>. On December 20, 2012, Secretary-General of the United Nations, Ban Ki-Moon, stated “the new status of Palestine as observer state surely qualifies it to become a member of the United Nations’ agencies and whether it intends to accede to the (ICC) remains a Palestinian issue<sup>59</sup>”.

The Security Council Credentials Committee’s report on Palestine’s bid for membership at the United Nations, dated 11/11/2011, pointed out that Palestine meets statehood standards. Paragraphs (9, 10, and 11) of the report are concerned with statehood standards, referring to Article 1 of the 1933 Montevideo Convention on Rights and Duties of States, determining that the State as a person of international law should have a permanent population, defined territory, government, and the ability to enter into relations with other states. With regard to the first and third conditions, the report states that these criteria are met<sup>60</sup>, and affirms that the absence of clearly defined borders does not constitute an obstacle to the creation of a state. Questions were asked about Palestine’s control over its territories, pointing to the fact that the Gaza Strip is under the authority of Hamas Movement. Also, the fact that Israel as the occupying power prohibits the Palestinian government from imposing its control over its territories was highlighted in the report. It was made clear that the occupation imposed by a foreign authority does not mandate it to transfer the sovereignty of the occupied territory to the occupation power<sup>61</sup>. So far as signature, ratification, acceptance, approval, or accession to the Statute of the ICC is concerned, Article (125) of Rome Statute keeps accession to this statute open by all states, and instruments of accession shall be deposited with the Secretary-General of the United Nations.

The Rome Statute imposes preconditions for exercising jurisdiction according to Article (12) thereto:

- “1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.
2. In the case of Article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
  - (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
  - (b) The State of which the person accused of the crime is a national.
3. 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

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57 See Appendix (4).

58 A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the UN Charter.

59 See Al-Quds Al-Maqisia newspaper, 20/12/2012.

60 See Appendix (5), Report of UNSC Credentials Committee Relevant to Palestine’s Membership.

61 UNSC Credentials Committee, Resolution S/2011/705.

of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

According to Article (13), the Court exercises its jurisdiction with respect to certain crimes referred to in Article 5 in accordance with the following provisions:

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
- (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
- (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

#### Article 14- Referral of a situation by a State Party

- 1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.
- 2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

Accordingly, the State of Palestine shall bear legal responsibilities in the event of acceding to the ICC. This includes being responsible for all acts based from its territories, especially military operations and armed resistance against Israel. This requires the State of Palestine to thoroughly consider its steps before applying to sign on to the ICC, taking into consideration that international criminal law treats all parties equally.

Dr. Muhammad Riyadh, an expert in international law at James E. Rogers College of Law, Arizona University, points out:

“Israel is neither party to the Rome Statute, nor a member of the ICC, preventing it from exercising its jurisdiction with respect to any lawsuit lodged against Israel. Thus, the Palestinian attempt to accede to the ICC may have a disastrous impact on the Palestinians themselves because if they succeed in that, it would be possible for the court to try the Palestinian resistance forces for their military operations against the Israeli civilian population. We shouldn’t forget that the Goldstone Report condemned both Hamas and Israel for perpetrating war crimes in (2008-2009), and so it would be possible for the court to issue arrest warrants against the leaders of the organizations sued”<sup>62</sup>.

Some other experts of international law have a different view, believing, as mentioned earlier, that Israel has attempted to argue against responsibility by claiming that the occupied Palestinian territories are not subject to the Geneva Conventions, and so Article

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62 <http://pulpit.alwatanvoice.com/articles/2012/12/05/278884.html>



(8) of the Statute of the Court, which affirms that grave breaches of the Geneva Conventions - relevant to the treatment of civilian persons in the occupied Palestinian territories - constitute war crimes, can not be implemented because such Israeli practices are outside the scope of the jurisdiction of the ICC. However, this line of argument is unable to stand up to robust legal arguments and evidence.

Mustapha Abu al-Khier, a professor of international law, views that

“the legal basis of the international responsibility of Israel implies that Israel, according to the rules of international criminal and civil responsibility, as an occupying power in the Palestinian territory occupied since 1967, should redress the Palestinians against the damage resulting from its continuous aggression and try the persons responsible for perpetrating war crimes and crimes against humanity of its leaders and military forces. The statute of international criminal responsibility applies to Israel as an occupying power responsible for war crimes against the Palestinian people. Individual criminal responsibility is stated under Article (227) of Versailles Treaty, recognized by Tokyo and Nuremberg Courts as one of international law principles and applied it to trying German and Japanese war criminals. The same case could be considered as a judicial precedent for condemning illegitimate Israeli occupation for its continuous crimes against the Palestinian people... The war crimes and crimes against humanity for which war criminals were tried before Tokyo and Nuremberg Courts are similar to the crimes committed by Israel against the Palestinian people. Therefore, Israeli leaders and officials responsible for such crimes should be brought to justice for their individual criminal responsibility for the crimes they commit against the Palestinians. In addition, Israel should redress and compensate the Palestinians against all the damages resulting from its aggressive actions as part of its civil responsibility.”<sup>63</sup>

However, Dr. Riyadh's concerns are reflected in comments from Uval Shini, a professor of international law at Tel Aviv University, who believes that “Palestine's accession to the ICC will give Israel a stronger position to raise international lawsuits against the Palestinians with respect to the violence which sets out from the Palestinian territories”. In the same vein, Silvan Shalom, Vice Prime Minister of Israel threatened to take the leaders of Hamas and other Palestinian factions to the ICC over rocketing Israel from the Gaza Strip. He stated “we shall take this step should the Palestinian President Mahmoud Abbas sue Israel at the ICC”<sup>64</sup>.

The Israeli newspaper Ha'aretz revealed that Israel's Prime Minister together with the United States pressured the Palestinians to pledge not to apply to join the ICC in order to make sure they will not pursue Israel at the Court and to acknowledge that the recognized Palestinian state shall have no sovereignty over certain areas in the West Bank, Gaza Strip and East Jerusalem<sup>65</sup>. The Palestinians refused categorically, and so the Israeli Prime Minister threatened to adopt the Levy report concerning legitimization of Israeli settle-

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63 “Zionist enemy's trial mechanisms under international criminal law”, *Ash-Sha'b Al-Jadeed*, April 26, 2012; <http://www.elshaab.org/thread.php?ID=22236>

64 <http://www.karamapress.com/arabic/?action=detail&id=28969>

65 <http://maannews.net/arb/ViewDetails.aspx?ID=542388>

ments in the West Bank if the Palestinians were determined to apply for statehood recognition in the UN<sup>66</sup>. The Hebrew newspaper Maariv revealed that an “upgrade in Palestine status at the United Nations without any concessions gives the Palestinians the right to join international organizations.” There was also speculation concerning the Palestinian President’s pursuit of Israel in the ICC, and how Israel might react. It commented that the Palestinians may find themselves in a situation where they have no other option, and if they take such a step, Israel will suffer legal consequences. Furthermore, the Palestinians, the newspaper added, will obtain a state without negotiations with Israel, which would be a painful blow to Israel<sup>67</sup>.

It is clear that the Palestinian bid to join the ICC faces some obstacles, exemplified, for instance, in the definition of “state” as the UN identifies the authorities entitled to define it (the Secretary-General, General Assembly, Assembly of the States parties to the Rome Statute). There are also the problems of criminal jurisdiction and the fact that Israel is not party to the Rome Statute. In addition, Israel does not recognize the jurisdiction of the Court, knowingly that responsibility is personal according to the Rome Statute and International Criminal Law. Another obstacle it faces is the non-retroactivity *ratione personae* of Article (24) of the Statute, which states: “No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute; In the event of a change in the law applicable to a given case prior to a final judgment, the law more favourable to the person being investigated, prosecuted or convicted shall apply”. It is also important to emphasize the non-applicability of a statute of limitations, as Article (29) of the Statute provides that “the crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.” Regarding Palestine, its national legislation should be subject to amendment, and in particular criminal legislation, in order for them to include international criminal jurisdiction whereby the State of Palestine can pursue war criminals in the national courts according to the amended national legislation.

Palestine’s accession to the international mechanisms for the protection of human rights within the UN system, and its ratification of international treaties shall enable it to revitalize international law as a reference and file complaints against the Israeli commanders and officials involved in perpetrating crimes. It can also file complaints against all the practices of the occupying power, including settlements and expulsions, as the legal status of Palestine is that of a State under occupation which subjects Israel as an occupying power to trial.

Any additional legal entitlements and obligations of the newly found status of Palestine and its opportunity for filing complaints with the Security Council in the future will continue to be considered and followed up.

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66 <http://www.maannnews.net/arb/ViewDetails.aspx?ID=542764>

67 <http://www.maannnews.net/arb/ViewDetails.aspx?ID=542764>



# Conclusions and Recommendations

## Conclusions

1. The legal review of international law shows that the UN Charter does not account for or have any provisions or clauses referring to the status of an observer state in the United Nations. It is the practical experience of the observer states in the UN that has defined that status and the nature of that status.
2. Observer states have the right to accede to international conventions and treaties in addition to specialized UN agencies and the Human Rights Council.
3. Observer states may participate effectively in the work of the General Assembly and the HRC by presenting written interventions, expressing opinion and nominating *ad litem* judges, although they do not have the right to vote or nominate judges from their own countries.
4. Palestine's status as an observer state has several legal consequences resulting from its transformation from "entity" to "state", this change of its legal status challenging Israeli claims that the Palestinian territory is disputed land, and reaffirming previous UN resolutions which emphasize that the Palestinian territory which has been occupied since 1967 is occupied territory.
5. Apply the UN Charter in reminding states parties of their responsibilities regarding the State of Palestine, which is under the occupation of a member state.
6. Reaffirmation that Palestinian territory is still under Israeli occupation, and applicability of the Geneva Conventions to it, especially Geneva Convention IV in regard to the protection of people in time of war, and the obligations of an occupying power.
7. The newly found status of Palestine in the UN may promote the opportunity for Palestine to accede to Rome Statute and opens new prospects despite any obstacles and lengthy procedures prior to having the ability to bring war criminals before the ICC.
8. The newly found status of Palestine may contribute to or promote Palestine's accession to the Statute of International Court of Justice in The Hague.
9. The newly found status of Palestine may enable it to ratify the international human rights conventions and treaties and accede to several UN agencies. It may also enable it to attend the sessions of the HRC and effectively participate in the work of that council orally or by written intervention.
10. Palestine shall have to submit a UPR before the HRC and bear the legal responsibilities in the event of ratifying and signing the human rights conventions by submitting periodic reports about the measures it takes at the national level to enforce these conventions.
11. Palestine should amend some of its national legislation by submitting provisions that provide stringent penal sanctions against grave violations of human rights.
12. National human rights institutions play a very important role in providing advice and



submitting recommendations for the government on human rights issues.

13. National human rights institutions have the right to comment in writing or orally in the session of the HRC after the reviewed state reviews its report.
14. Palestine's status as an observer state in the United Nations is subject to past and future experience and practice regarding the rights and privileges of observer states. Its new status opens new prospects for it as a state under occupation to interact with the international human rights system and the contracting and non-contracting bodies and mechanisms of the United Nations.



## **Recommendations**

### **Legislative Framework**

1. Enactment of a new constitution for the State of Palestine into which should be entered the principles of human rights stated under the relevant international conventions and treaties.
2. The legislative authority should ensure respect for and adherence to domestic human rights legislations.
3. Revocation of any legislation which contradicts international human rights conventions and treaties.
4. Drafting of new legislation complying with international human rights standards.
5. Amendment of domestic laws which provide stringent penal sanctions for grave violations of human rights.
6. Provide an explanatory account of the constitutional status of international human rights conventions and treaties in comparison to the national legislation.

### **Practical Framework**

1. The State of Palestine should ratify international human rights conventions, including the nine core international human rights treaties: Universal Declaration of Human Rights (1948); International Covenant on Economic, Social and Cultural Rights (1966); International Covenant on Civil and Political Rights (1966) and the two optional protocols thereto; International Convention on Elimination of All Forms of Racial Discrimination (1965); International Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1989); Convention on the Rights of the Child (1989). It should also sign the Geneva Conventions of 1949 and the 1977 Geneva Protocols. The PLO has expressed its willingness to sign and ratify or accede to them since 1989.
2. Where and when possible, the State of Palestine should join UN specialized agencies.
3. The State of Palestine should invite Special Rapporteurs of the United Nations and their working groups to visit Palestine to see it in context.
4. The participation of the ICHR should be promoted in preparation for governmental and consultative reports relevant to human rights issues and in the Universal Periodic Review.
5. The participation of civil society organizations should be promoted in the process of the Universal Periodic Review and preparation of reports.



**Annex No (1)**

**Status of Palestine  
in the United Nations**



United Nations

A/67/L.28



## General Assembly

Distr.: Limited  
26 November 2012

Original: English

Sixty-seventh session  
Agenda item 37  
Question of Palestine

**Afghanistan, Algeria, Argentina, Bahrain, Bangladesh, Bolivia (Plurinational State of), Brazil, Brunei Darussalam, Chile, China, Comoros, Cuba, Democratic People's Republic of Korea, Djibouti, Ecuador, Egypt, Guinea-Bissau, Guyana, Iceland, India, Indonesia, Iraq, Jordan, Kazakhstan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Libya, Madagascar, Malaysia, Maldives, Mali, Mauritania, Morocco, Namibia, Nicaragua, Nigeria, Oman, Pakistan, Peru, Qatar, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Tajikistan, Tunisia, Turkey, United Arab Emirates, Uruguay, Venezuela (Bolivarian Republic of), Yemen, Zimbabwe and Palestine: draft resolution**

### Status of Palestine in the United Nations

*The General Assembly,*

*Guided* by the purposes and principles of the Charter of the United Nations, and stressing in this regard the principle of equal rights and self-determination of peoples,

*Recalling* its resolution 2625 (XXV) of 24 October 1970,<sup>1</sup> by which it affirmed, inter alia, the duty of every State to promote through joint and separate action the realization of the principle of equal rights and self-determination of peoples,

*Stressing* the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights,

*Recalling* its resolution 181 (II) of 29 November 1947,

*Reaffirming* the principle, set out in the Charter, of the inadmissibility of the acquisition of territory by force,

*Reaffirming also* relevant Security Council resolutions, including, inter alia, resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 446 (1979) of 22 March 1979, 478 (1980) of 20 August 1980, 1397 (2002) of 12

<sup>1</sup> Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.





March 2002, 1515 (2003) of 19 November 2003 and 1850 (2008) of 16 December 2008,

*Reaffirming further* the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,<sup>2</sup> to the Occupied Palestinian Territory, including East Jerusalem, including, inter alia, with regard to the matter of prisoners,

*Reaffirming* its resolution 3236 (XXIX) of 22 November 1974 and all relevant resolutions, including resolution 66/146 of 19 December 2011, reaffirming the right of the Palestinian people to self-determination, including the right to their independent State of Palestine,

*Reaffirming also* its resolutions 43/176 of 15 December 1988 and 66/17 of 30 November 2011 and all relevant resolutions regarding the Peaceful settlement of the question of Palestine, which, inter alia, stress the need for the withdrawal of Israel from the Palestinian territory occupied since 1967, including East Jerusalem, the realization of the inalienable rights of the Palestinian people, primarily the right to self-determination and the right to their independent State, a just resolution of the problem of the Palestine refugees in conformity with resolution 194 (III) of 11 December 1948 and the complete cessation of all Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem,

*Reaffirming further* its resolution 66/18 of 30 November 2011 and all relevant resolutions regarding the status of Jerusalem, bearing in mind that the annexation of East Jerusalem is not recognized by the international community, and emphasizing the need for a way to be found through negotiations to resolve the status of Jerusalem as the capital of two States,

*Recalling* the advisory opinion of the International Court of Justice of 9 July 2004,<sup>3</sup>

*Reaffirming* its resolution 58/292 of 6 May 2004, affirming, inter alia, that the status of the Palestinian territory occupied since 1967, including East Jerusalem, remains one of military occupation and that, in accordance with international law and relevant United Nations resolutions, the Palestinian people have the right to self-determination and to sovereignty over their territory,

*Recalling* its resolutions 3210 (XXIX) of 14 October 1974 and 3237 (XXIX) of 22 November 1974, by which, respectively, the Palestine Liberation Organization was invited to participate in the deliberations of the General Assembly as the representative of the Palestinian people and was granted observer status,

*Recalling also* its resolution 43/177 of 15 December 1988, by which it, inter alia, acknowledged the proclamation of the State of Palestine by the Palestine National Council on 15 November 1988 and decided that the designation "Palestine" should be used in place of the designation "Palestine Liberation Organization" in the United Nations system, without prejudice to the observer status and functions of the Palestine Liberation Organization within the United Nations system,

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<sup>2</sup> United Nations, *Treaty Series*, vol. 75, No. 973.

<sup>3</sup> See A/ES-10/273 and Corr.1; see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136.

*Taking into consideration* that the Executive Committee of the Palestine Liberation Organization, in accordance with a decision by the Palestine National Council, is entrusted with the powers and responsibilities of the Provisional Government of the State of Palestine,<sup>4</sup>

*Recalling* its resolution 52/250 of 7 July 1998, by which additional rights and privileges were accorded to Palestine in its capacity as observer,

*Recalling also* the Arab Peace Initiative adopted in March 2002 by the Council of the League of Arab States,<sup>5</sup>

*Reaffirming* its commitment, in accordance with international law, to the two-State solution of an independent, sovereign, democratic, viable and contiguous State of Palestine living side by side with Israel in peace and security on the basis of the pre-1967 borders,

*Bearing in mind* the mutual recognition of 9 September 1993 between the Government of the State of Israel and the Palestine Liberation Organization, the representative of the Palestinian people,<sup>6</sup>

*Affirming* the right of all States in the region to live in peace within secure and internationally recognized borders,

*Commending* the Palestinian National Authority's 2009 plan for constructing the institutions of an independent Palestinian State within a two-year period, and welcoming the positive assessments in this regard about readiness for statehood by the World Bank, the United Nations and the International Monetary Fund and as reflected in the Ad Hoc Liaison Committee Chair conclusions of April 2011 and subsequent Chair conclusions, which determined that the Palestinian Authority is above the threshold for a functioning State in key sectors studied,

*Recognizing* that full membership is enjoyed by Palestine in the United Nations Educational, Scientific and Cultural Organization, the Economic and Social Commission for Western Asia and the Group of Asia-Pacific States and that Palestine is also a full member of the League of Arab States, the Movement of Non-Aligned Countries, the Organization of Islamic Cooperation and the Group of 77 and China,

*Recognizing also* that, to date, 132 States Members of the United Nations have accorded recognition to the State of Palestine,

*Taking note* of the 11 November 2011 report of the Security Council Committee on the Admission of New Members,<sup>7</sup>

*Stressing* the permanent responsibility of the United Nations towards the question of Palestine until it is satisfactorily resolved in all its aspects,

*Reaffirming* the principle of universality of membership of the United Nations,

1. *Reaffirms* the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian territory occupied since 1967;

<sup>4</sup> See A/43/928, annex.

<sup>5</sup> A/56/1026-S/2002/932, annex II, resolution 14/221.

<sup>6</sup> See A/48/486-S/26560, annex.

<sup>7</sup> S/2011/705.



2. *Decides* to accord to Palestine non-member observer State status in the United Nations, without prejudice to the acquired rights, privileges and role of the Palestine Liberation Organization in the United Nations as the representative of the Palestinian people, in accordance with the relevant resolutions and practice;

3. *Expresses the hope* that the Security Council will consider favourably the application submitted on 23 September 2011 by the State of Palestine for admission to full membership in the United Nations;<sup>8</sup>

4. *Affirms* its determination to contribute to the achievement of the inalienable rights of the Palestinian people and the attainment of a peaceful settlement in the Middle East that ends the occupation that began in 1967 and fulfils the vision of two States: an independent, sovereign, democratic, contiguous and viable State of Palestine living side by side in peace and security with Israel on the basis of the pre-1967 borders;

5. *Expresses the urgent need* for the resumption and acceleration of negotiations within the Middle East peace process based on the relevant United Nations resolutions, the terms of reference of the Madrid Conference, including the principle of land for peace, the Arab Peace Initiative<sup>5</sup> and the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict<sup>9</sup> for the achievement of a just, lasting and comprehensive peace settlement between the Palestinian and Israeli sides that resolves all outstanding core issues, namely the Palestine refugees, Jerusalem, settlements, borders, security and water;

6. *Urges* all States, the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination, independence and freedom;

7. *Requests* the Secretary-General to take the necessary measures to implement the present resolution and to report to the Assembly within three months on progress made in this regard.

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<sup>8</sup> A/66/371-S/2011/592, annex I.

<sup>9</sup> S/2003/529, annex.



**Annex No (2)**  
**Participation of the Holy See  
in the United Nations**



## General Assembly

Distr.: General  
16 July 2004

**Fifty-eighth session**  
Agenda item 59

### Resolution adopted by the General Assembly

*[without reference to a Main Committee (A/58/L.64)]*

#### **58/314. Participation of the Holy See in the work of the United Nations**

*The General Assembly,*

*Recalling* that the Holy See became a Permanent Observer State at the United Nations on 6 April 1964, and since then has always been invited to participate in the meetings of all the sessions of the General Assembly,

*Recalling also* that the Holy See is a party to diverse international instruments, including the Vienna Convention on Diplomatic Relations,<sup>1</sup> the Vienna Convention on the Law of Treaties,<sup>2</sup> the Convention relating to the Status of Refugees<sup>3</sup> and the Protocol thereto,<sup>4</sup> the Convention on the Rights of the Child<sup>5</sup> and the Optional Protocols thereto,<sup>6</sup> the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>7</sup> the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>8</sup> the Convention for the Protection of Cultural Property in the Event of Armed Conflict,<sup>9</sup> the Paris Convention for the Protection of Industrial Property,<sup>10</sup> the Treaty on the Non-Proliferation of Nuclear Weapons,<sup>11</sup> the main disarmament treaties and the Geneva Conventions<sup>12</sup> and the Additional Protocols thereto,<sup>13</sup>

*Recalling further* that the Holy See enjoys membership in various United Nations subsidiary bodies, specialized agencies and international intergovernmental

<sup>1</sup> United Nations, *Treaty Series*, vol. 500, No. 7310.

<sup>2</sup> *Ibid.*, vol. 1155, No. 18232.

<sup>3</sup> *Ibid.*, vol. 189, No. 2545.

<sup>4</sup> *Ibid.*, vol. 606, No. 8791.

<sup>5</sup> Resolution 44/25, annex.

<sup>6</sup> Resolution 54/263, annexes I and II.

<sup>7</sup> Resolution 39/46, annex.

<sup>8</sup> Resolution 2106 A (XX), annex.

<sup>9</sup> United Nations, *Treaty Series*, vol. 249, No. 3511.

<sup>10</sup> *Ibid.*, vol. 828, No. 11851.

<sup>11</sup> *Ibid.*, vol. 729, No. 10485.

<sup>12</sup> *Ibid.*, vol. 75, Nos. 970–973.

<sup>13</sup> *Ibid.*, vol. 1125, Nos. 17512 and 17513.

organizations, including the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, the United Nations Conference on Trade and Development, the World Intellectual Property Organization, the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons, the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization and the International Committee of Military Medicine,

*Aware* that the Holy See actively participates as an observer in many of the specialized agencies, such as the Food and Agriculture Organization of the United Nations, the International Labour Organization, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the United Nations Industrial Development Organization, the International Fund for Agricultural Development and the World Tourism Organization, as well as in the World Trade Organization, that it is a full member of the Organization for Security and Cooperation in Europe and a Guest of Honour in its Parliamentary Assembly, and that it participates as an observer in various other regional intergovernmental organizations, including the Council of Europe, the Organization of American States and the African Union, and is regularly invited to take part in the main meetings of the Asian-African Legal Consultative Organization,

*Aware also* that the Economic and Social Council, by its decision 244 (LXIII) of 22 July 1977, recommended that the Holy See attend sessions of the regional commissions on a basis similar to that provided for in the relevant terms of reference applicable to States Members of the United Nations not members of the regional commissions,

*Recalling* that the Holy See contributes financially to the general administration of the United Nations in accordance with the rate of assessment for the Holy See as a non-member State, as adopted by the General Assembly in its resolution 58/1 B of 23 December 2003,

*Considering* that it is in the interest of the United Nations that all States be invited to participate in its work,

*Desirous* of contributing to the appropriate participation of the Holy See in the work of the General Assembly in the context of the revitalization of the work of the Assembly,

1. *Acknowledges* that the Holy See, in its capacity as an Observer State, shall be accorded the rights and privileges of participation in the sessions and work of the General Assembly and the international conferences convened under the auspices of the Assembly or other organs of the United Nations, as well as in United Nations conferences as set out in the annex to the present resolution;

2. *Requests* the Secretary-General to inform the General Assembly during the current session about the implementation of the modalities annexed to the present resolution.

92nd plenary meeting  
1 July 2004

## Annex

The rights and privileges of participation of the Holy See shall be effected through the following modalities, without prejudice to the existing rights and privileges:

1. The right to participate in the general debate of the General Assembly;



2. Without prejudice to the priority of Member States, the Holy See shall have the right of inscription on the list of speakers under agenda items at any plenary meeting of the General Assembly, after the last Member State inscribed on the list;
3. 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;
4. The right of reply;
5. The right to have its communications relating to the sessions and work of the General Assembly issued and circulated directly, and without intermediary, as official documents of the Assembly;
6. The right to have its communications relating to the sessions and work of all international conferences convened under the auspices of the General Assembly issued and circulated directly, and without intermediary, as official documents of those conferences;
7. The right to raise points of order relating to any proceedings involving the Holy See, provided that the right to raise such a point of order shall not include the right to challenge the decision of the presiding officer;
8. The right to co-sponsor draft resolutions and decisions that make reference to the Holy See; such draft resolutions and decisions shall be put to a vote only upon request from a Member State;
9. Seating for the Holy See shall be arranged immediately after Member States and before the other observers when it participates as a non-member State observer, with the allocation of six seats in the General Assembly Hall;
10. The Holy See shall not have the right to vote or to put forward candidates in the General Assembly.

# **U.N. General Assembly Resolution A/58/314**

## **Participation of the Holy See in the United Nations**

**16 July 2004**

### **Fifty-eighth session**

Agenda item 59

### **Participation of the Holy See in the work of the United Nations**

### **Note by the Secretary-General**

The General Assembly, in paragraph 1 of its resolution 58/314 of 1 July 2004, decided to accord the Holy See, in its capacity as an Observer State, the rights and privileges of participation in the sessions and work of the General Assembly and the international conferences convened under the auspices of the Assembly or other organs of the United Nations, as well as in United Nations conferences as set out in the annex to that resolution. In paragraph 2 of the same resolution, the Assembly requested the Secretary-General to inform it, during the current session, about the implementation of the modalities annexed to that resolution. It should be noted that, as a State member of at least one specialized agency, the Holy See enjoys the same rights and privileges of participation as Member States in all meetings and conferences convened under the auspices of the United Nations which are open to all Member States of the United Nations and States members of the specialized agencies (“all States”). It should also be noted that, pursuant to the Statutes of the international tribunals for the Former Yugoslavia and for Rwanda, States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters, including the Holy See, have the right to submit nominations for, and to vote in, the elections of the permanent and ad litem judges of the aforementioned tribunals. Based on the Secretary-General’s understanding of resolution 58/314 and the annex thereto, the rights and privileges of participation of the Holy See, in its capacity as an Observer State, shall be effected through the following modalities, without prejudice to its aforementioned existing rights and privileges, in the sessions and work of the General Assembly and the international conferences, convened under its auspices, in the other organs of the United Nations and in United Nations conferences:

#### **1. The right to participate in the general debate of the General Assembly.”**

The Holy See will have the right to participate in the general debate of the General Assembly after Member States and before Palestine in any particular meeting of the general debate. Since the list of speakers for the general debate of the fifty-ninth session of the General Assembly was established prior to the adoption of resolution 58/314, the Holy See will be accommodated at any meeting at which there are speaking slots still available. Henceforth, the Permanent Observer Mission of the Holy See will be invited to submit three preferences of date and meeting (morning or afternoon) from within the period of the general debate of a regular session of



the General Assembly. If the General Assembly decides upon a different methodology of establishing the list of speakers for the general debate of a special session or an emergency special session, the Holy See will have the right to participate in that methodology.

2. **Without prejudice to the priority of Member States, the Holy See shall have the right of inscription on the list of speakers under agenda items at any plenary meeting of the General Assembly, after the last Member State inscribed on the list.”**

In the plenary meetings of the General Assembly, the Holy See will have the right to inscribe on the list of speakers under any agenda item on which it signifies its desire to speak after the last Member State inscribed and before Palestine on the list of that meeting.

The Holy See will have the same priority as Member States when it is participating in any “all States” conference convened under the auspices of the General Assembly or in any election of the permanent or ad litem judges of the International Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda.

3. **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.”**

At the beginning of each session of the General Assembly, during its consideration of the report of the General Committee, the President will indicate that the participation of the Holy See in that session will be in accordance with General Assembly resolution 58/314 of 1 July 2004, after which there will be no precursory explanation prior to any intervention by the Holy See in the session.

4. **The right of reply.”**

The presiding officer will accord the right of reply to the Holy See in the order in which it signifies its desire to make a reply.

5. **The right to have its communications relating to the sessions and work of the General Assembly issued and circulated directly, and without intermediary, as official documents of the Assembly.”**

The Holy See will have the right to request the circulation of its communications relating to any agenda item in the sessions and work of the General Assembly directly, and without a request by a Member State, and the Secretariat shall issue such communications as official documents of the Assembly.

6. **The right to have its communications relating to the sessions and work of all international conferences convened under the auspices of the General Assembly issued and circulated directly, and without intermediary, as official documents of those conferences.”**

As most international conferences convened under the auspices of the General Assembly are open to the participation of “all States”, the Holy See already enjoys the right to circulate its communications as official documents of those conferences. In

any such conferences which are not open to “all States”, the Holy See will have the right to request the circulation of its communications relating to the sessions and work of any international conference convened under the auspices of the General Assembly directly, and without a request by a Member State, and the secretariat of the conference shall issue such communications as official documents of those conferences.

**7. The right to raise points of order relating to any proceedings involving the Holy See, provided that the right to raise such a point of order shall not include the right to challenge the decision of the presiding officer.”**

On matters related to the proceedings on agenda items involving the Holy See, the Holy See may raise a point of order, with the exception of a point of order made in connection with the actual conduct of voting. A point of order will be immediately decided by the presiding officer in accordance with the rules of procedure of the General Assembly. The Holy See may not appeal against the ruling of the presiding officer.

The Holy See will not have the right to make procedural motions including the adjournment of debate, the closure of debate and the suspension or adjournment of the meeting.

The foregoing restrictions do not apply to the Holy See when it is participating in any “all States” conference convened under the auspices of the General Assembly or in any election of the permanent or ad litem judges of the International Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda.

**8. The right to co-sponsor draft resolutions and decisions that make reference to the Holy See; such draft resolutions and decisions shall be put to a vote only upon request from a Member State.”**

The Holy See will have the right to co-sponsor a draft resolution, draft decision or amendment making reference to the Holy See, but may not be the sole sponsor of such draft resolution, draft decision or amendment. Action will be taken on such draft resolution, draft decision or amendment only upon request from a Member State.

The foregoing restrictions do not apply to the Holy See when it is participating in any “all States” conference convened under the auspices of the General Assembly.

**9. Seating for the Holy See shall be arranged immediately after Member States and before the other observers when it participates as a non-member State observer, with the allocation of six seats in the General Assembly Hall.”**

When it participates as a non-member State, the Holy See will be seated after Member States and before Palestine. In the General Assembly Hall, the Holy See will occupy three seats as well as the three seats immediately behind.

The Holy See will have the right to be seated alphabetically with other States in any meeting or part thereof in which elections of the permanent or ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda are being conducted.

In addition, the Holy See shall be seated alphabetically among the other States when



it is participating in any “all States” conference convened under the auspices of the General Assembly.

**10. The Holy See shall not have the right to vote or to put forward candidates in the General Assembly.”**

The Holy See will not have the right to vote, including in elections. The Holy See may neither submit its own candidacy for any election or appointment nor submit the names of candidates for any election or appointment.

The Holy See will have the right to vote and submit candidatures, including its own, in any “all States” conference convened under the auspices of the General Assembly or in any election of the permanent or ad litem judges of the International Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda.



### **Annex No (3)**

**invitation to the holy see to attend  
sessions of the regional commissions**





**ECONOMIC AND SOCIAL COUNCIL**

**OFFICIAL RECORDS**

**SIXTY-THIRD SESSION**

**Geneva, 6 July - 4 August 1977**

# **RESOLUTIONS AND DECISIONS**

**SUPPLEMENT No. 1**

**UNITED NATIONS**

**New York, 1977**



**244 (LXIII). Invitation to the Holy See to attend sessions of the regional commissions**

At its 2078th meeting, on 22 July 1977, the Council decided to recommend the Economic and Social Commission for Asia and the Pacific, the Economic Commission for Latin America, the Economic Commission for Africa and the Economic Commission for Western Asia to invite the Holy See to attend sessions of these commissions on a basis similar to that provided for in the relevant terms of reference applicable to States Members of the United Nations not members of the commissions.

**Annex No (4)**  
**International Criminal  
Court- Situation in Palestine**



**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Le Bureau du Procureur

The Office of the Prosecutor

### **Situation in Palestine**

1. On 22 January 2009, pursuant to article 12(3) of the Rome Statute, Ali Khashan acting as Minister of Justice of the Government of Palestine lodged a declaration accepting the exercise of jurisdiction by the International Criminal Court for “acts committed on the territory of Palestine since 1 July 2002.”<sup>1</sup>
2. In accordance with article 15 of the Rome Statute, the Office of the Prosecutor initiated a preliminary examination in order to determine whether there is a reasonable basis to proceed with an investigation. The Office ensured a fair process by giving all those concerned the opportunity to present their arguments. The Arab League’s Independent Fact Finding Committee on Gaza presented its report during a visit to the Court. The Office provided Palestine with the opportunity to present its views extensively, in both oral and written form. The Office also considered various reports with opposing views.<sup>2</sup> In July 2011, Palestine confirmed to the Office that it had submitted its principal arguments, subject to the submission of additional supporting documentation.
3. The first stage in any preliminary examination is to determine whether the preconditions to the exercise of jurisdiction under article 12 of the Rome Statute are met. Only when such criteria are established will the Office proceed to analyse information on alleged crimes as well as other conditions for the exercise of jurisdiction as set out in articles 13 and 53(1).
4. The jurisdiction of the Court is not based on the principle of universal jurisdiction: it requires that the United Nations Security Council (article 13(b)) or a “State” (article 12) provide jurisdiction. Article 12 establishes that a “State” can confer jurisdiction to the Court by becoming a Party to the Rome Statute (article 12(1)) or by making an ad hoc declaration accepting the Court’s jurisdiction (article 12(3)).
5. The issue that arises, therefore, is who defines what is a “State” for the purpose of article 12 of the Statute? In accordance with article 125, the Rome Statute is open to accession by “all States”, and any State seeking to become a Party to the Statute must deposit an instrument of accession with the Secretary-General of the United Nations. In instances where it is controversial or unclear whether an applicant constitutes a “State”, it is the practice of the Secretary-General to follow or seek the General Assembly’s directives on the matter. This is reflected in General Assembly resolutions which provide indications of whether an

<sup>1</sup> The declaration can be accessed at: <http://www.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4-C8071087102C/279777/20090122PalestinianDeclaration2.pdf>

<sup>2</sup> For a summary of submissions see <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Comm+and+Ref/Palestine/>.



applicant is a “State”.<sup>3</sup> Thus, competence for determining the term “State” within the meaning of article 12 rests, in the first instance, with the United Nations Secretary General who, in case of doubt, will defer to the guidance of General Assembly. The Assembly of States Parties of the Rome Statute could also in due course decide to address the matter in accordance with article 112(2)(g) of the Statute.

6. In interpreting and applying article 12 of the Rome Statute, the Office has assessed that it is for the relevant bodies at the United Nations or the Assembly of States Parties to make the legal determination whether Palestine qualifies as a State for the purpose of acceding to the Rome Statute and thereby enabling the exercise of jurisdiction by the Court under article 12(1). The Rome Statute provides no authority for the Office of the Prosecutor to adopt a method to define the term “State” under article 12(3) which would be at variance with that established for the purpose of article 12(1).

7. The Office has been informed that Palestine has been recognised as a State in bilateral relations by more than 130 governments and by certain international organisations, including United Nation bodies. However, the current status granted to Palestine by the United Nations General Assembly is that of “observer”, not as a “Non-member State”. The Office understands that on 23 September 2011, Palestine submitted an application for admission to the United Nations as a Member State in accordance with article 4(2) of the United Nations Charter, but the Security Council has not yet made a recommendation in this regard. While this process has no direct link with the declaration lodged by Palestine, it informs the current legal status of Palestine for the interpretation and application of article 12.

8. The Office could in the future consider allegations of crimes committed in Palestine, should competent organs of the United Nations or eventually the Assembly of States Parties resolve the legal issue relevant to an assessment of article 12 or should the Security Council, in accordance with article 13(b), make a referral providing jurisdiction.

**EMBARGOED UNTIL DELIVERY 3 April 2012**

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<sup>3</sup> This position is set out in the understandings adopted by the General Assembly at its 2202<sup>nd</sup> plenary meeting on 14 December 1973; see *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*, ST/LEG/7/Rev. 1, paras 81-83; <http://untreaty.un.org/ola-internet/Assistance/Summary.htm>



## **Annex No (5)**

### **Report of the Committee on the Admission of New Members concerning the application of Palestine for admission to membership in the United Nations**



United Nations

S/2011/705



## Security Council

Distr.: General  
11 November 2011

Original: English

### **Report of the Committee on the Admission of New Members concerning the application of Palestine for admission to membership in the United Nations**

1. At its 6624th meeting, on 28 September 2011, the Security Council had before it the application of Palestine for admission to membership in the United Nations (S/2011/592). In accordance with rule 59 of the provisional rules of procedure and in the absence of a proposal to the contrary, the President of the Council (Lebanon) referred the application to the Committee on the Admission of New Members for examination and report.
2. At its 109th and 110th meetings, held on 30 September and 3 November 2011, respectively, the Committee considered the application.
3. Following the 109th meeting of the Committee, the Presidency of the Security Council for the month of October (Nigeria) convened five informal meetings of the Committee, four of which were held at the expert level, to carefully consider whether Palestine met the specific criteria for admission to membership contained in Article 4 of the Charter of the United Nations. Experts considered whether Palestine met the criteria for statehood, was a peace-loving State, and was willing and able to carry out the obligations contained in the Charter.
4. In the course of the meetings of the Committee, differing views were expressed. The view was expressed that the applicant fulfils all the criteria set out in the Charter. Questions were raised as to whether the applicant meets all of the Charter membership requirements. The view was also expressed that deliberations should take into account the broader political context of the matter at hand.
5. It was stated that the criteria set out in Article 4 of the Charter were the only factors that could be taken into consideration in the Committee's deliberations. In support of this position, reference was made to the Advisory Opinion of 28 May 1948 of the International Court of Justice, on the Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter).
6. It was also asserted that the Committee's work, whatever its outcome, should be mindful of the broader political context. The view was expressed that a two-State solution via a negotiated settlement remained the only option for a long-term sustainable peace and that final status issues had to be resolved through negotiations. Support was expressed for a two-State solution based on pre-1967 borders, resulting from political negotiations, leading to an independent State of



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Palestine with East Jerusalem as its capital. It was stressed that Palestine's right to self-determination and recognition is not contrary to Israel's right to exist.

7. It was stated that the Committee's work should not harm the prospects of the resumption of peace talks, particularly in the light of the Quartet statement on 23 September 2011 that had set out a clear timetable for the resumption of negotiations. Similarly, it was stated that the prospect of negotiations should not delay the Security Council's consideration of Palestine's application. It was stated that Palestine's application was neither detrimental to the political process nor an alternative to negotiations. It was also stated that the Palestinian application would not bring the parties closer to peace. It was further stated that the question of the recognition of Palestinian statehood could not and should not be subject to the outcome of negotiations between the Palestinians and Israelis, and that, otherwise, Palestinian statehood would be made dependent on the approval of Israel, which would grant the occupying Power a right of veto over the right to self-determination of the Palestinian people, which has been recognized by the General Assembly as an inalienable right since 1974. Concerns were raised in relation to Israel's continued settlement activities. The view was expressed that those activities were considered illegal under international law and were an obstacle to a comprehensive peace.

8. In relation to the application of Palestine (S/2011/592), attention was drawn to the letter received by the Secretary-General from the President of Palestine on 23 September 2011, which contained a declaration — made in a formal instrument — stating that the State of Palestine was a peace-loving nation; that it accepted the obligations contained in the Charter of the United Nations; and that it solemnly undertook to fulfil them.

9. On the criterion of statehood, reference was made to the 1933 Montevideo Convention on the Rights and Duties of States, which declares that a State as a person of international law should possess a permanent population, a defined territory, a government and the capacity to enter into relations with other States.

10. 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.

11. Questions were raised, however, regarding Palestine's control over its territory, in view of the fact that Hamas was the *de facto* authority in the Gaza Strip. It was affirmed that the Israeli occupation was a factor preventing the Palestinian government from exercising full control over its territory. However, the view was expressed that occupation by a foreign Power did not imply that the sovereignty of an occupied territory was to be transferred to the occupying Power.

12. With regard to the requirement of a government, the view was expressed that Palestine fulfilled this criterion. However, it was stated that Hamas was in control of 40 per cent of the population of Palestine; therefore the Palestinian Authority could not be considered to have effective government control over the claimed territory. It was stressed that the Palestine Liberation Organization, and not Hamas, was the legitimate representative of the Palestinian people.

13. Reference was made to reports of the World Bank, the International Monetary Fund and the Ad Hoc Liaison Committee for the Coordination of the International Assistance to Palestinians, which had concluded that Palestine's governmental functions were now sufficient for the functioning of a State.

14. With regard to the requirement that a State have the capacity to enter into relations with other States, the view was expressed that Palestine fulfilled this criterion. It was recalled that Palestine had been accepted into membership in the Non-Aligned Movement, the Organization of Islamic Cooperation, the Economic and Social Commission for Western Asia, the Group of 77 and the United Nations Educational, Scientific and Cultural Organization. In addition, over 130 States had recognized Palestine as an independent sovereign State. Questions were raised, however, regarding the authority of the Palestinian Authority to engage in relations with other States, since under the Oslo Accords the Palestinian Authority could not engage in foreign relations.

15. With regard to the requirement that an applicant be “peace-loving”, the view was expressed that Palestine fulfilled this criterion in view of its commitment to the achievement of a just, lasting and comprehensive resolution of the Israeli-Palestinian conflict. It was further stated that Palestine’s fulfilment of this criterion was also evident in its commitment to resuming negotiations on all final status issues on the basis of the internationally endorsed terms of reference, relevant United Nations resolutions, the Madrid principles, the Arab Peace Initiative and the Quartet road map.

16. Questions were raised as to whether Palestine was indeed a peace-loving State, since Hamas refused to renounce terrorism and violence, and had the stated aim of destroying Israel. Reference was made, on the other hand, to 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.

17. With regard to the requirement that an applicant accept the obligations contained in the Charter and be able and willing to carry out those obligations, the view was expressed that Palestine fulfilled these criteria, as was evident, *inter alia*, from the solemn declaration to this effect contained in its application. It was recalled that in 1948, when considering the application of Israel for membership, it had been argued that Israel’s solemn pledge to carry out its obligations under the Charter was sufficient to meet this criterion.

18. The view was also expressed 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. In this connection, it was stressed that Hamas had not accepted these obligations.

19. The view was expressed that the Committee should recommend to the Council that Palestine be admitted to membership in the United Nations. A different view was expressed that the membership application could not be supported at this time and an abstention was envisaged in the event of a vote. Yet another view expressed was that there were serious questions about the application, that the applicant did not meet the requirements for membership and that a favourable recommendation to the General Assembly would not be supported.

20. Further, it was suggested that, as an intermediate step, the General Assembly should adopt a resolution by which Palestine would be made an Observer State.



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21. In summing up the debate at the 110th meeting of the Committee, the Chair stated that the Committee was unable to make a unanimous recommendation to the Security Council.

22. The Committee on the Admission of New Members concluded its consideration of the application of Palestine for admission to membership in the United Nations.

23. At its 111th meeting, the Committee approved the present report on its consideration of the application of Palestine for admission to membership in the United Nations.

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## **Annex No (6)**

### **National institutions for the promotion and protection of human rights**







## General Assembly

Distr.: General  
11 April 2012

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Sixty-sixth session  
Agenda item 69 (b)

### Resolution adopted by the General Assembly

[on the report of the Third Committee (A/66/462/Add.2)]

#### **66/169. National institutions for the promotion and protection of human rights**

*The General Assembly,*

*Recalling* its previous resolutions on national institutions for the promotion and protection of human rights, the most recent of which was resolution 64/161 of 18 December 2009, and those of the Commission on Human Rights and the Human Rights Council concerning national institutions and their role in the promotion and protection of human rights,

*Welcoming* the rapidly growing interest throughout the world in the creation and strengthening of independent, pluralistic national institutions for the promotion and protection of human rights,

*Recalling* the principles relating to the status of national institutions for the promotion and protection of human rights ("the Paris Principles"),<sup>1</sup>

*Reaffirming* the important role that such national institutions play and will continue to play in promoting and protecting human rights and fundamental freedoms, in strengthening participation and the rule of law and in developing and enhancing public awareness of those rights and freedoms,

*Recalling* its resolution 65/207 of 21 December 2010 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights,

*Recognizing* the important role of the United Nations, in particular the Office of the United Nations High Commissioner for Human Rights, in assisting the development of independent and effective national human rights institutions, guided by the Paris Principles, and recognizing also in this regard the potential for strengthened and complementary cooperation among the United Nations, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and those national institutions in the promotion and protection of human rights,

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<sup>1</sup> Resolution 48/134, annex.





*Recalling* the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993,<sup>2</sup> which reaffirmed the important and constructive role played by national human rights institutions, in particular in their advisory capacity to the competent authorities and their role in preventing and remedying human rights violations, in disseminating information on human rights and in education in human rights,

*Reaffirming* that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis,

*Bearing in mind* the significance of national and regional particularities and various historical, cultural and religious backgrounds, and that all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms,

*Recalling* the programme of action adopted by national institutions, at their meeting held in Vienna in June 1993 during the World Conference on Human Rights,<sup>3</sup> for the promotion and protection of human rights, in which it was recommended that United Nations activities and programmes should be reinforced to meet the requests for assistance from States wishing to establish or strengthen their national institutions for the promotion and protection of human rights,

*Taking note with appreciation* of the report of the Secretary-General to the Human Rights Council on national institutions for the promotion and protection of human rights<sup>4</sup> and on the accreditation process of the International Coordinating Committee,<sup>5</sup>

*Welcoming* the strengthening in all regions of regional cooperation among national human rights institutions, and noting with appreciation the continuing work of the European Group of National Human Rights Institutions, the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas, the Asia-Pacific Forum of National Human Rights Institutions and the Network of African National Human Rights Institutions,

1. *Takes note with appreciation* of the report of the Secretary-General<sup>6</sup> and the conclusions contained therein;

2. *Reaffirms* the importance of the development of effective, independent and pluralistic national institutions for the promotion and protection of human rights, in accordance with the Paris Principles;<sup>1</sup>

3. *Recognizes* the role of independent national institutions for the promotion and protection of human rights in working together with Governments to ensure full respect for human rights at the national level, including by contributing to follow-up actions, as appropriate, to the recommendations resulting from the international human rights mechanisms;

4. *Welcomes* the increasingly important role of national institutions for the promotion and protection of human rights in supporting cooperation between their

<sup>2</sup> A/CONF.157/24 (Part I), chap. III.

<sup>3</sup> See A/CONF.157/NI/6.

<sup>4</sup> A/HRC/16/76.

<sup>5</sup> A/HRC/16/77.

<sup>6</sup> A/66/274.

Governments and the United Nations in the promotion and protection of human rights;

5. *Recognizes* that, in accordance with the Vienna Declaration and Programme of Action,<sup>2</sup> it is the right of each State to choose the framework for national institutions that is best suited to its particular needs at the national level in order to promote human rights in accordance with international human rights standards;

6. *Encourages* Member States to establish effective, independent and pluralistic national institutions or, where they already exist, to strengthen them for the promotion and protection of all human rights and fundamental freedoms for all, as outlined in the Vienna Declaration and Programme of Action;

7. *Welcomes* the growing number of States establishing or considering the establishment of national institutions for the promotion and protection of human rights, and welcomes, in particular, the growing number of States that have accepted recommendations to establish national institutions compliant with the Paris Principles made through the universal periodic review and, where relevant, by treaty bodies and special procedures;

8. *Encourages* national institutions for the promotion and protection of human rights established by Member States to continue to play an active role in preventing and combating all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international instruments;

9. *Recognizes* the role played by national institutions for the promotion and protection of human rights in the Human Rights Council, including its universal periodic review mechanism, in both preparation and follow-up, and the special procedures, as well as in the human rights treaty bodies, in accordance with Council resolutions 5/1 and 5/2 of 18 June 2007<sup>7</sup> and Commission on Human Rights resolution 2005/74 of 20 April 2005;<sup>8</sup>

10. *Welcomes* the strengthening of opportunities to contribute to the work of the Human Rights Council for national human rights institutions compliant with the Paris Principles, as stipulated in the Council review outcome document adopted by the General Assembly by resolution 65/281 of 17 June 2011, and encourages national human rights institutions to make use of these participatory opportunities;

11. *Stresses* the importance of the financial and administrative independence and stability of national human rights institutions for the promotion and protection of human rights, and notes with satisfaction the efforts of those States that have provided their national institutions with more autonomy and independence, including by giving them an investigative role or enhancing such a role, and encourages other Governments to consider taking similar steps;

12. *Urges* the Secretary-General to continue to give high priority to requests from Member States for assistance in the establishment and strengthening of national human rights institutions;

<sup>7</sup> See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 53 (A/62/53)*, chap. IV, sect. A.

<sup>8</sup> See *Official Records of the Economic and Social Council, 2005, Supplement No. 3 and corrigenda (E/2005/23 and Corr.1 and 2)*, chap. II, sect. A.



13. *Underlines* the importance of the autonomy and independence of Ombudsman institutions, encourages increased cooperation between national human rights institutions and regional and international associations of Ombudsmen, and also encourages Ombudsman institutions to actively draw on the standards enumerated in international instruments and the Paris Principles to strengthen their independence and increase their capacity to act as national human rights protection mechanisms;

14. *Commends* the high priority given by the Office of the United Nations High Commissioner for Human Rights to work on national human rights institutions, encourages the High Commissioner, in view of the expanded activities relating to national institutions, to ensure that appropriate arrangements are made and budgetary resources provided to continue and further extend activities in support of national institutions, and invites Governments to contribute additional voluntary funds to that end;

15. *Encourages* all United Nations human rights mechanisms as well as agencies, funds and programmes to work within their respective mandates with Member States and national institutions in the promotion and protection of human rights with respect to, inter alia, projects in the area of good governance and the rule of law, and in this regard welcomes the efforts made by the High Commissioner to develop partnerships in support of national institutions, including the emerging tripartite partnership among the United Nations Development Programme, the Office of the High Commissioner and the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights;

16. *Welcomes* the important role played by the International Coordinating Committee, in close cooperation with the Office of the High Commissioner, in assisting Governments, when requested, in the establishment and strengthening of national human rights institutions in accordance with the Paris Principles, in assessing the conformity of national human rights institutions with the Paris Principles and in providing technical assistance to strengthen national human rights institutions, upon request, with a view to enhancing their compliance with the Paris Principles;

17. *Encourages* national institutions, including Ombudsman and mediator institutions, to seek accreditation status through the International Coordinating Committee;

18. *Encourages* all Member States to take appropriate steps to promote the exchange of information and experience concerning the establishment and effective operation of national human rights institutions and to support the work of the International Coordinating Committee and its regional coordinating networks in this regard, including through support for the relevant technical assistance programmes of the Office of the High Commissioner;

19. *Requests* the Secretary-General to continue to provide the assistance necessary for holding international and regional meetings of national institutions, including meetings of the International Coordinating Committee, in cooperation with the Office of the High Commissioner;

20. *Also requests* the Secretary-General to report to the General Assembly at its sixty-eighth session on the implementation of the present resolution.

*89th plenary meeting  
19 December 2011*

**Annex No(7)**  
**Human rights Council - Universal  
Periodic Review (UPR)**





## General Assembly

Distr.: General  
3 April 2006

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Sixtieth session  
Agenda items 46 and 120

### Resolution adopted by the General Assembly

[without reference to a Main Committee (A/60/L.48)]

#### 60/251. Human Rights Council

*The General Assembly,*

*Reaffirming* the purposes and principles contained in the Charter of the United Nations, including developing friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and achieving international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all,

*Reaffirming also* the Universal Declaration of Human Rights<sup>1</sup> and the Vienna Declaration and Programme of Action,<sup>2</sup> and recalling the International Covenant on Civil and Political Rights,<sup>3</sup> the International Covenant on Economic, Social and Cultural Rights<sup>3</sup> and other human rights instruments,

*Reaffirming further* that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis,

*Reaffirming* that, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms,

*Emphasizing* the responsibilities of all States, in conformity with the Charter, to respect human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language or religion, political or other opinion, national or social origin, property, birth or other status,

*Acknowledging* that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

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<sup>1</sup> Resolution 217 A (III).

<sup>2</sup> A/CONF.157/24 (Part I), chap. III.

<sup>3</sup> See resolution 2200 A (XXI), annex.



*Affirming* the need for all States to continue international efforts to enhance dialogue and broaden understanding among civilizations, cultures and religions, and emphasizing that States, regional organizations, non-governmental organizations, religious bodies and the media have an important role to play in promoting tolerance, respect for and freedom of religion and belief,

*Recognizing* the work undertaken by the Commission on Human Rights and the need to preserve and build on its achievements and to redress its shortcomings,

*Recognizing also* the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization,

*Recognizing further* that the promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings,

*Acknowledging* that non-governmental organizations play an important role at the national, regional and international levels, in the promotion and protection of human rights,

*Reaffirming* the commitment to strengthen the United Nations human rights machinery, with the aim of ensuring effective enjoyment by all of all human rights, civil, political, economic, social and cultural rights, including the right to development, and to that end, the resolve to create a Human Rights Council,

1. *Decides* to establish the Human Rights Council, based in Geneva, in replacement of the Commission on Human Rights, as a subsidiary organ of the General Assembly; the Assembly shall review the status of the Council within five years;

2. *Decides* that the Council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner;

3. *Decides also* that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote the effective coordination and the mainstreaming of human rights within the United Nations system;

4. *Decides further* that the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development;

5. *Decides* that the Council shall, inter alia:

(a) Promote human rights education and learning as well as advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned;

(b) Serve as a forum for dialogue on thematic issues on all human rights;

(c) Make recommendations to the General Assembly for the further development of international law in the field of human rights;

(d) Promote the full implementation of human rights obligations undertaken by States and follow-up to the goals and commitments related to the promotion and



protection of human rights emanating from United Nations conferences and summits;

(e) Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session;

(f) Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies;

(g) Assume the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights, as decided by the General Assembly in its resolution 48/141 of 20 December 1993;

(h) Work in close cooperation in the field of human rights with Governments, regional organizations, national human rights institutions and civil society;

(i) Make recommendations with regard to the promotion and protection of human rights;

(j) Submit an annual report to the General Assembly;

6. *Decides also* that the Council shall assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advice and a complaint procedure; the Council shall complete this review within one year after the holding of its first session;

7. *Decides further* that the Council shall consist of forty-seven Member States, which shall be elected directly and individually by secret ballot by the majority of the members of the General Assembly; the membership shall be based on equitable geographical distribution, and seats shall be distributed as follows among regional groups: Group of African States, thirteen; Group of Asian States, thirteen; Group of Eastern European States, six; Group of Latin American and Caribbean States, eight; and Group of Western European and other States, seven; the members of the Council shall serve for a period of three years and shall not be eligible for immediate re-election after two consecutive terms;

8. *Decides* that the membership in the Council shall be open to all States Members of the United Nations; when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto; the General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights;

9. *Decides also* that members elected to the Council shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership;



10. *Decides further* that the Council shall meet regularly throughout the year and schedule no fewer than three sessions per year, including a main session, for a total duration of no less than ten weeks, and shall be able to hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council;

11. *Decides* that the Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and also decides that the participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities;

12. *Decides also* that the methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results-oriented, allow for subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures and mechanisms;

13. *Recommends* that the Economic and Social Council request the Commission on Human Rights to conclude its work at its sixty-second session, and that it abolish the Commission on 16 June 2006;

14. *Decides* to elect the new members of the Council; the terms of membership shall be staggered, and such decision shall be taken for the first election by the drawing of lots, taking into consideration equitable geographical distribution;

15. *Decides also* that elections of the first members of the Council shall take place on 9 May 2006, and that the first meeting of the Council shall be convened on 19 June 2006;

16. *Decides further* that the Council shall review its work and functioning five years after its establishment and report to the General Assembly.

*72nd plenary meeting  
15 March 2006*