

Is a State Divided by Xa “State”? Palestine as an Example

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Abstract

Palestine, as a contemporary political entity, is governed most notably by the Palestine Authority under the control of Fatah. The effectiveness of governance by Fatah is evidenced by the lack of control over the Gaza Strip, a component geographical element of Palestine, which is controlled by an ideological competitor, Hamas. The question presented is: Can Palestine be considered to be a state either measured against a traditional index set out in the 1933 Montevideo Convention or a more nuanced approach by a functional interpretation of international law? The conclusion presented is that, as presently configured, Palestine cannot be considered a state.

Then the king said, “Bring me a sword.” So they brought a sword for the king. He then gave an order: “Cut the living child in two and give half to one and half to the other.”¹

When in power, fear not the spears in front of you, but the knives poised at your back.

A Silverburg Aphorism

Introduction

If territoriality² is *asine qua non* requirement of statehood, complemented by effective governance, ostensibly by a central governing authority, then under what sense is Palestine a juristic entity? This condition, I suppose, could be responsive to a traditional international legal format³--or a more popularly acceptable evolving functional understanding⁴--given the nature of the contemporary political system. Admittedly, the Westphalian nation-state system is of a western European, white, Christian-generated origin.⁵ It should have been expected that, over time, with the globe recognized as an international political phenomenon, permutations would emerge in the form of international organizations,⁶ non-state actors,⁷ a state of affairs conditioned by desuetude,⁸ divided states,⁹ and failed states.¹⁰ But I will argue that Palestine as a political entity qua state is a singularly distinctive political unit.^{10a} I say so because not only is it divided between the West Bank of mandated Palestine but it is geographically separated from the Gaza Strip. Additionally, while the more recognized governing authority, *Fatah (Harakat al-Tahriri al-Filastiniya* [Palestine National Liberation Movement]), controls the Palestinian Authority (PA) in Ramallah on the West Bank,¹¹ there is a serious competitor in the form of *Hamas (Harakat al-Muqawama al-Islamiyya* [Movement of the Islamic Resistance]) that effectively controls the Gaza Strip. Considerable emphasis is placed by a variety of critics on the violent nature of *Hamas* found in the organization's Charter,¹² its disdain for and outright hostility to Israel, and its refusal to recognize the Jewish character of the state. Having said that, a specialist on *Hamas*, Khaled Hroub, makes the case that the group has evolved ideologically from the time the Charter was issued in August 1988 to a more pragmatic--albeit strictly Islamic-oriented--organization.¹³

I present three general questions of categorization of the *Hamas* governing authority as a way to bring about a particular context not necessarily response-oriented: 1a) Is *Hamas* a territorial, custodial, proxy government, or b) an Islamic faction within the PA in opposition to the more secular and nationalistic *Fatah*? 2) Is *Hamas* a proxy government serving the interests of external political actors i.e., Iran¹⁴ and Qatar?¹⁵ 3) Are any of the aforementioned categories subordinate in any way to the PA in Ramallah? If one gives credence to the Arrow Theorem i.e., if you have two or more of any set of interests, you have to prioritize,¹⁶ then how do we get out of this conundrum? The Palestine Liberation Organization (PLO) has been an umbrella organization including several factions, *Fatah* and *Hamas* comprising the significant elements within a common creed.¹⁷

However, *Fatah*, over time, has come to represent the dominant party.¹⁸ Beginning sometime during the decade of the '90s, a shift in leadership pattern developed within Palestinian society, the "old guard" under the direct control of Yasser Arafat, the professionals, Islamists, and a newer and younger generation of radical activists eager for reform and a positive accumulation of long sought-after goals, even if it means through negotiations with the Israelis.¹⁹ While an historical parallel can be drawn to the situation of Pakistan, the United States, and Tanzania as non-contiguous states, there was and is in each a single governing authority with an internationally recognized capital city.²⁰ An authority no less than the PLO in its Declaration of Independence outlined what should be the territory of a proposed, independent Palestinian state, comprising of the West Bank *and* Gaza.²¹ When the issue of Palestinian statehood came before the International Court of Justice (ICJ)--this time with respect to the construction of an Israeli security barrier along the border with and in the West Bank--the Court had difficulty providing an unequivocal statement affirming what the Palestinians sought, at least in terms of its political status.²² Under these conditions, Palestine has a bifurcated and fractured governing authority and thus there is no single, effective governing authority, a necessary criterion for the traditional understanding of the existence of a state.²³

Gaza: Separate or Inseparable?

Following the Israeli unilateral disengagement from Gaza,²⁴ pursuant to an anti-terrorist mission, and essentially forced upon Israel, the PA according to the Oslo II accords brought about an academic question whether or not the territory remained "occupied."²⁵ The Israeli decision on disengagement was meant, *inter alia* but significantly, to reduce the potential of violent confrontations with Palestinians. However, Hamas was able to convince local Palestinians that it was truly armed resistance that forced the Israelis to retreat, thus ironically gaining increased credibility and support. To the extent the Gaza government operates separately from the West Bank,²⁶ it necessarily reduces the opportunity for the PA to claim a unified political system operating under the control of a central government. Perhaps, but only so, does the PA's authority and jurisdiction extend to Gaza since the Oslo II accords was an interim measure with the termination date--May 4, 1999--passed.²⁷ It should be added here, however, that in this "interim" period there was to be a full-fledged effort to complete negotiations between the two parties to reach a permanent status; termination was not envisioned, but the arrangements agreed upon thereto did continue to apply.²⁸

In any case, if the argument holds that Gaza is not an "occupied" territory, since it allows the *Hamas* government, albeit *de facto*, a façade of independence sans sovereignty applies. Even if Israel has "effective control" over the Gaza Strip *per se*, it should be in the context of a lack of absolute control over the borders, since neighboring Egypt maintains control over the Sinai Peninsula and the Gaza Strip's southern boundary. *Hamas* has participated as an actor within the context of the Arab-Israeli conflict, although not necessarily as a representative of the Palestinian people. *Hamas* emerged following the first *Intifada* (which lasted from 1987 to 1993)²⁹ largely as a result of a perception of *Fatah*'s failed leadership and its eroded popularity. *Hamas* operates under the guise of the PLA, claiming to protect Palestinian interests, but actually, and for all practical purposes, Gazans only. This argument is construed on the basis of a series of proffers *Hamas* spokespersons put forth for truces and the abandonment of violent attacks on Israeli citizens if Israel would reciprocate by agreeing to a set of its demands.

The United Nations (UN) recognized the PLO to be the sole legitimate and responsible agency to represent the interests of the Palestinian people. This custodial affirmation was then reified regionally by the League of Arab States. Pursuant to the Oslo Accords in 1993, the PLO with the expressed support from the Palestinian National Council (PNC), established the PA. In the interim, or until a final agreement was reached, the PA was created as the established authority to govern areas of the West Bank and Gaza that Israel released, from its jurisdiction in any negotiated settlement. The PA was also given limited jurisdictional authority for a five year period in selected areas of the West Bank and Gaza and extended in 1988 with the enunciation of the Palestinian Declaration of Independence.

Hamas and a National Unity Government

One requirement for statehood that has continuously applied to those who have sought it is governance that is "viable," a concept left imprecise by recognized authorities, but that is nevertheless valuable. The competitive nature given to the question of legitimate representation of any future state of Palestine,³⁰ additionally rests on the nature of recognition of a governing authority,³¹ which turns crucially on the condition of effective control.³²

While Hamas is the *de facto* government in Gaza, it is not without its insurgent aspirants ready to compete for that control.³³ Far more important in this regard is the separateness of governing authorities between *Fatah* and *Hamas*, certainly recognized by both as evidenced by the attempts to create a unified governing body.³⁴ Accordingly, a set of reconciliation agreements were set in motion from the Cairo Agreement in 2005,³⁵ followed by the 2006 National Accord,³⁶ the Mecca Agreement of February 8, 2007,³⁷ the Sana'a Declaration of 2008,³⁸ the Egyptian Paper for inter-Palestinian Reconciliation in 2009,³⁹ the April 27, 2011 *Hamas-Fatah* Unity Agreement in Cairo⁴⁰, and the Doha Declaration,⁴¹ all of which attempted to reduce the differences between the factions. *Hamas*, ostensibly, provided Egyptian mediators still another unification proposal for *Fatah* to consider, however, it appears that the PA had not received word of it, or was intentionally disregarding it.⁴²

The divide between the two emerged in a most serious manner following the Palestinian parliamentary elections held on January 25, 2006.⁴³ Unexpectedly, the election resulted, in a clearly democratic fashion, with *Hamas* exacerbating the tensions with *Fatah* by creating a separate list (*al-Mustaqbal*), participating as the "Change and Reform" party, gaining 74 seats in a 132-seat Parliament, representing a 44% constituent advantage.⁴⁴ What appeared to surprise many, while difficult to comprehend given the electoral trend witnessed in the previous year's municipal elections and supported further by Palestinian public opinion, was the electoral outcome.⁴⁵ The result was to effectively remove *Fatah's* control over the PLC. Two days later, the PA's President, Mahmoud Abbas, asked *Hamas* to form a government. Remarkably however, *Fatah's* leadership indicated a reticence to coalesce with *Hamas*, making a formal governing ion that the organization is willing to employ an alternative to violence, even if considered to be a tactical structure unworkable. What is critical to consider is that *Hamas's* agreement to participate in an election is an indicative.

Regardless of the election results, *Fatah's* leadership, with a sense of bravado and arrogance, chose to test *Hamas's* political maneuverability by calling for hosting the 6th Palestinian Congress, a meeting laid fallow for 20 years, rather than work with *Hamas*.⁴⁶ Then on June 14, 2007, the day that *Hamas* gained full control over Gaza, president Abbas removed Prime Minister Ismail Haniyeh and dissolved the government, allowing for a legislative vacuum.⁴⁷ But within three days, Abbas swore in a new emergency cabinet with Salam Fayyad as Prime Minister, an unelected government without the popularly-supported *Hamas*. In still another attempt to lessen *Hamas's* footprint, Abbas dissolved the Palestinian National Security Council, placing Haniyeh in a subordinate position of Deputy Council Chairman.⁴⁸ In an attempt to bolster his spiraling downward position, Abbas sought support from the Palestine Central Council (PLC), the permanent legislative body to replace the newly-elected *Hamas*-dominated, one party regime/parliament.⁴⁹ The split between *Fatah* and *Hamas* now was a riven factional conflict with two different conceptions of a Palestinian identity. Ultimately, *Hamas* was able to displace whatever *Fatah* presence existed in Gaza in what one *Hamas* leader, Sami Abu Zuhri, claimed to be "the second liberation of the Gaza Strip."⁵⁰

The removal of *Fatah* from Gaza was accomplished by a violent coup d'état carried out by the 'Izz al-Din al-Qassam Brigades, the military wing of *Hamas*. With *Hamas* in control,⁵¹ Haniyeh became the *de facto* Prime Minister of the government, holding its first meeting on June 19th. The violence that erupted was not received well by the Arab League, the European Union, or the United States, all of whom threw their support behind *Fatah* and Abbas.⁵² What occurred was an essential exchange of political support, the PA lost Gaza but obtained western support. Fearful of the influence that *Hamas* might exert, the United States inserted its influence and broke off relations with the PA.⁵³ By June of the following year, *Hamas* assumed a position based on the belief that *Fatah* was about to pursue a course of action intended to extend its control and thus initiated a sanguine attempt, but this attempt to remove *Hamas's* power presence in Gaza was unsuccessful, allowing for a full control over the area.⁵⁴

The takeover was most likely precipitated by the Israeli disengagement from Gaza leaving the area with a security vacuum and the fact that *Hamas* already had a strong presence. But importantly, it provided *Hamas* a territorial base onto which it could prove useful in the future either in negotiations with the PA, the loyal opposition, or as a stand-alone feature. In still another attempt at rapprochement, Egypt arranged a brokered deal in April 2011 with Abbas' *Fatah* and *Hamas* to create an interim government to include both territories and a commitment to set a date to hold general elections within a year.⁵⁵ By the middle of May 2012, Abbas had created a new government under the parliamentary leadership of Salam Fayyad.⁵⁶ When the PA called for a legislative election on October 20, 2012, *Hamas* not only refused to participate, it disallowed the Central Elections Commission to proceed with voter registration and related efforts to include actual voting.⁵⁷

The results allowed for a *Fatah* victory on the West Bank.⁵⁸ The internally continuous shift in the balance of ruling authority within the institutional structure of *Hamas* dissipated any semblance of unity with *Fatah*, but in effect created a competitive governing structure or in Arabic vernacular, an *inqisaam* (division).⁵⁹ The takeover of Gaza by *Hamas* led one observer to claim that the maneuver staved off the two-state proposal in the overall peace process.⁶⁰ Regional politics also has had an impact on *Hamas*' strategy and domestic support. The on-going uprising in Syria posed a problem for *Hamas*: Syria offered protected residence to Khalid Meshal, *Hamas*' leader, but that required the organization to support the regime in Damascus which was in opposition to Palestinian public opinion. But when *Hamas*' leadership lent its support to the rebels, Syria rapidly chose to close down the organization's offices in the capital and dispersing the group's officers to the region.⁶¹

The violent turbulence that erupted along the Gaza-Israel border in November 2012 illustrates still further the disparate policies issued by *Hamas* and *Fatah*. Beginning with Palestinian Salafist militants firing across the border into an IDF (Israel Defence Forces) vehicle filled with soldiers,⁶² there followed an Israeli retaliatory strike at *Hamas* targets in Gaza, all of which served to initiate a series of escalatory actions. Notably, there were no similar hostilities emanating from the West Bank, except for measured grandiloquent, rhetorical support for *Hamas*. In fact, the focus was constantly and entirely on *Hamas* and governing officials from Gaza, with little to no consultation with the PA. When the Islamic World, e.g., Turkey, Qatar, and Egypt, chose to voice its support for the general Palestinian cause, it carefully stood behind *Hamas*, specifically, and not the PA.⁶³ After the UN General Assembly vote on the PA's status, Jordan's King Abdullah II, visited PA's president Abbas as a sign of support, preceding the visit of Khalid Meshal to Gaza.⁶⁴ An indication of the position of the Arab World on Palestinian developments following the UN General Assembly granting non-member statehood, Arab foreign ministers had agreed to meet in Ramallah in late December to voice their support and discuss much needed financial aid.⁶⁵

The turnout, however, registered only the Egyptian Foreign Minister, Mohammed Kamel Amr, the Jordanian Foreign Minister, Nasser Judeh, and the Arab League Secretary General, Nabil El-Arabi. Far more devastating for the PA's treasury, was the emptiness of the promises for financial assistance. The important point here is an explicit failure to come to bond with the PA beyond the diplomatic articulation. A rally to mark the 25th anniversary of *Hamas*' founding was held in Nablus, on the West Bank.⁶⁶ The rally, after a 5-year ban on *Hamas* holding any kind of demonstration, was notable for the presence of *Hamas* official, Meshal, visiting Gaza for the first time. He spoke defiantly for Palestinian demands best epitomized by a *Hamas* spokesperson, Salah Bardawil, who declared:

We are imposing a new reality on the Israeli occupation. All the factions are here, and the *Hamas* flags embrace the Palestinian flags and the *Fatah* flags. We need to extend the Arab revolution to all Palestinian from the sea to the river and every refugee returns to his home.⁶⁷

Still another attempt at support for union was shown by a rally held by *Fatah* this time--supported by *Hamas*--held in Gaza on January 4, 2013 on the 48th anniversary of its founding.⁶⁸ Egypt, again, attempted to reconcile both factions with an invitation to both for a mediation meeting in Cairo in early January 2013. Three significant issues bode high on the agenda: 1) the creation of a national unity government; 2) the scheduling of both presidential and parliamentary elections; and 3) reconstituting the PLO, to include *Hamas*.⁶⁹ Rallies were also held in the West Bank cities of Hebron and Ramallah, each led by the al-Aqsa Martyr's Brigade, the military wing of *Fatah*.⁷⁰ Simultaneously with ongoing discussions of reconciliation, Mahmoud Zahar, a *Hamas* official was calling for *Fatah* to join in a combined armed effort against Israel instead of endorsing any kind of peace process.⁷¹ In support of this push, Moussa Abu Marzouk, *Hamas*' Deputy Bureau Chief, issued a demand to President Abbas to turn over control of the West Bank to *Hamas*.⁷²

A significant section of the concluding chapter of this series of events is recognizing that *Hamas* is the effective governing body in Gaza, even assuming for discussion purposes that Israel is a belligerent occupant. Israel also has the ability to reduce the vertical extent of *Hamas*' control—even with the depth of its social penetration-- the real source of *Hamas*' influence. This condition sets up an interesting mix of variables: If *Hamas* has effective control over Gaza, can Israel simultaneously be a real occupier? The fact that Gaza is treated differently and separately from the West Bank in respect to Israel's military administration is a suspicious indicator of non-unity in the PA's claim to represent a unified Palestinian governing body.

If the internecine, factional conflict continues past the point where a single or a dual Palestinian governing body can be established, a proposal by former US ambassador to the UN may become a reality with Jordan reassuming control over the West Bank⁷³ and Egypt absorbing the Gaza Strip.⁷⁴

Legal Personality

The question arises whether or not Palestine, as it is presently constituted, has an international legal personality and, if so, what specifically is the referent? Professor Quigley, a noted international legal scholar and frequent porte-parole for admission of Palestine as a state opined that “[t]hose who deny Palestine statehood base their position on abstract concepts relying to the definition of statehood.” He then offers as an alternative that “[t]hey ignore the *practice of the international community*,” a condition that does not necessarily operate under the ambit of the United Nations, but is the gravamen of the professor’s argument nonetheless.⁷⁵ Whether or not Palestine is a state *in law* as opposed to some undefined political status, depends in large part on if it has a legal personality.⁷⁶ Without such an attribution, no political entity can accept international legal obligations and responsibilities.⁷⁷ At least one international legal scholar, who has spoken out on the part of Palestinian rights, has taken the position that the Oslo Accords achieved their legitimacy *inter alia* supported by Security Council Resolutions 242 and 338 and, therefore, a legal arrangement was established either between two states or a state and another under belligerent occupation;⁷⁸ in any case there is the attribution of legal personality.⁷⁹

Personality may be decided for practical purposes on the extent or recognition, even if symbolic, provided the entity has shown itself a responsible body.⁸⁰ An international political actor need not necessarily be a “state,” although it may appear to be one for purposes of political participation. This condition being the case, it becomes pragmatically possible to avoid the condition of legitimacy, the existence of a legal personality, or deserving sovereignty. Because the cultural characterization of the nation-state system is [western] Eurocentric, it is not difficult to appreciate how the globe has morphed into a collection of differently configured political units that fail to neatly match 17th century European dignitaries’ machinations.⁸¹

I would further argue that this historical development is at the core of the [Palestinian] Arab-Israeli conflict with the Palestinian Arab community an outlier and the Jewish Zionists an extension of European thought *mutatis mutandis* and experience with the European political model. It is arguably reasonable to accept a progressive analysis of how customary international law should operate in the current international political environment while a functional interpretation of international law as it applies to contemporary political conflicts is advocated by prominent jurists--among them, Rosalyn Higgins⁸² and Antonio Cassese.⁸³

The Involvement of the United Nations and Judicial Extensions

The PLO has maintained “observer status” in the UN since 1974.⁸⁴ In September 2011, Abbas as president of the PA and chairman of the PLO, sought from the UN Security Council full member state status based on the pre-1967 borders and relying on the traditional requirements of statehood set out in the Montevideo Convention.⁸⁵ The application failed to gain sufficient support from the Security Council (8 out of 15 votes) and the application was thus held in abeyance.⁸⁶ This move was followed on November 29, 2012 with an application--this time to the UN General Assembly--to upgrade their political status from “permanent observer entity” to “non-member state permanent observer” status all in an attempt to gain increased international support for Palestinian sovereignty.⁸⁷ The subsequent vote acceded to the Palestinian wishes,⁸⁸ but notably an action the PA took was in violation of the Oslo Accords II.⁸⁹ These applications, it is most notable to cite, were made with the understanding that a Palestinian state included the West Bank and Gaza and so that subsequent to the vote, there was overwhelming jubilation in the West Bank and in Gaza.⁹⁰

In a contemporaneous action, when the PA submitted a declaration on September 22, 2009 to the Office of the Prosecutor for the International Criminal Court (ICC), seeking a remedy to claims of war crimes resulting from the Israeli military incursion into Gaza beginning on July 1, 2002, it made no mention of statehood for Palestine.⁹¹ Ultimately the ICC rejected the application in April 2012⁹² after considerable delay and presumably deliberation.

Conclusion

Professor James Crawford, an *au fait* on the phenomenon of new states, opined clearly that “the State of Palestine has not yet become a fact as distinct from an aspiration.”⁹³ The institutionalization of a political structure certainly has been in progress on several levels, but as yet remains a state *in statu nascendi*.⁹⁴ While not necessarily a confused state of affairs, it is nevertheless a situation demanding a firmer agreement on what not only appears to be a state for purposes of political participation in order to achieve a political goal, but also one that enjoys more than a modicum of facial legality in order that the entire international legal system not be laid threadbare. There are alternative scenarios certainly: It should be recognized that in the decisive negotiations of the Oslo Accords, there was no formal delimited—nor demarcated—borders established for a Palestinian state,⁹⁵ setting aside the same state of affairs for Israel. Instead, this component of the peace process was allocated to Israel.⁹⁶

The PA could disassociate itself from *Hamas* and declare the West Bank as its independent and sovereign territorial unit and claim further East Jerusalem its capital. *Hamas*, likewise, realizing its institutional structure in the Gaza Strip, could create its own Islamic-based state.⁹⁷ Without demeaning *Hamas*' commitment to its understanding and functional application of Islamic principles, is it realistic to expect that it could be able to integrate its political fortunes with the secular, nationalistic *Fatah*. Political entities seeking statehood must be able to institutionalize public agencies that perform their duties state-wide with a minimum of invidious discrimination. All this, while not optimal for either group—or Israel and the region entirely—it allows for options to engage in diplomatic negotiations—a key element of which must be disposed is the obvious geographical connection between the two territorial elements of Palestine.⁹⁸ The mere separation allows for a stronger acceptance of **a two-Palestinian-state solution**,⁹⁹ a topic that goes beyond our interest here. There certainly have been, historically speaking, any number of anomalous political structures outside whatever was the more acceptable, legitimate, or notable forms of governance.¹⁰⁰ The point here is that it is not inconceivable to divide Palestine yet again, but this time among the same ethnic community, i.e., the Palestinian people (in Arabic, *ash-sha'b al-filasTini*), without recognition of any attachment to Syria,¹⁰¹ as was the pre-Palestine mandate situation.

This leaves us to a discussion of *Hamas* as a potential independent state. If a traditional understanding of a state is applied to our understanding of the concept, or a functional application of rules and norms to the reality on the ground we must somehow understand that *Hamas* has altered its ideology with a more pragmatic policy orientation. This being the case, the conclusion will be altered.¹⁰² But violent developments in the area in November 2012, and the position taken by *Hamas* in talks held in Cairo intending to find a *modus vivendi* to the escalation of events, support a realistic speculation that *Hamas* chose to provoke an Israeli response in order to achieve political objectives¹⁰³ or at least establish facts on the ground. This strategy would thus allow *Hamas* to circumvent diplomatic efforts to negotiate¹⁰⁴ in order to obtain those same ends, but then also deal with Israeli pre-conditional demands i.e., recognize Israel as a Jewish state¹⁰⁵ with greater bargaining leverage.

A ceasefire agreement was reached in Cairo through indirect negotiations in the form of a Memorandum of Agreement.¹⁰⁶ During a second round of talks in Cairo with Egyptian mediators, *Hamas* sought to have the opening of Israel's economic blockade extended to maritime borders.¹⁰⁷ It is interesting to speculate, since intrigue is often a component of diplomacy, that the Israeli concession to relax the controls over the Gazan economy would have the effect of strengthening the political influence of *Hamas* in order to create a stronger anti-Iranian, Sunni Arab coalition with Egypt, Qatar, and Turkey. Discussions followed regarding the benefits and losses from the conflict, but since *Hamas* was crucially central, it becomes incumbent on it to reconsider its ideology as well as its strategy of confrontation with Israel, an already existent state albeit to some extent an occupying power.¹⁰⁸ A great deal of attention has been given over to *Hamas*' ideology and its Islamic underpinnings alongside a goal of creating a western model of a state. The integration of these potentially complicated and, perhaps, contradictory objectives have been a developmental process yet to be completed.¹⁰⁹

Ultimately, the international legal community must come to grips with political arrangements that encompass people within some territorial configuration that is under the control of a governing authority, lest chaos ensue.¹¹⁰ Since 1933, the Montevideo Convention has provided the standard basis or index for the legal definition or a test of a state since. Subject to criticism in several quarters, given the changes that have occurred in the political world, the Convention has provided the only solidly recognized basis for the recognition of a state, even if it is the beginning of an understanding of the phenomenon.

However, as has been readily apparent, the international political system has gone through numerous iterations and, as is the case, law is slow to keep pace with political developments.¹¹¹ Thus, a functional approach has been injected to the customary creation of international law, allowing for a divergent interpretation of norms and rules, but far too often resembling a *kabuki* theatre. Can there be a blend of these two approaches? Certainly, but as is always the case, it depends upon either the perspective of the individual interpreter or the international community in general practicing a particular form of political behavior. Even the ultimate binding and codification effort in international law, whether it is a treaty, generally written with precision by nations' diplomats charged with protecting their country's interests is subject to rigorous interpretation;¹¹² the same can be said for customary norms¹¹³ and rules.¹¹⁴

As a standard component in the history of the dispute over Palestine, violence as employed particularly after Israel claimed its state status was a somewhat accepted practice of resistance to occupation by resident Palestinians and neighboring Arab states, evolving into directing unprovoked harm brought to innocent civilians, demanding the attribution of terrorism. It is from this condition that there is belief in the lack of legitimacy because of a dearth of accountability to the generally accepted norm of conducting international relations in a non-violent manner.

With respect to *aor* any Palestinian state that is to emerge, it either must comport strictly—or reasonably so—to the strictures of the Montevideo Convention. If the more nuanced functional approach becomes the operative template, then the internal differences between *Fatah* and *Hamas* must be resolved and reduced in order to have a state which resembles one and in particular, given a non-contiguous, combined territory, a unified government must be institutionalized. There are arguments for the existence of a Palestinian state based upon one document or another,¹¹⁵ combined with a statement published or an interview, all of which attracts the attention of intelligent observers, but fails to admit to the compelling obverse of legitimacy and sovereignty and that is the obligation to be a responsible partner on the political globe. Whether or not a Palestinian state will be democratic to any extent and within the Arab World is the subject of still another academic debate. There are, meanwhile, obstacles for both Palestinian governing bodies to overcome and reach a consensus that will allow for co-existence in some form.

¹ 1 Kings 3:24-25. King Solomon's historical albeit mythical judgment, I will argue, is apocryphally relevant to my thesis.

² On the importance of territory in the development of international law as it affected political formations, see Karen Knop, *Statehood: Territory, People, Government*, in *THE CAMBRIDGE COMPANION TO INTERNATIONAL LAW* 95-116 (James Crawford and Martti Kolskenniemi eds., 2012).

³ Montevideo Convention on Rights and Duties of States of 1933, at ¶ 1, 165 L.N.T.S.19, 49 Stat. 3097. Although technically a multilateral treaty among the Latin American signatories, the United States was also a signatory. See especially RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 201 (1987). The treaty, additionally, has been accepted as an international customary legal norm supported by *opinion juris* and has legal effect and force. A cautious examination can be found in Thomas D. Grant, *Defining Statehood: The Montevideo Convention and its Discontents*, 37 COLUM. J. TRANSNAT'L L. 403 (1999). The traditional definition was also employed by the Badinter Arbitration Committee of the European Union. Alain Pellet, *The Opinions of the Badinter Committee: A Second Breath for the Self-Determination of Peoples*, 3 EUR. J. INT'L L. 178, 182 (1992).

⁴ See Eric Allen Engle, *The Transformation of the International Legal System: The Post-Westphalian Legal Order*, 23 QUINNIPIAC L. REV. 23 (2004). For a discussion of the emergence of the nation-state system, see DANIEL H. NEXON, *THE STRUGGLE FOR POWER IN EARLY MODERN EUROPE: RELIGIOUS CONFLICT, DYNASTIC EMPIRES, AND INTERNATIONAL CHANGE* (2009); HENDRIK SPRUYT, *THE SOVEREIGN STATE AND ITS COMPETITORS: AN ANALYSIS OF SYSTEMS CHANGE* (1994); David Blaney and Naeem Inayatullah, *The Westphalian Deferral*, 2 INT'L STUD. REV. 29 (2000) and Friedrich Kratochwill, *Of Systems, Boundaries, and Territoriality: An Inquiry into the Formation of the State System*, 39 WORLD POL. 27 (1986).

⁵ For a discussion of *Res Christiana*, see HAROLD J. LASKI, *THE FOUNDATION OF SOVEREIGNTY AND OTHER ESSAYS* 1 (1921). It should be noted that actually the concept of the nation-state while popularly ascribed to the Peace of Westphalia (1648), the Peace of Augsburg (1555) deserves some credit. For earlier developments see BENNO TESCHKE, *THE MYTH OF 1648: CLASS, GEOPOLITICS, AND THE MAKING OF MODERN INTERNATIONAL RELATIONS* (2003) and Sebastian Schmidt, *To Order the Minds of Scholars: The Discourse of the Peace of Westphalia in International Relations Literature*, 55 INT'L STUD. Q. 1 (2011).

⁶ Advisory Opinion on Reparations for Injuries Suffered in the Service of the United Nations, 1949 I.C.J. 3 (Apr. 11).

⁷NON-STATE ACTOR DYNAMICS IN INTERNATIONAL LAW: FROM LAW-TAKERS TO LAW-MAKERS (Math Noortmann and Cedric Ryngaert eds., 2010); NON-STATE ACTORS AND INTERNATIONAL LAW (Andrea Bianchi ed., 2009); NON-STATE ACTORS AS STANDARD SETTERS (Anne Peters ed., 2009); Michael K. Young, *Non-State Actors in the Global Order*, 2010 UTAH L. REV. 81. This category could include national liberation movements. In support of this idea see Sanford R. Silverburg, *The Palestine Liberation Organization in the United Nations: Implications for International Law and Relations*, 12 ISRAEL L. REV. 365 (1977); Patrick J. Travers, *The Legal Effect of United Nations Actions in Support of the Palestine Liberation Organization and the National Liberation Movements in Africa*, 17 HARV. INT'L L. J. 561 (1976).

⁸EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION 92, 94-96(1993); YORAM DINSTEIN, WAR, AGGRESSION, AND SELF-DEFENCE 48-49 (4th ed., 2005). Brandon Valeriano and John Van Benthuyzen, *When States Die: Geographic and Territorial Pathways to State Death*, 33 THIRD WORLD Q. 1165 (2012).

⁹Joungwon Alexander Kim and Carolyn Campbell Kim, *The Divided Nation in the International System*, 25 WORLD POL. 479 (1973).

¹⁰NEVIRE AKPINARLI, THE FRAGILITY OF THE "FAILED STATE" PARADIGM: A DIFFERENT INTERNATIONAL LAW PERCEPTION OF THE ABSENCE OF EFFECTIVE GOVERNMENT (2005); Rosa Brooks, *Failed States or the State of Failure*, 72 U. CHICAGO L. REV. 1159 (2005).

^{10a} I appreciate that under law, specifically, as part of the overall peace process according to the Oslo II accord, Arts. IV and XI, the West Bank and Gaza Strip are considered a singular political territory. Israel-Palestine Liberation Organization: Interim Agreement on the West Bank and Gaza Strip, With Selected Annexes, Sept. 28, 1995, 36I.L.M. 551.

¹¹ The PA was created as a successor to the Palestine Liberation Organization (PLO) pursuant to the Oslo Peace Process as an interim measure to the ultimate goal of the establishment of a two-state solution to the Arab-Israeli conflict. For a good discussion of the differences and relationship between the two organizations, see "P.N.A. vs. P.L.O.," Sept. 22, 2011, <http://abunajoum.blogspot.com/2011/09/pna-vs-plo.html>.

¹² The *Hamas* Charter, Aug. 1988, http://avalon.law.yale.edu/20th_century/Hamas.asp.

¹³KhaledHroub, A "New Hamas" Through its New Documents, 35 J. PALESTINE STUD. 6 (2006). At least one analyst has claimed that *Hamas'* mission, to rid the region of Israel, affords it the label of a national liberation movement. Amy Chiang, *An International and Islamic Perspective of Hamas*, 83 CHI-KENT L. REV. 1021, 1029-1032 (2008).

¹⁴Iran has been a weapons supplier to *Hamas* for a long time. ISRAEL. MIN. FOR. AFF., IRANIAN WEAPONS IN GAZA, Nov. 22, 2012, http://www.mfa.gov.il/MFA/The+Iranian+Threat/Support+of+terror/Iranian_weapons_in_Gaza_22-Nov-2012.html. Iran supplies *Hamas* with financial support in addition to weapons. Although the aid is welcomed, the mutual benefit results from separate interests. GawdatBahgat, *Terrorism in the Middle East*, 32 J. SOC., POL. & ECON. STUD. 163, 174-175 (2007). The fact that Shiite Iran supports Sunni *Hamas* can be said to undermine the largely Sunni Arab world, the historical adversary of Persians.

¹⁵ The issue is diplomatic support. Khaled Abu Toameh and Herb Keinon, *Qatar Emir's Gaza Visit Criticized by Both PA and Israel*, JERUS. POST, Nov. 22, 2012, at 1. The interest of Qatar's Emir Hamad bin Khalifa al-Thani to invest \$400 million would allow Gaza increased economic independence.

¹⁶ KENNETH J. ARROW, SOCIAL CHOICE AND INDIVIDUAL VALUES (2d ed., 1963).

¹⁷Robert J. Mnokin, Ehud Eiran & Sreemati Mitter, *Barriers to Progress at the Negotiation Talks: Internal Conflicts Among Israelis and Among Palestinians*, 6 NEV. L.J. 299, 333 (2005/2006).

¹⁸ Mahdi Abdul Hadi, *Formulas for Partition, Fragmented Maps, Yet No Solution*, 19 NEW ENG. J. PUB. POL'Y 317, 324 (2005).

¹⁹ The comparative complexity is examined in Hayat Alvi-Aziz, *The (Non) Governance of Divided Territories: A Comparative Study of Bangladesh, Pakistan, and Palestine*, 28 COMP. STUD. OF S. ASIA, AFR. AND THE MIDDLE EAST 467 (2008).

²⁰Known as the Algiers Declaration, *Palestine Declaration of Independence*, 19th Sess. of the Palestinian National Council (PNC), ¶10, U.N. Doc. A/43/827-S/20278 (1988). Declared in Algiers on Nov. 15, 1988. See generally James L. Prince, *The International Legal Implications of the November 1988 Palestinian Declaration of Statehood*, 25 STAN. J. INT'L L. 681 (1988-1989) and Ruth Lapidot and Karin N. Calvo-Goler, *Les elements constitutives de l'État et la declaration du Conseil National Palestinien du 15 novembre 1988*, 96 REV. GEN. DE DROIT INT'L PUB. 777 (1992).

²¹ Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J., at ¶ 162 (July 9).

²² Support for this position is evinced from the non-government organization, the European Centre for Law and Justice, that submitted a Legal Memorandum Opposing Access to International Criminal Court Jurisdiction by Non-State Entities, Sept. 9, 2009, at 18, http://uclalawforum.com/media/background/gaza/2009-09-09_European_Centre-Memo.pdf.

²³ISRAEL. PRIME MINISTER'S OFFICE, THE CABINET RESOLUTION REGARDING THE DISENGAGEMENT, June 6, 2004, <http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Revised+Disengagement+Plan+67+June-62004.htm> complemented then by the IDF Spokesperson's Office, Declaration Regarding End of Military Rule in Gaza Strip, Sept. 12, 2005, <http://www1.idf.il/DOVER/site/mainpage.asp?sl-EN&id=7&docid=45427&Pos=1&last=0&bScope=False>.

While the Israeli military administration of both the West Bank and Gaza was in effect following the 1967 armed conflict as a singular effort, the administration of either area was separated with the IDF Chief of Southern Command, the Occupying Power for Gaza and the IDF Chief of Central Command serving the same role for the West Bank, coordinating their work. While the Israeli Supreme Court held that Israel was no longer in “effective control over...the Gaza Strip,” Jaber Al-Bassiouni Ahmed et al. v. Prime Minister et al., HJC 9132/07 (Nov. 1, 2007) and CA 6659/06 [2008] Anonymous v. The State of Israel, June 11, 2008, nevertheless Israel bore some responsibility for the humane treatment of Gazans because of the control over the borders that the IDF maintained.

²⁴For a general survey of the literature see Nicholas Stephanopolous, *Israel's Legal Obligations to Gaza After the Pullout*, 31 YALE J. INT'L L. 524 (2006). For the view that because Israel maintains “effective control” over Gaza, it remains occupied, see *Report of the Special Rapporteur on the Situation of Human Rights in Palestinian Territories Occupied Since 1967*, ¶ 6, U.N. Doc. A/HRC/4/17 (Jan. 29, 2007) (prepared by John Dugard); PLO. NEGOTIATIONS DEPT., THE ISRAELI “DISENGAGEMENT” PLAN: GAZA STILL OCCUPIED (Sept. 2005).

²⁵There is an interesting and an *a propos* comment included in the *Naletilic* case that appeared before the (International Criminal Trial for the Former Yugoslavia) ICTY, The Prosecutor v. Mladen Naletilic and Vinko Marinovic, Case No. IT-98-34-T, Judgment (Trial Chamber), Mar. 31, 2003, at ¶ 218, to wit: “There is no requirement that an entire territory be occupied, provided that the isolated areas in which the authority of the occupied power is still functioning ‘are effectively cut off from the rest of the occupied territory.’”

²⁶ISRAEL. MIN. FOR. AFF., Decision of 6 June 2004 on the Revised Disengagement Plan,

<http://mfa.gov.il/MFA/Peace+Process/Reference+Documents/Revised+Disengagement+Plan+6-June-2004.htm>. Cf.

Eyal Benvenisti, *The Present Status of the Palestinian Authority*, in THE ARAB-ISRAELI ACCORDS: LEGAL PERSPECTIVES 47 (Eugene Cotran and Mallat Shibli eds., 1996). The Accords afforded Palestinians a modicum of self-government, concretized by the passage of the Palestinian Basic Law in 1997 serving as the constitutional basis for the provision of order and security. The Hamas government in Gaza refused to recognize the Basic Law before the presidential elections in 2006, but subsequently reversed its position. Nathan J. Brown, *Legal Encounter: Can Constitutionalism Help Palestine?*, http://lawcenter.birzeit.edu/iol/en/conEdu/legal_encounters/2008/356_1.doc.

²⁷Document 14, Letter from Israeli Ambassador to the United Nations, Dore Gold, to US Secretary-General Kofi Annan on the Palestinians' Intention to Proclaim a Palestinian State on 4 May 1999, Apr. 19, 1999, ISRAEL. MIN. FOR. AFF., Y.B. OF OFF. DOCS. 78 (2002).

²⁸Sara Roy, *Hamas and the Transformation(s) of Political Islam in Palestine*, 103 CURRENT HIST. 13-20 (2003).

²⁹Although moot, it could have been an issue with the PA seeking membership as a full member of the United Nations. See the comment made by the U.N. Secretary General Trgve Lie in the Memorandum on the Legal Aspects of Problem of Representation in the U.N., UN Doc. S/1466 (Mar. 8, 1950).

³⁰There apparently have been diplomatic contacts at various levels of government in selected countries in Europe. Andrew Rettman, *EU Countries Practice 'Secret' Diplomacy, Hamas Says*, EUOBSERVER.COM, Sept. 14, 2009, <http://euroobserver.com/foreign/28660>.

³¹According to the Tinoco Case (Gr. Brit. V. Costa Rica), 1 R. Int'l Arb. Awards 369, 381-382 (1923), recognition need not be based on the “effective control test,” *id.*, at 377-378.

³²Khaled Abu Toameh, *Latest Round of Violence Shows Hamas no Longer the Major Player in Gaza*, JERUS. POST, Mar. 14, 2012, at 2.

³³Meir Litvak, *The Palestinian Cairo Agreements: Between Lull and Truce*, (130) TEL AVIV NOTES (Mar. 27, 2005), <http://www.imra.org.il/story.php?id=24685>.

³⁴Text of the Palestinian National Accord Adopted by President Abbas, May 2006,

<http://www.middleeastinfor.org/docs/PalestinianAccord.pdf>.

³⁵AL-AYYAM (Ramallah), Feb. 9, 2007,

http://en.wikipedia.org/w/index.php?title=Hamas=Fatah_Mecca_Agreement&oldid=521327637.

³⁶Mohamed Sudan, *Fatah and Hamas Sign Reconciliation Deal*, REUTERS, Mar. 23, 2008,

<http://uk.reuters/article/2008/03/28/uk-palestinian-yeman-deal-idUKL23831120080323>.

³⁷For a discussion of this diplomatic effort as well as general background see Y. Yehoshua, *The Fatah-Hamas Situation: Was There an Agreement?*, INNOVA, June 27, 2011, <http://www.internationaltelescope.com/?p=2514>.

³⁸“Fatah-Hamas Reconciliation Agreement, Palestinian National Initiative Signed in Cairo, Apr. 27, 2011,”

<http://www.middleeast.about.com/od/palestinepalestinians/qt/Fatah-Hamas-Reconciliation-Agreement.pdf>.

³⁹“Full Text of Doha Declaration Signed Between Hamas and Fatah,” Feb. 8, 2012,

<http://www.middleeastmonitor.com/nws/middle-est/3397-full-text-of-the-doha-declaration-signed-between-hamas-and-fatah.pdf>.

⁴⁰Elior Levy, *Hamas Hands Egypt New Reconciliation Agreement with Fatah*, YNET, Oct. 31, 2012,

http://www.ynetnews.com/articles/0,7340_L_4299705,00.html.

⁴¹Fatah Official Casts Doubt on Existence of Hamas Unity Proposal, MA'AN NEWS AGENCY, Sept. 11, 2012,

<http://Maannews.net/eng/ViewDetails.aspx?ID=533037>.

⁴²Not only have Palestinian legislative elections been complicated, confusing, and divisive, but the same could be said for Palestinian presidential elections. See Nathan J. Brown, *Palestinian Presidential Elections*, Fact Sheet, Middle East Program, Carnegie Endowment for International Peace, July 2008, http://www.carnegieendowment.org/files/brown_palestine_elections.pdf.

⁴³By morphing into a political party, *Hamas* deviated from its original Charter. Menachem Klein, *Hamas in Power*, 61 MIDDLE EAST J. 443, 450 (2007). For a succinct discussion of the background to the election and its intricacy see Graham Usher, *The Democratic Resistance: Hamas, Fatah, and the Palestinian Elections*, 35 J. PALESTINE STUD. 20 (2006). The electoral system was split with half of the parliament's seats based on party electoral lists while the other half based on a district-based vote with individuals running for office. One quarter of the seats were to be allocated to the districts. In the election, *Hamas* fared better with district voting, and the *Fatah* list did better with the popular vote.

⁴⁴Nassar Ibrahim, *The Fourth Stage of Palestinian Municipal Elections: Hot Results and Hotter Questions*, 22 NEWS FROM THE FRONT 6-8 (Jan. 2006) and Khalil Shikaki, *Dissatisfied With Hamas, But Would Not Vote for Fateh*, 13 PALESTINE-ISRAEL J. 52 (2006); Jamil Hilal, *Hamas' Rise as Charted in the Polls, 1994-2005*, 35 J. PALESTINE STUD. 6 (2006); Palestinian Center for Policy and Survey Research, *Palestinian Public Opinion Poll No. 37*, Sept. 30-Oct. 2, 1010, <http://www.pcpsr.org/survey/polls/2010/p37e.html#table>; Arab World for Research and Development, *Middle East Peace Process: Silver Linings Remain*, Aug. 8-14, 2010, <http://www.awrad.org/pdfs/Oversample%20Results%20-%20Analysis%20%28final%20.pdf>; Jerusalem Media and Communications Control Centre, *Poll No. 71*, Sept. 11-15, 2010, <http://www.jmcc.org/documentsandmaps.aspx?id=808>. See also Roger Heacock, *Les elections palestiniennes: Trentean de surprises*, (55) CONFLUENCES MÉDITERRANÉE 81 (2005) and Neve Gordon and Dani Filc, *Hamas and the Destruction of Risk Society*, 12 CONSTELLATIONS 542 (2005). *Hamas* has been able to maintain strong popular support because its deep penetration into Palestinian society, providing a wide array of social support to the populace's infrastructure (a process known as *da'wa*). See also Tavishi Bhasin and Maia Carter Hallward, *Hamas as a Political Party: Democratization in the Palestinian Territories*, 25 TERRORISM AND POL. VIOL. 75 (2013).

⁴⁵CAMERA (Committee for Accuracy on Middle East Reporting in America), *Sixth Fatah Congress: The Myth of Moderation*, Aug. 12, 2009, http://www.camera.org/index.asp?x_context=2&x_outlet=1478x_article=1710; AL JAZEERA, *Delegates Gather for Fatah Conference in Bethlehem*, Aug 11, 2009, <http://english.aljazeera.net/news/middleeast/2009/08/20098435612729372l.htm>.

⁴⁶Harvey Morris, *Abbas Scraps Unity Government as Gaza Falls to Hamas Hardliners*, FIN. TIMES, June 15, 2007, at 8. For a political profile of Haniyeh see Evgeny Lebedev, *Rebel Without a State*, THE INDEPENDENT, Jan. 7, 2012, <http://www.independent.co.uk/news/world/middle-east/rebel-without-a-state-evgeny-lebedev-meets-ismail-haniyeh-prime-minister-of-gaza-6284842.html>.

⁴⁷*Abbas Dissolves Palestinian National Security Council, Rallying International Support*, N.Y. TIMES, June 18, 2007, <http://www.nytimes.com/2007/06/18/world/africa/18iht-mideast.2.6185765.html>.

⁴⁸Mohammed Assadi, *Abbas convenes PLO Body to Back Emergency Cabinet*, REUTERS, June 20, 2007, <http://uk.reuters.com/asito/prime?aid=UKL2073403420070620>.

⁴⁹*Hamas Gunmen Take Control of the Preventive Security HQ in Gaza; Hamas Leader Applauds the "Liberation,"* MA'AN NEWS AGENCY, June 14, 2007, <http://www.maannews.net/eng/ViewDetails.aspx?ID=196688>.

⁵⁰Beverly Milton-Edwards, *The Ascendancy of Political Islam: Hamas and the Consolidation of the Gaza Strip*, 29 THIRD WORLD Q. 1585 (2008). See generally <http://www.qassam.ps/>.

⁵¹On the other hand, Norway in March 2007 recognized the *Hamas* government in Gaza in an attempt to foster good will among the two Palestinian factions. The act of recognition was claimed by David Johnson, a member of the Norwegian Progress Party, in an interview with Siv Jensen. *A Norwegian Thatcher*, STANDPOINT, Dec. 4, 2012, [http://www.standpointmag.co.uk/node/692/full.Norway's foreign policy is strategically guided by "peacebuilding." See the acting Security Council President from Norway's statement before the UN Security Council](http://www.standpointmag.co.uk/node/692/full.Norway's%20foreign%20policy%20is%20strategically%20guided%20by%20%22peacebuilding%22.%20See%20the%20acting%20Security%20Council%20President%20from%20Norway's%20statement%20before%20the%20UN%20Security%20Council), NORWAY. MIN. FOR. AFF., STRATEGIC FRAMEWORK: PEACEBUILDING--A DEVELOPMENT PERSPECTIVE 13-14 (2004). Switzerland, as a non-EU country, maintains a close relationship with *Hamas* in order to keep communications open with the West. *La diplomatie de l'ignominie*, Ludvic Monnerat, Mar. 22, 2006, http://www.ludvicmonnerat.com/archives/2006/03/la_diplomatie_d.html. Swiss foreign policy looks to further peace and human rights. SWITZERLAND. FED. DEPT. FOR. AFF. DIRECTORATE POL. AFF., HUMAN SECURITY IN SWITZERLAND'S FOREIGN POLICY (2012), <http://www.eda.admin.ch/etc/medialib/downloads/eclazen/doc/publi.Par.O222.File.tmp/EDA%20Broschuere%20SWeb%20e%20V.pdf>. Egypt is in a far more precarious position playing a cautious game. See Omar Shaaban, *Hamas and Morsi Not So Easy Between Brothers*, Carnegie Endowment for International Peace, Oct. 1, 2012, <http://carnegieendowment.org/2012/10/01/hamas-and-morsi-not-so-easy-between-brothers/dy53>. Egypt, as a suzerain over Gaza from 1948 to 1967, considered the area a part of geographical Palestine. Carol Farhi, *On the Legal Status of the Gaza Strip*, in 1 MIL GOV. IN THE TERRITORIES ADMINISTERED BY ISRAEL 1967-1980, at 61, 75 (1982), but Palestinians have failed to complete the integration.

⁵²Indeed, President Bush sought to overthrow the Hamas government. David Rose, *The Gaza Bombshell*, VANITY FAIR, Apr. 2008, <http://www.vanityfair.com/politics/features/2008/04/gaza>. The public face put on the event by the Bush administration appeared differently, Glenn Kessler, *Bush is Conciliatory in Accepting Victory of Hamas*, WASH. POST, Jan. 27, 2006, at A15. See also Alastair Crooke, *Permanent Temporariness*, 33 LONDON REV. BKS. 24 (Mar. 3, 2011) and Nathan Thrall, *Our Man in Palestine*, 57 NY REV. BKS. 75 (Oct. 14, 2010).

⁵³The Hamas politburo chief, Khalid Meshal has claimed that “[t]aking control over the Gaza Strip was not our objective...but to defend ourselves and protect our legitimacy.” Mouin Rabbani, *A Hamas Perspective on the Movement’s Evolving Role: An Interview with Khalid Meshal: Part II*, 37 J. PALESTINE STUD. 59, 74 (2008). A full account is covered in BEVERLY MILTON-EDWARDS AND STEPHEN FARRELL, *HAMAS: THE ISLAMIC RESISTANCE MOVEMENT* 282-292 (2010).

⁵⁴The agreement was signed by Moussa Abu Marzouk, the deputy head of Hamas’ politburo and Azzam al-Ahmad, a Fatah Central Committee member.

⁵⁵Done without the approval of the Palestine Legislative Council and in opposition to what was agreed to in the Doha Accord. Khaled Abu Toameh, *New AP Cabinet Sworn in With Fayyad at Helm*, JERUS. POST, May 17, 2012, at 1.

⁵⁶*Palestinian Divide May Deepen With Vote: West Bank Only to Go to Polls as Hamas Blocks Gaza Participation*, WALL ST. J. Oct. 18, 2012, <http://online.wsj.com/article/SB10000872390444592704578064343070370294.html>.

⁵⁷Agence France Presse, *Fatah Claimed Victory in the First West Bank Poll Since 2006*, ARABNEWS, Oct. 22, 2012, <http://www.arabnews.com/fatah-claimed-victory-in-the-first-West-Bank-Poll-Since-2006>.

⁵⁸Ehud Yaari, *Secret Hamas Elections Point to Internal Struggle*, The Wash. Inst. for Near East Pol’y Watch, 1936, May 16, 2012, <http://www.washingtoninstitute.org/policy-analysis/view/secret-Hamas-elections-point-to-internal-struggle>.

⁵⁹Kaveh L. Afrasiab, *The Death of the Two-State Solution*, ASIA TIMES, June 20, 2007, at 8.

⁶⁰*Syria Closes Hamas offices*, KHALEEJ TIMES (Dubai), Nov. 6, 2012, http://www.khaleejtimes.com/kt-article-display-1.asp?xfile=data/middleeast/2012/November/middleeast_November99.xml§ion-middleeast. See also Anne Barnard and Hania Mourtada, *Syria Berates Hamas Chief, an Old Ally, on State TV*, N.Y. TIMES, Oct. 2, 2012, http://www.nytimes.com/2012/10/03/world/middleeast/syrian-state-tv--lashes-out-at-hamas-leader-khaled=meshal.html?pagewanted=all&_r=0.html?src=un&feedurl=http%3A%2Fjson8-nytimes-com%2Fpages%2Fworld%2Fmiddleeast%2Findex.jsonp.

⁶¹Fares Akram and Isabel Kershner, *Violence Surges on Israeli-Gaza Border*, N.Y. TIMES, Nov. 11, 2012, at 10.

⁶²Jodi Rudoren and Fares Akram, *Bolder Hamas Tests Alliances in a Shifting Arab World*, N.Y. TIMES, Nov. 15, 2012, <http://www.nytimes.com/2012/11/16/world/middleeast/Hamas-emboldened-tests-its-arab-alliance.html>.

⁶³Isabel Kershner, *Visit to West Bank by King Gives Palestinians a Lift*, N.Y. TIMES, Dec. 7, 2012, at A14.

⁶⁴Marian Houk, *Nabil ElAraby [Arab League Secretary-General] Visits Ramallah Muqat’a—But Seems Not to Have Suitcases Full of Cash*, UN-TRUTH, Dec. 29, 2012, <http://un-truth.com/palestine-palestinians-2/Nabil-elaraby-visits-ramallah-but-seems-not-to-have-suitcases-full-of-cash>.

⁶⁵Jodi Rudoren, *Hamas Holds Rally in West Bank: Calls for Palestinian Unity*, N.Y. TIMES, Dec. 14, 2012, at A11.

⁶⁶Steven Erlanger, *Leader of Hamas Delivers Defiant Speech at Anniversary Celebration*, N.Y. TIMES, Dec. 9, 2012, at 11.

⁶⁷AP, *Fatah Rally in Gaza Looks Toward Unity With Hamas*, <http://www.nytimes.com/aponline/2013/01/04/world/middleeast/ap=ml=palestinians.html?src=un&feedurl=http%3A%2Fjson8.nytimes.com%2Fpages%2Fworld%2Fmiddleeast%2Findex.jsonp>. Jodi Rudoren, *Rally Signals Fatah’s Rift With Hamas May East*, N.Y. TIMES, Jan. 5, 2013, at A1.

⁶⁸Jodie Redoren, *Abbas and Hamas Leaders Meet at Egypt’s Invitation*, N.Y. TIMES, Jan. 10, 2013, at A6.

⁶⁹Noah Browning, *Confident Hamas Stages Rallies in West Bank*, THE DAILY STAR (Beirut), Dec. 14, 2012, <http://www.dailystar.com.lb/News/Middle-East/2012/Dec-14/198483-hamas-stages-first-west-bank-march-since-2007.ashxaxzz2H1vsoiHo>.

⁷⁰Khaled Abu Toameh, *Hamas Tells Fatah—Lets Fight Israel Together*, JERUS. POST, Dec. 4, 2012, <http://www.jpost.com/MiddleEast/Article.aspx?id=294502>.

⁷¹Elior Levy, *Abu Marzouk to Abbas: Hand Over Control of West Bank to Hamas*, YNET NEWS.COM, Dec. 31, 2012, <http://www.ynetnews.com/articles/0,7340L-43265550,00.html>.

⁷²Daoud Kuttab, *Are the Palestinians Ready to Share a State with Jordan*, THE ATLANTIC MONTHLY, Dec. 26, 2012, <http://www.theatlanticmonthly.com/international/archive/2012/12/are-the-palestinians-ready-to-share-a-state-with-jordan/266634/>. See also David Singer, *Palestine: Integrating Jordan’s Two Banks Could Reap Big Rewards*, ON LINE Opinion, Oct. 31, 2012, <http://www.onlineopinion.com.au/view.asp?article=14293>. The Jordanian Option was introduced by King Hussein in 1972, an item carried over to the agenda of the 16th Palestine National Council in Algiers in February 1983, with the understanding that there would be a confederation of two independent states (Jordan and the West Bank). The PLO later objected to the plan and it was disposed. YEHUDA LUKACS, *ISRAEL, JORDAN, AND THE PEACE PROCESS* 253 (1989) and E.R.F. Shrehan, *Visit With Hussein, Palestinians and Golda Meir*, N.Y. TIMES MAG. 10-11 (Aug. 27, 1972).

⁷³John R. Bolton, *Let’s Start by Recognizing That Trying to Create a Palestinian Authority From the Old PLO Has Failed and That Any Two-State Solution Based on the PA is Stillborn*, WASH. POST, Jan. 5, 2009, at A11.

- ⁷⁴ John Quigley, *Palestine Statehood: A Rejoinder to Professor Robert Weston Ash*, 36 RUTGERS L. REC. 257, 262-263 (2010). Emphasis added. The arguments presented represent a case, however, of begging the question. A far more extensive argument presented by Professor Quigley can be found in his *THE STATEHOOD OF PALESTINE: INTERNATIONAL LAW IN THE MIDDLE EAST CONFLICT* (2010), with extensions in *Palestine is a State: A Horse with Black and White Stripes is a Zebra*, 32 MICH. J. INT'L L. 749 (2011) and along the track of a connection to United Nations' actions in *Palestine at the United Nations: What Does it Take to be a State?* 20 ILSA Q.29 (2011). Interested readers of Professor Quigley's erudition on the subject can also see his perspective developed in *Palestine: The Issue of Statehood*, in *PALESTINE AND INTERNATIONAL LAW: ESSAYS IN POLITICS AND ECONOMICS* 37-54 (Sanford R. Silverburg ed., 2002, 2008); *Palestine's Declaration of Independence and the Right of the Palestinians to Statehood*, 7 B.U. INT'L L.J. 1 (1989). A similarly vociferous and supportive position is taken by Francis A. Boyle in *PALESTINE, PALESTINIANS AND INTERNATIONAL LAW* (2003) and his *Create the State of Palestine*, (25) AMER-ARAB AFF. 86(1988).
- ⁷⁵ For different approaches to the concept see David Derham, *Theories of Legal Personality*, in *LEGAL PERSONALITY AND POLITICAL PLURALISM* 1-19 (Leicester C. Webb ed., 1958). This is not to say that Palestinians are not entitled to some form of national self-determination, since this condition is not limited to statehood. Besides the obvious call for statehood by the Palestinians, it is a curious note that while President Woodrow Wilson supported the notion of self-determination of peoples at the Versailles Peace Conference following World War I, it wasn't until 1977 and President Carter that an American president officially said Palestinians were entitled to a "homeland." 1 PUB. PAPERS OF THE PRES.: JIMMY CARTER, 1977, at 387 (1977) and President George W. Bush was the first to reference a Palestinian state, in his "vision" statement done on July 17, 2002, 2 PUB. PAPERS PRES. U.S., GEORGE W. BUSH 2002, at 1256 (2005).
- ⁷⁶ Int'l L. Comm'n, *First Report on Responsibility of International Organizations*, U.N. Doc. A/CN.4/532, at ¶ 15, (Mar. 4, 2003) (prepared by Giorgio Gaja).
- ⁷⁷ For an understanding of "belligerent occupation," see Nehal Bhuta, *The Antimonies of Transformative Occupation*, 16 EUR. J. INT'L L. 721, 725 (2005).
- ⁷⁸ Paul J.I.M. deWaart, *Self-Rule Under Oslo II: The State of Palestine Within a Stone's Throw*, 8 PALESTINIAN Y.B. INT'L L. 35, 41 (1994-1995).
- ⁷⁹ Jan Klabbbers, *(I Can't Get No) Recognition: Subjects Doctrine and the Emergence of Non-State Actors*, in *NORDIC COSMOPOLITANISM: ESSAYS IN INTERNATIONAL LAW FOR MARTTI KOSKENNIEMI* 351-369 (Jarna Petman and Jan Klabbbers eds., 2003); NEIL MACCORMICK, *QUESTIONING SOVEREIGNTY: LAW, STATE AND PRACTICAL REASON* 189 (1989).
- ⁸⁰ No less an authority than the late Professor Ian Brownlie was to argue that there were unique political entities that should enjoy a "special type" of legal personality and therefore had to be seen as *sui generis*. *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 68 (7th ed. 2008). Myres McDougal and colleagues presented a similar conclusion of non-customary political entities and international law, *The World Constitutive Process of Authoritative Decision*, 19 J. LEGAL ED. 253 (1967).
- ⁸¹ *PROBLEMS AND PROCESSES: INTERNATIONAL LAW AND HOW WE USE IT* (2003).
- ⁸² *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL* 242 (1995).
- ⁸³ U.N. General Assembly Resolution 3237, Nov. 22, 1974, UN Doc. A/9631 (1974).
- ⁸⁴ The application is enclosed in UN Doc. S/2011/592 (Sept. 23, 2011), but specifically in UN Doc. A/66/371-S/2011/592, Annex I, (Sept. 23, 2011).
- ⁸⁵ See Report of the Committee on the Admission of New Members Concerning the Application of Palestine for Admission to Membership in the United Nations, UN Doc. S/2011/705 (Sept. 23, 2011).
- ⁸⁶ Introduced by the Sudanese delegate. United Nations. General Assembly. *Status of Palestine in the United Nations*, UN Doc. A/67/L.28 (Nov. 26, 2012); UNGA Final Draft Resolution on Nonmember State, Nov. 26, 2012, <http://un-report.blogspot.com/2012/11/unga-palestine-final-draft-resolution./html>. See also Ruth Lapidoth, *When is an Entity Entitled to Statehood?* 6 ISRAEL J. FOR. AFF. 78 (2012).
- ⁸⁷ U.N. General Assembly Resolution 67/19, Nov. 26, 2012, UN Doc. A/RES/6/19 (Nov. 26, 2012). The recorded vote adopted the resolution and can be found in UN Doc. A/67/PV. 44 (Nov. 29, 2012). Louis Charbonneau, *Palestinians Win Implicit U.N. Recognition of Sovereign State*, REUTERS, Nov. 29, 2012, <http://www.reuters.com/article/2012/11/29/us-palestinians-statehood-idUSBRE8AR0EG20121129>. The action taken has no legally binding effect on the remainder of the membership. See Stephen M. Schwebel, *The Legal Effect of Resolutions and Codes of Conduct of the United Nations*, in *JUSTICE IN INTERNATIONAL LAW: SELECTED WRITINGS: STEPHEN M. SCHWEBEL* 499-513 (Stephen M. Schwebel ed., 1994).
- ⁸⁸ *Supra* note 11, at Art. XXXI, ¶ 7, holding that "[n]either side shall initiate or take any step that will change the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations." This agreement, according to Judge Antonio Cassese would be *pacta de negotiando*. *The Israel-PLO Agreement and Self-Determination*, 4 EUR. J. INT'L L. 564 (1993). Relevant to this point and the thesis discussed herein is that Hamas opposed the PA's signing the Oslo Accords. Wendy Kristiansen, *Challenge and Counterchallenge: Hamas's Response to Oslo*, 28 J. PALESTINE STUD. 19 (1999).
- ⁸⁹ Anne Barnard, *Hamas Chief Revives Talks of Reuniting With P.L.O.*, N.Y. TIMES, Nov. 28, 2012, <http://www.nytimes.com/2012/11/28/world/middleeast/leader-of-hamas-calls-for-palestinian-unity.html?ref-middleeast>.

Khalid Meshal, Hamas leader speaking from Doha, his new residence in exile and before the UN vote, indicated an interest in rejoining the P.L.O., which means it was implicitly accepting the Oslo Accords, an agreement it had rejected.

⁹⁰ The text of the Declaration can be accessed at [http://www.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4-C8071087102C/279777/20090122Palestinian Declaration2.pdf](http://www.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4-C8071087102C/279777/20090122Palestinian%20Declaration2.pdf). It should be noted that in the unpublished Independent Fact Finding Commission on Gaza, chaired by Professor John Dugard, presented to the League of Arab States that the reference was accepted without discrimination.

<http://www.filedropper.com/reportoftheindependentfactfindingcommitteeongza30Apr.2009final>, at ¶593-594.

⁹¹ International Criminal Court (ICC). Office of the Prosecutor, *Situation in Palestine*, Apr. 3, 2012, [http://www.icc-cpi.int/NR/rdonlyres/C 6162BBF-4FEB9-4FAF-AF49-863106D2694A/284387/SituationinPalestine030412ENG.pdf](http://www.icc-cpi.int/NR/rdonlyres/C%206162BBF-4FEB9-4FAF-AF49-863106D2694A/284387/SituationinPalestine030412ENG.pdf). If, 1) following the upgrading the diplomatic status of the PA before the UN and 2) the PA ratifies the Rome Statute, the ICC could have jurisdiction over crimes prior to the Palestinian ratification effort, according to Articles 11(2) and 12(3) of the Rome Statute. *Rome Statute*, UN Doc. A/CONF.183/9, July 9, 1998. Incidentally, the PA does not have to ratify the Rome Statute by accepting the ICC's jurisdiction on an *ad hoc* basis applying Article 12(3), following the precedent of ICC-Côte d'Ivoire, Feb. 23, 2012, <http://www.icc-cpi.int/NR/exeres/13FAFAEA-9D7B-48A2-9D28-7694CADD30.htm>.

⁹² JAMES R. CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 421 (2006).

⁹³ Sanford R. Silverburg, *Diplomatic Recognition of States in statu nascendi, in PALESTINE AND INTERNATIONAL LAW: ESSAYS ON POLITICS AND ECONOMICS* 9 (Sanford R. Silverburg ed., 2002, 2008).

⁹⁴ Declaration of Principles on Interim Self-Government Arrangements, Israel-PLO, Sept. 13, 1993, 32 I.L.M. 1525, 1529.

⁹⁵ Israel-Palestine Liberation Organization. Interim Agreement on the West Bank and the Gaza Strip, Israel-PLO, Sept. 28, 1995. 36 I.L.M. 551, 562.

⁹⁶ Ghazi Ahmad Hamad, "The Challenge for Hamas-Establishing Transparency and Accountability," *Democratic Control of the Armed Forces (DCAF)*, Apr. 2006, <http://org/wps/dcaf016/dcaf106.pdf>.

⁹⁷ Justus Reid Weiner and Diane Morrison, *Legal Implications of "Safe Passage": Reconciling a Viable Palestinian State With Israel's Security Requirements*, 22 CONN. J. INT'L L. 233, 261-263 (2007).

⁹⁸ At least a few American reporters saw it similarly, but characterized it differently. See Jacob Savage, *The Three-State Solution*, L.A. TIMES, June 20, 2007, at 7; *Three State Solution* (editorial), THE N.Y. SUN, June 19, 2007, at 2; and Ian Bremmer, *A Difficult Plan Whose Time Has Come*, INT'L HERALD TRIBUNE, June 15, 2007, at 3. It would please at least some Israeli policy makers to have a separate Hamas-controlled state which would allow Israel to label it a "hostile entity." Attila Somfalvi, *Wikileaks: Yaddin Wanted Hamas Takeover*, YNETNEWS.COM, Dec. 20, 2010, <http://www.ynetnews.com/articles/0,7340,L-4002043.html> and *Viewing Cable 08TELAVIV2745, CodelWexler's Meeting With Military Intelligence*, Dec. 8, 2008, <http://wikileaks.org/cable/2008/12/08TELAVIV/2745.htm>. See something similar in Carey James, *Mere Words: "The Enemy Entity" Designation of the Gaza Strip*, 32 HASTINGS INT'L & COMP. L. REV. 643 (2009).

⁹⁹ For background see Oliver J. Lissitzyn, *Territorial Entities Other Than Independent States in the Law of Treaties*, 125 R.C.A.D.I. 51-63 (1968).

¹⁰⁰ As distinct from *Yehudi Palestina'ee* (Palestinian Jew). For an historical examination of the connection of Palestine to Greater Syria and Palestinian Arabs' identifying with Syria, see Yehoshua Porath, *Social Aspects of the Emergence of the Palestinian National Movement*, in SOCIETY AND POLITICAL STRUCTURE IN THE ARAB WORLD 101, 107, 119 (Menachem Milson ed., 1973) and Daniel Pipes, *Palestine for the Syrians*, COMMENTARY (Dec. 1986), <http://www.danielpipes.org/174/palestine-for-the-syrians>. For an argument of the cultural distinctiveness of the Palestinian folk see Ibrahim A. Abu Lughod, *Palestinian Culture and Israel's Policy*, ARAB STUD. Q. 95 (1985).

¹⁰¹ A related opinion was put in print by Katherine W. Meighan, *The Israel-PLO Declaration of Principles: Preclude to Peace*, 34 VA. J. INT'L L. 435, 465 (1994).

¹⁰² Hamas' conditions set out in Cairo by its delegation were that: 1) Israel would rescind its policy of targeted assassinations—as distinct from extra-judicial killing; 2) Israel would lift its economic blockade of Gaza, particularly by widening the maritime belt in the Mediterranean, allowing Gaza fishermen greater access; and 3) the removal of the 300-500 meter wide security barrier around the Israeli border with Gaza, established by the IDF. Sara Sidner, Frederik Pletiget, and Mohammed Fadel Fahmy, *Egyptian Intel Chief Working to Forge Cease-Fire*, CNN, Nov. 18, 2012, <http://www.cnn.com/2012/11/17/world/meast/gaza-israel-strike/index.html> and Ghassan Bannoura, *Palestinians Protest the Israeli Wall Surrounding the Gaza Strip*, International Middle East Media Center, <http://www.wimemc.org/article/=58181>. These conditions were similar to those set out following the Israeli Operation Cast Lead. Ethan Bronner, *Truce in Gaza Undone by Flaws But May be Revived by Necessity*, N.Y. TIMES, Dec. 20, 2008, at 1A. On the Israeli policy of targeted assassinations see how its Supreme Court ruled in HCJ 769/02 Public Committee Against Torture in Israel v. Government of Israel [Dec. 11, 2005]. See generally Gabriella Blum and Philip Heymann, *Law and Policy of Targeted Killing*, 1 HARV. NAT'L SEC. J. 146 (2010); Benjamin Gorelick, *The Israeli Response to Palestinian Breach of the Oslo Agreements*, 9 NEW ENG. J. INT'L & COMPL. L. 670 (2003) and Kristen E. Eichensehr, *On Target? The Israeli Supreme Court and the Expansion of Targeted Killings*, 115 YALE L.J. 1873 (2007). For a discussion on the Israeli blockade of Gaza with regard to human needs, see Randall C. DelFalco, *The Right to Food in Gaza: Israel's Obligation Under International Law*, 35 RUTGERS L. REC. 11 (2009).

A group of British international lawyers in a letter to The Sunday Times (London), claimed the blockade to be illegal. *Israel's Bombardment of Gaza is not Self-Defence—It's a War Crime*, THE SUNDAY TIMES, (London), Jan. 11, 2009, at 20.

¹⁰³ Barak Mendelsohn, *Hamas' Miscalculation: Why the Group Thought it Could Get Away with Striking Israel*, FOR. AFF., Nov. 18, 2012, <http://www.foreignaffairs.com/articles/138435/barak-mendelsohn/Hamas-miscalculation>. As soon as the truce was announced in Cairo, crowds in Gaza gathered in the streets claiming victory. Israel's demands were a halt in arms (rockets and missiles) smuggling into Gaza from Iran and Libya and local arms production. Public acknowledgement of Iranian support by supplying weapons was in evidence. Nidal al-Mughrabi, *Gazans Say 'Thank you Iran' After Israel War*, MA'AN NEWS AGENCY, Oct. 12, 2012, <http://maannews.net/eng/ViewDetails.aspx?ID=542673> and *Hamas Said to be Getting Weapons From Libya With 'Virtually No Restrictions'*, WORLDTRIBUNE.COM, Oct. 28, 2011, <http://www.worldtribune.com/2011/10/28/hamas-said-to-be-getting-weapons-from-libya-with-virtually-no-restrictions/>.

¹⁰⁴ The idea of Israel as a "Jewish state" was originally set forth in the Israeli Declaration of Independence, available at <http://nfa.gov.il/MFA/Peace%20Process/Guide%20to%20the%20Process/Declaration%20of%20Establishment%20of%20State%20of%20Israel>. In legal text form it is found in the Basic Law: The Knesset (Amendment No. 9) 5745-1985, S.H. 1155 (1985)(Isr.), at § 7A(1). It was one of the reservations to the Israeli agreement to the Quartet's Road Map, Israel. Knesset, *Israel's Response to the Road Map*, May 25, 2003, at ¶ 6, http://www.knesset.gov.il/process/docs/roadmap_response_eng.htm. Prime Minister Ehud Olmert made the condition of the PA recognizing Israel as a Jewish state prior to the Annapolis summit meeting with US President George W. Bush in November 2007. Aluf Benn, *Israel to Release Up to 400 Palestinian Prisoners Ahead of Summit*, HAARETZ, Nov. 12, 2007, <http://www.haaretz.com/hasen/spages/922959.htm>. In a major foreign policy speech, Israeli Prime Minister Netanyahu indicated he would accept a Palestinian state only if the PA accepted Israel as a Jewish state. See Transcript of translated text, <http://pmo.gov.il/PMOEng/Communication/PMSpeaks/speechbarilan140609.htm>.

The phrase is also found in American diplomatic parlance, first in the official letter of recognition by the United States by President Truman, on May 14, 1948, who struck out the original text, "new Jewish state" and inserted "State of Israel." Harry S. Truman Library and Museum. National Archives and Records Administration, *Draft of Recognition of Israel*, May 14, 1948, http://www.trumanlibrary.org/whistlestop/study_collection/israel/large/documents/index.php?documents=1948-05-14&documentid=48&collectionid=ROI&pagenumber=1. But more recently and publicly, former Secretary of State Colin Powell in an address given on November 19, 2001, used the phrase. U.S. Department of State, *Position on Terrorists and Peace in the Middle East*, Nov. 19, 2001, <http://2001-2009.state.gov/secretary/former/powell/remarks/2001/6219.htm>. The phrase was reportedly added by a Powell aide at the behest of Israel's ambassador to the United States, David Ivry. Glenn Kessler, *White House Offers Israel a Carrot for Peace Talks*, WASH. POST, Oct. 1, 2010, at A11. A Palestinian perspective is found in LamisAndoni, *Palestinians and the 'Jewish State'*, ALJAZEERA, Sept. 22, 2010, <http://www.aljazeera.com/indepth/2010/09/201091914540375557.html>.

¹⁰⁵ Reuters, *Text: Cease-Fire Agreement Between Israel and Hamas*, HAARETZ, Nov. 21, 2012, at 17; David Kirkpatrick and Jodi Rudoren, *Israel and Hamas Agree to a Cease-Fire, After a U.S.-Egypt Push*, N.Y. TIMES, Nov. 22, 2012, at 1A.

¹⁰⁶ Josef Federman, *Israel, Militants Began Talks on Truce Details*, AP, Nov. 26, 2012, http://hosted.ap.org/dynamic/stories/M/ML_ISRAEL_PALESTINIAN?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT. The maritime border was extended in a *de facto* fashion from three to six nautical miles, the first change since 2009. Steve Erlanger and Fares Akram, *A Cease-Fire Helps Fishermen, But Risks Remain*, N.Y. TIMES, Dec. 25, 2012, at A4, A6.

¹⁰⁷ ThanassisCambanis, *Where Hamas Goes From Here: Time to Regroup or Rupture*, FOR. AFF., Nov. 25, 2012, <http://www.foreignaffairs.com/articles/138444/thanassis-cambanis/where-hamas-goes-from-here>.

¹⁰⁸ Cf ANDREA NÜSSE, MUSLIM PALESTINE: THE IDEOLOGY OF HAMAS 35-37 (2003).

¹⁰⁹ In this respect, an expansive view is put forth in Jean d'Aspremont, *Non-State Actors in International Law: Oscillating Between Concepts and Dynamics*, in PARTICIPANTS IN THE INTERNATIONAL LEGAL SYSTEM—MULTIPLE PERSPECTIVES ON NON-STATE ACTORS IN INTERNATIONAL LAW 1-21 (Jean d'Aspremont ed., 2011).

¹¹⁰ ChristophSchreuer, *The Waning of the Sovereign State: Towards a New Paradigm for International Law?* 4 EUR.J.INT'L L. 447 (1993).

¹¹¹ See RICHARD GARDINER, TREATY INTERPRETATION (2008); ULF LINDERFALK, ON THE INTERPRETATION OF TREATIES: THE MODERN INTERNATIONAL LAW AS EXPRESSED IN THE 1969 VIENNA CONVENTION ON THE LAW OF TREATIES (2008).

¹¹² See CARLOS FERNANDEZ DE CASADEVANTE ROMANI, SOVEREIGNTY AND INTERPRETATION OF INTERNATIONAL NORMS (2007).

¹¹³ See ALEXANDER ORAKHELASHOILI, THE INTERPRETATION OF ACTS AND RULES IN PUBLIC INTERNATIONAL LAW (2008).

¹¹⁴ *Fatah's* Prime Minister Salam Fayyad provided a two-year plan for the establishment of an "independent, democratic, progressive, and modern Arab state, with full sovereignty over its territory in the West Bank and Gaza, on the 1967 borders, with East Jerusalem as its capital." This notion, however, is but one view of Palestinian identity. PALESTINIAN NATIONAL AUTHORITY, PALESTINE ENDING THE OCCUPATION, ESTABLISHING THE STATE, PROGRAMME OF THE THIRTEENTH GOVERNMENT, AUGUST 2009, at 3.