Birzeit Legal Encounters

Paul J.I.M. de Waart

THE LEGAL STATUS OF PALESTINE UNDER INTERNATIONAL LAW

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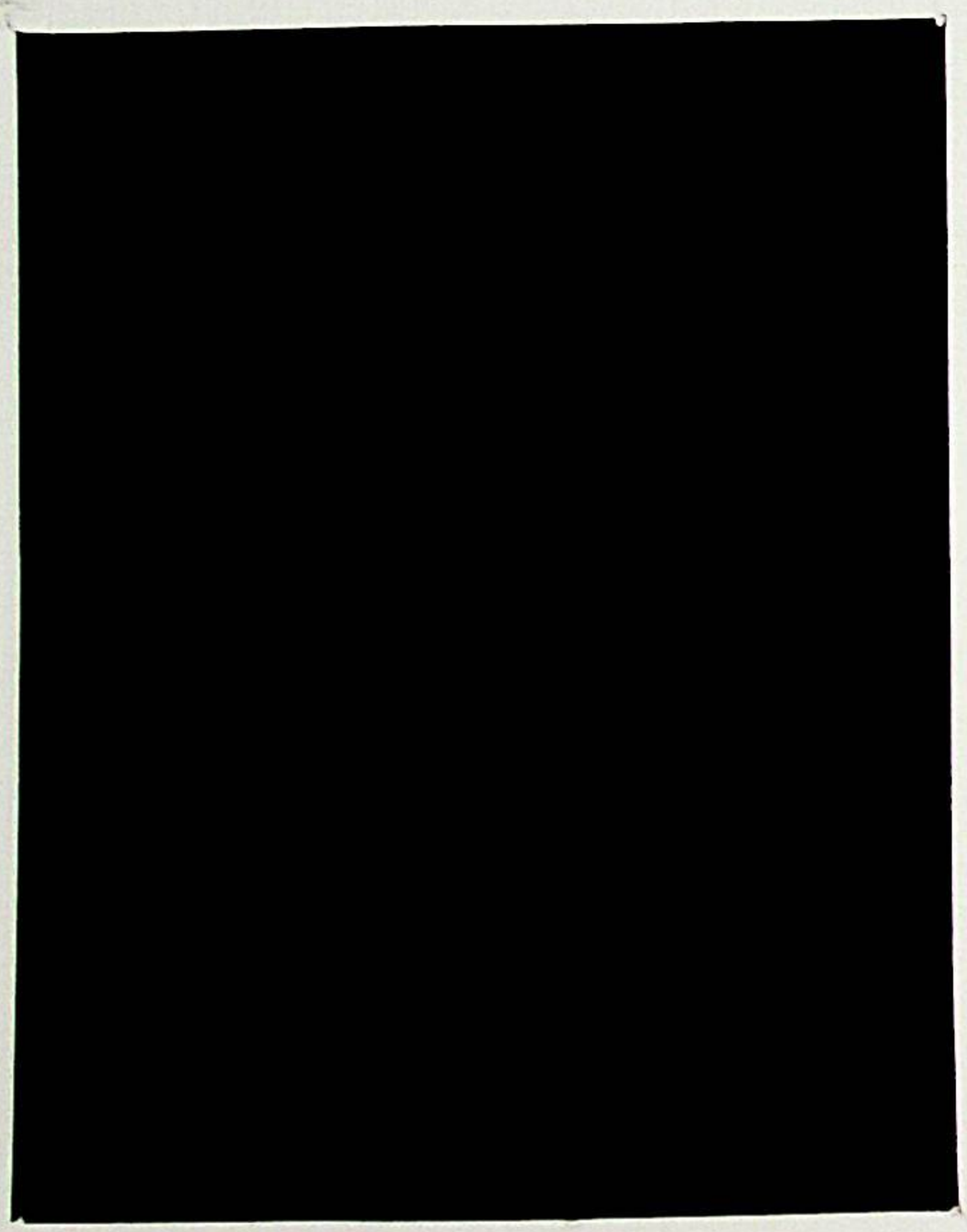

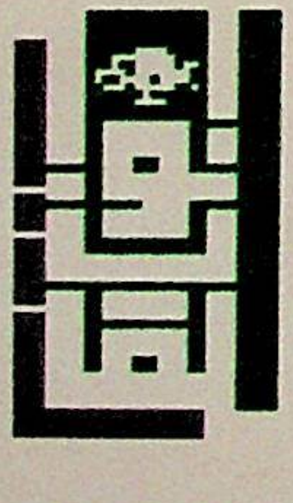

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Birzeit Legal Encounters

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Paul J.I.M. de Waart

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Introductory Remarks

In close consultation with the Arab Thought Forum in East Jerusalem and the International Center for Peace in the Middle East in Tel Aviv, the Netherlands Organisation for International Cooperation (NOVIB) sent a special fact-finding mission to the Palestinian Occupied Territories in February 1988 in order to inquire about the needs for emergency assistance, to which the 1987 *intifada* might have given rise.

The mission was also asked to consider structural aspects of the situation, including the role of international law in bringing about a lasting and peaceful solution of the protracted Israeli–Palestinian conflict. As a member of the NOVIB mission, I submitted to that end an informal paper on international law as a framework for a peaceful solution of the dispute between Arab states and Israel as a basis for discussion with Israelis and Palestinians.[1]

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* Professor of International Law, Free University of Amsterdam

1 E. Denters, W. Monasso and P. de Waart (eds.), *Dynamics of Self-determination*, Proceedings of the International Academic Conference on the Middle East, Amsterdam 16-18 June 1988, Amsterdam: Free University Press (1988), 78-85.

The discussions revealed at the time a remarkably new sense of realism on both sides, i.e. the acceptance of the existence of the State of Israel and of the right of self-determination of the Palestinian people in the Occupied Territories, as a legal and political fact of life. For that very reason, NOVIB recommended the organization of a meeting of relevant, and representative persons from the Israeli and the Palestinian sides on neutral ground and under the auspices of a scientific institution for studying ways and means for future coexistence and cooperation.

The recommendation resulted in an international academic conference on the Middle East in June 1988 at the Free University of Amsterdam, in which participated not only Israeli and Palestinian academic but also colleagues from American and European universities. The conference gave birth to a joint project, *Dynamics of Self-determination,* invoving the Arab Thought Forum (Jerusalem), the International Center for Peace in the Middle East (Tel Aviv), the University of Gent, the Free University of Amsterdam, the Catholic University of Nijmegen, and the International Dialogues Foundation at The Hague.

The project's goal was to enable Israeli and Palestinian researchers — in cooperation with Western colleagues — to indicate and analyse economic, military and political possibilities within their communities for a policy-oriented and a lasting peaceful settlement of the Israeli – Palestinian conflict. Hypothesizing a two-state solution, three seminars were held in 1990 and 1991 on economic aspects, security aspects and political aspects.[2] The organization of the fourth and concluding seminar was superseded by the 1993 Oslo Agreement between Israel and the Palestine Liberation Organization.

For obvious reasons, the seminars did not focus on the aspects of international law. After all, international law had not played a star role in the Israeli–Palestinian conflict except as the law of power.[3] Never-

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[2] E. Denters and J. Klijn (eds.), Economic Aspects of a Political Settlement in the Middle East (Nijmegen, 18–21 April 1990), Amsterdam: Free University Press (1991); W. Bartels (ed.), The Israeli–Palestinian Conflict: Security dilemmas and alternatives in the light of the Gulf crisis (Amsterdam, 21–24 November 1990), Amsterdam: Free University Press (1991); M. Cogen (ed.), The Israeli–Palestinian Conflict: the Impact of Shifting Perceptions on Collective Identities and Political Aspects (Gent 12–14 September 1991), Amsterdam: Free University Press 1992). The seminars were financially supported by the European Community, the Belgian and Dutch Ministries of Foreign Affairs; the Ford Foundation, the McArthur Foundation, NOVIB, University of Gent and the Free University of Amsterdam.

[3] G. Scharzenberger, *A Manual of International Law,* Milton: Professional Books Ltd. (1976, sixth edition), 9: 'Unorganised international society is conditioned primarily by power politics with its typical objects, motivations, tactics and strategies (...) International

theless, its significance as a normative framework for a just and lasting peace should not be overlooked either. This holds particularly true for the right of self-determination of the Palestinian people as well as for the legitimacy of the State of Israel under international law.

1. Legal Status of Palestine

Palestine has been recognized as a state by a great majority of members of the United Nations. Western states, however are still conspicuous by their absence under the pretext of legal or political arguments. The main legal argument is that the Palestinian people have no sovereignty in the Occupied Territories as yet. Therefore it does not fulfil the legal criteria of statehood: population, defined territory, government and independence, (i.e. capacity to enter into relation with other states),[4] The main political argument is that the security of Israel would require a just and lasting peace as the outcome of bilateral negotiations with its neighbour states, Egypt, Jordan, Lebanon and Syria.

With regard to the Palestinian people there is no consensus as yet whether they should have their own state. In the opinion of some western states, particularly the United States, bilateral negotiations between the Palestinian people and the Israeli government would give Israel a better chance not to go beyond some kind of autonomy. This may explain why western states did not insist on an active involvement of the United Nations in the Middle East peace process or even opposed it as the United States did. It may also explain the reluctance to find the right of self-determination in the League of Nations mandate system.

Another indication is the support for the view that the General Assembly fulfilled its duty under the *sacred trust of civilization* when it adopted the Plan of Partition in its resolution 181 (II) of 29 November 1947. For that reason, the rejection of partition of Palestine by the Palestinian people would have ended the responsibility of the United Nations. Be this as it may, it is anyhow striking that the Security Council has made no single reference to the Plan of Partition.

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law when operating on this level tends to present the characteristics of an extreme type of society of law, that is, it is preponderantly, but not necessarily exclusively, a law of power. Dependent on the degree of integration among the States concerned, international society may change into a hybrid between society and community law—a law of reciprocity—or a fully fledged community law—a law for the co-ordination of joint efforts on the basis of voluntary co-operation.'

4 I. Brownlie, *Principles of Public International* Law, Oxford: Clarendon Press (1990, fourth edition), 72–73.

It is also noticeable that the General Assembly dropped such a reference in its resolutions on the peace process in the Middle East since the start of the bilateral negotiations between the Palestine Liberation Organization and the government of Israel in 1993. This development is most disputable under international law.

2. Israeli–Palestinian Negotiations

Both the 1993 Declaration of Principles on Interim Self-government Arrangements (the 1993 Agreement) and the 1994 Israeli–Palestine Liberation Organization Agreement on the Gaza Strip and Jericho (the 1994 Agreement) give international lawyers much food for thought with respect to the legal status of Palestine under international law. According to the Declaration of Principles[5]

> *'the Government of the State of Israel and the P.L.O. team (in the Jordanian–Palestinian delegation to the Middle East Peace Conference) (the "Palestinian Delegation"), representing the Palestinian people, agree that it is time to put an end to decades of confrontation and conflict, recognize their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic conciliation through the agreed political process, (...).'*

This preamble of the Declaration seems to indicate that the Declaration is an international instrument. However, it is doubtful whether the Declaration intends to be an international agreement governed by international law in the meaning of the 1969 Vienna Convention on the Law of Treaties or the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. After all, both treaties refer to states and international organizations, i.e. associations of states established by and based on a treaty.

The Palestine Liberation Organization is neither a state nor an international organization. It derives its international legal position from being the representative of the Palestinian people in the United Nations and, since 1993, also in the negotiations with Israel on the permanent status of the West Bank and the Gaza Strip on the basis of Security Council resolutions 242 and 338. On the other hand, the[6]

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[5] *International Legal Materials* 32 (1993), 1527.

[6] Ibidem, Declaration of Principles, Article I.

'aim of the Israeli–Palestinian negotiations within the current Middle East peace process is, amongst other things, to establish a Palestinian Interim Self-government Authority, the elected Council (the "Council"), for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council resolutions 242 and 338.'

This situation raises the question whether the PLO still is the representative of the Palestinians in the West Bank and the Gaza Strip during the interim period and, if not, whether the Palestinian Authority, established by the 1994 Agreement has an international legal status either by itself or as representing for the time being the Palestinians in the Gaza Strip and Jericho only.

The question is not an academic one. After all, under the 1994 Agreement, the PLO may not run things in the Gaza Strip and Jericho in its own way any longer. It has to inform the government of Israel of the names of the members of the Palestinian Authority and any change of members. Moreover, changes in the membership of the Palestinian Authority 'will take effect upon an exchange of letters between the PLO and the Government of Israel', while each member 'shall enter into office upon undertaking to accord in accordance with this Agreement,' thus deriving his or her office from the exchange of letters as well.[7]

In addition, the parties to the 1993 Agreement stated that the exact mode and conditions of direct, free and general political elections for the Council in the West Bank and Gaza Strip should be agreed upon despite the purpose of these elections to constitute 'a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements.' [8]

3. United Nations Context

Further developments have shown indeed that the scope and content of the legitimate rights and just requirements of the Palestinian people are not determined by international law but by Israeli and United States politics. In other words, the Israeli interpretation of Security Council resolutions 242 and 338 seem to prevail. The fulfilment of the UN Charter principles thus would not any longer:

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7 1994 Agreement, Article IV (3) and (4), *International Legal Materials*, 33 (1994), 628.

8 1993 Agreement Article IV (3) and (4), *International Legal Materials*, 33 (1994), 628.

(i) require withdrawal of Israeli forces from all *the 1967 Occupied Territories, for instance from East Jerusalem;*
(ii) affirm the right of self-determination of the Palestinian people, the acknowledgement of the sovereignty, territorial and political independence of every state in the area and their right to live in peace within secure and recognized boundaries being only of important relevance to Israel.

It is questionable whether the Security Council will understand these days, if ever, its rejection of the 1980 Israeli basic law on the status of Jerusalem as disclaiming the Israeli interpretation of the withdrawal clause. After all, resolution 478 of 20 August 1980 only affirmed that the enactment of the basic law

'constitutes a violation of international law and does not affect the continued application of the Fourth Geneva Convention of 12 August 1949 Relative to the Protection of Civilian Persons in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem.'

In so doing, however,the Security council did not refer to its resolution 242 and 338. They were only referred to in the deliberation of the Security Council. It is revealing, however, that the American representative stated in his motivation of vote, i.e. abstention:[9]

'But if we do not vote against the draft resolution before us, neither can we find cause to support it, for it is still fundamentally flawed. It fails even to reaffirm resolution 242 (1967) as the basis for a comprehensive peace. Israel, for example, is to be censured, yet there is no censure, indeed no mention at all, of violence against Israel or of efforts that undermine Israel's legitimate security. Further, the Council calls upon those states that have established diplomatic missions in Jerusalem to withdraw them from the Holy City. In our judgement this provision is not binding. It is without force. And we reject it as a disruptive attempt to dictate to other nations. It does nothing to promote a resolution of the difficult problems facing Israel and its neighbours. It does nothing to advance the cause of peace.'

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9 R. Lapidoth and M. Hirsch, *The Jerusalem Question and its Resolution: Selected Documents* Dordrecht: Martinus Nijhoff Publishers (1994), 338.

According to the United States–Soviet Union invitation, the 1991 Madrid Peace Conference has no power to impose solutions on the parties or veto agreements reached by them. Neither has it authority to make decisions for the parties or ability to vote on issues or results.[10]

For that reason, the reference in the 1993 Agreement to the Israeli -Palestinian negotiations within the current Middle East peace process has no controlling impact, as long as the Madrid Conference should be considered as the sole framework. This seems to be the case indeed, for in 1994 the UN General Assembly expressed[11]

'its full support for the achievement of the peace process thus far, in particular the Declaration of Principles on Interim Self-Government signed by the Government of the State of Israel and the Palestine Liberation Organization, the subsequent Agreement on the Gaza Strip and the Jericho Area, signed by the Government of the State of Israel and the Palestine Liberation Organization, the representative of the Palestinian people, their 29 August 1994 agreement on the preparatory transfer of powers and responsibilities, the agreement between Israel and Jordan on the Common Agenda, the Washington Declaration, signed by Israel and Jordan on 25 July 1994, and the Jordan–Israel Treaty of Peace of 26 October 1994, which constitute important steps in achieving a comprehensive, just and lasting peace in the Middle East, and urges all parties to implement the agreements reached.'

In so doing, the General Assembly recalled only the convening of the Madrid Peace Conference, on the basis of Security Council resolutions 242 (1967) and 338 (1973) without referring to its previous resolutions in which it expressed the need for the United Nations to play a more active and expanded role in the peace process and considered that the

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10 R. Lapidoth and M. Hirsch, *The Arab-Israeli Conflict and its Resolution: Selected Documents* Dordrecht: Martinus Nijhoff Publishers (1992), 385.

11 UNGA res.49/88 of 16 December 1994, adopted by 149 votes in favour, 4 against (Iran, Lebanon, Libya, Syria), with 2 abstentions (Antigua and Barbuda, Sudan). See also UNGA res. 48/58 of 14 December 1993, adopted by 155 votes in favour, 3 against (Iran, Lebanon, Syria), with 1 abstention (Libya). It is worth of mentioning that Israel and the United States voted in favour. They voted against, however, resolutions 49/62: A (Committee on the Exercise of the Inaliened Rights of the Palestinian People); B (Division for Palestinian Rights of the Secretariat); C (Departments of Public Information of the Secretariat); and D (Peaceful Settlements of the Question of Palestine). The latter resolution affirmed the Right of Self-determination of the Palestinian People and the illegality of Israeli Settlements in the Occupied Territories.

convening of an international peace conference in the Middlle East under the auspices of the United Nations would contribute to peace in the region. What seems to be even more serious is that the United Nations did not reaffirm in 1993 and 1994 the principles for the achievement of a comprehensive peace, laid down in its 1992 and previous resolutions. These principles are:[12]

> *'(a) The withdrawal of Israel from the Palestinian territory occupied since 1967, including Jerusalem, and from the other occupied Arab territories;*
> *(b) Guaranteeing arrangements for security of all States in the region, including those named in resolution 181 (II) of 29 November 1947, within secure and internationally recognized boundaries;*
> *(c) Resolving the problem of the Palestine refugees in conformity with General Assembly resolution 194 (III) of 11 December 1948, and subsequent relevant resolutions;*
> *(d) Dismantling the Israeli settlements in the territories occupied since 1967;*
> *(e) Guaranteeing freedom of access to the Holy Places, religious building and sites.'*

This volte-face of the General Assembly seems to indicate that even this UN-organ is willing now to reconcile itself to the view of the United States and Israel that the legal status of the Gaza Strip and the West Bank, including Jerusalem, is a matter of politics and not of binding international law. This view overlooks the international status of mandated territories as a *sacred trust of civilization*. The key question is, of course, what good this will do to the Palestinian people? After all, the past has shown that the international community is not willing to fulfil its obligations under the Palestine mandate and with regard to the right of self-determination of the Palestinian people.

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12 UNGA res. 47/67 of 11 December 1992, adopted by 93 votes in favour, 4 against (Micronesia, Israel, Marshall Islands, the United States), with 60 abstentions (including Western states and former socialist states), emphasis added. The resolution on the international peace conference in the Middle East in 1990—UNGA res. 45/68 of 6 December 1990—had been adopted by 144 votes in favour, 2 against (Israel, United States), with no abstentions.

4. Palestinian Right of Self-determination Under International Law

In its 1950 Advisory Opinion on the International Status of South West Africa, the International Court of Justice stated that the Mandate[13]

> *'was created, in the interests of the inhabitants of the Territory, and of humanity in general, as an international institution with an international object—a sacred trust of civilization. (...) The international rules regulating the Mandate constituted an international status for the territory recognized by all the Members of the League of Nations, including the Union of South Africa.'*

This opinion was not related to the special position of the South West Africa Mandate but was derived from the legal status of A and B Mandates:[14]

> *'In the light of the foregoing, the Court is unable to accept any construction which would attach to "C" mandates an object and purpose different from those of "A" and "B" mandates. The only differences were those appearing from the language of Article 22 of the Covenant, and from the particular mandate instruments, but the objectives and safeguards remained the same, with no exceptions such as considerations of geographical continuity. To hold otherwise would mean that territories under "C" mandate belonged to the family of mandates only in name, being in fact the objects of disguised cessions, as if the affirmation that they could "be best administered under the laws of the Mandotary as integral portions of its territory" (Article 22, para. 6) conferred upon the administering power a special title not invested in States entrusted with "A" or "B" mandates.'*

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[13] ICJ Rep. (1950), 123.

[14] ICJ Rep (1971), 32.

5. The Mandate for Palestine

One of the A Mandates was the British Mandate for Palestine. It differed from the other ones—Iraq, Lebanon, Syria and Transjordan—in that it recognized 'the historical connexion of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country.'[15] This recognition resulted in the responsibility of the Manday for:[16]

> *'placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home';*
> *facilitating 'Jewish immigration under suitable conditions' such as 'ensuring that the rights and position of other sections of the population are not prejudiced';*
> *encouraging 'close settlement by Jews on the land, including State lands and waste lands not required for public purposes.'*
> *enacting a nationality law facilitating 'the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine'.*

Moreover, the Mandate contained a number of provisions dealing with the free access to the Holy Places, religious buildings and sites. The question is whether these special features of the British Mandate for Palestine affected the right of self-determination at the time, if any, and/ or today.

Article 22 of the Covenant of the League of Nations is said to reflect a compromise between 'the ideal of self-determination and the interests of occupying powers'.[17] Be this as it may, with regard to the application of the post–1945 principle of self-determination on non-self-governing territories, the International Court of Justice stated in its 1971 Advisory Opinion on Namibia (South West Africa) that '[O]bviously the sacred trust continued to apply to League of Nations mandated territories'.[18]

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15 Committee on the Exercise of the Inalienable Rights of the Palestinian people, *The Origins and Evolution of the Palestine Problem 1917–1988* , Annex V: The Mandate for Palestine, 24 July 1922, New York: United Nations (1990), 86.

16 Ibidem, 87: Articles 2, 6, 7 and 8.

17 D. Thürer, 'Self-determination', in R. Bernhardt et al. (eds.), *Encyclopedia of International Law* Amsterdam: North-Holland (1985, volume 8), 471.

18 ICJ Rep. (1971), 31. See also Brownlie, op. cit. note 4, 596, where he stated in the context of the principle of self-determination: 'The generality and political aspect of the

Although the principle of self-determination was not explicitly laid down in the League of Nations mandates, they still might nevertheless be considered as the cradle of the claim to self-determination of the peoples concerned. After all, the main reason that the mandates did not refer explicitly to self-determination was that France, Great-Britain and other intended Mandated Powers preferred ambiguity in order to keep open their option of annexation.[19] However, the International Court of Justice has clearly stated that this option did not exist from the very beginning of the mandate system:[20]

> *'The terms of this Mandate, as well as the provisions of Article 22 of the Covenant and the principles embodied therein, show that the creation of this new international institution did not involve any cession of territory or transfer of sovereignty to the Union of South Africa. The Union Government was to exercise an international function of administration on behalf of the League, with the object of promoting the well-being and development of the inhabitants.'*

6. Plan of Partition

The Mandate for Palestine is atypical in that it contained the right of all Jews all over the world to take up their permanent residence in Palestine, i.e. the territory of Israel, the West Bank, including Jerusalem and the Gaza Strip[21] However, the Mandatory Power was

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principle do not deprive it of legal content: in the *South West Africa* cases (Preliminary Objections) the International Court regarded the terms of Article 2 of the Mandate Agreement concerned as disclosing a legal obligation, in spite of the political nature of the duty 'to promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory.'

19 A.H.M. van Ginneken, *Volkenbondsvoogdij: het toezicht van de Volkenbond op het bestuur in mandaatgebieden 1919–1940* [League of Nations Trusteeship: the League of Nations Supervision of the Administration of Mandated Territories 1919–1940], doctoral thesis State University of Utrecht (1992), 24.

20 ICJ Rep. (1950), 132.

21 The Mandate for Palestine, Article 21: 'In the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, the Manday shall be entitled, with the consent of the Council of the League of Nations, to postpone or withhold applications of such provisions of this mandate as he may consider inapplicable to the existing local conditions, provided that no action shall be taken which is inconsistent with the provisions of Articles 15, 16 and 18 [dealing with the free access to the Holy Places, the supervision over religious and eleemosynary bodies of all faiths in Palestine as may be required for the maintenance of public order and good governance, PdW].'

also responsible for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.

There was no question of non-Jewish people living in Palestine having the duty of accepting the Mandate for Palestine becoming a Jewish state. The international status of Palestine opposed such a development. Neither the Jews in or outside Palestine nor the non-Jewish communities in Palestine could demand from the Mandatory local autonomy. The Mandatory should encourage local autonomy 'so far as circumstances permit' and taking into account its responsibility to facilitate Jewish immigration without prejudicing the rights and position of the other sections of the population. Local autonomy could thus never be granted to the Jewish section of the population at the expense of the other sections and vice versa. The same holds true for the right of self-determination.

Since 1946, the General Assembly performed the supervisory function of the League of Nations Council under the mandate system. The Palestine Mandate was put on its agenda by the Mandatory Power under Article 10 of the UN Charter in 1947. In its pertinent letter, the United Kingdom asked the General Assembly to make recommendations on the future government of Palestine. This procedure implied that the United Kingdom considered the future government of Palestine as a question or matter within the scope of the UN Charter or relating to the powers and functions of the General Assembly. However, the follow-up differed substantially from the United Nations line in respect of the South West Africa Mandate.

Not the United Nations but the Mandatory took the initiative of ending its mandate. The General Assembly noticed, not only obediently, the declaration of the Mandatory that it planned to complete its evacuation of Palestine by 1 August 1948. It also limited itself to recommending to the United Kingdom and all other members of the United Nations the adoption and implementation of the Plan of Partition with Economic Union with regard to the future government of Palestine. The inhabitants of Palestine were called upon to take the necessary steps. It is telling that this recommendation included the termination of the Mandate for Palestine as soon as possible but in any case not later than 1 August 1948.

In other words, the General Assembly did not exert its supervisory powers in respect of the Mandate for Palestine. Be this as it may, from a legal point of view its recommendation for terminating the mandate could mean no more than a proposal that the United Nations would resign themselves to the British determination to withdraw from Palestine. So this was done as appeared from the adoption of the Plan of Partition by the General Assembly, albeit not wholeheartedly

supported by the United States. The latter state opposed in the Security Council enforcement of its implementation by force.

The acceptance of the Plan of Partition by the Jewish people paved the way for the admittance of Israel to UN membership. The rejection of partition by the Palestinian people and the inherent refusal to recognize Israel prevented the UN from admitting Palestine to UN membership at the time. However, it did not deprive the Palestinian people from its entitlement under international law to establish today Palestine as a state in the 1967 Occupied territories. Realisation of this right is not a matter to be negotiated between the Palestinian people and the Israeli government. The atypical scope and content of the Palestine Mandate did not prevent the Council of the League of Nations to state that even this mandate entrusted the administration of the territory of Palestine to the United Kingdom for the purpose of giving effect to the provisions of Article 22 of the Covenant of the League of Nations.

Article 22 of the League of Nations Covenant rightly made a clear distinction between the principle of the well–being and development of the people(s) in Palestine as a sacred trust of civilization and the tutelage of such people(s) as the best *method* of giving practical effect to this principle. It is evident that the end of the method in 1948, i.e. the Mandate for Palestine, did not imply the end of the principle of the well–being and development of the Palestinian people as a sacred trust of civilization at the same time. This holds true the more since the Jewish and non-Jewish communities in Palestine formerly belonging to the Turkish empire had reached a stage of development where their existence as independent nation(s) could be recognized at the time, albeit subject to the rendering of administrative advice and assistance by a Mandatory until such time as they were able to stand alone.

The Mandate for Palestine did not set aside the kernel of Article 2, i.e. the sacred trust of civilization. On the contrary, the degree of authority, control and administration to be exercised by the Mandatory were defined by the Council of the League of Nations with explicit reference to that article. The duty of ensuring that the rights and position of other sections of the population should not be prejudiced by the facilitation of Jewish immigration illustrated the awareness of the Council of Article 22.

Whether or not the Palestine mandate has been the legal source of the right of self-determination of the Jewish people and the Palestinian people in the territory of the Mandate for Palestine, might be an academic question. However, it is not an academic point that the 1967 Occupied Territories still have an international status under

international law. For the international status urges the United Nations to admit Palestine to its membership, not as the result of the negotiations between the Israeli government and the Palestinian people but in order to enable both parties to reach such an agreement on peaceful coexistence within secure and recognized boundaries free from threats or acts of force.

Concluding Remarks

The above legal aspects of the Palestinian Question form the subject of my book *Dynamics of Self-determination in Palestine: Protection of Peoples as a Human Right*, published in 1994.[22] The study considered the mandate system as the pivot on which both the legitimacy of Israel and the right of self-determination of the Palestinian people hinge. Some reviews denied the significance of the Palestine Mandate for fainding the legitimacy of Israel and the right of self-determination of the Palestinian people. It was even said that the author had a blind eye for politics, being too much the victim of legalism.[23]

Be this as it may, I gladly availed myself of these dissenting opinions to explain once again why legally speaking the Palestine mandate still offers the best key to discover the legal status of Palestine and of the right of self-determination of the Palestinian people under international law. However, one may ask oneself what good a legal approach may do to the Palestinian people in a political environment. After all, the right of self-determination has not been determined as yet by the law of reciprocity, let alone community, but by the law of power mainly.

The Palestine Liberation Organization as representative of the Palestinian people may demand a more active involvement of the General Assembly in the Middle East peace process by virtue of the international status of the Gaza Strip and the West Bank, including Jerusalem. In so doing it may argue that the Declaration of Principles has not terminated the international status of the Gaza Strip and Jericho because of the fact that the interim agreements do not prejudice or preempt the outcome of the permanent status negotiations.

The international status may also enable the General Assembly to make the Palestine Liberation Organization responsible as a UN

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22 Paul J.I.M. de Waart. *Dynamics of Self-determination in Palestine: Protection of Peoples as a Human Right*, Leyden: E.J. Brill (1994).

23 D. Rai , *Leiden Journal of International Law* 8(1995), 233–344; G. Goudsmit, *Volkskrant* of 13 mei 1995, 43.

Council for Palestine for the legal administration of the Gaza Strip and the West Bank, including East Jerusalem pending the independence of Palestine. Such a position may strongly enhance the negotiating capacity of the Palestine Liberation Organization in the context of the 1993 and 1994 Agreements. It may also have a positive impact on the scope and content of the elections provided for in these agreements.

Finally, its recognition as UN Council for Palestine may facilitate Palestine's admission to UN membership for it implies unambiguously that the issue of the bilateral negotiations is not the permanent status of the Gaza Strip and the West Bank, including East Jerusalem, but the peaceful coexistence between Israel and Palestine as sovereign states within secure and recognized boundaries.

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