



Recognising a Palestinian state, other than in the context of a comprehensive peace agreement with Israel, undermines the international rule of law

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(forthcoming 2017)*

Abstract

- Among those who advocate immediate recognition of a Palestinian state, other than as an outcome of a peace agreement with Israel, there is a striking irony in the contrast between the legalistic approach they purportedly adopt on one question, namely settlements, and their cavalier disregard for well-established legal principles on another, namely the creation of states and their recognition. One either supports the international rule of law as a general principle, or not at all. One does not get to pick and choose.
- The four criteria of statehood set out in Article 1 of the Montevideo Convention the Rights and Duties of States, 1933, are widely accepted as the minimum required by customary international law for the creation of a new State. Two of the criteria - a single, centralized government and the capacity to enter into relations with other states – are manifestly not satisfied by any Palestinian entity.
- The internal divide between the secular nationalist movement among Palestinians (represented by the PLO and Palestinian Authority (PA) which controls parts of the West Bank), and the theocratic movement (represented by Hamas, which controls the Gaza Strip) has resulted in internecine violence on many occasions. All attempts at internal reconciliation have failed and appear to be intractable. They are at loggerheads on the most basic questions, not only concerning peace with Israel and other issues of foreign and domestic policy, but also on the essential nature of a future Palestinian state. Thus, for reasons which are entirely internal to Palestinian society, there is no reasonable prospect for the foreseeable future of any government being formed which would exercise effective control over both the West Bank and the Gaza Strip, and would have the capacity to give effect to any agreements purportedly entered into by “Palestine”.
- Although recognition is a political act and a matter of discretion, it is “*subject to compliance with the imperatives of general international law*”. Given that the criteria of government and the capacity to enter into relations with other States are at present not satisfied by any Palestinian entity, recognition of any such entity as a State would be to affirm a fiction, contrary to the imperatives of general international law. Recognition by even a large number of other States cannot overcome clear and compelling objective evidence indicating that the mandatory legal criteria of statehood have not been met. An exception would be admission of



the entity as a member State of the UN. If, notwithstanding its admission to the UN as a member State, the entity does not in fact meet the customary law criteria of statehood, at law it is still a State, albeit a failed State.

- Applying the additional requirements for recognition contained in the European Community Declaration and Guidelines (1991), the Palestinians have failed, and are likely to continue for the foreseeable future to be unwilling, to make commitments to respect the inviolability of the frontiers with Israel, to repudiate all territorial claims by Palestine against Israel and to settle all disputes with Israel by peaceful means.
- Recognition of a Palestinian State at the present time would not only be contrary to the well-established requirements for statehood stipulated by customary international law and the additional requirements mandated by the European Community Declaration and Guidelines in 1991, it would also contravene the internationally recognized and witnessed Oslo Accords between the Palestinians and Israel and lay the foundations for opening a new phase of the Palestinians' conflict with Israel, rather than for resolving the conflict. Recognition would therefore undermine the primary purposes of the UN Charter and the current international rules-based order, which is to maintain international peace and security.

I Introduction

According to the Palestinian Authority, 136 (70.5%) of the 193-member states of the United Nations and two non-member states have officially recognised a State of Palestine.¹ This paper considers the rules of international law which govern the creation of new states and their recognition by established States, and the application of those rules to the question of whether, at law, a State of Palestine has been created and is capable of being recognised.

Advocates of immediate recognition of a State of Palestine, other than as an outcome of a comprehensive peace agreement with Israel, frequently refer to Israel's civilian settlements in the West Bank as "illegal" - an alleged violation of Article 49(6) of the Fourth Geneva Convention and other international instruments - and cite the failure to reach a peace agreement and the growth in the number of settlers and continuing settlement construction as reasons to recognise a State of Palestine.

The conflation of the question of recognition of a Palestinian state with the question of the legal status of the settlements is clearly misconceived. The two issues raise entirely separate legal and policy considerations. There is also a striking irony in the contrast between the legalistic approach purportedly adopted by these advocates on one question, namely settlements, and their cavalier disregard for well-established legal principles on another, namely the creation of states and their recognition. One either supports the international rule of law as a general principle, or not at all. One does not get to pick and choose.



II Recognition of States in customary international law²

In international law, there are two general theories about the recognition of States.

The constitutive theory maintains that it is the act of recognition by other States that creates a new State and endows it with legal personality.

The declaratory theory adopts the opposite approach. It maintains that recognition is merely an acknowledgement by States of an already-existing situation. A new State acquires a legal personality and legal capacity only if and when it actually begins to operate as a State 'on the ground'. The issue of recognition in any particular case is therefore not primarily a question of whether a State **should** exist, but rather of whether such a State **does in fact** exist.

The constitutive theory has many difficulties. A new State cannot simply be wished into existence. If a putative State has no government that is capable of asserting its authority across its territory and of delivering on any agreements it enters into, no amount of recognition by other States can cure those defects. These are problems which ultimately must be overcome by the putative State itself and by the people it purports to represent.

States and international organisations have generally affirmed, and acted in accordance with, the declaratory theory rather than the constitutive theory. For this reason, customary international law (the body of rules reflecting the actual practices of established states and their legal opinions about those practices) predominantly reflects the declaratory theory.³ Accordingly, under the rules of customary international law, which are binding on all States, a political entity does not become a new State unless and until it meets certain objective criteria 'on the ground'.

Whilst legal writers have suggested many definitions of a state,⁴ Article 1 of the Montevideo Convention the Rights and Duties of States, 1933,⁵ is the best-known formulation of the basic criteria for statehood (the Montevideo criteria). The putative State must have (i) a permanent population (ii) a defined territory (iii) government (that is, a single centralised administration that can effectively assert its authority over, and maintain order among, the people within its claimed territory, without the assistance of another State⁶); and (iv) capacity to enter into relations with other States (including the capacity to fulfill any international agreements it may enter into).

The inclusion of the fourth requirement has been questioned by some writers,⁷ and further criteria have been proposed by others. Yet leading up to the Montevideo Convention there was a consensus that the first three criteria at least must be fulfilled in order for there to be any legal basis for claiming that an entity is a state.⁸



It follows that recognition does not confer statehood on a political entity. Recognition is a political, not a legal act. It must *follow* the fact of statehood and is purely declaratory. Recognition cannot *create* a State where none exists on the ground.

Instead, recognition by other States may serve as an expression of their view that the entity meets the requisite criteria of statehood. Although recognition is a political act and a matter of discretion, it is “*subject to compliance with the imperatives of general international law*”.⁹ Thus, recognition by even a large number of other States cannot overcome clear and compelling objective evidence indicating that the requisite criteria of statehood have not been met.

An exception would be if the putative state is admitted as a member State of the United Nations. Admission as a member State of the UN requires a decision of the General Assembly on the recommendation of the Security Council.¹⁰ According to the UN Charter, the UN as an organization is based on the principle of the sovereign equality of all its Members.¹¹ There is therefore little doubt that once admitted as a member State of the UN, a political entity has the legal personality of a State in international law. If, notwithstanding its admission to the UN as a member State, the entity does not in fact meet the customary law criteria of statehood, at law it is still a State, albeit a failed State.¹²

Applying the four Montevideo criteria to the Palestinians, the first two criteria appear to be satisfied. The Palestinians are a permanent population located in a defined territory, namely the West Bank and the Gaza Strip. These two territories would be regarded as having “sufficient consistency” to be considered “defined”, even though their precise boundaries have not yet been accurately delimited.¹³

The two remaining Montevideo criteria of statehood - government and the capacity to enter into relations with other States - are at present ***not*** satisfied by any Palestinian entity.

Given what has thus far been an irreconcilable philosophical and political division between the Palestinian Authority and Hamas, which each control different parts of the territory claimed by the Palestinians, there is currently no Palestinian entity which satisfies the third criterion: that of a government capable of asserting its authority over its territory and people.

The Palestine Liberation Organisation (PLO), and the Palestinian Authority (PA) which it controls, are publicly committed to a State based on the sovereignty of the Palestinian people. In their conception of a Palestinian state, the people would have the final say on all decisions.¹⁴ Hamas, on the other hand, believes in the sovereignty of God (alternatively expressed as “*the sovereignty of Islam*”),¹⁵ and the primacy of religious authority over the secular.¹⁶ Hamas thus envisages a theocratic State in which the people may get to vote, but don't have the final say. The final say would lie with some form of religious authority.



The internal divide between the secular nationalist and theocratic movements within Palestinian society is perhaps the most powerful obstacle to the achievement of Palestinian statehood at present. The division is not only ideological but also geographic. The PLO and the PA exercise limited control over the West Bank. Hamas has effective control in Gaza. The bitter differences between these two movements have degenerated into internecine violence on many occasions.

Representatives of the PLO/PA and Hamas have met many times over the years, both directly and through mediators, to try to resolve the fundamental differences between them, and to formulate a single vision of the kind of State which a State of Palestine would be. All of these attempts have failed. The differences between them appear to be intractable.

This means that, for reasons which are entirely internal to Palestinian society, there is no reasonable prospect for the foreseeable future of any government being formed which would exercise effective control over both the West Bank and the Gaza Strip. Hamas does not consider itself, or the people and territory of Gaza, to be bound by any agreement that the PLO/PA may enter into.¹⁷ Similarly, the PLO/PA do not consider themselves, or the people and territory of the West Bank, to be bound by any agreement that Hamas may enter into. This precludes any possibility of the fourth of the Montevideo criteria being fulfilled, namely the capacity to enter into international relations, including the capacity to fulfil treaty obligations affecting both the West Bank and the Gaza Strip.

Professor Guy Goodwin-Gill, an eminent international lawyer who represented the Palestinians before the International Court of Justice in the 2004 “Wall” case,¹⁸ has expressed the following opinion, as apposite now as when it was first published in 2011:

“Until such a time as a final settlement is agreed, the putative State of Palestine will have no territory over which it exercises effective sovereignty, its borders will be indeterminate or disputed, its population, actual and potential, undetermined and many of them continuing to live under occupation or in States of refuge. While it may be an observer State in the United Nations, it will fall short of meeting the internationally agreed criteria of statehood, with serious implications for Palestinians at large, particularly as concerns the popular representation of those not currently present in the Occupied Palestinian Territory.”¹⁹

Quite apart from the political reality that there is no entity which presently meets the description of a government that can assert control and maintain order over both the West Bank and the Gaza Strip, and enter into relations and live up to any agreements with other States, the Palestinians’ internationally recognised representative organization - the PLO - has itself accepted limitations on the jurisdiction and powers of the PA. (For further details, see section below on bilateral agreements between Israel and the Palestinians which are currently in force). These limitations, by definition, are incompatible with any claim of sovereign statehood.



Given that no Palestinian entity presently exists which meets the essential criteria of statehood or UN membership, recognition of any such entity as a state would be to affirm a fiction which, in the words of the Yugoslav Arbitration Commission cited above, would be contrary to “the imperatives of general international law”.

Further, the Montevideo criteria are only the most basic and minimal requirements that a political entity needs to satisfy in order legitimately to be recognised as a State. On 16 December 1991, the European Community adopted a Declaration on the ‘*Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union*’, which stipulated the following additional requirements for recognition:

- *respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights*
- *guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE*
- *respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement*
- *acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability*
- *commitment to settle by agreement, including where appropriate by recourse to arbitration, all questions concerning State succession and regional disputes.*²⁰

The European Community additionally required the new Yugoslav Republic, “*to commit itself, prior to recognition, to adopt constitutional and political guarantees ensuring that it has no territorial claims towards a neighbouring... State and that it will conduct no hostile propaganda activities versus a neighbouring ... State*”.²¹

If identical requirements were to be imposed on a putative State of Palestine as a precondition of recognition, it is virtually certain that such requirements would not be met. Commitments to respect the inviolability of the frontiers with Israel, to repudiate all territorial claims by Palestine against Israel and to settle all disputes with Israel by peaceful means, would at present be politically unacceptable to the PLO/PA and Hamas and, it has to be said, to most Palestinians.

We know this because of the results of Palestinian survey research. Polls of Palestinians are carried out frequently and by a variety of reputable institutes, and they are generally of a very high quality. A recent examination of the results of 400 surveys carried out by five Palestinian research centers, each of which has conducted regular polls in the West Bank and Gaza for many years and has made the results available online in English and Arabic, concluded that:



- (i) When asked to choose among three options—an Israeli State and a Palestinian state living side by side in peace, a unitary state with equal rights for Palestinians and Israelis, and a Palestinian state from the Jordan River to the Mediterranean Sea (ie ending Israel's existence) - most Palestinians chose the last option; and
- (ii) When asked what ought to be done if Palestinian leaders strike a two-state deal with Israel, most declared that the struggle should go on until all of historical Palestine is “liberated.” Only a minority of Palestinians have declared themselves in favour of a two-state solution as a **permanent outcome**. This minority has remained at about 30 percent of Palestinians for about the last 20 years.²²

Recognition of a State of Palestine in these circumstances would therefore not only be contrary to the minimum requirements for statehood stipulated by customary international law, and the additional requirements mandated by the European Community Declaration and Guidelines in 1991, but would also lay the foundations for opening a new phase of the Palestinians' conflict with Israel, rather than for resolving the conflict. Recognition would therefore undermine the primary purpose of the UN Charter and the current international rules-based order, which is to maintain international peace and security.

III The effect of existing Israeli-Palestinian bilateral agreements and international frameworks

Recognition of a State of Palestine, other than in the context of a comprehensive peace agreement between Israel and the Palestinians, would be contrary to both the letter and the spirit of certain bilateral agreements that have been entered into by the State of Israel and the PLO.

The first such agreement was set out in an exchange of letters between Israel's Prime Minister Yitzhak Rabin and PLO Chairman Yasser Arafat on 9 September 1993. The exchange of letters provided the foundation for the Declaration of Principles on Interim Self-Government Arrangements (known as “the Oslo Accord” or “Oslo I”) which was signed by the parties in Washington four days later (13 September 1993).²³

In the letter from Yasser Arafat to Yitzhak Rabin, reproduced below, the PLO committed itself to resolving “**all outstanding issues relating to permanent status will be resolved through negotiations.**”

LETTER FROM YASSER ARAFAT TO PRIME MINISTER RABIN:

September 9, 1993

Yitzhak Rabin, Prime Minister of Israel

Mr. Prime Minister,



The signing of the Declaration of Principles marks a new era in the history of the Middle East. In firm conviction thereof, I would like to confirm the following PLO commitments:

The PLO recognizes the right of the State of Israel to exist in peace and security.

The PLO accepts United Nations Security Council Resolutions 242 and 338.

*The PLO commits itself to the Middle East peace process, and to a peaceful resolution of the conflict between the two sides **and declares that all outstanding issues relating to permanent status will be resolved through negotiations**.*²⁴ (Emphasis added)

There is no doubt that the issue of Palestinian statehood is “an issue relating to permanent status”. Attempts by the PLO or the PA to try to resolve the issue of Palestinian statehood other than “through negotiations”, whether through UN resolutions or through political declarations of recognition by individual states and parliaments, are therefore incompatible with, and constitute a clear breach of the foregoing Palestinian commitment.

The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (also known as ‘Oslo II’) was entered into by Israel and the PLO in 1995.²⁵ Oslo II explicitly provides that the Palestinian Authority will ***not*** have jurisdiction or control over the external borders of the territory in which it operates (Article XII), its airspace (Article XIII, para 4 of Annex 1), foreign relations (Article IX, para 5), Israeli nationals and settlements located within the territory of the West Bank and Gaza (Article XII) and elements of internal security and public order (depending on the particular area involved, Area A, B, or C). The fact that the Palestinian Authority, by agreement, does not exercise jurisdiction or control over any of these matters – which are fundamental indicia of sovereignty – contradicts its claims that “Palestine” is a State.

If, in the agreements they have entered into, those representing the PLO and PA have acknowledged that the issue of statehood is on the agenda of the permanent status negotiations, then clearly, pending the outcome of such negotiations any Palestinian entity cannot be seen to be a state. An entity that does not recognize itself as a state cannot, logically or legally, be recognized as such by others.²⁶

Oslo II also contains certain provisions relating to final status issues. Article XXXI, paragraph 7, provides:

“Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations.”

For the Palestinians to declare that the West Bank and the Gaza Strip are parts of the sovereign territory of a State of Palestine is an attempt to “change the status” of those



territories. Accordingly, any such declaration also constitutes a breach by the PLO and PA of that binding commitment.

It follows that any declaration of a Palestinian state, other than as an outcome of a directly-negotiated agreement with Israel, would be in clear violation of Oslo II, and that any recognition of such a State by parliaments and governments in the international community would be complicit with such a breach.²⁷ It is a generally accepted principle of international law that a state may not arise out of an illegal act, as an illegal act cannot produce legal rights - *ex injuria non oritur jus*.²⁸

The Performance Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (2003) (the "Roadmap") was adopted by the International Quartet (UN, US, Russia and the EU) and endorsed by the UN Security Council in Resolution 1515 (2003). On 1 July 2003, in Jerusalem, Israeli Prime Minister Ariel Sharon and PA Prime Minister Mahmoud Abbas held a ceremonial opening to peace talks, televised live in both Arabic and Hebrew. Both government leaders said the violence of the conflict had gone on too long and that they were committed to the Roadmap for peace.²⁹

The Roadmap requires both sides not to act unilaterally but rather to negotiate with one another to resolve the conflict. It provides for the establishment of a Palestinian state as an outcome of the final stage of such negotiations:

"A two-state solution to the Israeli-Palestinian conflict will only be achieved through an end to violence and terrorism, when the Palestinian people have a leadership acting decisively against terror and willing and able to build a practicing democracy based on tolerance and liberty, and through Israel's readiness to do what is necessary for a democratic Palestinian state to be established, and a clear, unambiguous acceptance by both parties of the goal of a negotiated settlement as described below.

*A settlement, **negotiated between the parties**, will result in the emergence of an independent, democratic, and viable Palestinian State living side by side in peace and security with Israel and its other neighbours."*³⁰ [Emphasis added]

The Quartet on the Middle East has repeatedly reaffirmed this principle, most strikingly in the Statement it issued in Munich on 5 February 2011:

*"The Quartet reaffirmed that **negotiations** should lead to an outcome that ends the occupation that began in 1967 and resolves all permanent status issues....[The Quartet] reaffirms that **unilateral actions by either party cannot prejudice the outcome of negotiations and will not be recognized by the international community.**"*³¹ [Emphasis added].

It follows that any declaration of the establishment of a Palestinian State other than as an outcome of negotiations with Israel constitutes a breach by the PLO and PA of the commitments to which they agreed to be bound under the Roadmap "*and will not be recognized by the international community*".



IV. Unresolved issues

Recognition of a State of Palestine other than in the context of a comprehensive peace agreement with Israel would do nothing to resolve the core issues of the Israel-Palestinian conflict, in particular Jerusalem, refugees, borders, settlements, security and water. The complex arrangements required to address the core issues will require co-operation between the parties pursuant to detailed agreements, not grandiloquent, symbolic statements of recognition by outside parties.

For example, any attempt by third parties to impose a border between Israel and the Palestinians would be a nullity at law. It is a well-accepted principle of international law that only the relevant States can mutually resolve outstanding border disputes. Outside actors that are not party to the dispute cannot force a resolution of the issue of borders.³²

At present, bilateral arrangements exist in over 40 spheres of civilian activity, which serve as the basis for economic, legal and security cooperation between Israel and the PA, including tax transfers and water allocation. The establishment of a State of Palestine other than in the context of a comprehensive peace agreement with Israel would violate fundamental provisions of these agreements (see section III above) and thereby throw into doubt their continuing validity and operation. For other states to abet this would be to undermine the integrity of international law.

If the territory of the recognised State were to consist of both the West Bank and Gaza Strip, questions would also arise as to the relative status to be accorded to the PA, which has partial control of the West Bank, and Hamas, which has effective control over the Gaza Strip. Hamas, despite its recent publication of a supplement to its notorious Charter, has never amended the Charter, and has declared that the Charter remains in full force and effect. Hamas has been outlawed as a terrorist organisation in various countries throughout the world, including the US and EU. Hamas rejects outright Israel's right to exist, repudiates existing agreements, embraces terrorist violence and continues unabashedly to call for the destruction of the State of Israel.³³

The Palestinians' attempts to procure recognition of a Palestinian State from other States is manifestly an attempt to achieve Palestinian statehood without resolving the conflict with Israel. This will only serve to validate hardliners on both sides in the eyes of their own people, and thus cement Israelis and Palestinians into mutually irreconcilable positions. It will likely result in more, not less, bloodshed.

V. Historical analogies

The proposal that a State of Palestine should be recognised other than in the context of a comprehensive peace agreement between Israel and the Palestinians has been compared, inaccurately, to the UN General Assembly's endorsement of the establishment of a Jewish State in Resolution 181 on 29 November 1947. That



resolution recommended the partition of the former Mandate territory of Palestine into a Jewish state and an Arab state. It did not purport to extend recognition to either State, because neither State then existed. The resolution never entered into force in light of its rejection by the Arab states, and their decision to prevent its implementation by declaring and initiating war, initially against the Jewish community in the country, and then against the new Israeli state.

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All internet references are as accessed on 19 July 2017.

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- ³ *Ibid*, p.323: "Practice over the last century or so is not unambiguous but does point to the declaratory approach as the better of the two theories".
- ⁴ There is a useful analysis by Thomas D. Grant, in 'Defining Statehood: The Montevideo Convention and its Discontents' in 37 *Columbian Journal of Transnational Law*, 403 at 409 *et seq*, 1998-1999: <https://www.ilsa.org/jessup/jessup13/Defining%20Statehood,%20The%20Montevideo%20Convention%20and%20its%20Discontents.pdf>
- ⁵ (1934) 165 *League of Nations Treaty Series* 19: http://avalon.law.yale.edu/20th_century/intam03.asp
- ⁶ Aaland Islands case (1920), *League of Nations Official Journal*, Special Supplement No.3, p.3: <https://www.ilsa.org/jessup/jessup10/basicmats/aaland1.pdf>
- ⁷ These writers are named, and their arguments on this point are summarised, in Thomas D. Grant, 'Defining Statehood: The Montevideo Convention and its Discontents' in 37 *Columbian Journal of Transnational Law*, 403 at 434-435, 1998-1999: <https://www.ilsa.org/jessup/jessup13/Defining%20Statehood,%20The%20Montevideo%20Convention%20and%20its%20Discontents.pdf>
- ⁸ *Ibid*, p.418.
- ⁹ Yugoslav Arbitration Commission, Opinion No. 10, July 1992, para 4: <https://www.liverpool.ac.uk/library/sca/collDESCS/owen/boda/opac4.pdf>
- ¹⁰ Charter of the United Nations, 24 October 1945, 1 *United Nations Treaty Series* XVI, Article 4, paragraph 2: <http://www.un.org/en/sections/un-charter/chapter-ii/index.html>
- ¹¹ *Ibid*. Article 2, paragraph 1.
- ¹² Article 4, paragraph 1 of the UN Charter provides that membership in the UN is "open to all peace-loving states which accept the obligations contained in theCharter and, in the judgment of the organization, are able and willing to carry out those obligations". These are a separate, additional set of requirements to the legal criteria for state creation and recognition, and it is therefore necessary that the latter criteria have already been met. Statehood is a prerequisite to UN membership; UN membership is not a prerequisite to statehood. In any event, it is the thesis of this article that there is at present no Palestinian entity which meets the essential legal criteria of statehood, let alone the additional criteria for membership of the UN mandated by Article 4, paragraph 1 of the UN Charter.
- ¹³ *Deutsche Continental Gas Gesellschaft v Polish State* (1929) 5 *Annual Digest of Public International Law* 11, p.15.

- ¹⁴ “The Palestinian Arab people...have the right to determine their destiny ... in accordance with their wishes and entirely of their own accord and will”: Palestine National Charter 1968, Article 3:
http://avalon.law.yale.edu/20th_century/plocov.asp
- ¹⁵ Hamas Charter 1988, Article 31: http://avalon.law.yale.edu/20th_century/hamas.asp
- ¹⁶ “Secularism completely contradicts religious ideology. Attitudes, conduct and decisions stem from ideologies. That is why, with all our appreciation for The Palestinian Liberation Organization - and what it can develop into - and without belittling its role in the Arab-Israeli conflict, we are unable to exchange the present or future Islamic Palestine with the secular idea”: Hamas Charter 1988, Article 27:
http://avalon.law.yale.edu/20th_century/hamas.asp
- ¹⁷ For a recent example, see the statement of Hamas spokesperson Sami Abu Zuhri that “No one has authorized [PLO Chair and PA President] Mahmoud Abbas to represent the Palestinian people and no one is obligated to any position he’s issued”: Dov Lieber and Eric Cortellessa, ‘Hamas Rejects Abbas Peace Proposal Outline to Trump’, *Times of Israel*, 3 May 2017: <http://www.timesofisrael.com/hamas-rejects-abbas-peace-proposal-outline-to-trump/>
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<https://mosaicmagazine.com/essay/2017/04/do-palestinians-want-a-two-state-solution/>
- ²³ <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20principles.aspx>
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- ²⁵ <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement.aspx>
- ²⁶ See European Centre for Law and Justice, *Legal Memorandum Opposing Accession to ICC Jurisdiction by non-State Entities*, 9 Sept. 2009, pp. 12-15: http://iccforum.com/media/background/gaza/2009-09-09_European_Centre-Memo.pdf
- ²⁷ See ‘Opinion in the Matter of the Jurisdiction of the ICC with regard to the Declaration of the Palestinian Authority’, by Professor Malcolm Shaw QC, 9 September 2009, p.18, paras 41-42: <https://www.icc-cpi.int/NR/rdonlyres/D3C77FA6-9DEE-45B1-ACC0-B41706BB41E5/282851/OTP2010000035449SupplementaryOpinionMalcolmShaw.pdf>
- ²⁸ *Ibid*, p.20, para 46. See also James Crawford, *The Creation of States in International Law*, (Oxford: Oxford University Press, 2nd edition, 2006), Chapter 3, ‘International Law Conditions for the Creation of States’,
- ²⁹ Chris McGreal, Sharon and Abbas warm to road map, *The Guardian*, 2 July 2003:
<https://www.theguardian.com/world/2003/jul/02/israel>
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