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**DIPLOMATIC RECOGNITION OF STATES IN
STATU NASCENDI:
THE CASE OF PALESTINE**

*Sanford R. Silverberg**

When I ask the Palestinians if they'll stamp my passport, they say "Burhureyya" ("with independence.") Palestine is still not a state.¹

I. INTRODUCTION

It was a concluding observation, made with some degree of pre-science, that "we can only wait and observe the way the international political system, but more particularly the West, adapt to a rearrangement of national dominance with the U.N. and a shift in the emphasis of supporting norms and values."² The argument, as previously outlined, is now extended here to wit: The character of the contemporary international political system has lent itself to the expansion of recognized acceptable subjects of international law to what is, for lack of an accepted term, a latent and tentative territorial unit, an "entity." Because the state, as the traditional political actor at the international system level, is now complemented by other styles of authoritative organizations that conduct affairs that at least resemble inter-state business. This recognition of what is in fact occurring, is a basis for decisions by states and international organizations and merits concern and attention.

In particular, the emergence of an autonomous Palestinian entity (al-kiyan al-filastini) without sovereignty,³ resulting from the multilateral

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1. Daniel Jacobs. *Researching Gaza: An Author's Diary*, No. 2 ROUGHNEWS 7 (1997).

2. Sanford Silverburg. *The Palestine Liberation Organization in the United Nations*, 12 ISRAEL L. REV. 365, 392 (1977).

3. The selection of the descriptor "entity" is borrowed from the research of MOSHE SHEMESH *THE PALESTINIAN ENTITY 1959-1974* (1996). See also Samir Anabtawi. *The Palestinians as a Political Entity*, 60 THE MUSLIM WORLD 47 (1970) and Julius Stone.

negotiations begun at the Madrid Conference (1991) continuing through the Hebron Agreement (1995), presents an opportunity to witness a unique development in international law.⁴ There is adequate evidence in

Peace and the Palestinians, 3 N.Y.U. J. INT'L L. & POL. 247 (1970).

4. For a discussion of the Madrid Peace Conference see 2 DISPATCH 775 (1991), *id.*, at 806-810; 2 PUB. PAPERS PRES. US: GEORGE BUSH 1308 (1992), *id.* at 1352, 1362-1364; Jorge Dezcallar de Mazarredo. Conferencia de Madrid para la Paz en Oriente Media in *La Paz En Oriente Medio: Seminario Celebrado En La Escuela Diplomática Los Días 27-48 (20 a 23 de Febrero de 1995)*. For a general collection of documents relating to the "peace process," see <http://www.israel-mfa.gov.il/peace/palest.html> It is worth noting that all the "agreements" reached between Israel and the Palestinians, while commendable as an approach to develop regional stability, they fall short of "international agreements," which must be "concluded between states." Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, reprinted in 8 I.L.M. 679 (1969). For an argument contra see John Quigley, *The Israel-PLO Interim Agreements: Are They Treaties?*, 30 CORNELL INT'L L.J. 717 (1997). Oslo I consists of the following: The Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993, Isr.-P.L.O., 32 I.L.M. 1525 (1993) [hereinafter DOP]; Israel-Palestine Liberation Organization Agreement on the Gaza Strip and the Jericho Area, May 4, 1994, Isr.-P.L.O., 33 I.L.M. 622 (1994) [hereinafter Cairo Agreement]; Protocol on Economic Relations Between Israel and the P.L.O., 33 I.L.M. 696 (1994) (later included as an appendix to the Cairo Agreement). Together the DOP and Cairo Agreements constitute Phase 1 of an interim agreement. The Camp David Agreements were to establish a Palestinian "self-governing authority" which would lead to a final solution to the Arab-Israeli conflict, including peaceful resolution of outstanding issues and to be sure, territory. Camp David Agreements, Sept. 17, 1978, Egypt-Isr.-U.S., 17 I.L.M. 1466 (1978). Following actions were: Agreement on Preparatory Transfer of Powers and Responsibilities, Aug. 29, 1994, Isr.-P.L.O., 34 I.L.M. 455 (1994) [hereinafter Erez Agreement]; The Protocol on Further Transfer of Powers and Responsibilities, Sept. 28, 1995, UN Doc. A/51/889 (1995) [hereinafter Further Transfer Protocol]; *Arab League: Final Communiqué of the Cairo Summit Conference on Mideast Peace and Decisions on New Institutions*, 35 I.L.M. 1280 (1996). Oslo II: The Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip, Sept. 28, 1995, Isr.-P.L.O., 36 I.L.M. 551 (1997); Taba Agreement: Israel and the Palestine Liberation Organization, Joint Communiqué on the Permanent Status Negotiations, Taba, Egypt, May 5-6, 1996, Isr.-P.L.O., <<http://www.israel-mfa.gov.il/peace/taaba596/html>>; Hebron Agreement: Israel-Palestine Liberation Organization: Agreement on the Temporary International Presence in the City of Hebron (TIPH) and the Memorandum of Understanding Between Denmark, Italy, Norway, Sweden, Switzerland and Turkey on the Establishment of TIPH, 36 I.L.M. 547 (1997); Israel-Palestine Liberation Organization: Protocol Concerning the Redeployment in Hebron and Note for the Record, 36 I.L.M. 650 (1997). For the text of a Letter of Assurance to Israel by the American Secretary of State, Warren Christopher, Jan. 15, 1997 see N.Y. TIMES, Jan. 17, 1997 at A31 and 3 ISRAEL AFF. 343-344 (1997); For the Secretary Christopher's letter and the Israeli Cabinet's "Communique" of January 16, 1997 see 26 PAL. STUD. 139-140 (1997). For a version of Israeli and Palestinian interpretation of the various agreements see SAMUEL SEGEV. CROSSING THE JORDAN: RABIN'S ROAD TO PEACE, Chap. 12 (1998).

place to indicate that a process of institutionalized state-building⁵ has been put into place at least since the most recent Palestine Declaration of Independence.⁶ These developments bear witness, if for no other reason than the ambivalence exhibited by the international political community, to the issue of an acceptable non-state actor role in the international community of states. Therefore, the recognized referent, as the observer must make, is that it is an imperfect system. It is sometimes, perhaps even frequently, disheartening to jurists to observe change particularly if it is directed by or from non-western sources. According to one court, "to interpret various human rights documents as imposing legal duties on non-states like the PLO would require both entering a new and unsettled area of international law and finding there an exception to international law's general rule."⁷ Certainly, following World War I and World War II, other territories and colonies that came under mandatory jurisdiction evolved into states.⁸ The political process as practiced in the post-World War II era, focusing on the phenomenon of de-colonization and the concomitant

5. MOHAMMED AL-AZAR, DEMOCRATIC TRANSFORMATION AND THE POLITICAL SYSTEM IN PALESTINE. (1996); HILLEL FRISCH, COUNTDOWN TO STATEHOOD: PALESTINIAN STATE FORMATION IN THE WEST BANK AND GAZA (1998); GLENN ROBINSON, BUILDING A PALESTINIAN STATE (1997); THE PALESTINE COUNCIL: STRUCTURE, POWER AND RESPONSIBILITIES (1996); Francis Boyle, *The Creation of the State of Palestine*, 1 EUR. J. INT'L L. 301 (1990); see also Boyle, *Create the State of Palestine*, 7 SCAND. J. DEV. ALTERNATIVES 25 (1988); Mark Heller, *Towards a Palestinian State*, 39 SURVIVAL 5 (1997); Ann Lesch, *Transition to Palestinian Self-Government*, 22 J. PAL. STUD. 46 (1993); Kathryn McKinney, *The Legal Effects of the Israeli-PLO Declaration of Principles: Steps Toward Statehood for Palestine*, 18 SEATTLE U.L. REV. 93 (1994); David Newman and Ghazi Falah, *Small State Behavior: On the Formation of a Palestinian State in the West Bank and Gaza Strip*, 39 CAN. GEOG. 219 (1995). Menachem Mautner has suggested that a Palestinian political organization with a status of more than autonomy but less than sovereign was the best solution to the Arab-Israeli conflict. See Menachem Mautner, *West Bank and Gaza: The Case for Associate Statehood*, 6 YALE STUD. WORLD PUB. ORD. 297 (1981).

6. PALESTINE NATIONAL COUNCIL, DECLARATION OF INDEPENDENCE, 43 GAOR, Annex 3, Agenda Item 37, 13, U.N. Docs. A/48/827 and S/20278 (1988) reprinted in 27 I.L.M. 1660 (1988); See generally Maurice Flory, *Naissance d'un état palestinien*, 93 G. GÉN INT'L PUB. 389 (1989). The first Declaration of [Palestinian] Independence was issued on October 1, 1948. The text is reprinted in 4 PAL. Y.B. INT'L L. 294 (1987/88); Mr. Khalil Tufakji was commissioned by the Palestine National Authority (PNA) to produce an "official map" of Palestine showing the "Palestinian State," comprising the entirety of the West Bank, the Gaza Strip, Israel, and some of Jordan. See <<http://www.palestine-net.com/geography/gifs/palmap.gif>>. It might be interesting to learn, Mr. Tufakji has been similarly commissioned by the PNA to design and locate a capitol building, on the Mount of Olives in Jerusalem (or as it is known in Arabic, Ras al-Amud, which also includes the neighborhood of Mitzpe Daniel).

7. *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 806 (1984).

8. See Appendix 2, JAMES CRAWFORD. THE CREATION OF STATES IN INTERNATIONAL LAW 426-428 (1979).

increased demand for national self-determination, rests on a belief that as long as states exist and evolve in form, a new criteria for bringing them into existence may be introduced. But as has been apparent, all new proposals are based upon the existence of already existent sovereign entities or at least a formally established and separate territorial element recognized as distinctive. The issue of the legitimacy of any act of recognition of such political units may, of course, come subsequently.

Palestine, while appreciating the dangers of the assertion as a self-fulfilling prophecy, is a state in *statu nascendi*⁹ (something in the process of becoming, but which hitherto has not received either the attention or the formal international legal support generally reserved for traditional subjects of international law.)¹⁰ The legal maxim *nasciturus pro jam nato habetur*¹¹ applies in this instance and carries a set of recognized strictures. Brownlie, whose approach is close to political expediency, takes the position that “[f]or certain legal purposes it is convenient to assume continuity in a political entity and thus to give effect, after statehood has been attained, to legal acts occurring before independence.”¹² Even after statehood is assumed, “it is justifiable, both legally and practically, to assume the retroactive validation of the legal order during a period prior to general recognition as a state, when some degree of effective government existed.”¹³ From his approach, there is an understanding that political events occur with a frequency that outpaces any commanding legal authority. Realizing the need to maintain a relationship of law to politics,

9. See generally, *id.* at 391-398; IAN BROWNLIE, *PRIN. OF PUB. INT'L L.* 82 (1973); Friedrich von der Heydte, *Rechtssubject und Rechtsperson im Völkerrecht*, in *GRUNDPROBLEME DES INTERNATIONALEN RECHTS* 237 (D. Constantopoulous et al. eds., 1957); M. Vorster, *The International Legal Personality of Nasciturus States*, 4 *S. AFR. Y.B. INT'L L.* 1 (1978); See also ANTONIO CASSESE, *SELF-DETERMINATION OF PEOPLES* 346-348 (1995); for an older version of the phenomenon see R. Erich, *La Naissance et la reconnaissance de états*, *RECUEIL DES COURSE*, 1926, III, at 431.

10. The interest here is specific, particular and completely within an international legal context. See generally, MUSA MAZZAWI, *PALESTINE AND THE LAW: GUIDELINES FOR THE RESOLUTION OF THE ARAB-ISRAELI CONFLICT* 291-295 (1997); a more political tone can be inferred from other commentaries; see for example, Katherine Meighan, Note, *The Israel-PLO Declaration of Principles*, 34 *VA. J. INT'L L.* 435, 467 (1994); contra Justus Weiner, *Hard Facts Meet Soft Law—The Israel-PLO Declaration of Principles and the Prospect for Peace*, 35 *VA. J. INT'L L.* 931 (1995).

11. Literally, “Those who are about to be born shall be considered already born.” DAVID WALKER, *THE OXFORD COMPANION TO LAW* 133 (1980); the notion emanates from Roman law; See for example, G. INST. 1.147; DIG. 1.5.7. (Paulis); DIG. 1.5.26 (Salvus Julianus); DIG. 38.16.7 (Juventius Celsus); DIG. 50.16.231 (Paulianus); an analogy to the juristic personality of an individual, according to the French Civil Code is where an infant not yet born is subject to the rights of inheritance *when viable*, C. CIV. §§ 725, 906.

12. BROWNLIE, *supra* note 9, at 66.

13. *Id.* at 82.

a principle of continuity is given heavy weight or value.

Therefore, left aside is the intriguing but necessarily entangling idea of a two-state or bilateral option in the region within an historic Palestine.¹⁴ However, as has been asserted by Palestinians as an historical fact, if Palestine is an integral whole then conceivably any dismemberment violates the Declaration on the Granting of Independence to Colonial Countries and Peoples.¹⁵ The argument put forth here is that there has never been a state of Palestine, and thus no territorial integrity to suborn.

Actually, the process of Palestinian state development is a continuation after an interregnum of close to 50 years of a combination of inter-related historical dynamics. The League of Nations was succeeded, politically at least, by the United Nations. In its collective judgement, the United Nations recommended the partition of mandatory Palestine into an Arab state and a Jewish state.¹⁶ The Arab state members of the United Nations, but not an organized Palestinian body, "responding to the will of the Palestine Arab majority, rejected the Partition Plan."¹⁷ In the ensuing hostilities between the Palestinians, supported and abetted by their allied and neighboring Arab states and the newly declared State of Israel, the later never occupied completely mandatory Palestine. Presumably then, whatever portion of mandatory Palestine was not under control by Israel became available for reconstitution.¹⁸ In fact, in September 1948, in an attempt to maintain a legitimate claim of governance, an Arab Government of All-Palestine, now defunct, was formed by the Arab League

14. Some proponents of Palestinian statehood have argued that pursuant to United Nations resolutions, "there is continuing authority for the establishment of two states in Palestine." W. THOMAS MALLISON AND SALLY MALLISON, *THE PALESTINE PROBLEM IN INTERNATIONAL LAW AND WORLD ORDER* 206 (1986); Chairman Arafat proposed a "two-state solution" initiative in the U.N. General Assembly in Geneva on December 13, 1988; U.N. Doc. A/453/PV.78 (1988).

15. G.A. RES. 1514, 15 U.N. GAOR, Supp. No. 16, at 66, U.N. Doc. A/4684 (1961).

16. G.A. Res. 181 (II), 2 U.N. GAOR, Resolution 131, 132, U.N. Doc. A/519 (1947).

17. Nabil Elarby, *Some Legal Implications of the 1947 Partition Resolution and the 1949 Armistice Agreements*, 33 *LAW & CONTEMP. PROBS.* 97, 103 (1968). It should also be noted that the Arab Higher Committee, the only recognized "national" Palestinian political body, rejected the Resolution on November 30, 1947; see ISSA KHALAF, *POLITICS IN PALESTINE* 169 (1991).

18. Professor Van de Craen argues that "the juridical status of the remaining Palestinian territory can only be made by the use of the concept of 'sovereign vacuum,'" permitting the Palestinians to enter a claim at some subsequent point in time. Frank L.M. van de Craen, *The Territorial Title of the State of Israel to "Palestine: An Appraisal in International Law*, 14 *REVUE BELGE DE DROIT INTERNATIONAL* 500, 505 (1978/79). Because of a consideration that the Israeli presence in Palestinian areas not allocated by the United Nations Partition Plan could be labeled as belligerent occupation, territorial sovereignty that could similarly be sought by Palestinian political authority, not yet established, must be rejected. The disposition of the territory under review after 1949 was determined by armistice agreements and not any treaty of peace.

(without the compliance of Jordan) in Gaza. This political act was done on behalf of all Palestinians, ostensibly to govern the West Bank and Gaza Strip. However, little was to come from this development since the West Bank was annexed by Jordan in 1950 and Egypt "supervised" as a trustee an independent government in Gaza in 1959.¹⁹

While the forecasted outcome of a political development is certainly speculative,²⁰ it is argued that the nature of diplomatic recognition defines the status of the targeted organization by virtue of the nature of inter-state exchange. The formal action taken by states and international organizations afforded to the Palestine National Authority (PNA) is such that the political body, while recognized as less than a sovereign state, is certainly more than a completely dependent colonial enterprise.

There are two areas of concentration in this current exposition: diplomatic recognition and economic trade relations. In both instances, the emblematic nature of the nation state in a state-centric system is to be seen as transitory. The expansion in the number of states combined with an increased awareness of the global extent of issues that affect humanity, sometimes with grave consequences, has spurred an intent in creating conditions that lessen tensions while simultaneously providing human benefits. Trade and investment have been essential characteristics of industrial regions and drive pacific state relations. In order for economic relations to develop and produce positive results, political stability must serve as a foundation. A world in which liberal economies foster stability in due course encourages acceptance of reasonably viable political units. In writing about new international relations theory or new states in a chain of developments, one commentator has noted "that the contemporary global system of sovereign states has emerged out of an earlier Eurocentric system of 'civilized' and before that 'Christian' states." The evolutionary process, the author goes on to claim, has retained its constancy "because the underlying imperatives of independence are still the same,"²¹ but the context of the process has moved to greater complexity.

19. For a discussion of the perfunctory efforts to maintain an illusion of Palestinian governing authority during the years immediately after the establishment of Israel, see HUSSEIN HASSOUNA, *THE LEAGUE OF ARAB STATES AND REGIONAL DISPUTES* (1975).

20. From polling data we can derive that among Israelis there is a growing belief that a coterminous Palestinian state is evolving.

Date	Percentage
1990	37%
1991	48%
1994	74%

ASHER ARIAN, *ISRAEL SECURITY AND THE PEACE PROCESS: PUBLIC OPINION IN 1994* 6 (1994).

21. ROBERT JACKSON, *QUASI-STATES: SOVEREIGNTY, INTERNATIONAL RELATIONS, AND THE THIRD WORLD* 79 (1993).

II. PALESTINE AS A POLITICAL CONCEPT

The nation-state system or the Westphalian system developed in Europe as a western and predominantly Christian political organization, which was subsequently superimposed on the remaining extent of the globe through imperial and colonial exploits.²² The limitation of a people's political expression was set by the sole tangible quality of geographic borders. The manner of acceptance in the "civilized" world was also to no small degree conditional upon adherence to European cultural norms of existence, at least up through the middle of the 20th century.²³ In the Islamic world, the concept of "the state" has existed but with a distinguishably different heritage and orientation from its Christian counterpart.²⁴ Hence, for Palestinians, for many generations at least, the sense of peoplehood was present providing substance but without the form of a western state present.²⁵ This condition did not occur due to of a lack of intent to do otherwise. Essentially, the regional culture was not susceptible to the acculturation process necessary to adjust in the time period as presented to the non-western people resident there. Additionally, the western understanding of the modern state as it developed in the contemporary period requires an industrial base. With the superimposition of a modern capitalist system, many scholars of nationalism hold that there is a tendency that serves as a demolishing instrument of traditional societies i.e., pre-industrial or agriculturally based societies. Thus any organic nature of Palestinian political organization was rendered subservient to an industrially oriented competitor, in this case European-based and acculturated Zionists. The Arab, Palestinian and other opposition to political

22. From a positivist perspective, the initiation of the state system emerged from Christian civilization (at least in the period prior to Westphalia). See the canon law interpretation given by Hostiensis. G. Le Bras, *Théologie et droit romain dans Henri de Suse*, in *ÉTUDES HISTORIQUE À LA MÉMOIRE DE NOEL DIDIER* 195 (1960). It was not until 1856 and the organization of the Concert of Europe, that a non-Christian state, in this case Ottoman Turkey, was admitted into a European *qua* Christian political system. See TRAVERS TWISS, *LE DROIT DES GENS* 83 (1887).

23. J.A. Andrews, *The Concept of Statehood and the Acquisition of Territory in the Nineteenth Century*, 94 L.Q. REV. 408 (1978).

24. See generally, CHRISTINE HELMS, *ARABISM AND ISLAM: STATELESS NATIONS AND NATIONLESS STATES* (1990) [McNair Papers No. 10]. For an understanding of the development of the Islamic political community see generally, MOHAMMAD AL GHUNAIMI, *THE MUSLIM CONCEPTION OF INTERNATIONAL LAW AND THE WESTERN APPROACH* 61-70 (1968). For an examination of the Islamic state from the perspective of a non-Muslim historian, see R. Serjeant, *The Constitution of Medina*, 8 ISLAMIC Q. 3 (1964); See also, *The 'Sunnah Jam'ah' Pacts with the Yathrib Jews, and the 'Tahrim' of Yathrib*, 41 BULL. SCH. ORIENTAL & AFR. STUD. 1 (1978).

25. To examine the formation of the Palestinian national self see Sari Nusseibeh, *Personal and National Identity: A Tale of Two Wills in PHILOSOPHICAL PERSPECTIVES ON THE ISRAELI-PALESTINIAN CONFLICT* 205-220 (Tomie Kapitan ed., 1997).

Zionism, from its inception took on the character of a mantra for fear and threat perception of cultural and dispossessive foreign imposition.²⁶

There are many plausible explanations diachronically for the varied declarations and understandings of cultural groups' self-awareness. The effect of modernity on either Arab nationalism or Palestinian nationalism, assuming arguendo there is a difference, has not reduced the anxiety of the subject peoples but has placed contemporary generations in a cognitive position whereby their frame of reference is current and thus the standard of evaluation is different from that which was dominant in the pre-decolonization period.

In the case of the Palestinians, when their perception is blended with similarly situated people who may have emerged with a recognized political structure because of a preexisting territorial setting, their factual support pales. Contextually some theorists hold that nationalism is not necessarily "modern." Rather it is subject to a series of historical developmental forces that allies itself to cultural coherence, which places the controversy over Palestinian nationalism in still more of a controversial focus.²⁷

In the contemporary period, Palestine²⁸ was an amorphous geopolitical territory within the Ottoman Turkish Empire. As one Palestinian scholar and expert on Palestinian nationalism notes, "there was no political unit known as Palestine" in the Ottoman Empire.²⁹ Even in the premier examination of the development of Palestinian nationhood, one can

26. For a survey see Sami Zubaidi, *Theories of Nationalism in POWER AND THE STATE* 52-71 (Gary Littlejohn et al. eds. 1978); See also Wolfgang Mommsen, *The Varieties of the Nation State in Modern History in THE RISE AND DECLINE OF THE NATION STATE* 210-226 (1990).

27. See e.g., Anthony Smith, *The Myth of the 'Modern Nation' and the Myths of Nations*, 11 *ETHNIC & RACIAL STUD.* 1 (1988). As the theme is connoted within an Islamic context, see SAMI ZUABAIDA, *ISLAM, THE PEOPLE AND THE STATE* chap 6 (1989). For a characterization of the Palestinian economy from 1917 to 1945, see Bernard Wasserstein, *The British Mandate in Palestine in MIDDLE EASTERN LECTURES NUMBER ONE* 29, 37 (1995).

28. For a general treatment of the nature of the territory in historic texts see SUSAN ROLEF, *THE POLITICAL GEOGRAPHY OF PALESTINE: A HISTORY AND DEFINITION* (1983)[*Middle East Review Special Studies*, no. 3]; Louis Feldman, *Some Observations on the Name of Palestine*, 61 *HEBREW UNION COLL. ANN.* 1 (1990); Bernard Lewis, *Palestine: On the History and Geography of a Name*, 11 *THE INT'L HIST. REV.* 1 (1980). For the history of ancient Palestine see generally, GOSTA AHLSTRÖM, *THE HIST. OF ANCIENT PALESTINE* (1993); DAVID FIENSY, *THE SOCIAL HIST. OF PALESTINE IN THE HERODIAN PERIOD* (1991); MOSHE GIL, *A HIST. OF PALESTINE, 634-1099* (1992); A. AL-KAYYALI, *PALESTINE* (1978); ISMAIL SHAMMOUT, *PALESTINE* (1972); ROBERT WILKEN, *THE LAND CALLED HOLY* (1992). For the relationship between ancient Israel and ancient Palestine, see Marit Skjeggstad, *Ethnic Groups in Early Iron Age Palestine*, 6 *SCAN. J. OLD TEST.* 159 (1992).

29. MUHAMMAD MUSLIH, *THE ORIGINS OF PALESTINIAN NATIONALISM* 12 (1988).

find no formal setting beyond a "sense" of place, "a sort of sacred, if not yet a national, space."³⁰ Following World War I and as a result of that conflagration, the Ottoman Turkish Empire was despoiled by the victorious European alliance, and the Arab territories were divided into zones of occupation. The British military presence in Jerusalem and its environs early in December 1917 placed its government in a preeminent position to claim belligerent occupant rights. The British succeeded. Although the initial military administration established was meant to be transitional,³¹ the following year an Occupied Enemy Territory Administration-South (O.E.T.A.-South) was created. The principle of postliminium, with regard to the dismantling of Turkish Near and Middle East territories in accordance with a peace treaty, had to be held in abeyance until the French were assuaged, which was done at the Inter-Allied Conference at San Remo in April 1920.³² Again, following the European tradition and experience, the nation-state organizational form was extended by the western creation, the League of Nations, and operating as a formal political-legal agent of the major western powers, demarcated Palestine and made Great Britain the mandatory power.³³ It should be noted with great importance that it is only at this point in time and because of the action taken by the League of Nations in conjunction with Great Britain that the factor of

30. RASHID KHALIDI, *PALESTINIAN IDENTITY* 29 (1997). Except for Khalidi's work, there is no equivalent substitute in English for the treatment of the development of a Palestinian consciousness in a political realm.

31. BERNARD WASSERSTEIN, *THE BRITISH IN PALESTINE* 18 (1978).

32. GREAT BRITAIN, *PARLIAMENTARY PAPERS*, 1920, Misc. No. 11, Cmnd. 675. As a result, the territory east of the Jordan River was separated from Syria (*Bilad al-Sham*) and meant to be incorporated in the Palestine Mandate under British supervision. Many Palestinians demonstrated a nationalistic response in terms of Palestine being a part of southern Syria (*Suriyya al-Janubbiyya*). See Yehoshua Porath, *The Political Organization of the Palestinian Arabs Under the British Mandate in PALESTINIAN ARAB POLITICS* 8-9 (Moshe Maoz ed., 1975).

33. Terms of the British Mandate for Palestine Confirmed by the Council of the League of Nations, July 24, 1922, 3 *LEAGUE OF NATIONS O.J.* 1007 (1922) (entered into force Sept. 29, 1923). Both the British military and provisional governing authority (during the period of occupation and until the acquiring of mandatory authority) included what is present day, The Hashemite Kingdom of Jordan. With the Mandate for Palestine, a separate state of Trans-Jordan was unilaterally created by the British. Art. 2 *id.* refers to the area east to the Jordan river as "Trans-Jordan," and understood to be administered under the control of the Amir Abdullah. The final conclusion of belligerency was only completed by the Treaty of Lausanne (1923), 117 *BFSP* 543, which followed the negotiations over the Treaty of Sèvres (1920), 113 *BFSP* 652, an agreement that was unratified. One commentator discussing the role of the United Nations as a forum to bless the Palestinian Declaration of Independence, refers to Palestine "as one of the territories detached from the Turkish Empire." Vera Gowlland-Debbas, *Collective Responses to the Unilateral Declarations of Independence of Southern Rhodesia and Palestine*, 61 *BRIT. Y.B. INT'L L.* 135, 197 1990 (emphasis added).

territoriality was attached to what Palestinians understood then and now to exist in situ, but in point of fact only existed in another cultural and hence legal context. Palestine was never considered terra nullius because there was no such legal body before its creation by externally regional diplomatic negotiations. The beginnings of what could evolve into a state, as understood in western political and legal parlance, originated as a mandate and was never an "old state" or an "original state" interrupted by historical forces to become a "new state."³⁴ The act of creating a mandate in the generally recognized region of ancient Palestine, in effect, lent a modicum of juridical personality to the territory, thereby legitimizing the governing authority and in turn setting into motion an historic process whereby the components of statehood could become established. International legal authorities, for reasons of their own but who support the Palestinian cause and demand for political self-determination, support the notion that there was a Palestine in the past, that is prior to 1917. To complicate the history of "modern Palestine," and to indicate its pure anomalous nature requires an examination of how and why Trans-Jordan was diplomatically excised from mandatory Palestine in 1922 and anointed with statehood.³⁵

However, as stated above, a Palestine within the western political understanding of the term, simply never existed.³⁶ Indeed, the failure to establish a western-based territorial element in a rhetorical frame of reference had done much for years to cloud discussion over relevant issues but more importantly made the arguments for such a condition a non sequitur.³⁷ On a more positive note, from this temporal point forward the

34. The distinction between "old" and "new" states was made by the delegate from Ceylon at a meeting of the Sixth Committee (Legal) of the UN General Assembly. This meeting, held in October 1968, dealt with the Report of the Int'l Comm'n on Succession of States and Governments in Respect of Treaties. See U.N. Doc. A/C 6/SR 1036 (1968).

35. Yitzhak Gil-Har, *The Separation of Trans-Jordan from Palestine in THE JERUSALEM CATHEDRA* 284-313 (Lee Levine ed., 1981).

36. One can read the works of notable specialists such as Professor John Quigley who claims: "From the sixteenth century until World War I, Palestine was ruled by the Ottoman Empire." See John Quigley, *Judicial Autonomy in Palestine: Problems and Prospects*, 21 U. DAYTON L. REV. 698, 700 (1996). Sometimes, Professor Quigley's characterizations are hyperbolic, to wit: "For as long as history records, the Palestinians have been the majority population in Palestine." See Quigley, *The Oslo Accords: More Than Israel Deserves*, 12 AM. U. J. INT'L L. & POL'Y 285 (1997). For a fuller treatment of relevant issues by Professor Quigley, see *PALESTINE AND ISRAEL* (1990).

37. Perhaps one example will suffice:

On April 20, 1920, the Supreme Allied Council allocated the Palestinian Mandate to Great Britain. In March of 1921, the British detached all territory east of the Jordan River from Palestine and established the emirate of Transjordan. This territory had historically been a part of Palestine since before the arrival of the Hebrews led by Moses.

conflict of interests between Palestinians and Jewish Zionists operates with a great deal more symmetry, even if there are significant differences in strategies and approaches to their respective political goals and ideologies.

The argument put forth here then is that a people in the Arab world with a self-identity as Palestinian were a settled folk during the period of Ottoman Turkish control in some demarcated portion thereof. As outlined above, a Palestine was ultimately created, albeit not by Palestinians, and almost immediately subject to violent contention. Years of sporadic low-intensity conflict between Israel and Palestinians were followed by the creation of the PLO in 1964. By 1968 the PLO was clearly an organization that was committed to debate the State of Israel. In twenty years, this strategy moved to a two-state solution, while the current peace process holds out the possibility of Palestinian autonomy. Characterizing this ideological development is an anecdote from a meeting of the PLO's Central Committee in Tunis, held on October 10, 1993, where Mahmoud Abbas (aka "Abu Mazen"), a Palestinian diplomat who helped frame the Oslo Accords, told Chairman Arafat that "it was now 'time to take off the uniforms of the revolution and put on the business suits of the nascent Palestinian state.'"³⁸

The nature and status of political autonomy in the annals of international law is unique. On this point Benvenisti points out two forms: internal and international. Internal autonomy exists as a political unit within a sovereign state while international autonomy involves multinational administration. The autonomy established by the Cairo Agreement is for a territory, the extent of which is yet to be negotiated.³⁹ Even if the territorial element of a state is present there are other factors to consider, which for our purpose here take primacy in the evaluation of the argument presented. While the Palestinians have no sovereign title to territory, there is an established governing authority that maintains an ability to insure relative internal order and an ability to insure relative internal order and as pointed out, conducts regular diplomatic relations with states and international organizations. These conditions cannot be claimed by all other established states.⁴⁰

M. Cherif Bassiouni and Eugene Fisher, *The Arab-Israeli Conflict—Real and Apparent Issues*, 44 ST. JOHN'S L. REV. 399, 438 (1970).

38. SEGEV *supra* note 4, at 285.

39. Eyal Benvenisti, *The Status of the Palestinian Authority in THE ARAB-ISRAELI ACCORDS: LEGAL PERSPECTIVES* 60 (Eugene Cotran and Chibli Mallat eds., 1996).

40. The point here is to highlight the near-anarchic state conditions found presently in Afghanistan, Liberia, Somalia, and the former Yugoslavia in each of which nations are seen to implode. One United States court has held at least that "any government, however violent and wrongful in its origin, must be considered *a de facto* government if it was in full and actual exercise of sovereignty over territory and people large enough for a nation." *Ford v. Surget*, 97 U.S. (7 Otto) 594, 620 (1878) (Clifford, J. concurring)

III. SUBJECTS OF INTERNATIONAL LAW

The issue is limited to those elements that most directly affect the present theme. Therefore, a state, for purposes of a positivistic approach to public international law, is the primary subject for purposes of *locus standi*. Accordingly, the demanded status requires four well known and recognized elements: 1) "a permanent population," 2) "a defined territory," 3) a "government," and 4) the "capacity to enter into relations with the other states" of the international political system.⁴¹ In the opinion of one jurist, territoriality is the primary characteristic of the state and an absolutely necessary characteristic for its existence.⁴² Although it could be argued, as has been in some quarters, that a "political community" may be more important.⁴³ The notion of a geographically fixed presence for the governing authority lends itself to predictable outcomes. However, the state is an artificial creation for some functional purposes in place and time. As the required function of organization realigns with conditions of a changing world, so has the legal system adapted commensurately.⁴⁴ The

(emphasis added). Having said this, it should also be stated that non-state actors are not widely recognized for purposes of a cause of action in U.S. courts. *See Sanchez-Espinoza v. Reagan*, 770 F.2d 202 (D.C. Cir. 1985); *Linder v. Calero Portocarrero*, 747 F.Supp. 1452, 1462, 1469 n.8 (S.D. Fla. 1990); *Carmichael v. United Technologies Corp.*, 835 F.2d 109, 113 (5th Cir. 1988).

41. Montevideo Convention on Rights and Duties of States, Dec. 26, 1933, art. I, 165 L.N.T.S. 19. *See also*, THE RESTATEMENT (THIRD) ON THE FOREIGN RELATIONS LAW OF THE UNITED STATES, at §201 (1987), which requires *inter alia* that an entity "engages in, or has the capacity to engage in formal relations with other such entities." *See also* National Petrochemical Co. of Iran v. M/T Stolt Sheaf, 860 F.2d 551, 553 (2d Cir. 1988), *cert. denied* 489 U.S. 1081 (1989); *Texas v. White*, 74 U.S. (7 Wall.) 700, 720 (1868).

42. *United States v. Netherlands*, 2 U.N. Rep. Int'l Arb. Awards 829, 839 (1928) (Huber, Arb.) (Huber, M., separate opinion). Taking various historical and cultural factors into consideration, the issue of territorial sovereignty can be found in the decisions of the Legal Standard of Eastern Greenland (*Nor. v. Den.*), 1933 P.C.I.J. (ser. A/B) No. 53 Apr. 5). *See also*, *Fisheries Case (U.K. v. Nor.)*, 1951 I.C.J. 116; (Dec. 18); *The Minquiers and Ecrehos Case (Fr. v. U. K.)*, 1953 I.C.J. 47 (Nov. 17). Professor Quigley, a reknown advocate of Palestinian self-determination and an acute observer of the changing character of statehood in the world today, states, "Even without control of territory *in the usual sense*, however, the PLO exercised considerable powers in the Gaza Strip and West Bank through its control of various organizations carrying out quasi-governmental functions." Quigley, *supra* note 4, at 724 (emphasis added).

43. *North Sea Continental Shelf Cases (F.R.G. v. Den. And F.R.G. v. Neth.)*, 1960 Judgement), 1969 I.C.J. 4, 32 (Feb. 20).

44. The classic approach to this theme is, of course, John Herz, *Rise and Demise of the Territorial State*, 9 WORLD POL. 473 (1957); John Herz, *The Territorial State Revisited*, 1 POLITY 11 (1968). From a purely economic perspective *see* JEAN-MARIE GUÉHANNO, *THE END OF THE NATION-STATE* (1995); KENICHI OHMAE, *THE END OF THE NATION STATE* (1995). For a discussion on the impact of global economic issues *see* Peter Evans, *The Eclipse of the State*, 50 WORLD POL. 62 (1997). *See generally*, DAVID

expansion of general categories of subjects of international law was to occur in 1949 when the International Court of Justice recognized the United Nations as an international person for purposes of juridical status.⁴⁵ Briggs suggests that "absence of one or more of these criteria over relatively long periods has not been regarded by other States as depriving such States of legal capacity under international law."⁴⁶ However, he conflates two completely different categories of states in support of his argument. For example, Albania, which could be said a configured territory prior to admittance to the League of Nations, and Israel, which emerged from a completely different political arrangement serve to reduce the acceptability of Briggs' assertion. Therefore, his position does not serve us well in establishing any formal rule to follow.

Controversial but nevertheless applicable to the argument presented here generally and specifically, is the realistic acceptance of insurgent groups and national liberation movements under the umbrella of the laws of war and humanitarian intervention.⁴⁷ Since the early 1970s, many such organizations received favorable, and even preferential, treatment by the United Nations General Assembly. By this time, the General Assembly had greatly expanded to include many former Metropole colonies.⁴⁸ The affinity of the greater number of like situated states with similarly histori-

J. ELKINS, *BEYOND SOVEREIGNTY* (1995); DAVID HELD, *DEMOCRACY AND THE GLOBAL ORDER* (1995); HENRIK SPRUYT, *THE SOVEREIGN STATE AND ITS COMPETITORS* (1995); WALTER WRISTON, *THE TWILIGHT OF THE SOVEREIGNTY* (1992); Thomas Forsberg, *Beyond Sovereignty, Within Territoriality*, 31 *COOPERATION AND CONFLICT* 355 (1996); Barry Hindess, *Power and Rationality*, 17 *ALTERNATIVES* 149 (1992); David Kanin, *The State, Its Dysfunction, and Ours*, 34 *INT'L POL.* 355 (1997); Assa Lindbeck, *The Changing Role of the Nation State*, 28 *KYKLOS* 23 (1975); Oscar Schachter, *Is the State Withering Away?* 24 *CAN. COUNCIL INT'L L. PROC.* 184 (1995); Christoph Schreuer, *The Waning of the Sovereign State*, 4 *EUR. J. INT'L L.* 447 (1993); Mihály Simai, *The Changing State System and the Future of Global Governance*, 11 *GLOBAL SEC.* 141 (1997); *Symposium on the Decline of the Nation State and Its Effects on Constitutional and International Economic Law*, 18 *CARDOZO L. REV.* 903 (1996); Bruce Trigger, *The Archaeology of Government*, 6 *WORLD ARCHAEOLOGY* 95 (1974).

45. *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 *I.C.J.* 174, 179 (Apr. 11).

46. *THE LAW OF NATIONS: CASES, DOCUMENTS, AND NOTES* 66 (Herbert Briggs ed., 1952).

47. *See generally*, AZIZ HASBI, *LES MOUVEMENTS DE LIBERATION NATIONALE ET LE DROIT INTERNATIONAL* (1981); ABDELWAHAB HECHICHE, *L'AUTODETERMINATION PALESTINIENNE ENTRE LE DROIT ET LA FORCE* (1991); CHRISTOPHER QUAYLE, *LIBERATION STRUGGLES IN INT'L L.* (1990); Malcolm Shaw, *The International Status of National Liberation Movements*, 5 *LIVERPOOL L. REV.* 19 (1983); Yezid Sayigh, *Armed Struggle and State Formation*, 36 *J. PAL. STUD.* 17 (1997).

48. For a discussion of the growing United Nations, *see* Tullio Treves, *The Expansion of the World Community and Membership of the United Nations*, 4 *FINN. Y.B. INT'L L.* 248 (1995).

cal backgrounds coalesced particularly on political issues such as self-determination. Current international *opinio juris* does not provide sufficient clarification regarding any movement away from traditional approaches of how any people is expected to gain an organic structure of authority. For example, in a recent German case, the court rendered a decision reserving an opinion held by the European Court of Human Rights⁴⁹ obliging Austria not to deport a defendant to Somalia where it was suspected he would be subject to violation of Article 3 of the European Convention on Human Rights because of the lack of state control over non-state agents.⁵⁰

Clearly beginning in 1974, the United Nations saw the eventual creation of a Palestinian state as a necessary condition to fulfill the growing acceptance of the norm of national self-determination.⁵¹ Since the General Assembly operates with plenary voting, the body gave numerous "liberation movements" from developing areas "observer status" to its sub-groups. In the case of the Palestine Liberation Organization (PLO), that status was even elevated to the General Assembly itself.⁵² The alacrity of the decolonization process along with the actual numbers of newly emergent states and concomitant concern for humanitarian issues, and given the voting weight from raw membership, all together increased the overall concern for the respective populations. The practical realities of international politics and relations may demand from time to time that strict adherence to acceptance of the state as the sole beneficiary of international juridical personality be set aside in favor of *de facto*ism.

49. Ahmed v. Austria, 24 Eur. Ct. H.R. (Ser. B) at 278 (1996).

50. Case 9 C 38.96 BVerfGE, reprinted in INFORMATIONSBRIEF AUSLÄNDERRECHT 1997, No. 9, at 341.

51. See e.g., G.A. Res. 3236, 29 U.N. GAOR, Supp. 31, at 4, UN Doc. A/9631 (1974). The role of self-determination is emphasized in: *The Right of Self-Determination of the Palestinian People*, U.N. Doc. ST/SG/SER/F/3 (1979). While this idea is widely accepted (as evidenced by state practice), there are still those with strong reservations. See Sanford Silverburg, *In Perepetuation of Myth: National Self-Determination de lege ferenda*, 2 GLENDALE L. REV. 273 (1978). Professor Yoram Dinstein has written, "one should beware of an anachronistic application of legal norms in temporarily wrong settings." See *Arab-Israeli Conflict in International Law*, 43 U. NEW BRUNSW. L.J. 301, 3154 (1994).

52. The PLO was accorded "observer" status by the U.N. by G.A. Res. 3237, see *id.* Observer status was elevated in the summer 1998, by G.A. A/RES/52/250 (1988), to an unprecedented level when the General Assembly voted to permit the PLO to participate actively in the general debates within the chamber, as well as other procedural accommodations. For a broader description, see Press Release G.A. 9427, U.N. GAOR, 52nd Sess., 89th mtg. (1998). The Security Council permitted the organization to participate in its deliberations when the organization was directly involved. U.N. SCOR, 44th Sess., 2841st mtg., U.N. Doc. S/PV. 2841 (1989) contrary to the body's rules as set out in Security Council, *Provisional Rules of Procedure*, Rule 14, U.N. Doc. S/96/Rev. 4 (1946).

In the words of one preeminent international legal scholar, Oliver Lissitzyn:

We must...be on guard against attaching too much significance to the characterization of a particular entity such as a 'State.' Indeed, depending on one's preference, certain entities which are not regarded as independent but which seem to participate in treaty relations can be described either as 'dependent States' or as entities which though not 'States', possess a degree of international personality.⁵³

In international political economics, particularly in the post-World War II era, the transition from GATT (General Agreement on Tariffs and Trade) to the WTO (World Trade Organization) has, while not necessarily subverting state sovereignty, offered a transnational alternative and thus has added weight to the importance of trans-border economic relations and agreements.⁵⁴ The argument put forth frequently is that transnational organizations permit a freer exchange of capital, greater flexibility in organizational style, and fewer limitations on individual behavior. The interesting development in political relationships on a global level is the manner of dispute resolution, which is in the context of the WTO, handled through an organizational body though its decisions ultimately affect members' operability on a inter-national dimension.⁵⁵ The WTO now provides for trade dispute resolution by an international organization rather than permitting unilateral state action. The relevance of this discussion is to bring attention to the growing acceptance of economics and related organizational structures that impact on what has been an exclusively political sphere of activity. The globalization of economics does not have full consensus, however. It is recognized by some to be a reversible trend and a choice made by national political leaders.⁵⁶ But also

53. Oliver J. Lissitzyn, *Territorial Entities in the Law of Treaties*, RECUEIL DES COURS, III, 1, 13 (1970).

54. See generally, Roy Goode, *Usage and its Reception in Transnational Commercial Law*, 46 INT'L & COMPL. L.Q. 1 (1997); Ernst-Ulrich Petersmann, *The Transformation of the World Trading System Through the 1994 Agreement Establishing the World Trade Organization*, 6 EUR. J. INT'L L. 161 (1995). Still another distinctive development is the Multinational Agreement on Investment (MAI), currently being negotiated within the OECD (Organization for European Co-operation), a free-standing international treaty open to signature to all OECD members, the European Community, and all non-members able to meet the required obligations. See <<http://www.oecd.org/daf/cmisi/mai/MAIRAP97.HTM>>.

55. *World Trade Organization (WTO) Dispute Settlement Review Commission Act: Hearing Before the Comm. on Finance, United States Senate*, 104th Cong., 1st Sess. (1996); ASIF QURESHI, *THE WORLD TRADE ORGANIZATION* (1996); Steven Corley and John Jackson, *WTO Dispute Procedures, Standards of Review, and Deference to National Governments*, 90 AM. J. INT'L L. 1993 (1996).

56. See e.g., Eric Helleinen, *From Bretton Woods to Global Finance: A World Turned*

the argument presented here assumes, *inter alia*, that the growing globalization of trade economics and liberal belief that trade leads to stability and order underlies much of the desire of states to support the institutional framework of the PNA.

III. DIPLOMATIC RECOGNITION

Traditionally in international law, acceptable subjects determine the parameters for choices available to states' governments to accept similarly situated others into their midst which has effectively been *de facto* or *de jure* recognition of either governments or states. As indicated above, the international political system is a model of structural change and many argue for international law to follow the changes accordingly. One major school of modern thought on diplomatic recognition is the declaratory doctrine, which emphasizes the political nature of the exercise and while not derogating legal responsibility. Nevertheless, this presents a formal obligation.⁵⁷ That states and international organizations have chosen to enter into negotiations and formulate political and economic agreements with the PNA is an indicator of an appreciation of a putative state ability to engage in inter-state relations and thus conduct itself in a regularized manner in the international political community. Professor Brownlie is instructive here when he opines that "[t]he legal consequence accorded by governments and foreign courts to the acts of governments recognized *de facto* provide evidence for the views" of the process of an entity assuming statehood.⁵⁸ The PNA as a recognized governing authority is expected to maintain effective control over territory allocated it pursuant to diplomatic negotiations. How effective its control is, internally, has not had a deleterious effect on recognition of its institutional basis.⁵⁹ The general precursor to the PNA and the public body whose heritage present day recognition is garnered is the PLO. It has been the process and pattern of recognition of the PLO that lays the ground for similar and succeeding action for the PNA. While recognition of the PLO, either as a representative of the Palestinian people *per se*⁶⁰ or as a diplomatic repre-

Upside Down in POLITICAL ECONOMY AND THE CHANGING GLOBAL ORDER 163-175 (Richard Stubbs and Geoffrey R.D. Underhill eds., 1994).

57. See IAN BROWNLIE, *PRIN. OF PUB. INT'L L.* 94 (1973). See also, JOE VERHOEVEN, *LE RECONNAISSANCE INTERNATIONALE DANS LA PRATIQUE CONTEMPORAINE* 721 (1975).

58. *Id.* at 82.

59. An interesting albeit complicating factor here is the contentious status of the City and District of Jerusalem which, of course, has been under effective control of Israel since June 1967.

60. G.A. Res. 3210, 29 U.N. GAOR, 29th Sess., Supp., No. 31, at 3, U.N. Doc. A/L 736 (1974).

sentative of the Palestinian cause,⁶¹ the manner of acceptance is probably less salient than the act itself. Indeed, statehood may not require recognition from others in the world community.⁶² Even though unrecognized, the United States has accepted "state" action by entities that have not enjoyed the luxury of diplomatic recognition.⁶³

All of this is to note that given the nature of the PNA's status and the sensitivity of the Arab-Israeli conflict, state interaction is not frequently subject to public notice.⁶⁴ Nevertheless, the subtleties of diplomacy can be seen operating in the matter of interaction with the PNA. Hence, without full and complete recognition, there cannot truly be embassies or consulates with the appropriate ambassadors and consular officials. Some states, therefore, maintain legations in Gaza from which business is conducted as a circumlocution for an otherwise official diplomatic premise. Representatives of those states that maintain a presence in Gaza, it has been observed, tend to have preferential status with regard to gaining access to PNA officialdom.

There is a frequent claim that the political world has already given recognition to the Palestinians, first to the PLO and then to its successor, the PNA. There has been little investigation, however, into the nature or substance of this assertion. Professor de Waart, for example, boldly holds that "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."⁶⁵ He goes on to proffer that the 1993 DOP and 1994 Israeli-PLO

61. See MARIA LÄHTEENMÄKL *THE PALESTINE LIBERATION ORGANIZATION AND ITS INTERNATIONAL POSITION: UNTIL THE PALESTINE NATIONAL COUNCIL OF ALGIERS IN NOVEMBER 1988* (1994). See also, David Gilmour, *The Creation and Evolution of the Palestine Liberation Organization* in *PRESSURE GROUPS IN THE GLOBAL SYSTEM* 46, 56-59 (Peter Willetts ed., 1982); Anis Kassim, *The Palestine Liberation Organization's Claim to Status*, 9 *DEN. J. INT'L L. & POL'Y* 1 (1980). But see, William O'Brien, *The PLO in International Law*, 2 *BOSTON U. INT'L L.J.* 349, 372-395 (1984).

62. *THE RESTATEMENT (THIRD) ON THE FOR. RELS. OF THE UNITED STATES*, § 202 cmt. b (1986).

63. *United States v. Insurance Cos.*, 89 U.S. (22 Wall.) 99, 101-103 (1875); *Thorington v. Smith*, 75 U.S. (8 Wall.) 1, 9-12 (1868); *Carl Zeiss Stiftung v. VEB Carl Zeiss Jena*, 433 F.2d 686, 699 (2d Cir. 1970) *cert. denied*, 403 U.S. 965 (1971).

64. See generally, KARIN AGGESTAM, *TWO-TRACK DIPLOMACY: NEGOTIATIONS BETWEEN ISRAEL AND THE PLO THROUGH OPEN AND SECRET CHANNELS* (1996) [Davis Papers on Israel's For. Pol'y, No. 53].

65. PAUL DE WAART, *THE LEGAL STATUS OF PALESTINE UNDER INTERNATIONAL LAW* 5 (1996) [Birzeit University Law Center Encounters]. See the list of states supplied by the PLO official news organization, Wafa, in February 1989. 18 *J. PALESTINE STUD.* 175-176 (1989). For a detractive commentary on the value of implicit recognition by virtue of a vote total for a U.N. General Assembly Resolution, see Patrick Travers, *The Legal Effect of United Nations Action in Support of the PLO and National Liberation Movements in Africa*, 17 *HARV. INT'L L.J.* 561 (1976).

Agreement gave "international lawyers much food for thought with respect to the legal status of Palestine under international law," all the while recognizing that the PLO "is neither a state nor an international organization."⁶⁶ Additionally, on November 15, 1988, the Palestine National Council (PNC) declared at its 19th Extraordinary Session in Algiers, the establishment "of the State of Palestine in the Land of Palestine with its capital at Jerusalem."⁶⁷ The Declaration, while a grandiloquent rhetorical statement, was made without effective control over a territory. The PNC's action, in any case, was followed in December in the United Nations General Assembly with formal statements of recognition reportedly by at least 100 states.⁶⁸

The contention advanced here is that the structure of the international political system is not fixed and is subject to change. The emergence of transnational political actors and relations is matched by new forms of political organization which are recognized by existing states to be effective bargaining units in diplomatic relations. Some would argue that international personality and its expansion remains a fixture of statehood for determination.⁶⁹ Moreover, recognition may not necessarily proceed from states issuing a formal statement but it may be implied by formal acts of state such as engaging in diplomatic interaction and concluding an agreement even below the level of a treaty.⁷⁰ Now, admittedly, to permit non-states the degree of recognition that has been accorded states would only permit greater confusion. Proceeding with the focus at this point thus leads to economic ties which states and international organizations have sought either to enter into or to maintain with the PNA as a major indicator of the potential viability of a sovereign Palestinian body but also

66. DEWAART *supra* note 5, at 6 (emphasis added). Many of the remarks by Paul De Waart are prefatory to his general form. *See generally*, Paul De Waart, DYNAMICS OF SELF-DETERMINATION IN PALESTINE: PROTECTION OF PEOPLE AS A HUMAN RIGHT (1994).

67. *See supra* note 6 and accompanying text. It was not lost on Chairman Arafat that the Declaration was issued in Algeria, as was clearly indicated by his address during the opening ceremony for the 50th anniversary of the 1948 al-Nakhba (the Catastrophe). AL QUDS (Jerusalem), Feb. 13, 1998, at 1. The Declaration was not acceptable as "official" by Australia, Canada, Norway, Spain, and the United States, according to letters to the Director-General of the WHO. WHO Doc. A42/INF Doc./3, May 1989. *See* Japanese sentiment expressed in U.N. Doc. A/43/PV. 82, at 8 (1989) and the US position in *id.*, at 47 as well as its address to the 43rd World Health Assembly. WHO Doc. A43/VR/8, at 3-4 (1989).

68. The United Nations took note of the Declaration in G.A. Res. 43/177, U.N. GAOR, 43rd Sess., Supp. No. 49 at 62, U.N. Doc. A/43/49 (1989); 34 KEESING'S RECORD OF WORLD EVENTS 36321 (1988).

69. F.A. Mann, *International Corporations and National Law*, 42 BRIT. Y.B. INT'L L. 147, 153 (1969).

70. Manfred Lachs, *Recognition and Modern Methods of International Co-operation*, 35 BRIT. Y.B. INT'L L. 252, 253 (1960).

a willingness of states to recognize such. Great Britain, for example, conducts its diplomacy with regard to recognition of governments without being tied to some standardized or formal set of guidelines, although its policy towards states remains substantially unaltered.⁷¹

A. Political

Pursuant to the Gaza-Jericho Agreement in May 1994 and the subsequent Further Transfer Protocol of September 1995,⁷² a Palestinian National Authority was created as a transitional body by the PLO according to the first agreement, the defined authority was then extended to portions of Gaza and the West Bank by the second.⁷³ But the non-state status of the PNA precludes its ability to extend its legitimacy in ways that are reserved for states. In addition, as signatory to the Gaza-Jericho Agreement,⁷⁴ the PNA is constrained from engaging in a number of actions in foreign relations, the attention to which has been brought to light by Israeli concerns. A litany of charges raised by Israel illustrates the contentiousness of the PNA's ability to enjoy an international political status of some note. The Agreement makes clear that following the DOP,⁷⁵ the PNA, as distinct from the PLO, "will not have powers and responsibilities in the sphere of foreign relations."⁷⁶ With regard to the conduct of foreign affairs, Article IX(5)(a) indicates that the PNA is that of "an autonomous and not an independent entity." Having said that, there is an implicit understanding that following the precedent set out in the Gaza-Jericho Agreement, if the PNA was to operate with even a modicum of effectiveness, it would have to have "a mechanism...to enable some dealings with regard to specific matters between the Palestinian side and foreign states or international organizations."⁷⁷ Therefore the PLO, not the Palestinian National Council, was to conduct negotiations and sign agreements with states or international organizations.⁷⁸ It was noted that by Israeli officials that the official Palestinian representative in Egypt is designated as a PNA official, a violation of Article VI(2)(a). The PLO representative in Moscow signed a protocol on security cooperation with Russia in the name of the PNA. Also, the PNA joined the International Airport Council as the PNA, all in violation of Article VI(2)(b). Noted further, Morocco

71. 983 PARL. DEB., H.C. (5th Ser.) 277-9 (1980). See also, Colin Warbrick, *The New British Policy on Recognition of Governments*, 30 INT'L & COMP. L. Q. 568 (1981).

72. UNITED NATIONS, *supra* note 4.

73. For a discussion and listing of ministers, see *Information on the Palestinian Authority* (visited Oct. 10, 1997) <<http://www.arts.mcgill.ca/MEPP/PDIN/pdpa.html>>.

74. Isr.-P.L.O., *supra* note 4.

75. *Id.*

76. *Id.*, at Art VI(2)(a).

77. Joel Singer, *The West Bank and Gaza Strip: Phase Two*, JUSTICE, NO. 7, at 5, 13 (1995).

78. Isr.-P.L.O., *supra* note 4 at Art. IX(5)(b).

has a "liaison" office in Gaza, a violation of Article VI(2)(c).⁷⁹

The distinction between the PLO and the PNA is an important one as set out in the Agreement. The PLO became the public representative of the Palestinians in the mid-1960s and received the accolades forthcoming for any movement towards satisfaction for the demand of self-determination. But with any public body that enjoys juridical credibility, there is the concomitant obligation to assume responsibility for its collective behavior. In the case of the PLO, there is the haunting historical corpus of terrorism, acts for which the body might be held accountable after statehood if it becomes the constitutional government. The PNA, however, has been designated as the authorized governing body, regardless of how transparent the transition appears. To supplement Israeli authority, specifically to ban the PNA and the PLO from conducting foreign relations,⁸⁰ Israel legislated a formal exclusion of Palestinian sources in Jerusalem to conduct foreign affairs.

B. Economic

The interest here is to provide a cursory examination of a spectrum of states and international organizations that maintain commercial contact with the PNA, through the PLO, or otherwise as an indicator of a phenomenon. More concentrated efforts along this dimension have already been directed⁸¹ and hence will not be further examined.

It is instructive to follow such developments in the area of economic relations and statements that emanate from such meetings as took place on February 18, 1998 at the head offices of the Palestinian Ministry of International Cooperation in the al-Ram section of northern Jerusalem. At this meeting were representatives from the European Union, Israel, Norway, the PNA, the United States, and the World Bank. The group met to

⁷⁹ *Middle East Peace Process: Hearing Before House Comm. on Int'l Rels.*, 104th Cong. 288-289 (1996).

⁸⁰ Israel. Law Implementing the Agreement on the Gaza Strip and the Jericho Area (Restriction on Activity), 1994, S.H. 85-6 (popularly known as "The Orient House Law"). Orient House is the main office of Faysal al-Husseini, appointed by PNA Chairman Yasir Arafat as minister without portfolio to head Jerusalem Affairs. A number of official PNA functions, to include diplomatic, are conducted at the Orient House. See generally, Nadav Shragai, *Security Course: Palestinian Institutions Activity Intended to Undermine Israel's Sovereignty in Jerusalem*, HA'ARETZ (Tel Aviv), Feb. 20, 1997, at A4.

⁸¹ David Fidler, *Peace Through Trade? Developments in Palestinian Trade Law During the Peace Process*, 39 VA. J. INT'L L. 155 (1998); Keith Molkner, *Legal and Structural Hurdles to Achieving Political Stability and Economic Development in the Palestinian Territories*, 19 FORDHAM INT'L L.J. 1419 (1996). The most thorough listing of donor assistance can be found in quarterly monitoring reports of the PNA's Ministry of Planning and International Cooperation (MOPIC) which maintains its own website. See Palestinian National Authority Official Website, <http://www.pna.net/reports/aid_reports/150698/150698.htm> (last modified March 31, 1998).

work out difficulties between Israel and the PNA that were standing in the way of further economic development in those areas on the West Bank and Gaza controlled by the PNA. Perhaps more important was the announcement of a planned signing of two protocols by France and the PNA worth \$20 million. It was pointed out by the Palestinian representative that the "protocols fall within the framework of French action to bolster the establishment of the Palestinian state...France does not sign such agreements except with fully independent countries; Palestine is the only country [sic.] that is not totally independent with whom France has signed this kind of agreement."⁸²

1. Australia

Australia, which recognizes the Palestinians' right to self-determination and has publicly noted its expectation of the emergence of a Palestinian states has also provided funds for the development of "the rural sector in the Occupied Palestinian Territories."⁸³

2. Canada

Canada has been active in establishing free trade agreements with the United States and Israel⁸⁴ and has begun to enter into a trade relationship with the PNA.⁸⁵ In February 1997, the Canadian Minister of International Trade set into motion a commercial and investment effort.⁸⁶

⁸². Al-Ayyam (Ramallah) (Internet version), Feb. 19, 1998. (In Arabic as translated by FBIS/WNC).

⁸³. *Aid for Occupied Palestinian Territories*, AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT. MEDIA RELEASES & HOT TOPICS, Dec. 5, 1997, at AA72, reprinted in <<http://www.ausaid.gov.au/media/resleas/ab72.html>>.

⁸⁴. For the text of the Canadian-Israel Free Trade Agreement (CIFTA) see <<http://www.dfait-maeci.gc.ca/ENGLISH/GEO/AFRICA/cda-isr.htm>>; See also <<http://www.dfait-maeci.gc.ca/english/news/newletr/disweek/1997/fev24.htm>>.

⁸⁵. Dept. of Foreign Aff. and Int'l Trade, *Eggleton Introduces Legislation to Implement Canada-Israel Free Trade Agreement* 180 (Oct. 3, 1996) <http://www.dfait-maeci.gc.ca/english/news/press_~1/96_press/96_180E.HTM> [hereinafter CIFTA]. Mr. Art Eggleton, Canada's Minister for International Trade, has remarked that CIFTA would serve as a sort of platform "to extend benefits to goods produced in the West Bank and Gaza." He went on to declare: "We are examining ways to best achieve this in co-operation with the Palestinian Authority." Art Eggleton, *Notes for an Address by the Honourable Art Eggleton, Minister for International Trade, on the Occasion of the Signing of the Canada-Israel Free Trade Agreement*, (July 31, 1996), in Randall Hofley and Jason Gudovsky, *The Canada-Israel Free Trade Agreement: Leveling the Playing Field*, 31 J. WORLD TRADE L. 153, 154, n7.

⁸⁶. Dept. Foreign Aff. & Int'l Trade, *Eggleton Leads Business Delegation to Israel and the West Bank* 31 (Feb. 17, 1997) <http://dfait-maeci.gc.ca/english/news/press_releases/97_press/97_031E.HTM>. The direction was indicated by an intent to sign a Memorandum of Understanding or Protocol with the PLO, but on behalf of the PNA, to achieve free trade as well as closer Canada-Palestinian trade and investment. See

3. China

The Chinese government has discussed the possibility of extending a \$12 million loan for the construction of a Chinese medical facility on both the West Bank and in Gaza.⁸⁷

4. European Union (EU)

The EU relationship with the Palestinians,⁸⁸ it can be said, began in 1971 when it contributed to the operation of the United Nations Relief and Works Agency for Palestine refugees (UNRWA). In 1980, the EU released the Venice Declaration⁸⁹ expressing support for the general principle of Palestinian self-determination. The EU has been the single largest financial contributor to the PNA for development projects with contributions of just under 1.7 billion ECU (3.4 DM billion) between 1993 and 1997 for the establishment of democratic institutions.⁹⁰ The EU clearly sees a role to play in the economic development of those areas under the jurisdiction of the PNA.⁹¹ The EU, in its attempt to foster regional stability, is actively supporting the peace process.⁹² There is also a realistic understanding that in order for the EU to play the constructive role so eagerly sought, it would have to take Israeli concerns into consideration. In this case, an anti-terrorist stance would occur. To this end, the EU

<<http://www.dfait-maeci.gc.ca/english/geo/africa/delegation-e.htm>>. For more extensive treatment see CIDA <<http://www.acdi-cida.gc.ca/index.htm>>.

87. Al-Ayyam (Ramallah) (Feb. 24, 1998) <<http://www.ayyam.com/index.html>>.

88. European Union, *The European Union and the Palestinians* (1995) IP/96/406 <<http://www.ce.pt/textos/IP6406/html>>.

89. *A Very Successful European Summit Meeting*, EUROPEAN COMMUNITY NEWS, No. 21, June 16, 1980.

90. Andreas Middel, *Europa dringt auf mehr Einfluss im Nahen Osten*, in DIE WELT (Internet Version), (Jan. 20, 1998). See <<http://www.welt.de/archiv/1998/01/20/0120au02.htm>>. To its credit, the EU has supplied 50 percent of the development aid to the Palestinian territories and has been the recipient of 50 percent of Israel's exports. For a general discussion of a development aid program to the Palestinians see <<http://www.arts.mcgill.ca/MEPP/PDIN/pdoverview.html>> see also <<http://europa.eu.int/en/comm/dg16/en/cisjordan.htm>>.

91. Proposal for a Council Decision Concerning the Conclusion by the European Community of a Euro-Mediterranean Interim Association Agreement on Trade and Cooperation Between the European Community and the PLO for the Benefit of the Palestinian Authority of the West Bank and the Gaza Strip, COM(97) 51 final.

92. See generally, *Communication From the Commission to Council and Parliament on Future European Union Economic Assistance to the West Bank and the Gaza Strip*, <<http://europa.eu.int/en/comm/dg16/en/cisjordan.htm>>; *Communication from the Commission. The Role of the European Union in the Peace Process and its Future Assistance to the Middle East*, COM/97/0715/FIN (also known as the [Manual] "Marin Memorandum.") This report was followed by a formal visit to the region by EU Comm'n President Jacques Santer during the first week in February 1998. LE SOIR (Brussels), Feb. 19, 1998, at 7.

maintains a "special advisor" to the PNA.⁹³ Somewhat related is the EU's financial support for the Ex-Detainees Rehabilitation Program, an effort to reintegrate Palestinians who have spent at least a year in an Israeli prison.⁹⁴

5. Finland

In January 1996, Finland announced it would provide the PNA, over some undetermined period of time, economic assistance totaling 10 million Finnish Marks (\$10 million US).⁹⁵

6. Germany

Germany was the first state following the signing of the DOP to open a Representative Office in Jericho with the PNA. Its interest in the peace process was also a motivation in providing substantial financial assistance to various sectors of the Palestinian economy.⁹⁶

7. Great Britain

British assistance represents self-proclaimed contributions to multi-lateral programs, underwriting the EU's efforts and subsidizing UNRWA's assistance to Palestinian refugees. Beginning in 1994, British bilateral aid was proffered and increased during the following year.⁹⁷

8. Japan

In October 1997 Japan agreed with the PNA to provide the latter with \$17.5 million for education in the Gaza Strip. The importance of the grant is that it added to the total of \$312 million since 1994 and at a time when the Japanese foreign aid budget planned cuts up to ten percent.⁹⁸

9. Jordan

Jordan has gone so far as to establish formal trade relations with the

⁹³. LA LIBRE BELGIQUE (Brussels), Feb. 11, 1998, at 6.

⁹⁴. Alessandra Antonelli, *From Jail to a New Life*, PALESTINE REPT., Mar. 13, 1998. See also, <<http://www.birzeit.edu/jmcc/weekly/980313pr.html>>. Financial support for this effort is also provided by Italy and Switzerland.

⁹⁵. Ministry for Foreign Affairs of Finland. Press Releases: *Finland Supports the Middle East Peace Process and Doubles Economic Aid for the Palestinians*, Jan. 9, 1996. See also <<http://www.mofile.fi/fennia/um/803/htm>>.

⁹⁶. Communication from Allam Jayyusi, Project Manager of the Aid Coordination Department, Palestinian Ministry of Planning and International Cooperation supported by the German Technical Cooperation Agency (GTZ), on the West Bank and Gaza (Mar. 10, 1998) <allam@nmopic.pna.net>.

⁹⁷. Foreign & Commonwealth Office London (visited Jan. 1, 1996) <http://www.fco.gov.uk/current/1996/jan/09/hanley_statement_aid-to-palestinians.txt>

⁹⁸. AL QUDS (Jerusalem), Oct. 27, 1997 at 1, 19.

PNA in an attempt to keep its historic commitment to the Palestinians.⁹⁹

10. The Netherlands

The Netherlands' interest in Palestinian politics and economic development is in support of the peace process. There is a strong financial contribution for the construction of an airfield and a seaport in the Gaza Strip, amounting to about 40 million guilders in 1997.¹⁰⁰

11. South Africa

The relationship of the South African Government today to the PNA is to some degree a result of the regime's pedigree. Since the ruling administration is an outgrowth of the efforts of the African National Congress (ANC), a fellow national liberation movement to the PLO,¹⁰¹ there is an affinity towards the Palestinians and their political efforts which appear to mirror those of the ANC.

12. Spain

During 1996, Spain provided \$119,048 (US) in humanitarian assistance to the PNA Ministry of Health. The money was made available for local purchase by Palestinians in need of pharmaceuticals.¹⁰²

13. Sweden

For an 18 month period during 1995/96, the Swedish International Development Cooperation Agency (SIDA) allocated 216,600 MSEK and 120 MSEK for 1997 for such varied activities as children's health, health rehabilitation, and police training.¹⁰³ SIDA along with the Institute for Further Education of Journalists in Sweden (FOJO) also supports financially The Birzeit University Journalist Training Project.¹⁰⁴

99. Treaty of Cooperation on Trade, 1995, Jordan-Palestine National Authority [Amman, 1995]. (Copy on file with the author); Hashemite Kingdom of Jordan. Revised Text of the Treaty of Cooperation on Trade Between the Kingdom of Jordan and the Palestine National Authority [Amman, 1995]. (Copy on file with the author); Hashemite Kingdom of Jordan. Joint Jordanian-Palestinian Committee. Report [Amman, 1995]. (Copy on file with the author).

100. NRG HANDELSBLAD (Rotterdam), Feb. 6, 1998, at 4.

101. *Mandela Calls for International Support to Restructure the ANC*, JERUSALEM POST, Feb. 28, 1990, at 1; *See also*, Asher Walfish, *ANC Visitors Stress Ties with the PLO*, JERUSALEM POST, Jan. 25, 1993, at 12. *See also*, AYRE ODED, *AFRICA, THE PLO AND ISRAEL* (1990) [Leonard Davis Inst. for Int'l Rels., Pol'y Stud. No. 37].

102. Donor Humanitarian Assistance Database, <<http://www.reliefweb.int/fts/donor-db/spa96gaw.html>>.

103. <<http://www.sida.se/eng/bistand/sidaworld/gaza/numbers.html>>.

104. <<http://home1.swipnet.se/~w-10358/JLD/Birzeit.html>>.

14. United States

The United States has appreciated throughout the peace process the importance of the West Bank to any Palestinian aspiration for political self-control. During the administration of George Bush, a presidential determination was made to allocate funds for economic development of the area, presumably to aid the bulk of the residents in the area which were Palestinian.¹⁰⁵ In an attempt to insure compliance with the Oslo agreement, particularly the demand that the PNA crack down on terrorist activity, amend its National Covenant, and negotiate in good faith, the Congress passed legislation providing the Palestinians with \$100 million of annual aid.¹⁰⁶ In September 1994, the United States signed a treaty with the PLO for the encouragement of investments which it was believed would strengthen the Palestinian economy permitting greater autonomy to commit to a peaceful resolution of conflict.¹⁰⁷ Since the United States was signatory to a free trade agreement with Israel, goods imported from Palestinian autonomous areas were at a commercial price disadvantage with Israeli-produced goods. To offset this advantage, presumably as an overall diplomatic package, the United States, in April 1995, applied its General System of Preferences (GSP) to cover Palestinian goods.¹⁰⁸ To supplement this action and firm up relations with the Palestinians, President Clinton signed H.R. 3074¹⁰⁹ into law on October 2, 1996 but it was not promulgated until November.¹¹⁰

15. World Bank

On October 18-19, 1995, in Paris, representatives of the PNA, Israel, and the World Bank, along with 29 donor states and international organizations, convened for the expressed purpose of developing an assistance

105. Pres. Determination No. 89-22, 54 Fed Reg. 34,475 (1989).

106. Middle East Peace Facilitation Act (MEDPFAO OF 1993, Pub. L. No. 103-125, 107 Stat. 1309 (terms extended by Pub. L. No. 103-166, 107 Stat. 1978).

107. See T.I.F. 212 (1997); Hein's No. KAV 4032. See also, *Executive Briefing*, 18 MIDDLE EAST EXEC. REPTS. 4 (1995); S. Miles, *Gaza: Foreign Investment: OPIC Loan Opens Up Investment Opportunities* and, 2 MIDDLE EAST COM. L. REV. A19 (1996).

108. Public Papers of President William J. Clinton, 1995 at 395 (1996); Proclamation No. 6778, 60 Fed. Reg. 15, 455 (1995). See also, H. REP. NO. 104-495 (1996) reprinted in 1996 U.S.C.C.A.N. 3485 and S. REP. 104-270 (1996); *Economic Development and U.S. Assistance in Gaza/Jericho: Hearing Before the Subcomm. on Near East and South Asian Aff. of the Sen. Comm. on For. Rels.*, 104th Cong., 1st Sess. (1995). The EU has a preferential trade agreement with the PNA covering the West Bank and Gaza. Israel and the PNA signed an Economic Protocol in April 1994 in Paris covering trade arrangements between the two.

109. Pub. L. No. 104-234, 110 Stat. 3058 amending the United States-Israel Free Trade Agreement Implementation Act of 1985 to provide the President with additional proclamation authority with respect to articles of the West Bank or Gaza Strip or a qualifying industrial zone, 19 U.S.C. 2112, n.1.

110. Proclamation No. 6955, 61 Fed Reg. 58,761-58,765 (1996).

program for the Palestinian territories.¹¹¹ The meeting was a follow-up to the Taba Agreement, reached a few weeks previously following progress in the peace process.¹¹²

The World Bank's Consultative Group decided at a meeting in mid-December 1997 in Paris to pledge \$900 million in grants and loan guarantees for the first of a three-year development plan.¹¹³

IV. CONCLUSION

The evolutionary nature of international politics has included the emergence of Palestine as a non-state actor due to its importance in a major geographical region has given credence to the de facto acceptance of a structural change in the international political system that is in the process of being defined. In sequence, the political development of Palestine, while not complete enough to satisfy the standard requirement for statehood in international law, has been recognized in more than a courtesy manner by virtue of financial investment, economic venture capital grants, and subtle diplomatic interaction by donor states and international organizations. Recognition of states in the expressed opinion of Hans Kelsen can and often is a political, as distinguished from a legal, act but in this instance "pre-supposes the legal existence of a state or government to be recognized"¹¹⁴ while simultaneously having no legal effect nor does the act in and of itself create an obligation on the part of either the recognizing state or government or the recipient of its political largess. On a higher plane, the observed practice of some states acting as if in formal compliance with international norms adds a new dimension to our understanding of the Westphalian system, assuming it still exists. It may be a more cogent assertion to claim that there has been a fundamental reconfiguration of the system with respect to a model of rule.

It might be said that the more staid understanding of the rules and norms of public international law was at one time and, until recently, a fixture of western-dominated state practice. The contemporary era has become global not only in presence but also in function. First politically, and eventually economically as private commercial enterprise operates in the form of multinational corporations and transnational actors in the in-

111. See generally Torunn Laugen, *The World Bank and the UN in the Occupied Territories*, 29 SECURITY DIALOGUE 63 (1998) and Barbara Balaj, *Nouvelles approches pour le développement économique et social de la Cisjordanie et de la bande de Gaza*, 62 POLITIQUE ÉTRANGÈRE 335 (1997).

112. THE WORLD BANK GROUP. PRESS RELEASE, *International Community Reaffirms Support For Palestinian Development*, (Dec. 15, 1997). <<http://worldbank.org/html/extdr/extme.1215pr.htm>>.

113. *The Jerus*, TIMES, Jan. 23, 1998, at 10.

114. Hans Kelsen, *Recognition in International Law: Theoretical Observations*, 35 AM. J. INT'L L. 605 (1941).

ternational economic system.

The important issue here with regard to Palestine is that unlike the mandatory period in which internecine family conflict and a general lack of social and political cohesion set forth the conditions in which the Palestinians confronted a western, socially-based competitor for territory, the Zionists, the political cohesion now exhibited is visibly accepted by a broad extent of the Palestinian community. Having failed to achieve their political objectives in the past, the Palestinians have now organized a western political dimension, first as the PLO and now in the form of the PNA, with support from major western states all who ostensibly seek to stabilize the Middle East and reap some economic benefit therefrom. In order to accomplish this, it would be necessary to reduce one source of contention, the Palestinian demand for political self-determination while simultaneously providing the necessary satisfaction for their nemesis, Israel and its primary objective, its national security.

The current peace process has done much to move an unorganized and unaffiliated people to real political status, to autonomy, and in time what appears to be a sovereign entity. Both the current status of the PNA and the process that brought the conditions of its operation into evidence has lent to this organization some sort of legal personality. If international personality can be denied by virtue of non-recognition, does the obverse portend furtherance of an anomaly? I suggest that the Palestinian case is one in the making for study of the relationship of political dynamics related to the inertia of international legal development.

