

INTERNATIONAL COURT OF JUSTICE

**REQUEST BY THE UNITED NATIONS GENERAL ASSEMBLY
FOR AN ADVISORY OPINION ON THE QUESTION OF THE
"LEGAL CONSEQUENCES OF THE CONSTRUCTION OF A WALL IN
THE OCCUPIED PALESTINIAN TERRITORY"**

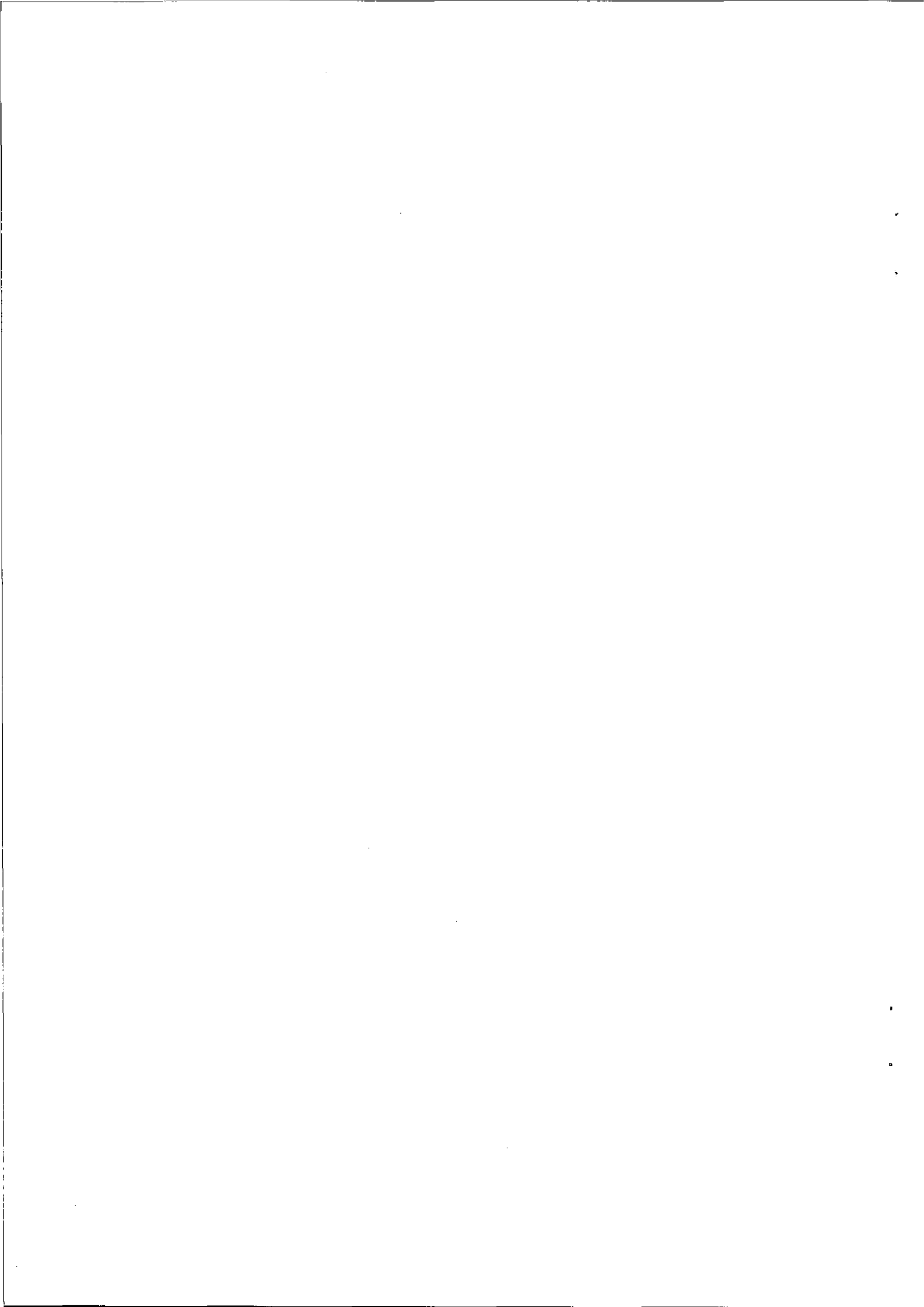
**WRITTEN STATEMENT OF
THE UNITED STATES OF AMERICA**

30 JANUARY 2004



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CHAPTER I

INTRODUCTION

1.1 In its Order dated 19 December 2003, this Court invited States to submit written statements on the question of the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. The United States submits this Statement to apprise the Court of the Middle East peace process for which the United States shares responsibility and to identify concerns it has regarding the Court's consideration of the General Assembly's request for an advisory opinion.

1.2 The United States is a co-sponsor, along with the Russian Federation, of the Middle East peace process initiated at the 1991 Madrid Conference. Since 2002, the United States, together with the Russian Federation, the European Union and the United Nations Secretary-General, has worked as a member of the Quartet to promote a peaceful, negotiated resolution of the Israeli-Palestinian conflict within the framework of the Madrid Conference principles. The goal of this process is a comprehensive peace that will include not only Israel and a new Palestinian State, but also Lebanon and Syria.

1.3 Both the United Nations General Assembly and the United Nations Security Council have endorsed the Quartet's "Performance-based Road Map to a Permanent Two-State Solution to the Israel-Palestinian Conflict" (the "Roadmap")¹. The General Assembly and Security Council have also called upon the Israelis and Palestinians to fulfill their responsibilities under the Roadmap in cooperation with the Quartet to achieve the vision of two States living side by side in peace and security. Thus, the United States, as a co-sponsor of the Madrid

¹ A Performance-based Road Map to a Permanent Two-State Solution to the Israel-Palestinian Conflict, S/2003/529, annex, Annex 1.

peace process and as a member of the Quartet, has an important role in assisting the efforts to achieve peace between Israelis and Palestinians under relevant United Nations resolutions and previous agreements between the parties.

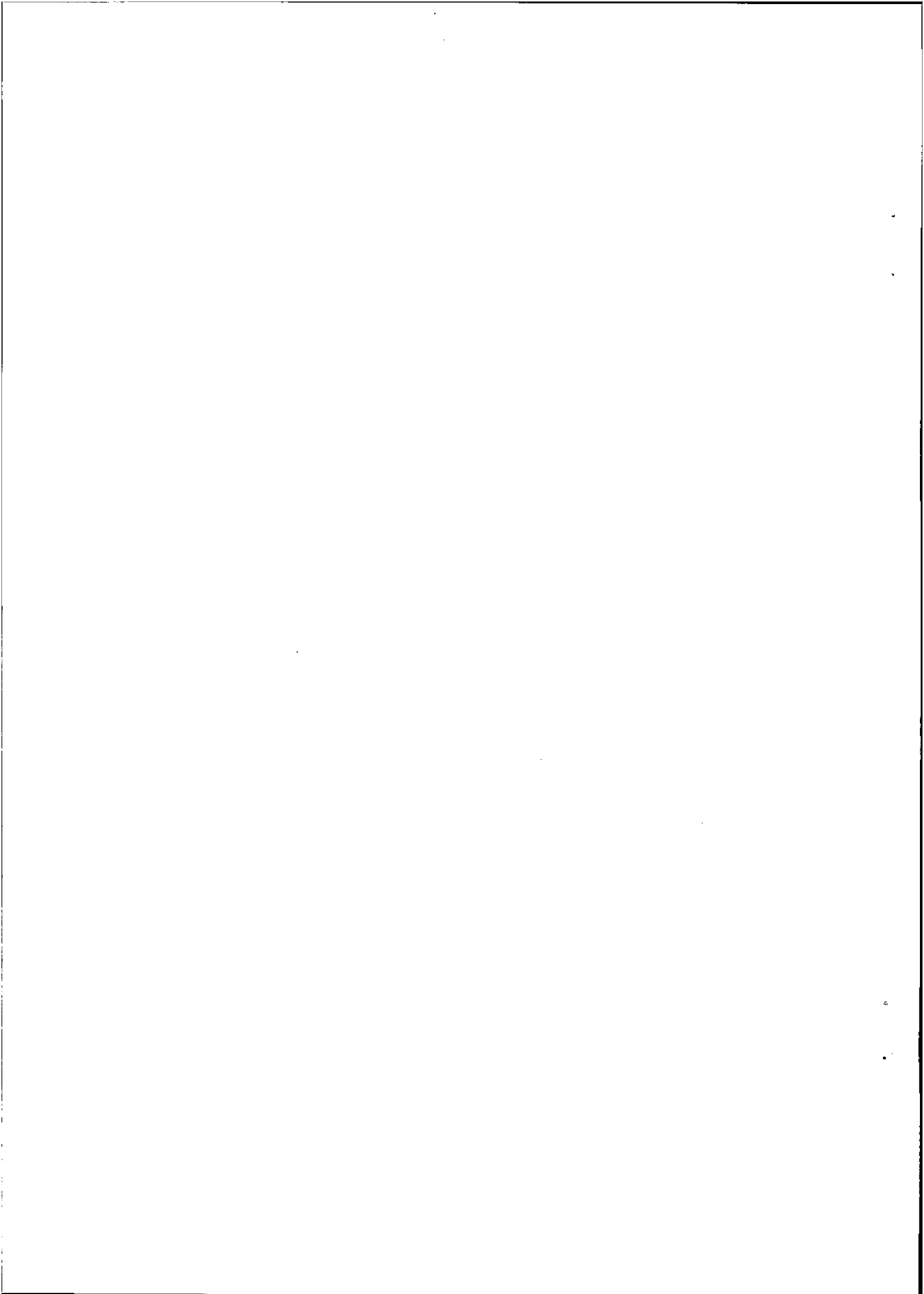
1.4 In light of this role the United States submits this Statement. As made clear in its statement in opposition to the adoption of the referral resolution in the General Assembly, the United States believes that the giving of an advisory opinion in this matter risks undermining the peace process and politicizing the Court. The United States also feels a special responsibility to bring to the Court's attention the essential elements of the Madrid peace process, particularly as it pertains to resolving the Israeli-Palestinian conflict. This Statement therefore initially describes the Roadmap and the negotiating process it embodies (Chapter II: Background). In this context it is possible to evaluate the General Assembly's request and its relationship to the negotiations designed to bring peace to the area.

1.5 The Statement next identifies some of the key factors relevant to the Court's decision whether to provide an advisory opinion (Chapter III: Considerations Relating to the Judicial Propriety of Giving an Advisory Opinion). Because of the manner in which this proceeding has arisen, including the formulation of the question, it is not clear what issues might be engaged in this case. The United States therefore wishes to emphasize that, in deciding whether to address the different issues that may be presented in written and oral submissions, the Court should give due regard to the principle that advisory opinion jurisdiction is not intended as a means of circumventing the rights of States to determine whether to submit their disputes to judicial settlement. As the Court has itself recognized, this principle is important to preserve the independence and sovereign rights of States and to maintain the appropriate judicial character of the Court in an advisory opinion context. The United States believes this principle has

special importance where there is an established framework for addressing disputed issues through a negotiating process.

1.6 Finally, this Statement highlights two key aspects of the Middle East peace process that the United States does not believe the General Assembly's resolution invites the Court to disturb (Chapter IV: Considerations Relating to the Negotiating Process More Generally). First, it is a fundamental principle of this process that the permanent status issues at the core of the Israeli-Palestinian conflict are, by agreement and under the applicable international framework, to be resolved through negotiations by the parties to the dispute. It would be inconsistent with the resolutions of the Security Council and the General Assembly, and create a serious risk to the peace process, if any party unilaterally, or this Court, were to seek to determine the outcome of any of the permanent status issues.

1.7 Second, Israelis and Palestinians must fulfill their security responsibilities, separately and in coordination and cooperation with one another. These responsibilities are spelled out in their prior agreements. All parties and international organizations must continue to emphasize the responsibility of both Israelis and Palestinians to fulfill their security undertakings in order for the peace process to succeed.



CHAPTER II
BACKGROUND

A. The Referral Resolution

2.1 By resolution ES-10/14 of 8 December 2003, the United Nations General Assembly requested an advisory opinion from this Court on the following question:

What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions²?

In the same resolution (“the referral resolution”), the United Nations General Assembly

Affirm[ed] the necessity of ending the [Israeli-Palestinian] conflict on the basis of the two-State solution of Israel and Palestine living side by side in peace and security based on the Armistice Line of 1949, in accordance with relevant Security Council and General Assembly resolutions³.

² A/RES/ES-10/14 (2003).

³ *Id.*



In this connection, the referral resolution reaffirmed General Assembly resolution ES-10/13 of 21 October 2003, which

Calls upon both parties to fulfil their obligations under relevant provisions of the road map, the Palestinian Authority to undertake visible efforts on the ground to arrest, disrupt and restrain individuals and groups conducting and planning violent attacks, and the Government of Israel to take no actions undermining trust, including deportations and attacks on civilians and extrajudicial killings⁴.

2.2 The referral resolution also recalled United Nations Security Council resolution 1515 (2003) of 19 November 2003, in which the Security Council

1. *Endorses* the Quartet Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (S/2003/529);
[and]

2. *Calls on* the parties to fulfil their obligations under the Roadmap in cooperation with the Quartet and to achieve the vision of two States living side by side in peace and security⁵.

2.3 Thus, the framework endorsed and relied upon by both the General Assembly and the Security Council for resolving the Israeli-Palestinian conflict is the Roadmap, under the auspices of the Quartet. Most importantly for this proceeding, the General Assembly's decision to request an advisory opinion from the Court must be understood within the context of its own

⁴ A/RES/ES-10/13 (2003), para. 2 (citing the Roadmap, S/2003/529, annex).

⁵ S/RES/1515 (2003).

affirmation of the essential elements of the peace process, including the centrality of the negotiating process within the framework of the Roadmap.

B. The Roadmap

2.4 The Quartet's Roadmap is a phased diplomatic framework for achieving a final and comprehensive settlement of the Israeli-Palestinian conflict. Its fulfillment 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 neighbors. As stated in the Roadmap

The settlement will resolve the Israel-Palestinian conflict, and end the occupation that began in 1967, based on the foundations of the Madrid Conference, the principle of land for peace, UNSCRs 242, 338 and 1397, agreements previously reached by the parties, and the initiative of Saudi Crown Prince Abdullah – endorsed by the Beirut Arab League Summit – calling for acceptance of Israel as a neighbor living in peace and security, in the context of a comprehensive settlement. This initiative is a vital element of international efforts to promote a comprehensive peace on all tracks, including the Syrian-Israeli and Lebanese-Israeli tracks⁶.

2.5 Israeli and Palestinian authorities have both accepted and committed themselves to the Roadmap. As the Prime Minister of the Palestinian Authority stated on 4 June 2003:

A new opportunity for peace exists, an opportunity based upon President Bush's vision

⁶ Roadmap at 2, S/2003/529, annex, Annex 1.

and the Quartet's road map, which we have accepted without any reservations. Our goal is two states, Israel and Palestine, living side-by-side, in peace and security. The process is the one of direct negotiations to end the Israeli-Palestinian conflict, and to resolve all the permanent status issues, and end the occupation that began in 1967, under which Palestinians have suffered so much. At the same time, we do not ignore the suffering of the Jews throughout history. It is time to bring all this suffering to an end. Just as Israel must meet its responsibilities, we, the Palestinians, will fulfill our obligations for this endeavor to succeed. We are ready to do our part⁷.

The Prime Minister of Israel echoed similar sentiments on the same day:

Israel, like others, has lent its strong support for President Bush's vision expressed on June 24, 2002, of two states, Israel and a Palestinian state, living side-by-side in peace and security. The government and people of Israel welcome the opportunity to renew direct negotiations according to the steps of the road map as adopted by the Israeli government to achieve this vision. It is in Israel's interest not to govern the Palestinians, but for the Palestinians to govern themselves in their own state. A democratic Palestinian state, fully at peace with

⁷ Remarks of President Bush, His Majesty King Abdullah of Jordan, Prime Minister Sharon of Israel, and Prime Minister Abbas of the Palestinian Authority, 4 June 2003, *available at* <http://www.whitehouse.gov/news/releases/2003/06/20030604-1.html>, Annex 2.

Israel, will promote the long-term security and well-being of Israel as a Jewish state⁸.

2.6 As stated by Israeli and Palestinian leaders, the essence of the Roadmap is a negotiating process between Israelis and Palestinians on the basis of agreements between the parties and principles set out in previous United Nations Security Council resolutions.

C. The Negotiating Process

2.7 For the Roadmap to succeed, Israelis and Palestinians must conduct good faith negotiations to resolve the permanent status issues that lie at the heart of their fifty-year conflict. This negotiating process derives from resolutions of the United Nations Security Council and prior agreements of the parties.

2.8 In resolution 242 (1967) of 22 November 1967, the Security Council, *inter alia*,

Affirm[ed] that the fulfilment of [United Nations] Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

(i) Withdrawal of Israeli armed forces from territories occupied in the recent conflict; [and]

(ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political

⁸ *Id*

independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force⁹.

2.9 In resolution 338 (1973) of 22 October 1973, the Security Council

2. *Call[ed] upon* the parties concerned to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all of its parts; [and]

3. *Decide[d]* that, immediately and concurrently with the cease-fire, negotiations shall start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East¹⁰.

2.10 Egypt and Israel successfully concluded a peace agreement on 26 March 1979, on the basis of this negotiating framework. As stated in the Preamble, they did so

Convinced of the urgent necessity of the establishment of a just, comprehensive and lasting peace in the Middle East in accordance with Security Council Resolutions 242 and 338¹¹.

2.11 Limited progress was made to broaden this success to include other parties until the United States and the Soviet Union convened a Middle East Peace Conference in Madrid in

⁹ S/RES/242 (1967), para. 1.

¹⁰ S/RES/338 (1973).

¹¹ Treaty of Peace, 26 Mar. 1979, Egypt-Israel, 1136 U.N.T.S. 115.

1991. Here, for the first time, Israelis, Palestinians, Jordanians, Lebanese, Syrians and others from the region joined with the common objective of a comprehensive peace. In their invitation, the United States and the Soviet Union as co-sponsors stated that they were

prepared to assist the parties to achieve a just, lasting and comprehensive peace settlement, through direct negotiations along two tracks, between Israel and the Arab states, and between Israel and the Palestinians, based on United Nations Security Council Resolutions 242 and 338¹².

2.12 Regarding the Israeli-Palestinian conflict, the invitation proposed a phased negotiating process, beginning with talks on interim self-government arrangements and culminating with negotiations on permanent status. As stated in the invitation

These permanent status negotiations, and the negotiations between Israel and the Arab states, will take place on the basis of resolutions 242 and 338¹³.

2.13 On 13 September 1993, Israel and the PLO concluded a Declaration of Principles on Interim Self-Government Arrangements (the "DOP")¹⁴, witnessed by the United States and the Russian Federation. The DOP set out a framework for Israeli-Palestinian negotiations envisioned at the Madrid conference, starting with the creation of a "Palestinian Interim Self-Government Authority". That step was then to be followed

¹² Invitation, 18 Oct. 1991, Annex 3.

¹³ *Id.*

¹⁴ Declaration of Principles on Interim Self-Government Arrangements, A/48/486, S/26560 (1993), annex.

by the negotiated solution to permanent status that “will lead to the implementation of Security Council resolutions 242 (1967) and 338 (1973)”¹⁵. Regarding permanent status, the DOP stated that

It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest¹⁶.

2.14 Israel and the PLO subsequently concluded a large number of specific agreements relating to the creation and acquisition of responsibilities by the Palestinian interim authority (the “Palestinian Authority” or “PA”), which was first established in Gaza in 1994. Their most significant agreement was the “Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip” (the “Interim Agreement”)¹⁷, signed in Washington, D.C. on 28 September 1995, where it was witnessed by the co-sponsors and the European Union, as well as Egypt, Jordan and Norway. Like the DOP, the Interim Agreement specified that the negotiations on permanent status will lead to the implementation of Security Council resolutions 242 and 338. And, like the DOP, the Interim Agreement stated that

It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other

¹⁵ *Id.*, art. I.

¹⁶ *Id.*, art. V.

¹⁷ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, A/51/889, S/1997/357, annex.

neighbors, and other issues of common interest¹⁸.

In parallel, the Interim Agreement also provided that

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 negotiations¹⁹.

2.15 This provision is reaffirmed in subsequent agreements between the parties²⁰. It complements and reinforces the parties' commitment to resolve each of the permanent status issues through negotiation.

2.16 The Interim Agreement also elaborated a detailed arrangement for maintaining security in the West Bank and Gaza Strip during the interim period. It provides for the creation of a Palestinian police force, and stipulates how that force in conjunction with Israeli security forces and other measures was intended to ensure tranquility as civil and security jurisdiction was transferred by Israel to the newly created Palestinian Authority. The arrangements for cooperation and coordination in the West Bank are particularly complex, given the mixed population of Israelis and Palestinians there and the agreement of the parties that the issue of the Israeli settlements was left to be resolved in the permanent status negotiations. Unfortunately, many of the difficulties that have arisen in the efforts to resolve the permanent status issues are a result of

¹⁸ *Id.*, art. XXXI(5).

¹⁹ *Id.*, art. XXXI(7)

²⁰ See Wye River Memorandum, 23 Oct. 1998, 37 I.L.M. 1251; Sharm El-Sheikh Memorandum, 4 Sept. 1999, 38 I.L.M. 1465.

continued violence in the area and, in recent years, the absence of effective cooperation between the parties in suppressing it²¹.

2.17 In 2002, the Quartet was formed to assist the parties in overcoming the deep distrust that had developed between them and provide support for cooperative security efforts and a resumption of negotiations. The United Nations Security Council then adopted resolution 1397 (2002) of 12 March 2002. That resolution

Affirm[ed] a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders, [and]

Welcom[ed] and encourag[ed] the diplomatic efforts of special envoys from the United States of America, the Russian Federation, the European Union and the United Nations Special Coordinator and others, to bring about a comprehensive, just and lasting peace in the Middle East²².

2.18 In May of 2003, the Quartet obtained the agreement of the Palestinians and Israelis to work together under the auspices of the Quartet on the basis of the Quartet's Roadmap. In November of 2003, the United Nations Security Council issued resolution 1515, which endorses the Roadmap and calls on the parties to fulfill their obligations under it. The Roadmap

²¹ Article XXI of the Interim Agreement provides that "Any difference relating to the application of this Agreement shall be referred to the appropriate coordination and cooperation mechanism established under this Agreement". Differences pertaining to the interim period that are not resolved by that mechanism are to be settled through the Parties' Liaison Committee. Failing that, Article XXI provides that the Parties may agree to refer the dispute to a conciliation or arbitration mechanism.

²² S/RES/1397 (2002).

incorporates by reference the previous Israeli-Palestinian agreements and relevant United Nations Security Council resolutions. It provides a concrete structure for the parties to reach a two-State solution through a negotiated resolution of the permanent status issues.

2.19 As it states, the Roadmap is intended to lead “to a final, permanent status resolution in 2005, including on borders, Jerusalem, refugees, settlements”²³. In the third and final phase, the

Parties [will] reach [a] final and comprehensive permanent status agreement that ends the Israel-Palestinian conflict in 2005, through a settlement negotiated between the parties based on UNSCR 242, 338, and 1397, that ends the occupation that began in 1967, and includes an agreed, just, fair, and realistic solution to the refugee issue, and a negotiated resolution on the status of Jerusalem that takes into account the political and religious concerns of both sides, and protects the religious interests of Jews, Christians, and Muslims worldwide, and fulfills the vision of two states, Israel and sovereign, independent, democratic and viable Palestine, living side-by-side in peace and security²⁴.

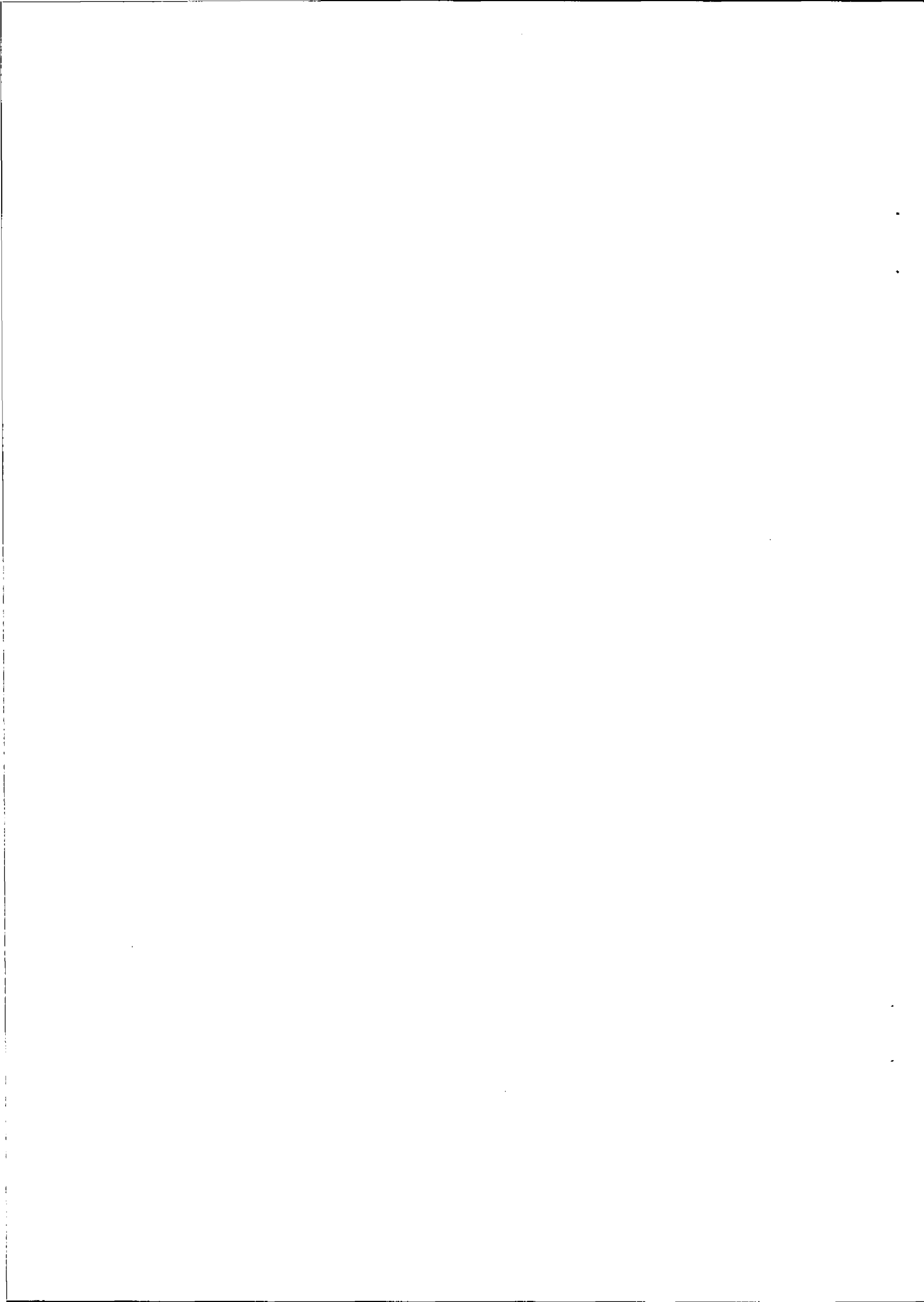
2.20 Movement through the phases of the Roadmap is entrusted to the consensus judgment of the Quartet, based upon their assessment of whether conditions are appropriate to proceed, taking into account performance of both parties. Sustained and high-level efforts continue by the United States, along with the other members of the Quartet, to promote

²³ Roadmap at 7, S/2003/529, annex, Annex 1.

²⁴ *Id.* at 8.

progress by the parties through these phases so the goal of a two-State solution can be achieved.

2.21 In addressing the General Assembly's request in this case, the Court should be guided by the overriding consideration that the Quartet-led Roadmap is the method for bringing peace between Israelis and Palestinians that has been endorsed by both the General Assembly and the Security Council. The Court therefore should avoid any actions that would interfere with or be inconsistent with the Roadmap.



CHAPTER III

CONSIDERATIONS RELATING TO THE JUDICIAL PROPRIETY OF GIVING AN ADVISORY OPINION

3.1 The United States voted against adoption of the referral resolution. In its statement in the General Assembly concerning the resolution, the United States said in part:

The international community has long recognized that resolution of the [Israeli-Palestinian] conflict must be through negotiated settlement, as called for in Security Council resolutions 242 (1967) and 338 (1973). That was spelled out clearly to the parties in the terms of reference of the Madrid Peace Conference in 1991. Involving the International Court of Justice in this conflict is inconsistent with that approach and could actually delay a two-State solution and negatively impact road map implementation. Furthermore, referral of this issue to the International Court of Justice risks politicizing the Court. It will not advance the Court's ability to contribute to global security, nor will it advance the prospects of peace²⁵.

²⁵ A/ES-10/PV.23 (1993), at 19. A number of other delegations did not support the resolution. *See, e.g., id.* at 15 (Italy on behalf of the European Union, the Acceding Countries Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, the Associated Countries Bulgaria and Romania, the countries of the Stabilization and Association Process and potential candidates Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Serbia and Montenegro, as well as the European Fair Trade Association countries Iceland and Norway, members of the European Economic Area) ("[T]he proposed request for an advisory opinion from the



The United States continues to believe that referral of this dispute to the Court is inappropriate and that this referral will not advance but may impede efforts to implement the Roadmap and to achieve a two-state solution.

3.2 Despite these dangers, the resolution was adopted by the General Assembly by 90 votes to 8, with 74 abstentions (with 19 Member States not participating). In responding to the General Assembly's request, the Court will now need to decide whether it has jurisdiction and whether it should exercise its discretion to issue an advisory opinion on the particular issues that may arise in this proceeding.

3.3 Without prejudice to other considerations, the United States believes it is particularly important for the Court to give due regard to the principle that advisory opinion jurisdiction is not intended as a means of circumventing the right of States to determine whether to submit their disputes to judicial settlement. This principle carries special importance where there is an established framework for addressing disputed issues through a negotiating process.

International Court of Justice will not help the efforts of the two parties to relaunch a political dialogue and is therefore inappropriate"); *id.* at 17 (Russian Federation) ("It is important to now restore direct Palestinian and Israeli dialogue"); *id.* at 18 (Uganda) ("The solution lies in a negotiated settlement by both sides. That is why, in our opinion, referring the matter to the International Court of Justice would not serve the cause of peace"); *id.* at 21 (United Kingdom) ("To pursue an advisory opinion will in no way help the parties to re-launch the much-needed political dialogue necessary to implement the road map – and implementing the road map should be the priority"); *id.* at 22 (Canada) ("[W]e . . . question whether this request for an advisory opinion is a useful step at this time . . ."); *id.* (Switzerland) ("We do not judge it to be appropriate in the current circumstances to bring before a legal body a subject in which highly political implications predominate"); *id.* (Singapore) ("We do not consider it to be appropriate to involve the ICJ in this dispute in this way").

A. Key Considerations in the Court's Assessment of the Propriety of Giving an Advisory Opinion

3.4 It is well established that, pursuant to Article 65 of its Statute, the Court has discretion whether to give an advisory opinion even where it has jurisdiction to entertain the request²⁶. The Court's concern for judicial propriety in exercising this discretion has been focused in particular on ensuring that the Court maintains the distinction, reflected in its Statute, between contentious and advisory proceedings. In the former case, the Court is empowered by consent of the States concerned to resolve a legal dispute between them in a binding fashion²⁷. In contrast, the Court's authority to issue advisory opinions is discretionary, and the Court may decline to accede to a request for an advisory opinion where the request requires the Court to resolve a dispute in which a State party to the dispute has not provided its consent. As stated in the *Western Sahara* proceeding:

In certain circumstances . . . the lack of consent of an interested State may render the giving of an advisory opinion incompatible with the Court's judicial character. An instance of this would be when the circumstances disclose that to give a reply would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent. If such a situation should arise, the powers of the Court

²⁶ See, e.g., *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 72; *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 19; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 21.

²⁷ See Statute of the International Court of Justice, Article 36.

under the discretion given to it by Article 65, paragraph 1, of the Statute, would afford sufficient legal means to ensure respect for the fundamental principle of consent to jurisdiction²⁸.

3.5 The Court (and its predecessor Court, the Permanent Court of International Justice) has explained the importance of this principle on several grounds. First, it is necessary to preserve the independence of States, which retain sovereign control over whether to submit a dispute to which they are a party to the Court²⁹. Second, it would be incompatible with the

²⁸ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 25. The Court reaffirmed this principle in *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, p. 191; see also 2 *The Charter of the United Nations: A Commentary* 1185 (Bruno Simma ed., 2d ed. 2002) (“A decision to entertain a request [for an advisory opinion] would be inappropriate if a legal dispute relating to States which have not recognized the jurisdiction of the ICJ on the basis of Art. 36 of the Statute, were brought before the Court, in the absence of the States concerned, by a request for advisory proceedings”).

²⁹ See *Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J., Series B, No. 5*, p. 27 (“It is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States either to mediation or to arbitration, or to any other kind of pacific settlement”). The Court has noted that *Eastern Carelia* involved unique circumstances posed by Russia’s non-membership in the League of Nations in that case. See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 23. That distinction nevertheless does not undermine the continued vitality of the principle or the underlying considerations identified in *Eastern Carelia* for purposes of the Court’s ascertaining whether it should as a matter of discretion decline a request. The Court has twice since the *Namibia* opinion reaffirmed the core principle of *Eastern Carelia*, although it has considered the principle in terms of judicial propriety and discretion rather than as a jurisdictional hurdle. See *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 25; *Applicability of Article VI, Section 22, of the*

purpose of the advisory opinion procedure for it to be used for dispute-resolution between non-consenting parties, or in a way that effectively determines the substantive outcome of a particular legal dispute between parties³⁰. Third, an advisory setting is ill-suited to application of principles of law to particular factual situations where the lack of participation by an interested party may deprive the Court of necessary information, and the format of the proceedings is ill-suited to the development of a factual record³¹.

3.6 The United States would submit that these underlying considerations take on special importance where an alternative framework already exists for addressing disputed issues through a negotiating process. In that context, the Court's intervention by way of an advisory opinion may be both inconsistent with that framework and harmful to its implementation. It was largely for that reason that the United States declined to support the General Assembly's referral resolution in this case.

Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989, p. 191.

³⁰ See, e.g., *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 72* (“[I]t is justifiable to conclude that it in no way touches the merits of those disputes. . . . It follows that the legal position of the parties to these disputes cannot be in any way compromised by the answers that the Court may give. . .”).

³¹ See *Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J., Series B, No. 5, p. 28* (“It appears now to be very doubtful whether there would be available to the Court materials sufficient to enable it to arrive at any judicial conclusion upon the question of fact . . .”); *Western Sahara, Advisory Opinion, I.C.J. Reports 1975, pp. 28-29* (examining “whether the Court has before it sufficient information and evidence to enable it to arrive at a judicial conclusion upon any disputed questions of fact the determination of which is necessary for it to give an opinion in conditions compatible with its judicial character”).

**B. Observations with Respect to the Judicial Propriety of
Giving an Advisory Opinion in this Proceeding**

3.7 It is not possible at this juncture to anticipate precisely how the foregoing considerations will bear on the instant proceeding. It is not known who will be participating in the proceedings. Nor is it known what information or issues may be presented to the Court during the written and oral proceedings.

3.8 The United States nevertheless believes that in at least one respect it is possible to offer specific views on how this principle of propriety should be applied to this proceeding. The permanent status issues underlying the peace process are undoubtedly in dispute, for that is the reason they have been remitted to a negotiating process. And no party has consented to their resolution by the Court, in this or any other proceeding. Accordingly, the Court should not allow these advisory proceedings to be used to circumvent the negotiating process over the permanent status issues.

3.9 A similar issue arose in the Court's consideration of the *Western Sahara* case. Spain had objected that the case concerned a territorial dispute and argued that the advisory opinion procedure should not properly be used to adjudicate the attribution of territorial sovereignty in the absence of the requisite consent of the parties³². The Court did not question the validity of Spain's underlying concern, but rather emphasized how the issue it was addressing would not prejudice the legal position of any of the parties to the existing territorial dispute³³. The Court found that the request for an advisory opinion did not "call for adjudication upon existing territorial

³² See *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, pp. 27-28.

³³ See *id.* at 28.

rights or sovereignty over territory”³⁴ and would “not affect the rights of Spain today as the administering Power”³⁵. The Court indicated in this regard that the General Assembly’s request had not been made with “the object of . . . bring[ing] before the Court . . . a dispute or legal controversy . . . [with a view to its subsequent] peaceful settlement” but only to assist the General Assembly in carrying out its special responsibilities concerning the decolonization of the territory³⁶.

3.10 The *Western Sahara* precedent is instructive for the present proceedings because territorial status is among the permanent status issues that must be resolved through negotiations (along with Jerusalem, settlements and other issues). Should questions arise during the proceedings regarding any of these permanent status issues, the Court’s jurisprudence strongly counsels against addressing them. It is in precisely these final status matters – matters directly bearing on the substance of a pending dispute, the resolution of which has been committed to a negotiating process, where the facts are unusually complex and contentious – that the potential threat to the Court’s judicial character in an advisory proceeding is greatest. The Court will, also, need to examine any other issues raised in the proceeding to determine whether similar considerations counsel against providing its legal views with respect to those issues as well.

³⁴ *Id.*

³⁵ *Id.* at 27.

³⁶ *Id.* at 26.

CHAPTER IV

CONSIDERATIONS RELATING TO THE NEGOTIATING PROCESS MORE GENERALLY

4.1 The paramount interest of the United States as co-sponsor of the peace process and as member of the Quartet at this time is to ensure that every effort is made to return the parties to the bargaining table where they can address interim issues, and more importantly the permanent status issues central to realizing the shared vision of a two-State solution to their dispute. As recognized by the Security Council, the General Assembly, the Quartet and the parties themselves, only in that way can a just and lasting peace be achieved.

4.2 The General Assembly's referral resolution asks the Court to address just one of the many issues currently in dispute between the Israelis and Palestinians during this interim period prior to permanent status. Should the Court decide to provide an advisory opinion, the United States would urge the Court to keep in mind two key aspects of the peace process: the fundamental principle that permanent status issues must be resolved through negotiations; and the need during the interim period for the parties to fulfill their security responsibilities so that the peace process can succeed. In the view of the United States, the referral resolution must be read as preserving both of these elements, and therefore the Court should do nothing that would interfere with either of them.

A. The Permanent Status Issues Are to be Negotiated by the Parties

4.3 The foundation of the peace process embraced by the United Nations Security Council, the General Assembly, and the Israelis and Palestinians is a bilateral negotiating process between Israelis and Palestinians to resolve their permanent

status issues. It would be inconsistent with this assignment of responsibility to the parties to interpret the General Assembly's referral resolution as a request for an advisory opinion on any of the permanent status issues.

4.4 Progress has been made during previous negotiating efforts by the parties to identify solutions to these extraordinarily difficult and sensitive issues. The United States, as co-sponsor of the peace process, and the other members of the Quartet are deeply involved in efforts to advance those negotiations, with the support and encouragement of the Security Council and the General Assembly. It would be extremely damaging to future negotiating efforts if the Court were to set forth, even on a non-binding advisory basis, legal conclusions with respect to the permanent status issues.

4.5 A durable and mutually acceptable resolution of the permanent status issues will require the parties to find ways to address their own and each other's interests through a negotiating process. The Israelis and Palestinians have long agreed not to take unilateral acts that would preempt their negotiations. For example, as previously noted, several of their agreements provide that

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 negotiations³⁷.

4.6 Any expression of legal views by the Court on the permanent status issues can be expected to make the necessary political accommodations between the parties on these issues far more difficult or even impossible. Even if in setting out its legal views the Court were to acknowledge that the parties are

³⁷ Interim Agreement, art. XXXI(7), A/51/889, S/1997/357, annex.

free to disregard or to bargain away a "legal" solution identified by the Court, the parties would face substantial, new constraints on their ability to negotiate with one another to find mutually-acceptable compromises.

4.7 In light of these considerations, the United States does not believe the referral resolution can or should be read to invite the Court to create such new obstacles to peace-making efforts. The referral resolution itself reaffirms the principle that the permanent status issues are to be resolved through negotiations. The General Assembly therefore should not be understood as having asked for legal guidance from the Court on what those solutions must consist of or otherwise to reach legal conclusions about them.

**B. The Parties Must Carry Out Their Security
Responsibilities for the Peace Process to Succeed**

4.8 As is reflected in the "Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13"³⁸, the dispute between the Israelis and Palestinians over Israel's construction of a barrier centers largely on their different views of how to address the problem of terrorist attacks against Israel. Should the Court deem it appropriate to consider the issues underlying this dispute, it is crucial that in doing so it emphasize the responsibilities of both the parties to address this serious threat to the Roadmap and the overall peace process.

4.9 The Roadmap states that

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

³⁸ A/ES-10/248 (2003).

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 below³⁹.

In recognition of this fact, the first phase of the Roadmap is entitled "Ending Terror and Violence, Normalizing Palestinian Life, and Building Palestinian Institutions". Among the steps it requires are:

Palestinians declare an unequivocal end to violence and terrorism and undertake visible efforts on the ground to arrest, disrupt, and restrain individuals and groups conducting and planning violent attacks on Israelis anywhere.

Rebuilt and refocused Palestinian Authority security apparatus begins sustained, targeted, and effective operations aimed at confronting all those engaged in terror and dismantlement of terrorist capabilities and infrastructure. This includes commencing confiscation of illegal weapons and consolidation of security authority, free of association with terror and corruption.

GOI [Israel] takes no actions undermining trust, including deportations, attacks on civilians; confiscation and/or demolition of Palestinian homes and property, as a punitive measure or to facilitate Israeli construction; destruction of Palestinian institutions and infrastructure; and

³⁹ Roadmap at 2, S/2003/529, annex, Annex 1.

other measures specified in the Tenet work plan [a U.S. security initiative]. . . .

As comprehensive security performance moves forward, IDF [Israeli Defense Forces] withdraws progressively from areas occupied since September 28, 2000 and the two sides restore the status quo that existed prior to September 28, 2000. Palestinian security forces redeploy to areas vacated by IDF⁴⁰.

4.10 The focus in the Roadmap on the need for viable and effective security measures between the parties is consistent with their previously concluded agreements. The Interim Agreement, which established the framework for security cooperation in the West Bank,

REAFFIRM[S] their mutual commitment to act, in accordance with this Agreement, immediately, efficiently and effectively against acts or threats of terrorism, violence or incitement, whether committed by Palestinians or Israelis⁴¹.

It provides generally that

Both sides shall take all measures necessary in order to prevent acts of terrorism, crime and hostilities directed against each other, against individuals falling under the other's authority and against their property, and shall take legal measures against offenders⁴².

⁴⁰ *Id.* at 3-4.

⁴¹ Interim Agreement, preamble, A/51/889, S/1997/357, annex.

⁴² *Id.*, art. XV(1).

4.11 The applicable arrangements are complex, given the division of responsibilities between the parties and the evolving situation. The Agreement divides the West Bank into three areas. In Area C, Israel retains exclusive security authority. In Area B, Israel has “the overriding responsibility for security for the purpose of protecting Israelis and confronting the threat of terrorism” while the PA has responsibility for public order for Palestinians. In Area A, the PA largely has sole responsibility for security⁴³. These geographic divisions and further adjustments in their territorial scope have been disrupted by the violence during the past three years. One of the purposes of the Quartet’s Roadmap is to return the parties to their previous areas of responsibility and to promote further territorial adjustments en route to permanent status.

4.12 The Interim Agreement sets out in detail the respective security responsibilities of each party in its area of operation. For the Palestinians, the Agreement provides that

In order to guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip, the Council [PA] shall establish a strong police force as set out in Article XIV below. . . .⁴⁴

Except for the Palestinian Police and the Israeli military forces, no other armed forces shall be established or operate in the West Bank and the Gaza Strip. . . .⁴⁵

⁴³ *Id.*, annex I, art. V, Annex 4.

⁴⁴ *Id.*, art. XII(1).

⁴⁵ *Id.*, art. XIV(3).

The Palestinian security policy [will be implemented in West Bank areas under PA responsibility] as follows:

- a. The Palestinian Police is the only Palestinian security authority.
- b. The Palestinian Police will act systematically against all expressions of violence and terror.
- c. The Council [PA] will issue permits in order to legalize the possession and carrying of arms by civilians. Any illegal arms will be confiscated by the Palestinian Police.
- d. The Palestinian Police will arrest and prosecute individuals who are suspected of perpetrating acts of violence and terror⁴⁶.

At the same time, under the Interim Agreement,

Israel shall continue to carry the responsibility for defense against external threats . . . as well as the responsibility for overall security of Israelis and Settlements, for the purpose of safeguarding their internal security and public order, and will have all the powers to take the steps necessary to meet this responsibility⁴⁷.

⁴⁶ *Id.*, annex I, art. II(1), Annex 4.

⁴⁷ *Id.*, art. XII(1).

4.13 Against this complex backdrop, it is essential that the Court, if it should take up the question referred to it in any degree, not call into question the detailed security arrangements previously agreed upon by the parties. To do so could create a vacuum, which either or both sides might feel compelled to fill unilaterally. This could further reduce the prospects for ending violence and restarting the negotiating process. Even more seriously, it could embolden those opposed to peace in their violent efforts to disrupt the process. It is vital to the efforts of the co-sponsors and the Quartet that both the Israelis and Palestinians carry out their security responsibilities, while at the same time addressing their other obligations under the Roadmap. Since this view is shared by the General Assembly⁴⁸, the Court should treat this as part of the essential framework for addressing the General Assembly's question.

⁴⁸ See A/RES/ES-10/13 (2003), para. 2 (citing the Roadmap, S/2003/529, annex).

CHAPTER V

CONCLUSION

5.1 The United States takes seriously its responsibilities as co-sponsor of the Middle East Peace Process launched in Madrid in 1991. Most recently, together with the other members of the Quartet – the Russian Federation, the EU and the UN Secretary-General – the United States has exerted intensive and continuing efforts to bring an end to the conflict that for more than half a century has tragically affected the lives of both Palestinians and Israelis. A shared vision of two States, at peace with each other and their neighbors, has now been achieved. As significantly, a mechanism – the Roadmap – has been established for realizing that vision. The United Nations Security Council, the United Nations General Assembly, the Quartet and other members of the international community, and Israelis and Palestinians have agreed on the path ahead.

5.2 The United States has therefore submitted this Statement to assist the Court in understanding the complex diplomatic process underway. This is the context in which the General Assembly has acted and in which this proceeding arises. The United States would urge the Court to avoid any steps that would interfere with or make this negotiating process more difficult than it already is. This risk could be avoided altogether if the Court declined to issue an advisory opinion.

5.3 If the Court chooses to provide its views, however, then as a matter of judicial propriety the Court should examine any proposed issues to ensure that addressing them will not offend the principle that advisory proceedings are not a means to address disputes of States without their consent. This would be especially true if it is suggested that the Court should address any of the permanent status issues that the parties have agreed to resolve through negotiations. Additionally, given the

General Assembly's support for the Roadmap and the efforts of the Quartet, the referral resolution should not be interpreted to question either of two key elements underlying the peace process: (i) that permanent status issues are to be resolved through negotiations; and (ii) that the Israelis and Palestinians must fulfill their security responsibilities for the peace process to succeed. A lasting peace requires fulfillment of both these conditions.

5.4 The matter referred by the General Assembly to the Court – the barrier under construction by Israel – is of concern to the United States. But so is protecting the peace process agreed upon by the parties and endorsed by the Security Council and the General Assembly. For that reason, the United States respectfully requests that the Court consider the points in this submission carefully in deciding how to respond to the General Assembly's request to ensure that nothing it might do undermines the Roadmap or the negotiating process. Meanwhile, with the other members of the Quartet, the United States will continue its own efforts to promote progress in implementing the Roadmap so that issues such as barriers give way to normal, peaceful relations between two equal, sovereign States.

William H. Taft, IV
Legal Adviser
U.S. Department of State

Annexes to the Written Statement

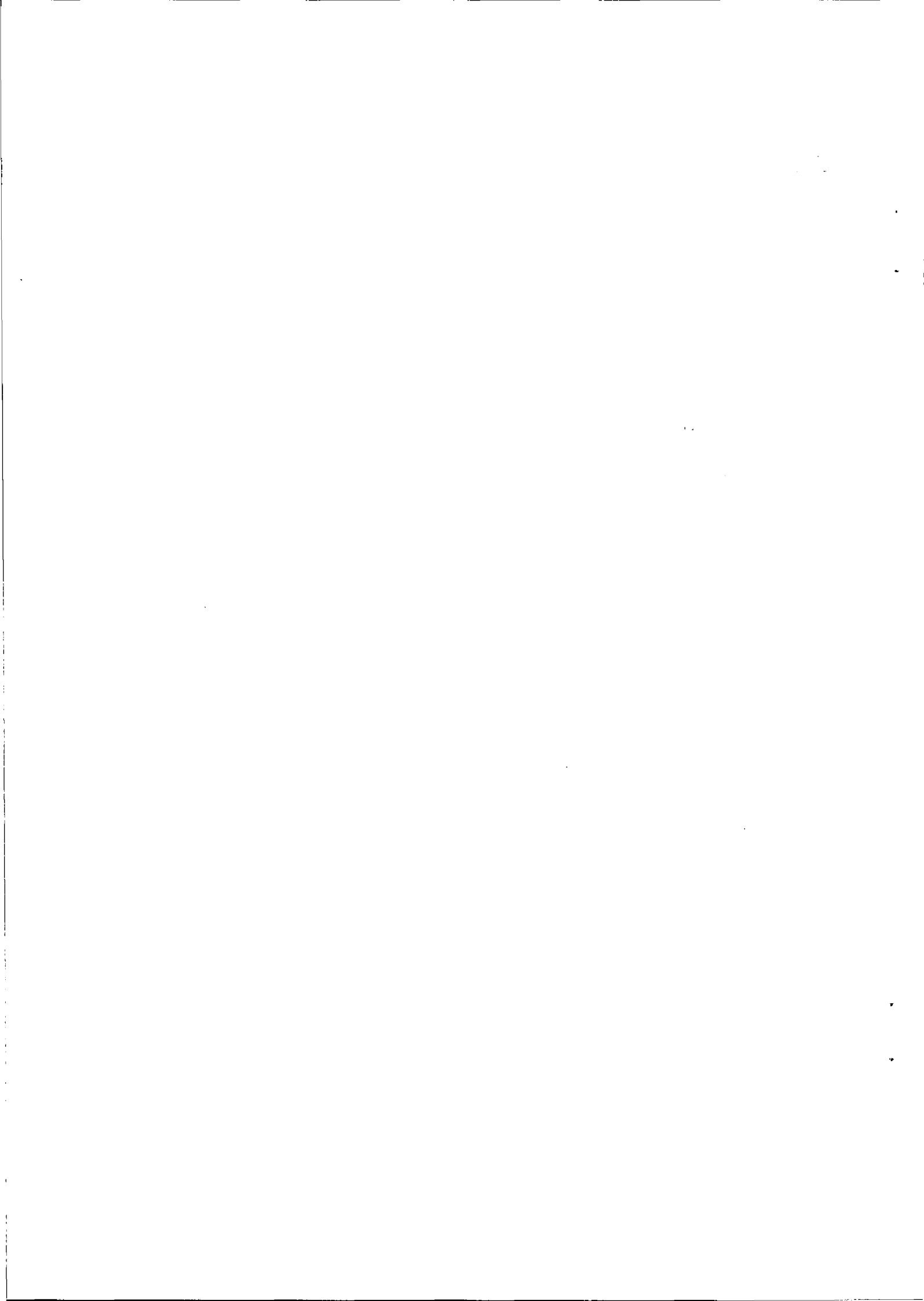
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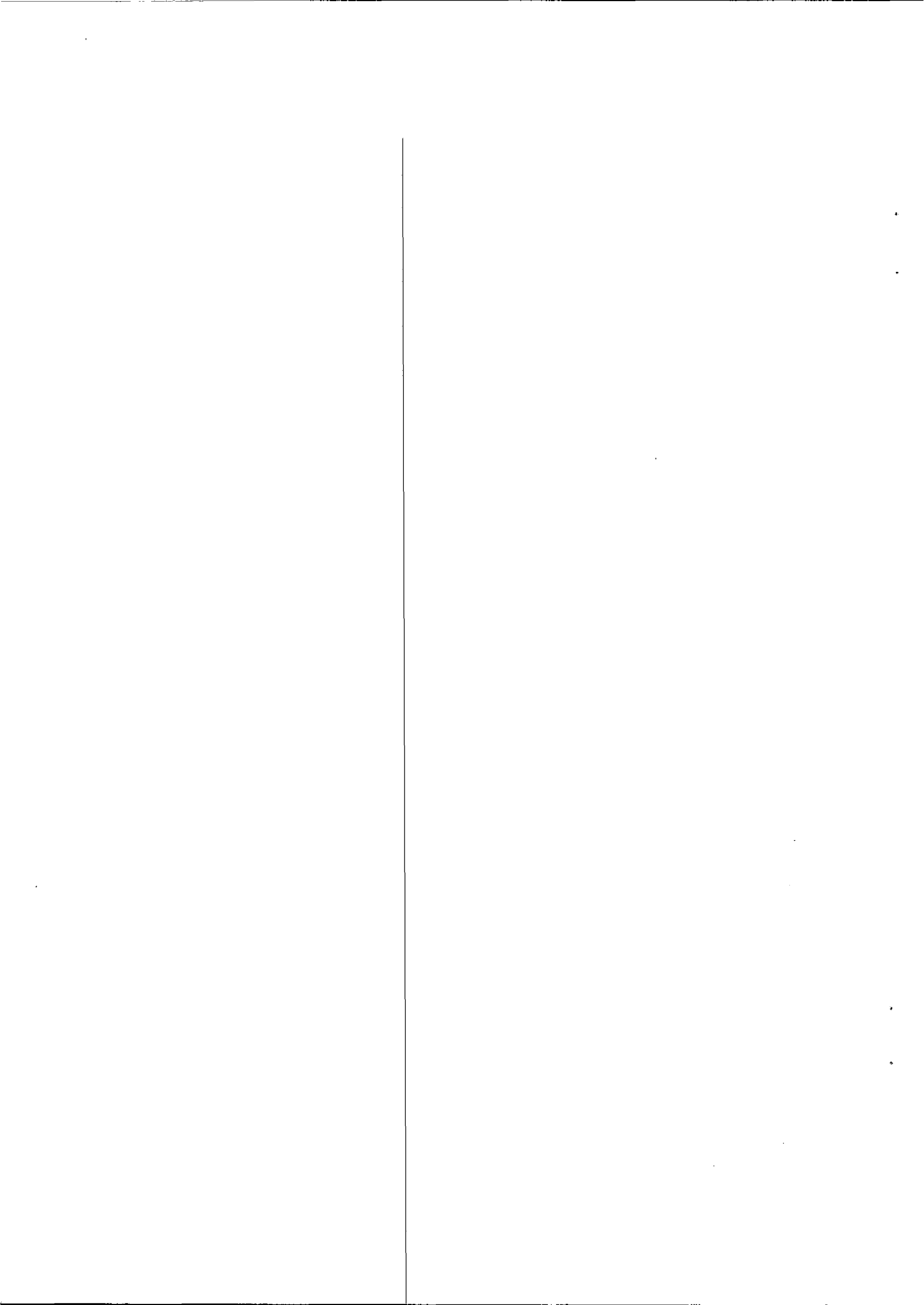
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Annex 1

**A Performance-based Road Map to a Permanent Two-State
Solution of the Israeli-Palestinian Conflict (the "Roadmap")**



Annex

A performance-based road map to a permanent two-State solution to the Israeli-Palestinian conflict

The following is a performance-based and goal-driven roadmap, with clear phases, timelines, target dates, and benchmarks aiming at progress through reciprocal steps by the two parties in the political, security, economic, humanitarian, and institution-building fields, under the auspices of the Quartet. The destination is a final and comprehensive settlement of the Israeli-Palestinian conflict by 2005, as presented in President Bush's speech of 24 June, and welcomed by the EU, Russia and the UN in the 16 July and 17 September Quartet Ministerial statements.

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. The Quartet will assist and facilitate implementation of the plan, starting in Phase I, including direct discussions between the parties as required. The plan establishes a realistic timeline for implementation. However, as a performance-based plan, progress will require and depend upon the good faith efforts of the parties, and their compliance with each of the obligations outlined below. Should the parties perform their obligations rapidly, progress within and through the phases may come sooner than indicated in the plan. Non-compliance with obligations will impede progress.

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 neighbors. The settlement will resolve the Israel-Palestinian conflict, and end the occupation that began in 1967, based on the foundations of the Madrid Conference, the principle of land for peace, UNSCRs 242, 338 and 1397, agreements previously reached by the parties, and the initiative of Saudi Crown Prince Abdullah – endorsed by the Beirut Arab League Summit – calling for acceptance of Israel as a neighbor living in peace and security, in the context of a comprehensive settlement. This initiative is a vital element of international efforts to promote a comprehensive peace on all tracks, including the Syrian-Israeli and Lebanese-Israeli tracks.

The Quartet will meet regularly at senior levels to evaluate the parties' performance on implementation of the plan. In each phase, the parties are expected to perform their obligations in parallel, unless otherwise indicated.

**PHASE I:
ENDING TERROR AND VIOLENCE, NORMALIZING PALESTINIAN LIFE,
AND BUILDING PALESTINIAN INSTITUTIONS
PRESENT TO MAY 2003**

In Phase I, the Palestinians immediately undertake an unconditional cessation of violence according to the steps outlined below; such action should be accompanied by supportive measures undertaken by Israel. Palestinians and Israelis resume security cooperation based on the Tenet work plan to end violence, terrorism, and incitement through restructured and effective Palestinian security services. Palestinians undertake comprehensive political reform in preparation for statehood, including drafting a Palestinian constitution, and free, fair and open elections upon the basis of those measures. Israel takes all necessary steps to help normalize Palestinian life. Israel withdraws from Palestinian areas occupied from September 28, 2000 and the two sides restore the status quo that existed at that time, as security performance and cooperation progress. Israel also freezes all settlement activity, consistent with the Mitchell report.

At the outset of Phase I:

- Palestinian leadership issues unequivocal statement reiterating Israel's right to exist in peace and security and calling for an immediate and unconditional ceasefire to end armed activity and all acts of violence against Israelis anywhere. All official Palestinian institutions end incitement against Israel.
- Israeli leadership issues unequivocal statement affirming its commitment to the two-state vision of an independent, viable, sovereign Palestinian state living in peace and security alongside Israel, as expressed by President Bush, and calling for an immediate end to violence against Palestinians everywhere. All official Israeli institutions end incitement against Palestinians.

SECURITY

- Palestinians declare an unequivocal end to violence and terrorism and undertake visible efforts on the ground to arrest, disrupt, and restrain individuals and groups conducting and planning violent attacks on Israelis anywhere.
- Rebuilt and refocused Palestinian Authority security apparatus begins sustained, targeted, and effective operations aimed at confronting all those engaged in terror and dismantlement of terrorist capabilities and infrastructure. This includes commencing confiscation of illegal weapons and consolidation of security authority, free of association with terror and corruption.
- GOI takes no actions undermining trust, including deportations, attacks on civilians; confiscation and/or demolition of Palestinian homes and property, as a punitive

measure or to facilitate Israeli construction; destruction of Palestinian institutions and infrastructure; and other measures specified in the Tenet work plan.

- Relying on existing mechanisms and on-the-ground resources, Quartet representatives begin informal monitoring and consult with the parties on establishment of a formal monitoring mechanism and its implementation.
- Implementation, as previously agreed, of U.S. rebuilding, training and resumed security cooperation plan in collaboration with outside oversight board (U.S.–Egypt–Jordan). Quartet support for efforts to achieve a lasting, comprehensive cease-fire.
 - All Palestinian security organizations are consolidated into three services reporting to an empowered Interior Minister.
 - Restructured/retrained Palestinian security forces and IDF counterparts progressively resume security cooperation and other undertakings in implementation of the Tenet work plan, including regular senior-level meetings, with the participation of U.S. security officials.
- Arab states cut off public and private funding and all other forms of support for groups supporting and engaging in violence and terror.
- All donors providing budgetary support for the Palestinians channel these funds through the Palestinian Ministry of Finance's Single Treasury Account.
- As comprehensive security performance moves forward, IDF withdraws progressively from areas occupied since September 28, 2000 and the two sides restore the status quo that existed prior to September 28, 2000. Palestinian security forces redeploy to areas vacated by IDF.

PALESTINIAN INSTITUTION-BUILDING

- Immediate action on credible process to produce draft constitution for Palestinian statehood. As rapidly as possible, constitutional committee circulates draft Palestinian constitution, based on strong parliamentary democracy and cabinet with empowered prime minister, for public comment/debate. Constitutional committee proposes draft document for submission after elections for approval by appropriate Palestinian institutions.
- Appointment of interim prime minister or cabinet with empowered executive authority/decision-making body.
- GOI fully facilitates travel of Palestinian officials for PLC and Cabinet sessions, internationally supervised security retraining, electoral and other reform activity, and other supportive measures related to the reform efforts.

- Continued appointment of Palestinian ministers empowered to undertake fundamental reform. Completion of further steps to achieve genuine separation of powers, including any necessary Palestinian legal reforms for this purpose.
- Establishment of independent Palestinian election commission. PLC reviews and revises election law.
- Palestinian performance on judicial, administrative, and economic benchmarks, as established by the International Task Force on Palestinian Reform.
- As early as possible, and based upon the above measures and in the context of open debate and transparent candidate selection/electoral campaign based on a free, multi-party process, Palestinians hold free, open, and fair elections.
- GOI facilitates Task Force election assistance, registration of voters, movement of candidates and voting officials. Support for NGOs involved in the election process.
- GOI reopens Palestinian Chamber of Commerce and other closed Palestinian institutions in East Jerusalem based on a commitment that these institutions operate strictly in accordance with prior agreements between the parties.

HUMANITARIAN RESPONSE

- Israel takes measures to improve the humanitarian situation. Israel and Palestinians implement in full all recommendations of the Bertini report to improve humanitarian conditions, lifting curfews and easing restrictions on movement of persons and goods, and allowing full, safe, and unfettered access of international and humanitarian personnel.
- AHLC reviews the humanitarian situation and prospects for economic development in the West Bank and Gaza and launches a major donor assistance effort, including to the reform effort.
- GOI and PA continue revenue clearance process and transfer of funds, including arrears, in accordance with agreed, transparent monitoring mechanism.

CIVIL SOCIETY

- Continued donor support, including increased funding through PVOs/NGOs, for people to people programs, private sector development and civil society initiatives.

SETTLEMENTS

- GOI immediately dismantles settlement outposts erected since March 2001.
- Consistent with the Mitchell Report, GOI freezes all settlement activity (including natural growth of settlements).

PHASE II: TRANSITION
JUNE 2003-DECEMBER 2003

In the second phase, efforts are focused on the option of creating an independent Palestinian state with provisional borders and attributes of sovereignty, based on the new constitution, as a way station to a permanent status settlement. As has been noted, this goal can be achieved when the Palestinian people have a leadership acting decisively against terror, willing and able to build a practicing democracy based on tolerance and liberty. With such a leadership, reformed civil institutions and security structures, the Palestinians will have the active support of the Quartet and the broader international community in establishing an independent, viable, state.

Progress into Phase II will be based upon the consensus judgment of the Quartet of whether conditions are appropriate to proceed, taking into account performance of both parties. Furthering and sustaining efforts to normalize Palestinian lives and build Palestinian institutions, Phase II starts after Palestinian elections and ends with possible creation of an independent Palestinian state with provisional borders in 2003. Its primary goals are continued comprehensive security performance and effective security cooperation, continued normalization of Palestinian life and institution-building, further building on and sustaining of the goals outlined in Phase I, ratification of a democratic Palestinian constitution, formal establishment of office of prime minister, consolidation of political reform, and the creation of a Palestinian state with provisional borders.

- **INTERNATIONAL CONFERENCE:** Convened by the Quartet, in consultation with the parties, immediately after the successful conclusion of Palestinian elections, to support Palestinian economic recovery and launch a process, leading to establishment of an independent Palestinian state with provisional borders.
 - Such a meeting would be inclusive, based on the goal of a comprehensive Middle East peace (including between Israel and Syria, and Israel and Lebanon), and based on the principles described in the preamble to this document.
 - Arab states restore pre-intifada links to Israel (trade offices, etc.).
 - Revival of multilateral engagement on issues including regional water resources, environment, economic development, refugees, and arms control issues.
- New constitution for democratic, independent Palestinian state is finalized and approved by appropriate Palestinian institutions. Further elections, if required, should follow approval of the new constitution.

- Empowered reform cabinet with office of prime minister formally established, consistent with draft constitution.
- Continued comprehensive security performance, including effective security cooperation on the bases laid out in Phase I.
- Creation of an independent Palestinian state with provisional borders through a process of Israeli-Palestinian engagement, launched by the international conference. As part of this process, implementation of prior agreements, to enhance maximum territorial contiguity, including further action on settlements in conjunction with establishment of a Palestinian state with provisional borders.
- Enhanced international role in monitoring transition, with the active, sustained, and operational support of the Quartet.
- Quartet members promote international recognition of Palestinian state, including possible UN membership.

**PHASE III:
PERMANENT STATUS AGREEMENT
AND END OF THE ISRAELI-PALESTINIAN CONFLICT
2004 – 2005**

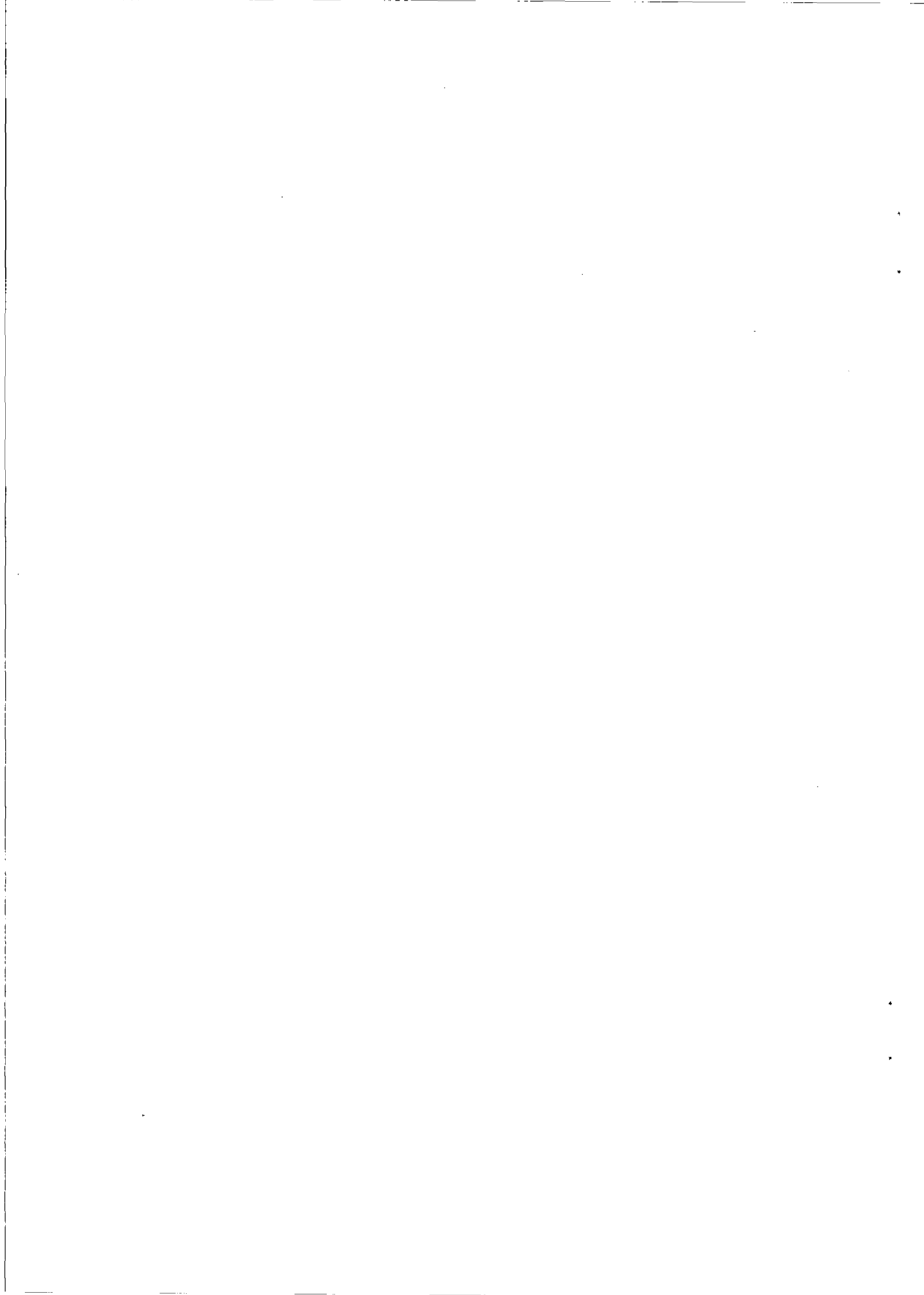
Progress into Phase III, based on consensus judgment of Quartet, and taking into account actions of both parties and Quartet monitoring. Phase III objectives are consolidation of reform and stabilization of Palestinian institutions, sustained, effective Palestinian security performance, and Israeli-Palestinian negotiations aimed at a permanent status agreement in 2005.

- **SECOND INTERNATIONAL CONFERENCE:** Convened by Quartet, in consultation with the parties, at beginning of 2004 to endorse agreement reached on an independent Palestinian state with provisional borders and formally to launch a process with the active, sustained, and operational support of the Quartet, leading to a final, permanent status resolution in 2005, including on borders, Jerusalem, refugees, settlements; and, to support progress toward a comprehensive Middle East settlement between Israel and Lebanon and Israel and Syria, to be achieved as soon as possible.
- Continued comprehensive, effective progress on the reform agenda laid out by the Task Force in preparation for final status agreement.
- Continued sustained and effective security performance, and sustained, effective security cooperation on the bases laid out in Phase I.
- International efforts to facilitate reform and stabilize Palestinian institutions and the Palestinian economy, in preparation for final status agreement.

- Parties reach final and comprehensive permanent status agreement that ends the Israel-Palestinian conflict in 2005, through a settlement negotiated between the parties based on UNSCR 242, 338, and 1397, that ends the occupation that began in 1967, and includes an agreed, just, fair, and realistic solution to the refugee issue, and a negotiated resolution on the status of Jerusalem that takes into account the political and religious concerns of both sides, and protects the religious interests of Jews, Christians, and Muslims worldwide, and fulfills the vision of two states, Israel and sovereign, independent, democratic and viable Palestine, living side-by-side in peace and security.
- Arab state acceptance of full normal relations with Israel and security for all the states of the region in the context of a comprehensive Arab-Israeli peace.

Annex 2

**Remarks of President Bush, His Majesty King Abdullah of
Jordan, Prime Minister Sharon of Israel, and Prime Minister
Abbas of the Palestinian Authority, 4 June 2003**



President Meets with Leaders of Jordan, Israel and Palestinian Authority


Remarks by President Bush, His Majesty King Abdullah of Jordan,
Prime Minister Sharon of Israel, and Prime Minister Abbas of the
Palestinian Authority
Beit al Bahar
Aqaba, Jordan



VIDEO Multimedia

President's Remarks

 [view](#)

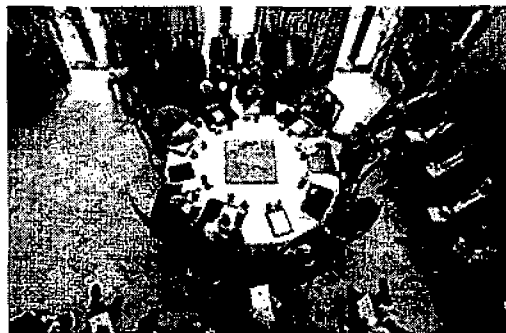
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3:30 P.M. (Local)

KING ABDULLAH: President Bush; Prime Minister Sharon; Prime Minister Abbas; distinguished guests: We gather today in Aqaba, this small city that symbolizes the immeasurable potential of bringing different peoples together. Not far from here, Jordan and Israel signed a peace treaty in 1994. Nine years later, what brings us here is the same dream -- the dream of peace, prosperity, coexistence and reconciliation. But dreams alone cannot fulfill hopes. It is thanks to the efforts of President Bush, and the commitments of Prime Minister Sharon and Prime Minister Abbas, that we meet here today to transform these dreams into real achievements on the ground.

Mr. President, Prime Ministers, let us have ambitions -- ambitions to move beyond the violence and occupation; to the day when two states, Palestine and Israel, can live together, side-by-side, in peace and security.

And in our hands today, we hold the mechanism that can translate these ambitions into realities on the ground. It is a plan, the road that addresses the needs of both Palestinians and Israelis. To the Israelis, this plan offers collective security guarantees by all Arabs, a peace treaty and normal relations with Arab states, and an end to the conflict. To the Palestinians, it offers an end to the occupation, a viable state, and the promise to live as a free and prosperous people.



To be sure, the road to realizing this vision will not be straightforward or without obstacles. I'm aware that many in our region and around the world view our gathering today through a lens marred with skepticism and suspicion. The failures and frustrations of the past have left many disbelievers in their wake.

Today we have an opportunity and an obligation to reinstate faith in the process, and to reinvigorate hopes for a better tomorrow. We simply cannot afford the alternative. The road to confrontation has shown its consequences: loss of innocent lives, destruction and fear. Most costly, however, was the loss of hope. The most precious gift that you can present to your peoples over the coming weeks is renewed hope borne out of tangible progress on the ground. And it's not only your people who will be watching and waiting. The eyes of the entire world will be upon you.

The nature of our new borderless world means that we all have a stake in what happens here today. Jordanians, Americans, Europeans, and many around the world stand ready and willing to lend all their support to ensure your success. But at the end of the day, it is you, the Palestinians and the Israelis, who have to come together to resolve the many outstanding issues that divide you.

Many will view the compromises that will be made during your negotiations as painful concessions. But why not view them as peace offerings, ones that will provide in return the priceless gifts of hope, security, and freedom for our children and our children's children. It is



only by putting yourselves in each other's shoes that we can hope to achieve real progress.

Thus, we reaffirm today our strong position against violence in any form and from whatever source. Blowing up buses will not induce the Israelis to move forward. And neither will the killing of Palestinians or the demolition of their homes and their future. All this needs to stop. And we pledge that Jordan will do its utmost to help achieve it.

Mr. President, you have stayed the course. Your presence here today, to witness the two leaders meeting together, agreeing on common grounds to solve this conflict, provides a great impetus to move forward and a clear answer to all the skeptics. I thank you, sir, for your leadership and your courage.

Prime Minister Sharon, Prime Minister Abbas, I urge you today to end the designs of those who seek destruction, annihilation and occupation. And I urge you to have the will and the courage to begin to realize our dreams of peace, prosperity and coexistence. And, remember, that in the pursuit of these noble goals, Jordan will always remain a true friend.

Thank you very much. And it is with great pleasure, if I may introduce Prime Minister Abbas to say a few words.

PRIME MINISTER ABBAS: I would like to thank King Abdullah for hosting our meeting here today. I would like also to thank President Mubarak and King Abdullah, King Hamad, and Crown Prince Abdallah who met in Egypt yesterday. I thank them for their statements supporting our efforts. I also would like to thank the Israeli Prime Minister Sharon for joining us here in Jordan. And many thanks, especially, to President Bush, who took the longest journey for peace of all of us.

As we all realize, this is an important moment. A new opportunity for peace exists, an opportunity based upon President Bush's vision and the Quartet's road map, which we have accepted without any reservations.

Our goal is two states, Israel and Palestine, living side-by-side, in peace and security. The process is the one of direct negotiations to end the Israeli-Palestinian conflict, and to resolve all the permanent status issues, and end the occupation that began in 1967, under which Palestinians have suffered so much.

At the same time, we do not ignore the suffering of the Jews throughout history. It is time to bring all this suffering to an end.

Just as Israel must meet its responsibilities, we, the Palestinians, will fulfill our obligations for this endeavor to succeed. We are ready to do our part.

Let me be very clear: There will be no military solution to this conflict, so we repeat our renunciation, a renunciation of terror against the Israelis wherever they might be. Such methods are inconsistent with our religious and moral traditions and are dangerous obstacles to the achievement of an independent, sovereign state we seek. These methods also conflict with the kinds of state we wish to build, based on human rights and the rule of law.

We will exert all of our efforts, using all our resources to end the militarization of the intifada, and we will succeed. The armed intifada must end, and we must use and resort to peaceful means in our quest to end the occupation and the suffering of Palestinians and Israelis. And to establish the Palestinian state, we emphasize our determination to implement our pledges which we have made for our people and the international community. that is a rule of law, single political authority, weapons only in the hands of those who are in charge with upholding the law and order, and political diversity within the framework of democracy.

Our goal is clear and we will implement it firmly and without compromise: a complete end to violence and terrorism. And we will be full partners in the international war against occupation and terrorism. And we will call upon our partners in this war to prevent financial and military assistance to those who oppose this position. We do this as a part of our commitment to the interest of the Palestinian people, and as members of the large family of humanity.

We will also act vigorously against incitement and violence and hatred, whatever their form or forum may be. We

will take measures to ensure that there is no incitement – from Palestinian institutions. We must also reactivate and invigorate the U.S.-Palestinian-Israeli Anti-Incitement Committee. We will continue our work to establish the rule of law and to consolidate government authority in accountable Palestinian institutions. We seek to build the kind of democratic state that will be a qualitative addition to the international community.

All the PA security forces will be part of these efforts, and will work together toward the achievement of these goals. Our national future is at stake, and no one will be allowed to jeopardize it.

We are committed to these steps because they are in our national interest. In order to succeed, there must be a clear improvement in the lives of Palestinians. Palestinians must live in dignity. Palestinians must be able to move, go to their jobs and schools, visit their families, and conduct a normal life. Palestinians must not be afraid for their lives, property, or livelihood.

We welcome and stress the need for the assistance of the international community and, in particular, the Arab states, to help us. And we also welcome and stress the need for a U.S.-led monitoring mechanism.

Together, we can achieve the goal of an independent Palestinian state, sovereign, viable, in the framework of good neighbors with all states in the region, including Israel. Thank you very much. (Applause.)

PRIME MINISTER SHARON: Thank you. I would like to thank His Majesty King Abdullah for having this meeting, and express Israel's appreciation to President Bush for coming here to be with Prime Minister Abbas and me. Thank you.

As the Prime Minister of Israel, the land which is the cradle of the Jewish people, my paramount responsibility is the security of the people of Israel and of the state of Israel. There can be no compromise with terror. And Israel, together with all free nations, will continue fighting terrorism until its final defeat.

Ultimately, permanent security requires peace, and permanent peace can only be obtained through security. And there is now hope of a new opportunity for peace between Israelis and Palestinians.

Israel, like others, has lent its strong support for President Bush's vision expressed on June 24, 2002, of two states, Israel and a Palestinian state, living side-by-side in peace and security. The government and people of Israel welcome the opportunity to renew direct negotiations according to the steps of the road map as adopted by the Israeli government to achieve this vision.

It is in Israel's interest not to govern the Palestinians, but for the Palestinians to govern themselves in their own state. A democratic Palestinian state, fully at peace with Israel, will promote the long-term security and well-being of Israel as a Jewish state.

There can be no peace, however, without the abandonment and elimination of terrorism, violence and incitement. We will work alongside Palestinians and other states to fight terrorism, violence and incitement of all kinds. As all parties perform their obligations, we will seek to restore normal Palestinian life, improve the humanitarian situation, rebuild trust and promote progress, follow the President's vision. We will act in a manner that respects the dignity, as well as the human rights of all people.

We can also reassure our Palestinian partners that we understand the importance of territorial contiguity in the West Bank for a viable Palestinian state. Israeli policy in the territories that are subject to direct negotiations with the Palestinians will reflect this fact. We accept the principle that no unilateral actions by any party can prejudice the outcome of our negotiations.

In regard to the unauthorized outposts, I want to reiterate that Israel is a society governed by the rule of law. we will immediately begin to remove unauthorized outposts.

Israel seeks peace with all its Arab neighbors. Israel is prepared to negotiate in good faith wherever there are partners. As normal relations are established, I am confident that they will find in Israel a neighbor and a people committed to comprehensive peace and prosperity for all the peoples of the region.

Thank you, all. (Applause.)

PRESIDENT BUSH: King Abdullah, thank you for hosting this event. Her Majesty, thank you for your hospitality. It is fitting that we gather today in Jordan. King Abdullah is a leader on behalf of peace and is carrying forward the tradition of his father, King Hussein.

I'm pleased to be here with Prime Minister Sharon. The friendship between our countries began at the time of Israel's creation. Today, America is strongly committed, and I am strongly committed, to Israel's security as a vibrant Jewish state.

I'm also pleased to be with Prime Minister Abbas. He represents the cause of freedom and statehood for the Palestinian people. I strongly support that cause, as well. Each of us is here because we understand that all people have the right to live in peace. We believe that with hard work and good faith and courage, it is possible to bring peace to the Middle East. And today we mark important progress toward that goal.

Great and hopeful change is coming to the Middle East. In Iraq, a dictator who funded terror and sowed conflict has been removed, and a more just and democratic society is emerging. Prime Minister Abbas now leads the Palestinian Cabinet. By his strong leadership, by building the institutions of Palestinian democracy and by rejecting terror, he is serving the deepest hopes of his people.

All here today now share a goal: the Holy Land must be shared between the state of Palestine and the state of Israel, living at peace with each other and with every nation of the Middle East.

All sides will benefit from this achievement and all sides have responsibilities to meet. As the road map accepted by the party makes clear, both must make tangible immediate steps toward this two-state vision.

I welcome Prime Minister Sharon's pledge to improve the humanitarian situation in the Palestinian areas and to begin removing unauthorized outposts immediately. I appreciate his gestures of reconciliation on behalf of prisoners and their families, and his frank statements about the need for the territorial contiguity.

As I said yesterday, the issue of settlements must be addressed for peace to be achieved. In addition, Prime Minister Sharon has stated that no unilateral actions by either side can or should prejudice the outcome of future negotiations. The Prime Minister also recognizes that it is in Israel's own interest for Palestinians to govern themselves in their own state. These are meaningful signs of respect for the rights of the Palestinians and their hopes for a viable, democratic, peaceful, Palestinian state.

Prime Minister Abbas recognizes that terrorist crimes are a dangerous obstacle to the independent state his people seek. He agrees that the process for achieving that state is through peaceful negotiations. He has pledged to consolidate Palestinian institutions, including the security forces and to make them more accountable and more democratic. He has promised his full efforts and resources to end the armed intifada. He has promised to work without compromise for a complete end of violence and terror. In all these efforts, the Prime Minister is demonstrating his leadership and commitment to building a better future for the Palestinian people.

Both Prime Ministers here agree that progress toward peace also requires an end to violence and the elimination of all forms of hatred and prejudice and official incitement – in school books, in broadcasts, and in the words used by political leaders. Both leaders understand that a future of peace cannot be founded on hatred and falsehood and bitterness.

Yet, these two leaders cannot bring about peace if they must act alone. True peace requires the support of other nations in the region. Yesterday, in Sharm el-Sheikh, we made a strong beginning. Arab leaders stated that they share our goal of two states, Israel and Palestine, and living side-by-side in peace and in security. And they have promised to cut off assistance and the flow of money and weapons to terrorist groups, and to help Prime Minister Abbas rid Palestinian areas of terrorism.

All sides have made important commitments, and the United States will strive to see these commitments fulfilled. My government will provide training and support for a new, restructured Palestinian security service. And we'll place a mission on the ground, led by Ambassador John Wolf. This mission will be charged with helping the

parties to move towards peace, monitoring their progress and stating clearly who was fulfilling their responsibilities. And we expect both parties to keep their promises.

I've also asked Secretary of State Colin Powell, and National Security Advisor Condoleezza Rice to make this cause a matter of the highest priority. Secretary Powell and Dr. Rice, as my personal representative, will work closely with the parties, helping them move toward true peace as quickly as possible.

The journey we're taking is difficult, but there is no other choice. No leader of conscience can accept more months and years of humiliation, killing and mourning. And these leaders of conscience have made their declarations today in the cause of peace.

The United States is committed to that cause. If all sides fulfill their obligation, I know that peace can finally come.

Thank you very much, and may God bless our work. (Applause.)

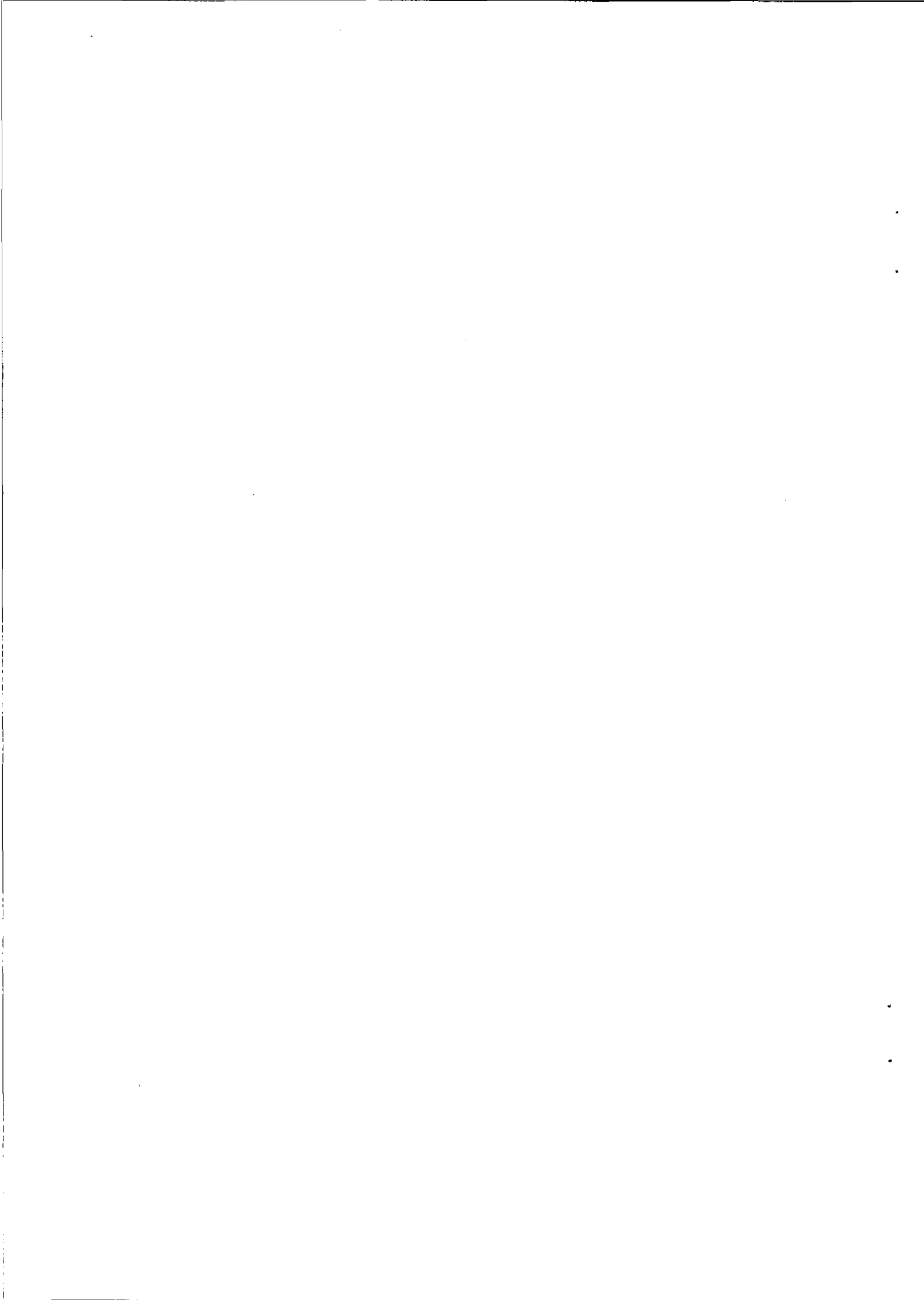
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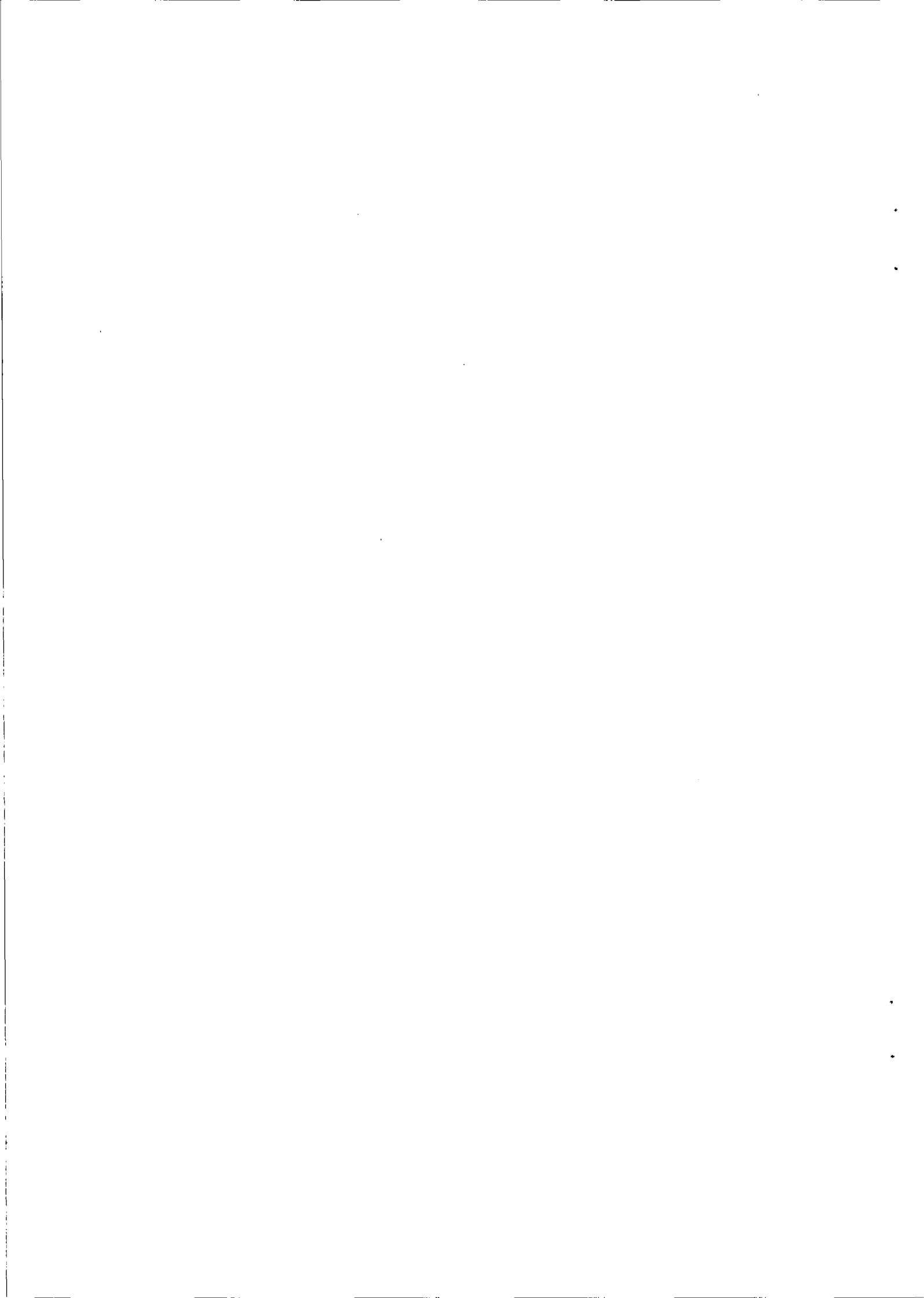
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Annex 3

Invitation, 18 Oct. 1991



October 18, 1991

INVITATION

After extensive consultations with Arab states, Israel and the Palestinians, the United States and the Soviet Union believe that an historic opportunity exists to advance the prospects for genuine peace throughout the region. The United States and the Soviet Union are prepared to assist the parties to achieve a just, lasting and comprehensive peace settlement, through direct negotiations along two tracks, between Israel and the Arab states, and between Israel and the Palestinians, based on United Nations Security Council Resolutions 242 and 338. The objective of this process is real peace.

Toward that end, the President of the United States and the President of the USSR invite you to a peace conference, which their countries will co-sponsor, followed immediately by direct negotiations. The conference will be convened in (to be provided in execute cable) on October 30, 1991. President Bush and President Gorbachev request your acceptance of this invitation no later than 6:00 p.m. Moscow time, October 21, 1991, in order to ensure proper organization and preparation of the conference.

Direct bilateral negotiations will begin four days after the opening of the conference. Those parties who wish to attend multilateral negotiations will convene two weeks after the opening of the conference to organize those negotiations. The co-sponsors believe that those negotiations should focus on region-wide issues such as arms control and regional security, water, refugee issues, environment, economic development, and other subjects of mutual interest.

The co-sponsors will chair the conference which will be held at ministerial level. Governments to be invited include Israel, Syria, Lebanon and Jordan. Palestinians will be invited and attend as part of a joint Jordanian-Palestinian delegation. Egypt will be invited to the conference as a participant. The European Community will be a participant in the conference alongside the United States and the Soviet Union and will be represented by its Presidency. The Gulf Cooperation Council will be invited to send its Secretary General to the conference as an observer, and GCC member states will be invited to participate in organizing the negotiations on multilateral issues. The United Nations will be invited to send an observer, representing the Secretary General.

The conference will have no power to impose solutions on the parties or veto agreements reached by them. It will have no authority to make decisions for the parties and no ability to vote on issues or results. The conference can reconvene only with the consent of all the parties.

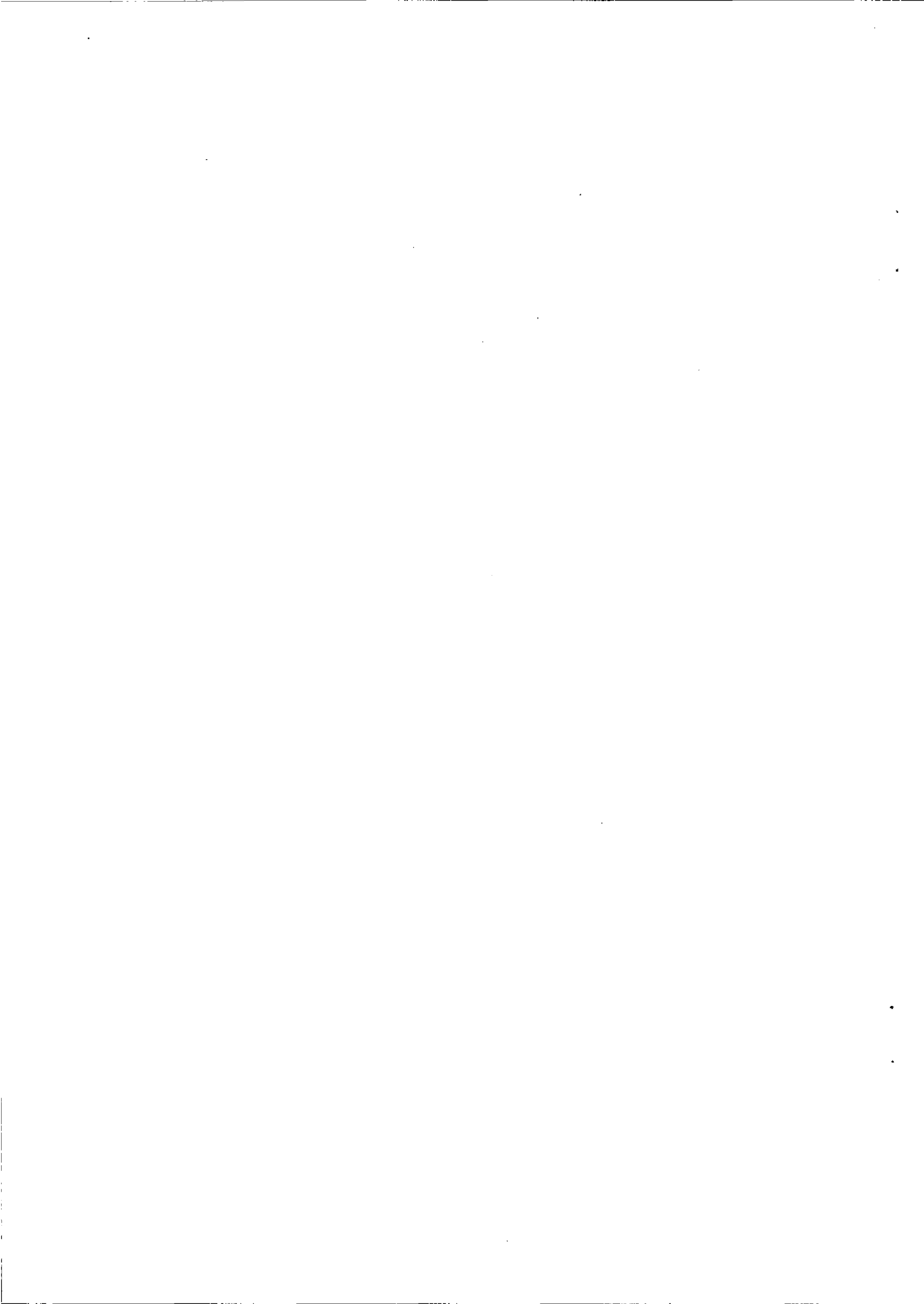
With respect to negotiations between Israel and Palestinians who are part of the joint Jordanian-Palestinian delegation, negotiations will be conducted in phases, beginning with talks on interim self-government arrangements. These talks will be conducted with the objective of reaching agreement within one year. Once agreed, the interim self-government arrangements will last for a period of five years. Beginning the third year of the period of interim self-government arrangements, negotiations will take place on permanent status. These permanent status negotiations, and the negotiations between Israel and the Arab states, will take place on the basis of resolutions 242 and 338.

It is understood that the co-sponsors are committed to making this process succeed. It is their intention to convene the conference and negotiations with those parties who agree to attend.

The co-sponsors believe that this process offers the promise of ending decades of confrontation and conflict and the hope of a lasting peace. Thus, the co-sponsors hope that the parties will approach these negotiations in a spirit of good will and mutual respect. In this way, the peace process can begin to break down the mutual suspicions and mistrust that perpetuate the conflict and allow the parties to begin to resolve their differences. Indeed, only through such a process can real peace and reconciliation among the Arab states, Israel, and the Palestinians be achieved. And only through this process can the peoples of the Middle East attain the peace and security they richly deserve.

Annex 4

Israeli-Palestinian Interim Agreement on the West Bank
and the Gaza Strip, Annex I



ANNEX I

PROTOCOL CONCERNING

REDEPLOYMENT AND SECURITY

ARRANGEMENTS

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ARTICLE I

Redeployment of Israeli Military Forces and Transfer of Responsibility

First Phase of Redeployment

1. The first phase of Israeli military forces redeployment will cover populated areas in the West Bank - cities, towns, villages, refugee camps and hamlets, as shown on map No. 1. This redeployment will be effected in stages, as set out in the schedule attached to this Annex as Appendix 1, and will be completed prior to the eve of the Palestinian elections, *i.e.*, 22 days before the day of elections.
2. In order to maintain the territorial integrity of the West Bank and the Gaza Strip as a single territorial unit, and to promote their economic growth and the demographic and geographical links between them, both sides shall implement the provisions of this Annex, while respecting and preserving without obstacles, normal and smooth movement of people, vehicles, and goods within the West Bank, and between the West Bank and the Gaza Strip.
3. Any security arrangements and measures which become effective commensurate with the redeployment of the Israeli military forces will not undermine the importance of, nor will they prejudice, the Palestinian development programs and projects for reconstruction and development of the West Bank and the Gaza Strip, as well as the moral and physical dignity of the Palestinian people in the West Bank and the Gaza Strip.
4. After the inauguration of the Palestinian Council, the unity and integrity of the Palestinian people in the West Bank and the Gaza Strip shall be maintained and respected. All Palestinian people residing in the West Bank and the Gaza Strip will be accountable to the Palestinian Council only, unless otherwise provided in this Agreement.
5. After the inauguration of the Palestinian Council, the Israeli Civil Administration will be dissolved and the Israeli military government will be withdrawn.
6. The Council will assume powers and responsibilities for civil affairs, as well as for public order and internal security, according to this Agreement.
7. Nothing in this Article shall derogate from Israel's security powers and responsibilities in accordance with this Agreement.
8. There will be a period of 10 days prior to each stage of redeployment according to paragraph 1 of this Article, during which the commanders of the Israeli military forces will acquaint the respective commanders of the different echelons of the Palestinian Police with the respective area and its specific problems.

Further Redeployments After the Inauguration of the Palestinian Council

9. The further redeployments of Israeli military forces to specified military locations will be gradually implemented in accordance with the DOP in three phases, each to take place after an interval of six months, after the inauguration of the Council, to be completed within 18 months from the date of the inauguration of the Council.
10. The specified military locations referred to in Article X, paragraph 2 of this Agreement will be determined in the further redeployment phases within the specified time-frame ending not later than 18 months from the date of the inauguration of the Council, and will be negotiated in the permanent status negotiations.

ARTICLE II

Security Policy for the Prevention of Terrorism and Violence

1. The Palestinian security policy as defined by the Palestinian Authority on March 9, 1995, for the Gaza Strip and the Jericho Area will also be implemented in the rest of the West Bank in areas which come under Palestinian security responsibility as follows:
 - a. The Palestinian Police is the only Palestinian security authority.
 - b. The Palestinian Police will act systematically against all expressions of violence and terror.
 - c. The Council will issue permits in order to legalize the possession and carrying of arms by civilians. Any illegal arms will be confiscated by the Palestinian Police.
 - d. The Palestinian Police will arrest and prosecute individuals who are suspected of perpetrating acts of violence and terror.
2. Both sides will, in accordance with this Agreement, act to ensure the immediate, efficient and effective handling of any incident involving a threat or act of terrorism, violence or incitement, whether committed by Palestinians or Israelis. To this end, they will cooperate in the exchange of information and coordinate policies and activities. Each side shall immediately and effectively respond to the occurrence or anticipated occurrence of an act of terrorism, violence or incitement and shall take all necessary measures to prevent such an occurrence.
3. With a view to implementing the above, each side shall, in accordance with the provisions of this Agreement, carry out the following functions in the areas under its security responsibility:

- a. protect all residents of, and all other persons present in, these areas;
 - b. actively prevent incitement to violence, including violence against the other side or persons under the authority of the other side;
 - c. apprehend, investigate and prosecute perpetrators and all other persons directly or indirectly involved in acts of terrorism, violence and incitement; and
 - d. prevent and deal with any attempt to cause damage or harm to infrastructure serving the other side, including, *inter alia*, roads, water, electricity, telecommunications and sewage infrastructure.
4. Both sides undertake to deal with the issue of persons who are present in the areas in violation of this Agreement, and to take further measures in accordance with procedures to be determined by the JSC.

ARTICLE III

Coordination and Cooperation In Mutual Security Matters

1. Joint Security Coordination and Cooperation Committee
 - a. A Joint Coordination and Cooperation Committee for Mutual Security Purposes is hereby established (hereinafter "the JSC"). It will deal with all security matters of mutual concern regarding this Agreement in the West Bank and the Gaza Strip.
 - b. The JSC shall:
 - (1) recommend security policy guidelines for the approval of the Joint Israeli-Palestinian Liaison Committee and implement such approved guidelines;
 - (2) deal with security issues raised by either side;
 - (3) provide the proper channel for exchanging information between the two sides, needed to solve security problems;
 - (4) provide directives for the Joint Regional Security Committees (hereinafter "the RSCs") and for the Joint District Coordination Offices (hereinafter "the DCOs"); and
 - (5) subject to the provisions of Article XXVI (the Joint Israeli Palestinian Liaison Committee), and Article XXI (Settlement of Differences and Disputes) of this Agreement, deal with alleged

violations, as well as differences relating to the application or implementation of the security arrangements set out in this Agreement.

- c. The JSC shall comprise between five and seven members from each side. Decisions of the JSC will be reached by agreement between the two sides.
- d. The JSC shall determine its rules of procedure. Meetings of the JSC shall be held every two weeks. In the event that either side requests a special meeting, it shall be convened within forty-eight (48) hours.
- e. Unless otherwise agreed by the two sides, JSC meetings will be hosted by each of the sides alternately.
- f. The JSC shall develop a comprehensive plan to ensure full coordination between the Israeli military forces and the Palestinian Police during the interim period, starting from the date of signing of this Agreement.
- g. This coordination will be implemented through the RSCs in the West Bank and the Gaza Strip and the DCOs, as mentioned hereafter in this Article.
- h. The comprehensive plan will include a plan for the West Bank, consisting of arrangements for the entry of the Palestinian Police and the introduction of police arms, ammunition and equipment, as well as arrangements intended to facilitate the smooth transfer of authority and assumption by the Palestinian Police of its security responsibilities according to this Agreement.
- i. The above mentioned comprehensive plan will also include two regional plans that will include arrangements for coordination and cooperation in security matters after the redeployment is effected.
- j. These regional plans will be reviewed every six months, or whenever needed, by the JSC and the relevant RSC.

2. Regional Security Committees

- a. Two RSCs are hereby established, one in the West Bank and one in the Gaza Strip.
- b. Each RSC shall:
 - (1) guide the relevant DCOs with security policy guidelines;
 - (2) deal with security issues referred to it by the DCOs;
 - (3) ensure proper transfer of information and guidelines to the relevant DCOs; and

- (4) propose to the JSC security policy guidelines, and forward issues to the JSC for determination.
- c. The Israeli side and the Palestinian side in the RSCs will maintain contact with each other as follows:
 - (1) regular as well as special meetings shall be held between the commander of the Israeli military forces and the commander of the Palestinian Police in the West Bank or in the Gaza Strip, as appropriate; and
 - (2) each side will operate a regional security coordination office 24 hours a day, with direct and constant communication links between the two sides.
- d. The RSCs shall commence operations immediately upon the signing of this Agreement and shall determine by agreement their mode of procedure.

3. District Coordination Offices

- a. DCOs are hereby established in the West Bank and the Gaza Strip, as set out below.
- b. The location of the DCOs is as detailed on attached map Nos. 2 and 4.
- c. Each DCO shall:
 - (1) monitor and manage matters requiring coordination as determined by the JSC and/or the relevant RSC, according to the policy and guidelines established by either of them ;
 - (2) monitor and manage all matters of a joint nature within the respective district of the DCO, including the coordination of activities by one side which may affect the other side;
 - (3) review, investigate and report to the relevant RSC on the overall situation within the DCO's respective district, with special regard to specific events, incidents and activities occurring in the district; and
 - (4) direct the Joint Patrols and the Joint Mobile Units set up in accordance with paragraphs 4 and 5 of this Article and Article V, paragraph 2.c below, operating within the DCO's respective district.
- d. The DCOs shall commence operations immediately upon the signing of this Agreement.

- e. Each DCO will be continuously staffed by a team of up to six officers from each side, comprising one commander and five duty officers.
- f. The DCOs will be operated jointly by both sides, 24 hours a day. At least one duty officer from each side, as well as the necessary number of assistants, will be present during each eight-hour shift.
- g. With a view to preventing friction and to enabling the two sides to deal with possible incidents, both sides shall ensure that the relevant DCO shall immediately be notified of any of the following events:
 - (1) routine, scheduled or unscheduled activity or deployment by the Israeli military forces or the Palestinian Police that directly affects the security responsibility of the other side. This includes activity or deployment in the proximity of Settlements or Palestinian populated localities, as the case may be;
 - (2) events that pose a threat to public order;
 - (3) activities that disturb the regular flow of traffic on the main roads, including roadblocks and roadworks;
 - (4) incidents involving both Israelis and Palestinians, such as road accidents, rescue of casualties or persons in mortal danger, engagement steps or any incident in which a weapon is used;
 - (5) a terrorist action of any kind and from any source;
 - (6) infiltrations between the West Bank, the Gaza Strip and Israel; and
 - (7) all cases in which Israelis are hospitalized in the West Bank or the Gaza Strip, or in which Palestinians of the West Bank or the Gaza Strip are hospitalized in Israel.
- h. Each DCO shall notify the relevant Israeli and Palestinian headquarters, as well as the Joint Patrols operating in the relevant district, of the occurrence of any of the events listed in subparagraph g. above.
- i. The JSC may modify the content of the list of events included in subparagraph g. above.
- j. Any event involving injury to Israelis, at any location within the West Bank or the Gaza Strip, shall be immediately reported to Israel through the relevant DCO. Israel may employ any means necessary for the evacuation and treatment of such injured persons, and will coordinate such activity through the relevant DCO.

- k. The DCOs shall be equipped with the necessary means of communication to enable direct and immediate contact both with the Joint Patrols and the relevant RSC, as well as with each side's respective police or military district headquarters.

4. Joint Patrols

- a. The mission of the Joint Patrols shall be to assist in ensuring free, unimpeded and secure movement along the roads designated in Articles V and VI below.
- b. Unless the JSC decides otherwise, the Joint Patrols shall each be composed of two 4-wheel drive vehicles, one Palestinian and one Israeli, equipped with adequate communications systems. The vehicles shall be marked so as to be easily distinguishable from all other vehicles in the area. In each vehicle there will be an officer and three uniformed and armed guards.
- c. The Joint Patrols will patrol 24 hours a day, in vehicles along their routes of activity, or as directed by the relevant DCO. Joint Patrols on the Lateral Roads in the Gaza Strip will also patrol on foot along their routes of activity, and on the adjacent sides of the roads upon which the security of the traffic along these roads is dependent.
- d. On roads under Israeli security responsibility, the Israeli vehicle will be the leading vehicle. On roads under Palestinian security responsibility, the Palestinian vehicle will be the leading vehicle. The Joint Patrols will be under the direction of the relevant DCO.
- e. The Joint Patrols shall continuously monitor movement within their area of operation and shall act to prevent and deal with incidents that may threaten or endanger persons using the roads. They shall report any such incident or threat thereof, as well as any action taken, to the relevant DCO, and to the respective Israeli military and Palestinian police district headquarters.
- f. On reaching the scene of an incident, the Joint Patrol will take all measures necessary to deal with the incident, and provide assistance as necessary. The Joint Patrol shall verify that the appropriate measures have been taken and report to the relevant DCO accordingly.

5. Joint Mobile Units

- a. The mission of the Joint Mobile Units (hereinafter "JMUs") is to provide rapid response in the event of incidents and emergency situations, in order to ensure free, unimpeded and secure movement along their designated routes of activity, or in their areas of activity.
- b. The composition of the JMUs will be similar to that of the Joint Patrols.

- c. In areas under Israeli security responsibility, the Israeli vehicle will be the leading vehicle. In areas under Palestinian security responsibility, the Palestinian vehicle will be the leading vehicle. The Joint Mobile Units will be under the direction of the relevant DCO.
- d. The functions of the JMUs are:
 - (1) to monitor movement along their designated routes of activity from their stationary locations, from where they may patrol on agreed roads as directed by the relevant DCO, in which case their duties will be the same as those of the Joint Patrols;
 - (2) in the event of an incident involving both Israelis and Palestinians, to reach the site of the incident in order to provide assistance and to investigate; and
 - (3) any other function determined by the relevant DCO.

6. Joint Liaison Bureaus

Joint Liaison Bureaus established by the two sides shall operate at crossing points and at terminals as described in Articles V, VI and VIII of this Annex.

7. Other joint activities may be agreed upon in the JSC and/or the RSC.

ARTICLE IV

The Palestinian Police

1. Duties and Functions

As detailed in the Palestinian law, the Palestinian Police shall carry out its duties and functions in accordance with this Agreement as follows:

- a. maintaining internal security and public order;
- b. protecting the public and all other persons present in the areas, as well as protecting their property, and acting to provide a feeling of security, safety and stability;
- c. adopting all measures necessary for preventing crime in accordance with the law;
- d. protecting public installations, infrastructure and places of special importance;
- e. preventing acts of harassment and retribution;

- f. combating terrorism and violence, and preventing incitement to violence; and
- g. performing any other normal police functions.

2. Structure and Composition

- a. The Palestinian Police shall consist of one integral unit under the control of the Council. It shall be composed of six branches:
 - (1) Civil Police (Al Shurta);
 - (2) Public Security;
 - (3) Preventive Security;
 - (4) Amn Al Ri'asah;
 - (5) Intelligence; and
 - (6) Emergency Services and Rescue (Al Difa'a Al Madani).

In each district, all members of the six Police branches shall be subordinate to one central command.

- b. The Palestinian Police shall have a Palestinian Coastal Police unit in accordance with Article XIV of this Annex.

3. Deployment

- a. During the interim period, the total number of policemen of the Palestinian Police in all its branches in the West Bank and the Gaza Strip will be no more than 30,000 out of which up to 12,000 policemen may be deployed in the West Bank and up to 18,000 policemen in the Gaza Strip. These numbers may be changed by agreement, if necessary. The Palestinian side will notify Israel of the names of the policemen recruited to the Palestinian Police in the Gaza Strip.
- b. In accordance with the stages of the first phase of redeployment of Israeli forces in the West Bank, up to 6,000 of the above-mentioned 12,000 Palestinian policemen may be deployed in the West Bank in Area A and, as set out in paragraph 3 of Article V, in Area B, as detailed in Appendix 2.
- c. The remaining 6,000 Palestinian policemen will be deployed in the West Bank according to the phases of the further redeployments or as needed, as agreed upon by the two Parties.

- d. The Palestinian Police shall be deployed as shown on attached map Nos. 3 and 5.

4. Recruitment

- a. The Palestinian Police shall consist of policemen recruited locally, and from abroad (from among individuals holding Jordanian passports or Palestinian documents issued by Egypt). The number of Palestinian recruits from abroad shall not exceed 5,000 in the West Bank and 7,000 in the Gaza Strip.
- b. Palestinian policemen coming from abroad may be accompanied by their spouse and sons and daughters.
- c. The Palestinian policemen to be recruited pursuant to this Agreement shall be West Bank or Gaza Strip residents who will be duly trained to perform police functions.
- d. The Palestinian side will notify Israel of any candidate for recruitment to the Palestinian Police. Should Israel object to the recruitment of any such candidate, that person shall not be recruited.
- e. In accordance with Palestinian law, the employment of policemen who have been convicted of serious crimes, or have been found to be actively involved in terrorist activities subsequent to their recruitment, will be immediately terminated, and their weapons and police identification documentation will be confiscated.

5. Arms, Ammunition and Equipment

- a. In the West Bank and the Gaza Strip, uniformed policemen may carry arms, and plainclothes policemen on duty who hold special accreditation may carry personal light arms concealed in their clothing, in accordance with this Agreement.
- b. In the West Bank, the Palestinian Police will possess the following arms and equipment:
 - (1) up to 4,000 rifles;
 - (2) up to 4,000 pistols;
 - (3) up to 120 machine guns of 0.3" or 0.5" caliber; and
 - (4) up to 15 light, unarmed riot vehicles of a type to be agreed on between the two sides in the JSC.

- c. In the Gaza Strip, the Palestinian Police will possess the following arms and equipment:
- (1) 7,000 light personal weapons;
 - (2) up to 120 machine guns of 0.3" or 0.5" caliber; and
 - (3) up to 45 wheeled armored vehicles of a type to be agreed on between the two sides, and of which 22 will be deployed in protecting Council installations. The use of wheeled armored vehicles in the Security Perimeter, on the Lateral Roads and on their adjacent sides, or in the vicinity of the Settlements shall be approved through the relevant DCO. Movement of such vehicles along the central North-South road (Road No. 4) in the Gaza Strip may take place only after providing notification to the relevant DCO.
- d. The number of arms or items of equipment specified in subparagraphs b. and c. above may be increased subject to the agreement of both sides.
- e. The Palestinian Police will maintain an updated register of all weapons held by its personnel.
- f. The Palestinian Police may possess communication systems, subject to Article 36 of Annex III, and distinctive uniforms, identification badges and vehicle markings.
- g. In this Annex, the term "weapons" includes firearms, ammunition and explosives of all kinds.

6. Introduction of Arms, Equipment and Foreign Assistance

- a. All foreign contributions and other forms of assistance to the Palestinian Police must comply with the provisions of this Agreement.
- b. The introduction of arms, ammunition or equipment intended for the Palestinian Police shall be coordinated through the JSC, in accordance with its established practices.

7. Movement

Movement of Palestinian policemen between the West Bank and the Gaza Strip will be conducted in accordance with Article X of this Annex.

ARTICLE V

Security Arrangements in the West Bank

1. Coordination and Cooperation in the West Bank

As shown on map No. 4, eight DCOs will function in the West Bank, as follows:

- a. a DCO for the Jenin District, located at the Quabatiya junction or in its vicinity;
- b. a DCO for the Nablus District, located at the Hawara Junction;
- c. a DCO for the Tulkarm District, located at the Kaddouri Junction;
- d. a DCO for the Qalqilya District located at Tsufin Junction;
- e. a DCO for the Ramallah District, located at the Beth El junction or in its vicinity;
- f. a DCO for the Bethlehem District, located at the Panorama Hills in Beit Jala;
- g. a DCO for the Hebron District, located at Har Manoakh (Jabal Manoah); and
- h. a DCO for the Jericho District, located at Vered Yericho, that will maintain a subordinate Joint Liaison Bureau in the Allenby Terminal.

2. Area A

- a. The Council will, upon completion of the redeployment of Israeli military forces in each district, as set out in Appendix 1 to this Annex, assume the powers and responsibilities for internal security and public order in Area A in that district.
- b. Jewish Holy Sites
 - (1) The following provisions will apply with respect to the security arrangements in Jewish holy sites in Area A which are listed in Appendix 4 to this Annex:
 - (a) While the protection of these sites, as well as of persons visiting them, will be under the responsibility of the Palestinian Police, a JMU shall function in the vicinity of, and on the access routes to, each such site, as directed by the relevant DCO.

(b) The functions of each such JMU shall be as follows:

(i) to ensure free, unimpeded and secure access to the relevant Jewish holy site; and

(ii) to ensure the peaceful use of such site, to prevent any potential instances of disorder and to respond to any incident.

(c) Given the Jewish religious nature of such sites, Israeli plainclothes guards may be present inside such sites.

(2) The present situation and the existing religious practices shall be preserved.

c. Clarifications Concerning the Jericho Area

With regard to the definition of the Jericho Area, as delineated on attached map No. 1, it is hereby clarified that Route No. 90 crossing Auja from South to North and the East-West road connecting Route No. 90 with Yitav, and their adjacent sides, shall remain under Israeli authority. For the purpose of this Article, the width of each such road and its adjacent sides, as shown on attached map No. 1, shall extend at least 12 meters on each side measured from its center.

3. Areas B and C

a. There will be a complete redeployment of Israeli military forces from Area B. Israel will transfer to the Council and the Council will assume responsibility for public order for Palestinians. Israel shall have the overriding responsibility for security for the purpose of protecting Israelis and confronting the threat of terrorism.

b. In Area B the Palestinian Police shall assume the responsibility for public order for Palestinians and shall be deployed in order to accommodate the Palestinian needs and requirements in the following manner:

(1) The Palestinian Police shall establish 25 police stations and posts in towns, villages, and other places listed in Appendix 3 to this Annex and as delineated on map No. 3. The West Bank RSC may agree on the establishment of additional police stations and posts, if required.

(2) The Palestinian Police shall be responsible for handling public order incidents in which only Palestinians are involved.

(3) The Palestinian Police shall operate freely in populated places where police stations and posts are located, as set out in paragraph b.1 above.

- (4) While the movement of uniformed Palestinian policemen in Area B outside places where there is a Palestinian police station or post will be carried out after coordination and confirmation through the relevant DCO, three months after the completion of redeployment from Area B, the DCOs may decide that movement of Palestinian policemen from the police stations in Area B to Palestinian towns and villages in Area B on roads that are used only by Palestinian traffic will take place after notifying the DCO.
- (5) The coordination of such planned movement prior to confirmation through the relevant DCO shall include a scheduled plan, including the number of policemen, as well as the type and number of weapons and vehicles intended to take part. It shall also include details of arrangements for ensuring continued coordination through appropriate communication links, the exact schedule of movement to the area of the planned operation, including the destination and routes thereto, its proposed duration and the schedule for returning to the police station or post.

The Israeli side of the DCO will provide the Palestinian side with its response, following a request for movement of policemen in accordance with this paragraph, in normal or routine cases within one day and in emergency cases no later than 2 hours.

- (6) The Palestinian Police and the Israeli military forces will conduct joint security activities on the main roads as set out in this Annex.
- (7) The Palestinian Police will notify the West Bank RSC of the names of the policemen, number plates of police vehicles and serial numbers of weapons, with respect to each police station and post in Area B.
- (8) Further redeployments from Area C and transfer of internal security responsibility to the Palestinian Police in Areas B and C will be carried out in three phases, each to take place after an interval of six months, to be completed 18 months after the inauguration of the Council, except for the issues of permanent status negotiations and of Israel's overall responsibility for Israelis and borders.
- (9) The procedures detailed in this paragraph will be reviewed within six months of the completion of the first phase of redeployment.

4. Joint Patrols

- a. Joint Patrols led by a Palestinian vehicle will operate on each of the following roads, as indicated on map No. 4:
 - (1) the main north-south road (Route No. 60) crossing Jenin;
 - (2) the main north-south road (Route No. 60) crossing Nablus;

- (3) the main east-west road (Route Nos. 57 and 60) crossing Nablus;
- (4) the main east-west road (Route No. 57) crossing Tulkarm;
- (5) the main east-west road (Route No. 55) crossing Qalqilya;
- (6) the main north-south road (Route No. 60) crossing Ramallah;
- (7) the main east-west road (Route No. 3) crossing Ramallah;
- (8) the main north-south road (Route No. 60) crossing Bethlehem;
- (9) the main east-west road crossing Beit Jala;
- (10) the main north-south road (Route No. 90) crossing Jericho; and
- (11) the road crossing Hebron, as set out in Article VII (Hebron) below.

The operation of the Joint Patrols in each district will commence after the completion of redeployment in the respective district.

- b. Each DCO will be allowed, within 3 months after the completion of the redeployment in its respective district, to decide that Joint Patrols will function on roads crossing areas A, B and C.

5. Joint Mobile Units

- a. Joint Mobile Units will operate in Area B and will be led by the Israeli vehicle. Three such Joint Mobile Units shall be located at each DCO. One will be on alert 24 hours a day. The two others will perform missions as directed by the DCO during daylight hours.
- b. A Joint Mobile Unit shall be located at the Auja junction being the intersection of Route No. 90 and the road to Yitav. This unit shall be led by the Israeli vehicle, and may be directed by the DCO to deal with certain incidents occurring on the road between Auja and Jericho in which Palestinians are involved.
- c. A Joint Mobile Unit shall be located at the Nahal Elisha junction on the road from Jericho to the Mousa Allami project.

6. Movement of Palestinian Policemen

Movement of uniformed policemen, whether armed or unarmed, as well as armed on-duty plainclothes policemen, in Area C, will be confirmed and coordinated by the relevant DCO. Movement of such policemen between Area A and Area B will be approved by the relevant DCO.

7. Rachel's Tomb

- a. Without derogating from Palestinian security responsibility in the City of Bethlehem, the two sides hereby agree on the following security arrangements regarding Rachel's Tomb which will be considered a special case during the Interim Period:
 - (1) While the Tomb, as well as the main road leading from Jerusalem to the Tomb, as indicated on map No.1, will be under the security responsibility of Israel, the free movement of Palestinians on the main road will continue.
 - (2) For the purpose of protecting the Tomb, three Israeli guard posts may be located in the Tomb, the roof of the Waqf building, and the parking lot.
- b. The present situation and existing practices in the Tomb shall be preserved.

ARTICLE VI

Security Arrangements in the Gaza Strip

1. The Delimiting Line

- a. For the purpose of the present Agreement only, and without prejudice to the permanent status negotiations on borders, the line delimiting the northern and eastern edge of the Gaza Strip follows the fence on the ground, as delineated on attached map No. 2 by an unbroken green line (hereinafter "the Delimiting Line") and shall have no other effect.
- b. The Parties reaffirm that, as long as this Agreement is in force, the security fence between the Gaza Strip and Israel shall remain in place, and that the line demarcated by the fence shall be authoritative only for the purpose of this Agreement.

2. Security Perimeter

- a. There will be a security perimeter along the Delimiting Line inside the Gaza Strip as delineated on attached map No. 2 by a broken green line (hereinafter "the Security Perimeter").
- b. In accordance with the provisions of this Agreement, the Palestinian Police will be responsible for security in the Security Perimeter.
- c. The Palestinian Police will enforce special security measures aimed at preventing infiltrations across the Delimiting Line or the introduction into the Security Perimeter of any arms, ammunition or related equipment,

except for the arms, ammunitions or equipment of the Palestinian Police, authorized through the relevant DCO.

- d. Activities of the Palestinian Police inside the Security Perimeter will be coordinated through the relevant DCO. Security activities in Israel in the vicinity of the Delimiting Line that directly affect the other side will be coordinated with the Palestinian Police through the relevant DCO.

3. The Israeli Settlements

- a. In accordance with the DOP, during the interim period, the Gush Katif and Erez settlement areas, as well as the other settlements in the Gaza Strip, as delineated on attached map No. 2 by a blue line, will be under Israeli authority.
- b. Palestinians will be free to move along the coast road and along the road from the Netzarim Junction to the seashore.

4. The Yellow Area

- a. In the areas delineated by a broken red line and shaded in yellow in attached map No. 2 (hereinafter "the Yellow Area"), and without derogating from Palestinian authority, responsibility will be shared as follows: the Israeli authorities will have the overriding responsibility and powers for security, and the Council will have the responsibility and powers for civil affairs, subject to this Agreement. In addition, with regard to the Yellow Area, cooperation and coordination in security matters, including Joint Patrols, as agreed, will be implemented.
- b. Entry of Palestinian policemen into the Yellow Area and their activity therein may take place as agreed upon through the relevant DCO.
- c. Without derogating from the above, while the Palestinian side shall have responsibility and powers for public order for Palestinians in the Mawasi Area, Israel shall retain the responsibility and powers for internal security. Accordingly, the area shall be treated as Area B throughout the interim period in accordance with the provisions of paragraph 3 of Article V above. For the purpose of exercising Palestinian public order responsibility and powers, Palestinian uniformed Civil Police (Al Shurta) policemen may enter the Mawasi Area after coordination and confirmation of their movement and activity through the relevant DCO.

5. The Mawasi Area

- a. As shown on map No. 2, two Joint Patrols will operate in the Mawasi area, the fishermen's wharves of Rafah and Khan Yunis and along the coast road, led by the Israeli vehicle.

b. Access of Palestinians to the Mawasi area, as delineated on attached map No. 2, will be by the following roads:

- (1) Rafah - Tel Sultan - Mawasi;
- (2) Khan Yunis - El Bahr Village; and
- (3) Deir El Ballah - along the beach to the Mawasi.

c. The Mawasi Beach

- (1) Notwithstanding Israeli authority over the Gush Katif settlement area, the Council may operate sections of the Mawasi beach extending to the east up to the coast road, totaling, together with the Rafah and Khan Yunis wharves, five (5) kilometers. Israel has notified the Palestinian Authority of the locations of these sections.
- (2) These sections may be used for the following purposes:
 - (a) sport and recreation, including boat hire facilities;
 - (b) operating food establishments;
 - (c) enlarging the wharves;
 - (d) expanding the facilities for fishermen, such as offices, warehouses and cold storage facilities; and
 - (e) an hotel.
- (3) In these sections, the Council, in exercising its civil authority, will be able to grant licenses for businesses, collect fees and taxes, set and enforce public health standards and develop and manage the tourist sector.
- (4) In each of the fishermen's wharves, the Council may have an office building which shall be protected.
- (5) There will not be any construction by Israelis of new sites along the beach.
- (6) During a period of three months from the signing of this Agreement, Israel may consider, in light of the security situation, the use by the Council of additional beach sections.

6. The Egyptian Border

The Military Installation Area along the Egyptian border in the Gaza Strip, as delineated on attached map No. 2 by a blue line and shaded in pink, will be under Israeli authority.

The village of Dahaniya will remain part of the Military Installation Area pending a declaration of a general amnesty for the residents of the village, and provision having been made for their protection. Upon realization of the above amnesty and protection, the village of Dahaniya will become part of the Yellow Area.

7. Lateral Roads to the Settlements

a. Without derogating from Palestinian authority and in accordance with the Declaration of Principles:

- (1) On the three lateral roads connecting the Israeli settlements in the Gaza Strip to Israel, namely: the Kissufim-Gush Katif road; the Sufa-Gush Katif road; and the Karni-Netzarim road, as indicated by a light blue line on attached map No. 2, including the adjacent sides upon which the security of traffic along these roads is dependent (hereinafter "the Lateral Roads"), the Israeli authorities will have all necessary responsibilities and powers in order to conduct independent security activity, including Israeli patrols.
- (2) Joint Patrols will operate along the Lateral Roads. Such joint patrols will be led by the Israeli vehicle.
- (3) Where the Israeli authorities carry out engagement steps, they will do so with a view to transferring, at the earliest opportunity, the continued handling of the incidents falling within the Palestinian responsibility, to the Palestinian Police.
- (4) Overpasses will be constructed on intersections between the Lateral Roads and the central North-South road (Road No. 4).

b. Where the Lateral Roads overlap the Security Perimeter, the two sides, in the exercise of their respective powers and responsibilities, will fully coordinate their activity in order to prevent friction.

8. The Central North-South Road (Road No. 4)

A Joint Patrol led by the Palestinian vehicle will be operated along the central North-South road (Road No. 4) in the Gaza Strip between Kfar Darom and Wadi Gaza.

9. Joint Mobile Units

a. Joint Mobile Units will be located at the following junctions:

- (1) the Nissanit junction;
- (2) the Netzarim junction;
- (3) the Deir el-Ballah junction; and
- (4) the Sufa-Morag junction.

b. At the Netzarim junction, the Israeli side of this Joint Mobile Unit will check Israeli vehicles, which will then be able to continue their journey without interference. This Joint Mobile Unit will also operate as a Joint Patrol between the Netzarim junction and Wadi Gaza under the direction of the relevant DCO.

10. Coordination and Cooperation in the Gaza Strip

Two DCOs will function in the Gaza Strip as follows:

- a. A DCO for the Gaza district, located at the Erez crossing point with subordinate Joint Liaison Bureaus at the Erez and Nahal Oz crossing points.
- b. A DCO for the Khan Yunis district, located at the Nuriya Camp with subordinate Joint Liaison Bureaus at the Sufa crossing points and at the Rafah Terminal.

ARTICLE VII

Guidelines for Hebron

1. a. There will be a redeployment of Israeli military forces in the city of Hebron except for places and roads where arrangements are necessary for the security and protection of Israelis and their movements. The areas of such redeployment are delineated by red and blue lines and shaded in orange stripes on a yellow background on attached map No. 9 (hereinafter "Area H-1").
- b. This redeployment will be completed not later than six months after the signing of this Agreement.
2. a. The Palestinian Police will assume responsibilities in Area H-1 similar to those in other cities in the West Bank.

- b. All civil powers and responsibilities, set out in Annex III of this Agreement, will be transferred to the Council in the City of Hebron as in the other cities in the West Bank.
 - c. Palestinian police stations or posts will be established in Area H-1, manned by a total of up to 400 policemen, equipped with 20 vehicles and armed with 200 pistols, and 100 rifles for the protection of those stations.
 - d. The Palestinian Police shall operate freely in Area H-1. Any activity or movement by it outside this area will be carried out after coordination and confirmation through the DCO established in paragraph 6 of this Article.
 - e. The Imara will be turned over to the Palestinian side upon the completion of the redeployment, and will become the headquarters of the Palestinian Police in the city of Hebron.
3. According to the DOP, Israel will continue to carry the responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order.
4. a. In the area of the city of Hebron from which Israel military forces will not redeploy, as delineated by red and blue lines on attached map No. 9 (hereinafter "Area H-2"), Israel will retain all powers and responsibilities for internal security and public order.
- b. In Area H-2, the civil powers and responsibilities will be transferred to the Council, except for those relating to Israelis and their property which shall continue to be exercised by Israeli Military Government.
- c. In Area H-2, plainclothes unarmed municipal inspectors will monitor and enforce *vis-a-vis* Palestinians, compliance with the laws and regulations, within the civil powers and responsibilities transferred to the Council in Hebron.
5. The municipality of Hebron will continue to provide all municipal services to all parts of the city of Hebron.
6. a. A DCO will be located at Har Manoakh (Jabal Manoah).
- b. Upon completion of the redeployment of Israeli military forces, a JMU will operate throughout the city of Hebron, including in the Old City, if required to do so by the abovementioned DCO.
- c. A Joint Patrol will function in Hebron on the road from Ras e-Jura to the north of the Dura junction *via* E-Salaam road and on Route No. 35.
- d. Three months after the completion of the redeployment, the DCO will consider the reassignment of the Joint Patrol to other parts of Hebron.

7. Measures and procedures for normalizing life in the Old City and on the roads of Hebron will be taken immediately after the signing of this Agreement, as follows:
 - a. opening of the wholesale market - Hasbahe, as a retail market;
 - b. removal of the barrier on the road leading from Abu Sneineh to Shuhada Road in order to facilitate the movement on these roads;
 - c. reopening of the main entrance to the Islamic College;
 - d. replacement of the closed roadblock at the Ras e-Jura junction by a normally open traffic supervision system;
 - e. replacement of the roadblock at the Harsina junction by a regular position;
 - f. opening of the route from the Sa'air Shiukh road to Hebron;
 - g. opening of the Tnuva Road; and
 - h. removal of the two barriers in the vicinity of the Raranta School near the North Dura junction.
8. A high level Joint Liaison Committee will be established in order to deal with the security situation in Hebron after completion of the redeployment.
9.
 - a. Since the two sides are unable to reach agreement regarding the Tomb of the Patriarchs / Al Haram Al Ibrahim, they have agreed to keep the present situation as is.
 - b. Three months after the redeployment the high level Joint Liaison Committee will review the situation.
10. There will be a Temporary International Presence in Hebron (TIPH). Both sides will agree on the modalities of the TIPH, including the number of its members and its area of operation.
11. Immediately after the completion of the redeployment, measures must be taken to ensure a stable and secure situation throughout the Hebron area, free from efforts to undermine this Agreement or the peace process.
12. Hebron will continue to be one city, and the division of security responsibility will not divide the city.

ARTICLE VIII

Passages

1. General

- a. While Israel remains responsible during the interim period for external security, including along the Egyptian and Jordanian borders, border crossing shall take place according to the arrangements included in this Article. These arrangements aim at creating a mechanism that facilitates the entry and exit of people and goods, reflecting the new reality created by the DOP, while providing full security for both sides.
- b. The arrangements included in this Article shall apply to the following border crossings:
 - (1) the Allenby Bridge crossing; and
 - (2) the Rafah crossing.
- c. A joint Israeli-Palestinian committee will decide on applying the arrangements included in this Article to the Damya Bridge crossing and, in parallel, on alternatives.
- d. The provisions of the Protocol Regarding Arrangements with Respect to Passages, signed on October 31, 1994 in Casablanca, as amended and attached to this Annex as Appendix 5 (hereinafter "Appendix 5"), will continue to be applicable for the duration of this Agreement, unless otherwise agreed upon. Immediately upon the signing of this Agreement, the CAC shall review the amended Protocol and, in this context, consider the Palestinian request that with regard to the administration of the passages, the Israel Airport Authority be replaced by the Israeli military government.
- e. The same arrangements will be applied by the Parties, with the necessary adjustments, to agreed seaports, airports or other international crossings, such as the Abdullah bridge.
- f. The two sides are determined to do their utmost to maintain the dignity of persons passing through the border crossings. To this end, the mechanism created will rely heavily on brief and modern procedures.
- g. In each border crossing there will be one terminal, consisting of two wings. The first wing will serve Palestinian residents of the West Bank and the Gaza Strip and visitors to these areas (hereinafter "the Palestinian Wing"). The second wing will serve Israelis and others (hereinafter "the Israeli Wing"). There will be a closed Israeli checking area and a closed Palestinian checking area, as set out below.

- h. Special arrangements applicable to VIPs crossing through the Palestinian Wing, are set out in Appendix 5.

2. Control and Management of the Passages

- a. For the purpose of this Article, "passage" is defined to mean the area from the crossing barrier at the Egyptian border or the Allenby Bridge, passing through and including the terminal and:
 - (1) with regard to the Allenby Bridge crossing, from the terminal up to the Jericho Area; and
 - (2) with regard to the Rafah crossing, from the terminal up to the outer limit of the Israel military location along the Egyptian border.
- b.
 - (1) Israel will have the responsibility for security throughout the passage, including for the terminal.
 - (2) An Israeli director-general will have the responsibility for the management and security of the terminal.
 - (3) The director-general will have two deputies who will report to him:
 - (a) an Israeli deputy who will be the manager of the Israeli Wing. Israel will have exclusive responsibility for the management of the Israeli Wing; and
 - (b) a Palestinian deputy, appointed by the Council, who will be the manager of the Palestinian Wing.
 - (4) Each deputy will have an assistant for security and an assistant for administration. The assignments of the Palestinian deputies for security and administration are set out in Appendix 5.
 - (5) The Palestinian deputy director-general at the Allenby Bridge terminal will be able to travel between this terminal and the Jordanian terminal for the purpose of exercising his functions.
 - (6) There will be maximum coordination between the two sides. Both sides will maintain cooperation and coordination on matters of mutual concern.
 - (7) The director-general will continue to use Palestinian contractors to provide bus services and other administrative and logistical services.

- (8) Palestinian policemen present at the terminal will be armed with handguns. Their deployment is set out in Appendix 5. Other Palestinian officials present at the terminal will be unarmed.
 - (9) The details of management and security including those relating to the Liaison Bureau referred to in subparagraph 5 below, are set out in Appendix 5.
 - (10) The two sides will work together in order to seek ways for additional arrangements in the Rafah terminal.
- c. Except for all the arrangements included in this Article, the current procedures and arrangements applicable outside the terminal shall continue to apply throughout the passage.
 - d.
 - (1) Once incoming passengers have crossed the terminal, they will proceed to the West Bank or the Gaza Strip, as appropriate, without any interference from Israeli authorities (safe passage).
 - (2) Outgoing passengers may proceed to the terminal without any interference from Israeli authorities after joint verification that such passengers hold the necessary documentation for exiting the area to Jordan or Egypt, as set out in this Agreement.

3. Arrangements for Entry from Egypt and Jordan Through the Palestinian Wing

- a. At the entrance to the Palestinian Wing there will be a Palestinian policeman and a raised Palestinian flag.
- b. Before entering the Palestinian Wing, passengers will identify their personal luggage and it will be placed on a conveyor belt. Each side will be able to inspect such luggage inside its own checking area, using its own personnel and, if necessary, may open the luggage for inspection in the presence of the owner and a Palestinian policeman.
- c. Persons entering the Palestinian Wing will pass through a magnetic gate. An Israeli policeman and a Palestinian policeman will be posted on each side of this gate. In the event of suspicion, each side will be entitled to require a physical inspection to be conducted in inspection booths to be located adjacent to the gate. Passengers will be inspected by a Palestinian policeman in the presence of an Israeli policeman. Accompanying personal belongings may also be inspected at this point.
- d. Having completed the above phase, persons entering the Palestinian Wing will pass through one of two lanes for the purpose of identification and document control, as follows:

- (1) The first lane will be used by Palestinian residents of the West Bank and the Gaza Strip. These passengers will pass via a Palestinian counter, where their documents and identity will be checked. Their documents will be checked by an Israeli officer who will also check their identity indirectly in an invisible manner.
 - (2) The second lane will serve visitors to the West Bank and the Gaza Strip. These passengers will first pass via an Israeli counter, where their documents and identity will be checked. Then they will continue via a Palestinian counter, where their documents and identity will be checked. The two counters will be separated by tinted glass and a revolving door.
- e. In the event of suspicion regarding a passenger in any of the two lanes described in subparagraph d. above, each side may question such passengers in its closed checking area. Suspicion justifying questioning in the closed checking area may be one of the following:
- (1) the passenger was involved, directly or indirectly, in criminal or planned criminal activity, or in terrorist or planned terrorist activity, and is not a beneficiary of the amnesty provisions of this Agreement;
 - (2) the passenger conceals arms, explosives or related equipment;
 - (3) the passenger holds forged or non-valid documentation or the details included in the documentation are inconsistent with those included in the population registry (in case of a resident) or in the data base (in case of a visitor), except that questions relating to such inconsistency will initially be raised at the counter and the passenger will be questioned in the closed checking area only if the suspicion has not been removed, or
 - (4) the passenger acts in an obviously suspicious behavior during the passage via the terminal.

If, at the conclusion of this questioning, the suspicion has not been removed, such passenger may be apprehended, after the other side has been notified. In case of a Palestinian suspect being apprehended by the Israeli side, a Palestinian policeman will be asked to meet with the suspect. Following notification to the Liaison Bureau, any further treatment of the apprehended person will be in accordance with Annex IV.

- f. In the Palestinian Wing, each side will have the authority to deny the entry of persons who are not residents of the West Bank and the Gaza Strip.

For the purpose of this Agreement, "residents of the West Bank and the Gaza Strip" means persons who, on the date of entry into force of this Agreement, are registered as residents of these areas in the population

registry maintained by the military government of the West Bank and the Gaza Strip and by the Council, as well as persons who have subsequently obtained permanent residency in these areas with the approval of Israel, as set out in this Agreement.

- g. Following the above procedure, the passengers will collect their luggage and proceed to the customs area as described in Annex V, and as set out in Appendix 5.
- h. The Palestinian side will provide passengers whose entry is approved with an entry permit stamped by the Palestinian side and attached to their documents.

At the conclusion of the direct and indirect checking of the documents and identity of passengers passing via the first lane and stamping their entry permits, the Palestinian officer will provide the passenger with a white card issued by the Israeli officer. A Palestinian official posted at the exit of the Palestinian Wing will verify that the passenger holds such white card and will collect the cards with indirect and invisible Israeli checking.

For passengers going through the second lane, the Israeli officer will provide the passengers with a blue card, after checking their documents and identity, and verifying their entry permits. An Israeli and a Palestinian official posted at the exit of the Palestinian Wing will verify and collect the cards. White and blue cards collected will be checked by Israeli and Palestinian officials.

In cases where either side denies the entry of a non-resident passenger, that passenger will be escorted out of the terminal and sent back to Jordan or Egypt, as appropriate, after notifying the other side.

4. Arrangements for Exit to Egypt and Jordan Through the Palestinian Wing

Passengers exiting to Egypt or Jordan through the Palestinian Wing will enter the terminal without their luggage. Thereafter, the same procedures described in paragraph 3 above will apply to them, except that the order of passing via the Israeli and Palestinian counters will be reversed.

5. Joint Liaison Bureau

- a. There will be a Joint Liaison Bureau at each crossing point in order to deal with matters arising regarding passengers passing through the Palestinian Wing, issues regarding coordination, and differences regarding the implementation of these arrangements. Without derogating from Israel's responsibility for security, the bureau will also deal with incidents.
- b. This bureau will be comprised of an equal number of representatives from each side and will be located at a specified location inside each terminal.

c. This bureau will be subordinate to the relevant subcommittee of the CAC.

6. Miscellaneous

- a. Special arrangements will be agreed upon by the two sides regarding the passage of goods, buses, trucks and privately-owned vehicles. Pending this agreement, the current arrangements will continue to apply. The above-mentioned arrangements will be agreed upon within six months from the date of signing this Agreement.
- b. In order to cross through the border crossings into and out of the West Bank and the Gaza Strip, residents of these areas will use documents as detailed in Annex III.
- c. The Allenby Bridge terminal will operate from Sunday through Thursday, between the hours of 08:00 and 24:00, and on Fridays and Saturdays, between the hours of 08:00 and 15:00, except on Yom Kippur.

ARTICLE IX

Movement Into, Within and Outside the West Bank and the Gaza Strip

1. General

- a. Israel declares that work to relocate the Erez crossing point currently within the Gaza Strip to a location within Israel adjacent to the Delimiting Line, is underway. Israel will make every effort to complete this work as soon as possible. A joint Israeli-Palestinian committee will decide, within one month from the signing of this Agreement, the timeframe for completing this work and all related issues. Pending the completion of this work, Israel shall retain control over this crossing point and operate it in accordance with the provisions of this Article.
- b. Israelis entering the West Bank and the Gaza Strip shall carry Israeli documentation (if they are above the age of 16) and, if driving a vehicle, a driving license and vehicle registration documentation recognized in Israel. Tourists to Israel entering the West Bank and the Gaza Strip shall be subject to Palestinian laws in accordance with the provisions of this Agreement, shall carry their passports and other relevant documentation, and may be required by the Palestinian Police to identify themselves by presenting their passport or documentation, unless otherwise provided in this Article.
- c. Entry of persons from the West Bank and the Gaza Strip to Israel shall be subject to Israeli laws and procedures regulating entry into Israel, and residents of these areas shall be required to carry the identity card as

agreed upon in this Agreement, as well as documentation specified by Israel and notified through the CAC to the Council.

- d. The provisions of this Agreement shall not prejudice Israel's right, for security and safety considerations, to close the crossing points to Israel and to prohibit or limit the entry into Israel of persons and of vehicles from the West Bank and the Gaza Strip. In addition, the provisions of this Agreement shall not prejudice the use of safe passage.
- e. Tourists to the West Bank and the Gaza Strip from countries having diplomatic relations with Israel, who have passed through an international crossing, will not be required to pass any additional entry control before entry into Israel.

2. Passage within the West Bank and between the West Bank and Israel

- a. Without derogating from Israel's security powers and responsibilities in accordance with this Agreement, movement of people, vehicles and goods in the West Bank, between cities, towns, villages and refugee camps, will be free and normal, and shall not need to be effected through checkpoints or roadblocks.
- b. Movement between the West Bank and Israel shall be governed by the applicable laws, regulations and rules regulating the movement of persons and vehicles between the West Bank and Israel, while respecting the importance of the economic and social life, development programs and projects, and emergency health care services of the Palestinian population.
- c. The Palestinian Police shall set up checkpoints in areas under its security responsibility on roads connecting the West Bank and Israel, for the purpose of inspection and identification of Palestinian vehicles and passengers, in order to prevent illegal introduction of weapons into or from Israel.

3. Passage between the Gaza Strip and Israel

- a. Passage between the Gaza Strip and Israel will be via one or more of the following crossing points:
 - (1) the Erez crossing point;
 - (2) the Nahal Oz crossing point;
 - (3) the Sufa crossing point; and
 - (4) the Karni (commercial) crossing point (for goods only).

- b. The Council may set up a checkpoint, within the Gaza Strip, on the road leading to the Erez crossing point and on the road leading to the Nahal Oz crossing point, at locations to be coordinated between the two sides, for the purpose of inspection and identification of passengers and vehicles. Israelis and tourists to Israel passing through these checkpoints may be only required to identify themselves by presenting Israeli documentation or a passport, as set out in subparagraph 1.b above. The above requirements shall not apply to uniformed members of the Israeli military forces.
- c. The Council may set up a checkpoint, within the Gaza Strip, on the road leading to the Sufa crossing point, at a location acceptable to both sides, for the purpose of inspection and identification of Palestinian passengers and vehicles. Israeli vehicles may bypass this checkpoint unimpeded.
- d. The Council will allow passage of Israelis and tourists to Israel between the Gaza Strip and Israel, in addition, via the following crossing points:
 - (1) the Karni (non-commercial) crossing point;
 - (2) the Kisufim crossing point;
 - (3) the Kerem Shalom crossing point; and
 - (4) the Elei Sinai crossing point.
- e. Israelis, and tourists to Israel, who have passed through any of the above crossing points into the West Bank and the Gaza Strip shall not be required to undergo inspection, identification or other requirements in addition to the stated provisions for entry into the West Bank and the Gaza Strip outlined in this Article.
- f. Arrangements for the movement of goods between the Gaza Strip and Israel through the crossing points are set out in Annex V.
- g. A Palestinian liaison officer will be present at each of the crossing points on the Lateral Roads.

ARTICLE X

Safe Passage

1. General

- a. There shall be a safe passage connecting the West Bank with the Gaza Strip for movement of persons, vehicles and goods, as detailed in this Article.

- b. Israel will ensure safe passage for persons and transportation during daylight hours (from sunrise to sunset) or as otherwise agreed by the JSC, but in any event not less than 10 hours a day.
- c. Safe passage through Israel between the West Bank and the Gaza Strip will be effected via the following designated crossing points:
 - (1) the Erez crossing point (for persons and vehicles only);
 - (2) the Karni (commercial) crossing point (for goods only);
 - (3) the Tarkumya crossing point; and
 - (4) an additional crossing point around Mevo Horon.
- d. Israel will make such passage available through the routes indicated on attached map No. 6.
- e. Consistent with Article XXXI, paragraph 6 of the Agreement, the arrangements included in this Article are without prejudice to the permanent status negotiations.

2. Use of Safe Passage

- a. As detailed below, persons using the safe passage shall carry, in addition to personal and vehicle documentation, the following documents:
 - (1) a safe passage card; and
 - (2) (for drivers only) a vehicle safe passage permit.

Arrangements for the implementation of the safe passage usage, as well as modalities for the issuance by Israel of safe passage cards and vehicle safe passage permits, shall be discussed and agreed in the JSC, in consultation with the CAC.

- b. Residents of the West Bank and the Gaza Strip in possession of a permit enabling them to enter Israel will be able to use this permit as a safe passage card.
- c. Safe passage cards and vehicle safe passage permits shall be stamped by the Israeli authorities at the crossing point, with the time of departure from the crossing point and the estimated time of arrival.
- d. Israel may deny the use of its territory for safe passage by persons who have seriously or repeatedly violated the safe passage provisions detailed in this Article.

- e. Persons who are denied entry into Israel will use safe passage by means of shuttle buses which will be escorted by the Israel Police and which will operate from 7:00 AM to 2:00 PM on two days of every week. The exact date and times of such operation will be coordinated through the JSC. Applications by persons denied entry to Israel to use safe passage must be submitted to, and agreed upon in, the relevant DCO at least five days prior to the planned journey.
- f. Special arrangements will apply with respect to the passage of Palestinian leaders, senior Council officials, distinguished personalities and guests of the Ra'ees of the Council. The CAC will define the scope and nature of the special arrangements, in consultation with the JSC.
- g. The movement of Palestinian policemen on duty through the safe passage between the West Bank and the Gaza Strip will be coordinated through the JSC.
- h. Any additional matters relating to the usage of safe passage will be coordinated through the JSC.

3. Mode of Use of Safe Passage

- a. Persons and vehicles using safe passage under these arrangements shall neither break their journey nor depart from the designated routes, and shall complete the passage within the designated time stamped on their safe passage cards and permits, unless a delay is caused by a medical emergency or a technical breakdown.
- b. Persons using the safe passage through Israel shall be subject to Israeli law.
- c. Persons and vehicles using the safe passage shall not carry explosives, firearms or other weapons or ammunition, except for special cases that may be agreed in the JSC.

4. General Provisions Regarding the Safe Passage Routes

- a. The above arrangements shall in no way affect the status of the safe passage and its routes.
- b. The safe passage arrangements will not be available on Yom Kippur, Israel's Memorial Day and Israel's Independence Day.
- c. Israel may, for security or safety reasons, temporarily halt the operation of a safe passage route or modify the passage arrangements while ensuring that one of the routes is open for safe passage. Notice of such temporary closure or modification shall be given to the JSC.

- d. Israel shall notify the Council of incidents involving persons using safe passage routes, through the JSC.

ARTICLE XI

Rules of Conduct in Mutual Security Matters

1. Human Rights and the Rule of Law

Subject to the provisions of this Agreement, the Palestinian Police and the Israeli military forces shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms of human rights and the rule of law, and shall be guided by the need to protect the public, respect human dignity and avoid harassment.

2. Weapons

- a. Each side shall enforce upon civilians, Palestinians or Israelis, in the West Bank and the Gaza Strip, in accordance with their security responsibility, a prohibition on possession or carrying of weapons without a license.
- b. The Palestinian Police may grant licenses to possess or carry pistols for civilian use. The modalities for granting such licenses, as well as categories of persons who may be granted such licenses, will be agreed upon in the JSC.
- c. Upon the assumption of security responsibility, and in accordance with the Palestinian law, the Palestinian Police shall declare a period of grace of one month, during which period holders of unlicensed weapons will be required to declare that they hold such weapons and to apply for licenses. The Palestinian Police may grant such licenses in accordance with subparagraph b. above, and will enforce the Palestinian security policy set out in Article II, paragraph 1 of this Annex, against persons who hold unlicensed weapons.
- d. Israelis may carry weapons licensed in accordance with subparagraph a. above.
- e. The Palestinian Police will maintain an updated register of all weapons licensed by it.
- f. The Palestinian Police will prevent the manufacture of weapons as well as the transfer of weapons to persons not licensed to possess them.
- g. The use of explosives in quarries and for other civilian purposes will be only in accordance with modalities and procedures agreed upon in the JSC.

3. Engagement Steps

- a. For the purpose of this Article, "engagement" shall mean an immediate response to an act or an incident constituting a danger to life or property that is aimed at preventing or terminating such an act or incident, or at apprehending its perpetrators.
- b. Within the territory under the security responsibility of the Council, in places where Israeli authorities exercise their security functions in accordance with this Annex and in their immediate vicinities, the Israeli authorities may carry out engagement steps in cases where an act or incident requires such action. In such cases, the Israeli authorities will take any measures necessary to bring to an end such an act or incident with a view to transferring, at the earliest opportunity, the continued handling of the incident falling within the Palestinian responsibility to the Palestinian Police. The Palestinian Police will immediately be notified, through the relevant DCO, of such engagement steps.
- c. Engagement with the use of firearms in responding to such acts or incidents shall not be allowed, except as a last resort after all attempts at controlling the act or the incident, such as warning the perpetrator or shooting in the air, have failed, or are ineffective or without any promise of achieving the intended result in the circumstances. Use of firearms should be aimed at deterring or apprehending, and not at killing, the perpetrator. The use of firearms shall cease once the danger is past.
- d. Any activity involving the use of firearms other than for immediate operational purposes shall be subject to prior notification to the relevant DCO.
- e. If a person is injured or otherwise in need of assistance, such assistance will be provided by the side that first reaches the site. If such a person is under the security responsibility of the other side, the assisting side shall notify the relevant DCO and appropriate arrangements shall be made, pursuant to this Agreement, for treatment and hospitalization.

4. Rules of Conduct on Roads for Israelis

- a. Israeli military forces and Israeli civilians may continue to use roads freely within the West Bank and the Gaza Strip.
- b. On the main roads that are jointly patrolled, vehicles bearing Israeli license plates shall not be stopped except for identification, which shall be conducted by a Joint Patrol, pursuant to the provisions of Article III of this Annex. The Israeli side of such a patrol may carry out identity and vehicle documentation checks. In the event that a vehicle bearing a license plate issued by either the Council or the Civil Administration is stopped, the

Palestinian side of the Joint Patrol may carry out identity and vehicle documentation checks.

- c. On other roads, vehicles bearing Israeli license plates shall not be stopped by the Palestinian Police, except that such vehicles may be stopped in the Gaza Strip, in Area A or in places in Area B where there is a police station or post, for the purpose of identification checks of the above-mentioned documentation.
- d. Israelis shall under no circumstances be apprehended or placed in custody or prison by Palestinian authorities. However, where an Israeli is suspected of having committed an offense, he or she may be detained in place by the Palestinian Police while ensuring his or her protection, in accordance with the provisions of Annex IV, until the arrival of a Joint Patrol, called immediately by the Palestinian Police, or of other Israeli representatives dispatched by the relevant DCO.
- e. Israeli pedestrians may be required to produce identity documentation (if above the age of sixteen). Thereafter, they shall be treated in accordance with the provisions of this Article.
- f. Uniformed members of the Israeli military forces, as well as vehicles of the Israeli military forces, shall not be stopped by the Palestinian Police in any circumstances, and shall not be subject to any identification requirements. Without derogating from the above, in the event of suspicion regarding such a person or vehicle, the Palestinian Police may notify the Israeli authorities through the relevant DCO, in order to request appropriate assistance.
- g. Verification, pursuant to this Article, of the identity of persons who claim to be Israelis but cannot present appropriate identification documentation, will be confirmed by the Israeli side of a Joint Patrol, called by the Palestinian Police, or by other Israeli representatives dispatched by the relevant DCO.

ARTICLE XII

Security Arrangements Concerning Planning, Building and Zoning

I. General Provisions

- a. Notwithstanding the provisions relating to planning, building and zoning set out elsewhere in this Agreement, the provisions of this Article shall apply with respect to the areas specified below.
- b. These arrangements will be reviewed within a period of six months from the signing of this Agreement, and, thereafter, every six months, with a

view to modifying them, with due consideration to Palestinian plans for establishing economic projects, and to the security concerns of both sides.

- c. The limitations set out below on the construction of buildings and installations in specific areas shall not require the demolition or removal of existing buildings or installations.

2. Provisions regarding the West Bank

- a. Buildings or installations shall not be constructed or erected and natural and artificial culture shall not be altered, on either side of the roads delineated in blue on map No. 7 up to a distance of 50 meters from the center of these roads.
- b. Bridges or other structures will not be built which may prevent the movement on roads of vehicles of a height of up to 5.25 meters.
- c. In the areas shaded in purple on map No. 7, construction will be limited to a height of 15 meters.
- d. Any buildings or installations constructed or erected contrary to this paragraph shall be dismantled.

3. Provisions regarding the Gaza Strip

- a. The existing buildings, installations and natural and artificial culture in the Gaza Strip within a distance of 100 meters from the Delimiting Line shall remain as they are at present.
- b. Within the next 500 meters of the Security Perimeter, and within the Yellow Area, buildings or installations may be constructed, provided that:
 - (1) one building or installation may be constructed on each plot, the size of which shall not be less than 25 dunams; and
 - (2) such building or installation shall not exceed two floors, of a size not exceeding 180 sq. meters per floor.

The Council shall maintain the predominantly agricultural character of the remaining areas of the Security Perimeter.

- c. Buildings or installations shall not be constructed on either side of the Lateral Roads up to a distance of 75 meters from the center of these Roads.
- d. For the purpose of enforcing this Article, the United States has provided both sides with satellite photographs of the Gaza Strip depicting the

buildings, installations and natural and artificial culture existing at the time of the signing of the Gaza-Jericho Agreement.

ARTICLE XIII

Security of the Airspace

1. Operation of aircraft for the use of the Council in the West Bank and the Gaza Strip shall be initially as follows:
 - a. Two (2) transport helicopters for VIP transportation within and between the West Bank and the Gaza Strip.
 - b. Up to 3 helicopters for the purpose of transport missions to approved landing pads.
 - c. 3 fixed-wing transport aircraft with up to 35 persons capacity, for transporting persons between the West Bank and the Gaza Strip.
2. Changes in the number, type and capacity of aircraft may be discussed and agreed upon in a Joint Aviation Subcommittee of the JSC (hereinafter "the JAC").
3. The Council may immediately establish and operate in the West Bank and the Gaza Strip provisional airstrips for the helicopters and fixed wing aircraft referred to in paragraph 1 above, in accordance with arrangements and modalities to be discussed and agreed upon in the JAC.
4. All aviation activity or use of the airspace by any aerial vehicle in the West Bank and the Gaza Strip shall require prior approval of Israel. It shall be subject to Israeli air traffic control including, *inter alia*, monitoring and regulation of air routes as well as relevant regulations and requirements to be implemented in accordance with the Israel Aeronautical Information Publication, the relevant parts of which will be issued after consultation with the Council.
5. Aircraft taking off from, and landing in the West Bank and the Gaza Strip shall be registered and licensed in Israel or in other states members of International Civil Aviation Organization (ICAO). Air crews of such aircraft shall be licensed in Israel or in such other states, provided that such licenses have been approved and recommended by the Council and validated by Israel.
6. Palestinian Civil Aviation and airline staff may be recruited locally and from abroad. The number of Palestinians recruited from abroad shall not exceed 400. This number may be changed by agreement, if necessary.
7. Aircraft referred to in this Article shall not carry firearms, ammunition, explosives or weapons systems, unless otherwise approved by both sides. Special

arrangements for armed guards escorting high ranking officials, will be agreed upon in the JAC.

8. The location of navigational aids and other aviation equipment will be approved by Israel through the JAC.
9.
 - a. The Council sha'l ensure that only the aviation activity in accordance with this Agreement will take place in the West Bank and the Gaza Strip.
 - b. Further powers and responsibilities may be transferred to the Council through the JAC.
 - c. The Council may establish a Palestinian Civil Aviation Department to act on its behalf in accordance with the provisions in this Article and of this Agreement.
10.
 - a. Aviation activity by Israel will continue to be operated above the West Bank and the Gaza Strip, with the same limitations applicable in Israel regarding civil and military flights over densely-populated areas.
 - b. Israel will notify the Council of emergency rescue operations, searches and investigation of aerial accidents in the West Bank and the Gaza Strip. Searches and investigations of civilian aircraft accidents in which Palestinians or their property are involved, will be conducted by Israel with the participation of the Council.
11. Guided by the principle that the two sides view the West Bank and Gaza Strip as a single territorial unit, as set out in Article IV of the DOP, and in order to enable the smooth operation of flights between the West Bank and the Gaza Strip:
 - a. The JAC will agree on special arrangements to facilitate flights of the Ra'ees of the Executive Authority of the Council between the West Bank and the Gaza Strip. The Ra'ees and his spouse, and family members of the Ra'ees, his body guards and VIPs when accompanying the Ra'ees will fly without prior inspection of their person, personal belongings, and luggage.
 - b. The minimum time of notification of VIPs' flights will be four hours. The notification will include the list of passengers.
 - c. Flights of other persons will be handled in accordance with the procedures agreed in the JAC.
12. Flights between the West Bank and the Gaza Strip may be operated through the Gaza-Tel Aviv (sea shore) corridor.

Monitoring and regulations of this air route will be discussed in the JAC.

13. Commercial, domestic and international air services to, from and between the West Bank and the Gaza Strip may be operated by Palestinian, Israeli or foreign operators approved by both sides, certified and licensed in Israel or in ICAO member states maintaining bilateral aviation relations with Israel. Arrangements for such air services, beginning with a service between Gaza and Cairo using two (2) fixed-wing aircraft with capacity up to fifty passengers each, as well as arrangements regarding the establishment and operation of airports and air terminals in the West Bank and the Gaza Strip, will be discussed and agreed upon by the two sides in the JAC.

Any such international commercial air services will be carried out in accordance with Israel's bilateral aviation agreements. The implementation phase will be discussed and agreed on in the JAC.

ARTICLE XIV

Security along the Coastline to the Sea of Gaza

1. Maritime Activity Zones

a. Extent of Maritime Activity Zones

The sea off the coast of the Gaza Strip will be divided into three Maritime Activity Zones, K, L, and M as shown on map No. 8 attached to this Agreement, and as detailed below:

(1) Zones K and M

- (a)** Zone K extends to 20 nautical miles in the sea from the coast in the northern part of the sea of Gaza and 1.5 nautical miles wide southwards.
- (b)** Zone M extends to 20 nautical miles in the sea from the coast, and one (1) nautical mile wide from the Egyptian waters.
- (c)** Subject to the provisions of this paragraph, Zones K and M will be closed areas, in which navigation will be restricted to activity of the Israel Navy.

(2) Zone L

- (a)** Zone L bounded to the south by Zone M and to the north by Zone K extends 20 nautical miles into the sea from the coast.
- (b)** Zone L will be open for fishing, recreation and economic activities, in accordance with the following provisions:

will be notified of such actions, and the ensuing procedures will be coordinated through the MC.

2. The Palestinian Coastal Police

- a. The Palestinian Coastal police (hereinafter the "PCP") may function in Zone L, up to a distance of 6 nautical miles from the coast. In special cases, it may also exercise control over Palestinian fishing boats fishing in Zone L in an additional area of 6 nautical miles, up to the limit of 12 nautical miles from the coastline, after clearance and coordination through the MC.
- b. The PCP shall have up to 10 boats, with a displacement of up to 50 tons and maximum speed of up to 25 knots.
- c. The boats shall carry weapons of up to a 7.62 mm caliber.
- d. Boats of the PCP shall fly a Palestinian flag, have police identification markings and shall operate identification lights.
- e. The two sides shall cooperate on all sea matters, including mutual help at sea, and pollution and environmental issues.
- f. The boats of the Palestinian Coastal Police will initially use the Gaza Wharf.
- g. Boats belonging to Israelis are solely subject to the control, authority and jurisdiction of Israel and the Israel Navy.

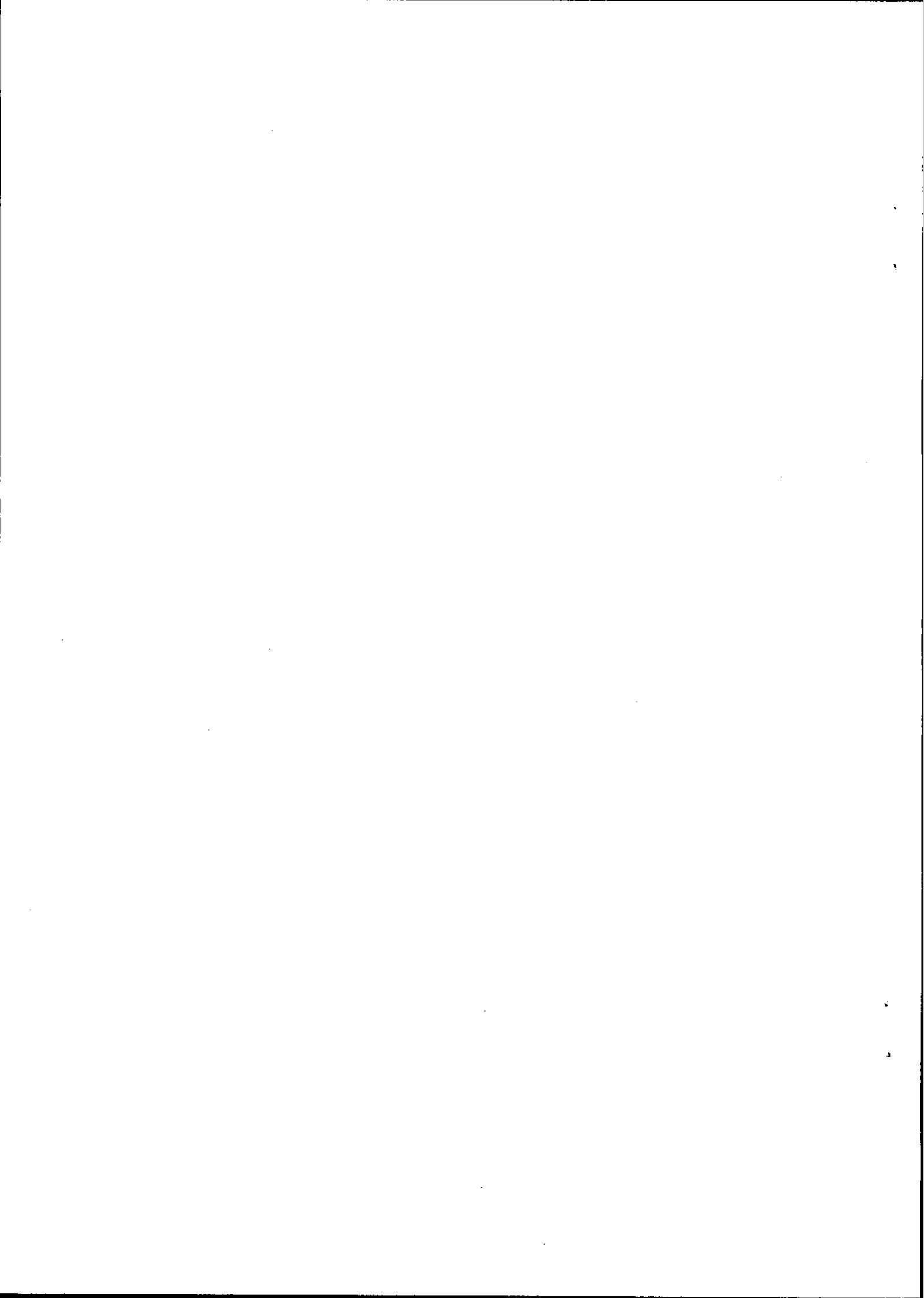
3. Maritime Coordination and Cooperation Center

- a. The MC shall function as part of the JSC, to coordinate civil maritime activities and coastal police affairs off the coast of the Gaza Strip.
- b. The MC shall function within the relevant DCO, and will determine its own rules of procedure.
- c. The MC shall function 24 hours a day.
- d. The MC shall be staffed by members of the Israel Navy and the PCP, each providing a liaison officer and an assistant liaison officer.
- e. A direct radio telephone link (hot line) shall be set up between the Israel Navy vessels and the PCP vessels.
- f. The role of the MC is to coordinate:

- (1) assistance between the PCP and the Israel Navy as may be necessary to deal with incidents arising at sea;
- (2) PCP training involving the use of firearms;
- (3) joint activities between the PCP and the Israel Navy when pre-planning is operationally necessary;
- (4) radio contact between PCP and Israel Navy vessels in the event that "hot line" communication between vessels of the two sides has not been established;
- (5) search and rescue operations; and
- (6) maritime activities related to an agreed port, when established in the Gaza Strip.

4. Gaza Strip Port

- a. Plans for the establishment of a port in the Gaza Strip in accordance with the DOP, its location, and related matters of mutual interest and concern, as well as licenses for vessels and crews sailing on international voyages will be discussed and agreed upon between Israel and the Council taking into consideration the provisions of Article XXX (Passages) of this Agreement. To this end a special committee will be established by the two sides.
- b. The Gaza Sea Port Authority referred to in the DOP shall act on behalf of the Council in accordance with the provisions of this Agreement.
- c. Pending construction of a port, arrangements for entry and exit of vessels, passengers and goods by sea, as well as licenses for vessels and crews sailing on international voyages in transit to the West Bank and the Gaza Strip, shall be through Israeli ports in accordance with the relevant rules and regulations applicable in Israel and in accordance with the provisions of Annex V.



EXPOSE ECRIT DES ETATS-UNIS D'AMERIQUE

[Traduction]

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CHAPITRE I

INTRODUCTION

1.1. Dans son ordonnance datée du 19 décembre 2003, la Cour a invité les Etats à soumettre des exposés écrits sur la question des *Conséquences juridiques de l'édification d'un mur dans le Territoire palestinien occupé*. Les Etats-Unis soumettent le présent exposé pour éclairer la Cour sur le processus de paix au Moyen-Orient, dont ils partagent la responsabilité, et lui faire part de leurs préoccupations quant à l'examen par celle-ci de la demande d'avis consultatif de l'Assemblée générale.

1.2. Les Etats-Unis coparrainent avec la Fédération de Russie le processus de paix au Moyen-Orient engagé lors de la conférence de Madrid de 1991. Depuis 2002, les Etats-Unis, de concert avec la Fédération de Russie, l'Union européenne et le Secrétaire général de l'Organisation des Nations Unies, s'emploient, en tant que membres du Quatuor, à promouvoir un règlement

pacifique négocié du conflit israélo-palestinien dans le cadre des principes de la conférence de Madrid. Le but de ce processus est de parvenir à une paix globale qui inclue non seulement Israël et un nouvel Etat palestinien, mais aussi le Liban et la Syrie.

1.3. Tant l'Assemblée générale que le Conseil de sécurité de l'Organisation des Nations Unies ont approuvé la «feuille de route axée sur des résultats en vue d'un règlement permanent du conflit israélo-palestinien prévoyant deux Etats» («la feuille de route»)¹. L'Assemblée générale et le Conseil de sécurité ont aussi demandé aux Israéliens et aux Palestiniens de s'acquitter des responsabilités qui leur incombent en vertu de la feuille de route, en coopération avec le Quatuor, afin de concrétiser la vision de deux Etats vivant côte à côte dans la paix et la sécurité. Il appartient ainsi aux Etats-Unis, en tant que coparrain du processus de paix de Madrid et membre du Quatuor, de jouer un rôle important dans le soutien à apporter aux efforts visant à instaurer la paix entre les Israéliens et les Palestiniens conformément aux résolutions pertinentes de l'Organisation des Nations Unies et aux accords conclus précédemment entre les parties.

1.4. C'est en ayant égard à ce rôle que les Etats-Unis soumettent le présent exposé. Comme ils l'ont déclaré lorsqu'ils se sont prononcés contre l'adoption par l'Assemblée générale de la résolution par laquelle celle-ci a saisi la Cour, les Etats-Unis sont d'avis que rendre en la matière un avis consultatif risque de compromettre le processus de paix et de politiser la Cour. Les Etats-Unis estiment aussi qu'il est de leur responsabilité particulière d'appeler l'attention de la Cour sur les éléments essentiels du processus de paix de Madrid, étant donné sa pertinence pour le règlement du conflit israélo-palestinien. Le présent exposé commence donc par décrire le contenu de la feuille de route et le processus de négociation qu'elle définit (chap. II : Contexte). Il est possible d'évaluer dans ce contexte la demande de l'Assemblée générale, en la mettant en relation avec les négociations destinées à apporter la paix à la région.

1.5. L'exposé identifie ensuite certains des éléments essentiels que la Cour doit prendre en considération pour décider s'il convient qu'elle rende un avis consultatif (chap. III : Considérations relatives à l'opportunité judiciaire de donner un avis consultatif). Etant donné la manière dont cette procédure a été engagée et dont la question posée est formulée, les points susceptibles d'être abordés en l'espèce n'apparaissent pas clairement. Les Etats-Unis tiennent donc à souligner que, pour déterminer s'il y a lieu d'examiner les différents points qui viendraient à être soulevés dans les exposés écrits et oraux, la Cour devra prendre dûment en considération le principe selon lequel la procédure d'avis consultatif n'est pas censée être un moyen de faire échec au droit qu'ont les Etats de décider de soumettre ou non leurs différends au règlement judiciaire. Comme la Cour elle-même l'a reconnu, c'est là un principe important pour préserver l'indépendance et les droits souverains des Etats et pour sauvegarder comme il convient le caractère judiciaire de la Cour dans le contexte d'un avis consultatif. Les Etats-Unis estiment que ce principe revêt une importance toute particulière lorsqu'il existe un cadre établi dans lequel régler les questions contestées par la négociation.

1.6. Enfin, le présent exposé met en relief deux aspects essentiels du processus de paix au Moyen-Orient auxquels, selon la lecture que font les Etats-Unis de la résolution de l'Assemblée générale, la Cour n'est pas invitée à toucher (Chapitre IV : Considérations relatives au processus de négociation en général). Premièrement, un principe fondamental de ce processus est que les questions relatives au statut définitif qui sont au centre du conflit israélo-palestinien doivent, d'après ce qui a été convenu et selon le cadre international applicable, être réglées par la voie de négociations entre les parties au différend. Le fait pour une des parties, agissant unilatéralement,

¹ Feuille de route axée sur des résultats en vue d'un règlement permanent du conflit israélo-palestinien prévoyant deux Etats, S/2003/529, annexe (annexe 1).

ou pour la Cour, de chercher à déterminer l'issue de la contestation sur l'une quelconque de ces questions serait incompatible avec les résolutions du Conseil de sécurité et de l'Assemblée générale et mettrait gravement en péril le processus de paix.

1.7. Deuxièmement, les Israéliens et les Palestiniens doivent, séparément et en concertation et coopération les uns avec les autres, s'acquitter de leurs responsabilités en matière de sécurité. Ces responsabilités sont spécifiées dans leurs accords antérieurs. Toutes les parties et les organisations internationales doivent continuer à mettre l'accent sur le fait qu'il incombe aux Israéliens comme aux Palestiniens d'honorer leurs engagements en matière de sécurité pour que le processus de paix puisse aboutir.

CHAPITRE II

CONTEXTE

A. La résolution de saisine

2.1. Par sa résolution ES-10/14 du 8 décembre 2003, l'Assemblée générale des Nations Unies a demandé à la Cour un avis consultatif sur la question suivante :

«Quelles sont en droit les conséquences de l'édification du mur qu'Israël, puissance occupante, est en train de construire dans le Territoire palestinien occupé, y compris à l'intérieur et sur le pourtour de Jérusalem-Est, selon ce qui est exposé dans le rapport du Secrétaire général, compte tenu des règles et des principes du droit international, notamment la quatrième convention de Genève de 1949, et les résolutions consacrées à la question par le Conseil de sécurité et l'Assemblée générale ?»²

Dans la même résolution («la résolution de saisine»), l'Assemblée générale des Nations Unies a

«*Affirm[é]* qu'il est nécessaire de mettre fin au conflit [israélo-palestinien] sur la base d'une solution qui permette aux deux Etats, Israël et la Palestine, de vivre côte à côte dans la paix et la sécurité et dans le respect de la ligne d'armistice de 1949, conformément aux résolutions pertinentes du Conseil de sécurité et de l'Assemblée générale.»³

A ce propos, la résolution de saisine a réaffirmé la résolution ES-10/13 de l'Assemblée générale du 21 octobre 2003, aux termes de laquelle l'Assemblée

«*Engage* les deux parties à s'acquitter des obligations qui leur incombent en vertu des dispositions pertinentes de la feuille de route, l'Autorité palestinienne à s'efforcer visiblement, sur le terrain, d'arrêter et de désorganiser les individus et les groupes qui exécutent et organisent des attentats violents et de les empêcher d'agir, et le Gouvernement israélien à ne pas prendre de mesures qui sapent la confiance, notamment les expulsions, les attaques contre la population civile et les exécutions extrajudiciaires.»⁴

2.2. La résolution de saisine rappelle aussi la résolution 1515 (2003) du Conseil de sécurité de l'ONU, en date du 19 novembre 2003, dans laquelle le Conseil

«1. *Approuve* la feuille de route axée sur les résultats en vue d'un règlement permanent du conflit israélo-palestinien prévoyant deux Etats, établie par le Quatuor (S/2003/529); [et]

2. *Demande* aux parties de s'acquitter des obligations qui leur incombent en vertu de la feuille de route, en coopération avec le Quatuor, et de concrétiser la vision de deux Etats vivant côte à côte dans la paix et la sécurité.»⁵

² A/RES/ES-10/14 (2003).

³ *Ibid.*

⁴ A/RES/ES-10/13 (2003), par. 2 (citant la feuille de route, S/2003/529, annexe).

⁵ S/RES/1515 (2003).

2.3. Ainsi, la feuille de route est le cadre que l'Assemblée générale comme le Conseil de sécurité ont approuvé et auquel ils s'en sont remis pour le règlement du conflit israélo-palestinien, sous les auspices du Quatuor. Le point capital pour la présente procédure est que la décision prise par l'Assemblée générale de demander à la Cour un avis consultatif doit s'entendre dans le contexte de la réaffirmation — par l'Assemblée elle-même — des éléments essentiels du processus de paix, parmi lesquels la place centrale faite à la négociation dans le cadre de la feuille de route.

B. La feuille de route

2.4. La feuille de route établie par le Quatuor est un dispositif diplomatique en plusieurs phases devant aboutir à un règlement définitif et global du conflit israélo-palestinien. Sa mise en œuvre conduira à l'avènement d'un Etat palestinien indépendant, démocratique et viable vivant côte à côte avec Israël et ses autres voisins dans la paix et la sécurité. Ainsi qu'il est dit dans la feuille de route :

«[Le règlement] mettra fin au conflit israélo-palestinien et à l'occupation qui a commencé en 1967, en s'appuyant sur les résultats de la conférence de Madrid, le principe «la terre contre la paix», les résolutions 242 (1967), 338 (1973) et 1397 (2002) du Conseil de sécurité des Nations Unies, les accords précédemment conclus par les parties et l'initiative du prince héritier Abdullah d'Arabie saoudite — approuvée par le sommet des Etats membres de la Ligue arabe réuni à Beyrouth — laquelle demande qu'Israël soit accepté en tant que pays voisin vivant dans la paix et la sécurité, dans le cadre d'un règlement global. Cette initiative est un élément crucial des efforts accomplis au plan international pour promouvoir une paix globale sur tous les volets, y compris le volet israélo-syrien et le volet israélo-libanais.»⁶

2.5. Les autorités tant israéliennes que palestiniennes ont accepté la feuille de route et se sont engagées à la mettre en œuvre. Comme l'a déclaré le premier ministre de l'Autorité palestinienne le 4 juin 2003 :

«Il existe une nouvelle opportunité pour la paix, une opportunité fondée sur la vision du président Bush et la feuille de route du Quatuor, que nous avons acceptée sans réserve. Notre but est qu'il y ait deux Etats, Israël et la Palestine, vivant côte à côte dans la paix et la sécurité. Le processus est celui de négociations directes visant à mettre fin au conflit israélo-palestinien et à régler toutes les questions relatives au statut définitif, ainsi qu'à mettre un terme à l'occupation qui a commencé en 1967 et dont les Palestiniens ont tant souffert. Nous ne méconnaissons pas pour autant les souffrances qu'ont connues les juifs au cours de l'histoire. Il est temps que toute cette souffrance finisse. De même qu'Israël doit faire face à ses responsabilités, nous, Palestiniens, assumerons nos obligations pour permettre le succès de cette entreprise. Nous sommes prêts à faire notre part.»⁷ [*Traduction du Greffe.*]

Le premier ministre d'Israël a, le même jour, fait écho à cette déclaration en exprimant des sentiments analogues :

⁶ Feuille de route, S/2003/529, p. 2, annexe (annexe 1).

⁷ Remarques du président Bush, de Sa Majesté le roi Abdullah de Jordanie, de M. Sharon, premier ministre d'Israël, et de M. Abbas, premier ministre de l'Autorité palestinienne, 4 juin 2003, texte disponible sur <http://www.whitehouse.gov/news/releases/2003/06/20030604-1.html> (annexe 2).

«Israël, comme d'autres, soutient fermement la vision exprimée par le président Bush le 24 juin 2002 de deux Etats, Israël et un Etat palestinien, vivant côte à côte dans la paix et la sécurité. Le Gouvernement et le peuple d'Israël sont heureux de la possibilité qui s'offre de reprendre des négociations directes, selon les étapes de la feuille de route telle qu'adoptée par le Gouvernement israélien, pour concrétiser cette vision. Il est de l'intérêt d'Israël de ne pas gouverner les Palestiniens mais que les Palestiniens se gouvernent eux-mêmes dans leur propre Etat. Un Etat palestinien démocratique, pleinement en paix avec Israël, favorisera à long terme la sécurité et le bien-être d'Israël en tant qu'Etat juif.»⁸ [Traduction du Greffe.]

2.6. Comme l'ont déclaré les dirigeants israélien et palestinien, l'essentiel de la feuille de route consiste en un processus de négociation entre Israéliens et Palestiniens, sur la base des accords entre les parties et des principes énoncés dans les résolutions antérieures du Conseil de sécurité de l'Organisation des Nations Unies.

C. Le processus de négociation

2.7. Pour assurer le succès de la feuille de route, les Israéliens et les Palestiniens doivent mener de bonne foi des négociations en vue de régler les questions relatives au statut définitif qui sont au cœur du conflit qui les oppose depuis cinquante ans. Ce processus de négociation découle de résolutions du Conseil de sécurité de l'ONU et d'accords antérieurs entre les parties.

2.8. Dans sa résolution 242 (1967) du 22 novembre 1967, le Conseil de sécurité, entre autres dispositions, a

«Affirm[é] que l'accomplissement des principes de la Charte [des Nations Unies] exige l'instauration d'une paix juste et durable au Moyen-Orient qui devrait comprendre l'application des deux principes suivants :

- i) retrait des forces armées israéliennes des territoires occupés lors du récent conflit; [et]
- ii) cessation de toutes assertions de belligérance ou de tous états de belligérance et respect et reconnaissance de la souveraineté, de l'intégrité territoriale et de l'indépendance politique de chaque Etat de la région et de leur droit de vivre en paix à l'intérieur de frontières sûres et reconnues à l'abri de menaces ou d'actes de force.»⁹

2.9. Dans sa résolution 338 (1973) du 22 octobre 1973, le Conseil de sécurité a

«Demand[é] aux parties en cause de commencer immédiatement après le cessez-le-feu l'application de la résolution 242 (1967) du Conseil de sécurité, en date du 22 novembre 1967, dans toutes ses parties; [et]

3. Décid[é] que, immédiatement et en même temps que le cessez-le-feu, des négociations commenceront entre les parties en cause sous des auspices appropriés en vue d'instaurer une paix juste et durable au Moyen-Orient.»¹⁰

⁸ *Ibid.*

⁹ S/RES/242 (1967), par. 1.

¹⁰ S/RES/338 (1973).

2.10. Le 26 mars 1979, l'Égypte et Israël ont, sur la base de ce cadre de négociation, conclu avec succès un accord de paix. Ainsi qu'il est dit dans le préambule, ils l'ont fait «Convaincus de la nécessité urgente d'établir au Moyen-Orient une paix juste, globale et durable conformément aux résolutions 242 et 338 du Conseil de sécurité.»¹¹

2.11. Les efforts visant à étendre le champ de cette réussite à d'autres parties n'ont donné que des résultats limités jusqu'à ce que les États-Unis et l'Union soviétique convoquent à Madrid, en 1991, une conférence sur la paix au Moyen-Orient. Là, pour la première fois, des Israéliens, des Palestiniens, des Jordaniens, des Libanais, des Syriens et des représentants d'autres pays de la région se sont rencontrés en ayant pour objectif commun l'instauration d'une paix globale. Dans leur invitation, les États-Unis et l'Union soviétique, coparrains de la conférence, se sont déclarés

«prêts à apporter leur concours aux parties pour parvenir à un règlement de paix juste, durable et global, par des négociations directes menées à deux niveaux, entre Israël et les États arabes et entre Israël et les Palestiniens, sur la base des résolutions 242 et 338 du Conseil de sécurité des Nations Unies» [traduction du Greffe].¹²

2.12. S'agissant du conflit israélo-palestinien, l'invitation proposait un processus de négociation en plusieurs phases, commençant par des pourparlers sur des arrangements intérimaires d'autonomie (*self-government*) et menant, pour finir, à des négociations sur le statut permanent. L'invitation précisait : «Ces négociations sur le statut permanent et les négociations entre Israël et les États arabes se dérouleront sur la base des résolutions 242 et 338.»¹³ [Traduction du Greffe.]

2.13. Le 13 septembre 1993, Israël et l'OLP ont signé une déclaration de principes sur des arrangements intérimaires d'autonomie («la déclaration de principes»)¹⁴, avec pour témoins les États-Unis et la Fédération de Russie. La déclaration de principes définissait le cadre des négociations israélo-palestiniennes envisagées à la conférence de Madrid, en commençant par la création d'une «Autorité palestinienne intérimaire autonome.» A cette étape devait faire suite un règlement négocié de la question du statut permanent qui «aboutir[ait] à l'application des résolutions 242 (1967) et 338 (1973) du Conseil de sécurité»¹⁵. A propos du statut permanent, la déclaration de principes précisait : «Il est entendu que ces négociations porteront sur les questions en suspens, notamment : Jérusalem, les réfugiés, les implantations, les arrangements en matière de sécurité, les frontières, les relations et la coopération avec d'autres voisins, et d'autres questions d'intérêt commun.»¹⁶

2.14. Israël et l'OLP ont conclu par la suite un grand nombre d'accords spécifiques portant création et acquisition de responsabilités par l'Autorité palestinienne intérimaire («l'Autorité palestinienne», ou AP), qui a commencé par être mise en place à Gaza en 1994. L'accord le plus important est l'«accord intérimaire israélo-palestinien relatif à la Cisjordanie et à la bande de Gaza»

¹¹ Traité de paix, 26 mars 1979, Égypte-Israël, Nations Unies, *Recueil des traités*, vol. 1136, p. 206.

¹² Invitation, 18 octobre 1991 (annexe 3).

¹³ *Ibid.*

¹⁴ Déclaration de principes sur des arrangements intérimaires d'autonomie, A/48/486, S/26560 (1993), annexe.

¹⁵ *Ibid.*, article premier.

¹⁶ *Ibid.*, art. V.

(«l'accord intérimaire»)¹⁷, qui a été signé à Washington le 28 septembre 1995, avec pour témoins les coparrains et l'Union européenne ainsi que l'Égypte, la Jordanie et la Norvège. Comme la déclaration de principes, l'accord intérimaire indiquait que les négociations sur le statut permanent conduiraient à la mise en œuvre des résolutions 242 et 338 du Conseil de sécurité. Et, comme la déclaration de principes, l'accord intérimaire précisait :

«Il est entendu que ces négociations traiteront des questions encore en suspens, se rapportant notamment à Jérusalem, aux réfugiés, aux implantations, aux dispositions de sécurité, aux limites territoriales, aux relations et à la coopération avec les pays voisins, ainsi que d'autres questions d'intérêt commun.»¹⁸

Parallèlement, l'accord intérimaire disposait aussi : «Aucune des deux parties n'entreprend ni ne prend de mesure à même de modifier le statut de la Cisjordanie et de la bande de Gaza avant que les négociations sur le statut permanent n'aboutissent.»¹⁹

2.15. Cette disposition est réaffirmée dans des accords ultérieurs entre les parties²⁰. Elle complète et renforce l'engagement assumé par les parties de régler par la négociation chacune des questions relatives au statut permanent.

2.16. L'accord intérimaire établit également un dispositif détaillé pour le maintien de la sécurité en Cisjordanie et dans la bande de Gaza pendant la période intérimaire. Il prévoit la création d'une force de police palestinienne et stipule comment cette force, agissant en concertation avec les forces de sécurité israéliennes et en conjonction avec d'autres mesures, est censée assurer la paix publique au fur et à mesure du transfert par Israël de la juridiction civile et sécuritaire à l'Autorité palestinienne nouvellement créée. Les arrangements prévus pour la coopération et la coordination en Cisjordanie sont particulièrement complexes, parce que la population de cette zone est mélangée, comprenant à la fois des Israéliens et des Palestiniens, et que les parties sont convenues d'attendre d'en être au stade des négociations sur le statut permanent pour régler la question des implantations israéliennes. Malheureusement, beaucoup de difficultés ont été rencontrées dans le règlement des questions relatives au statut permanent à cause de la persistance de la violence dans la zone et, ces dernières années, du fait de l'absence de coopération efficace entre les parties pour la réprimer²¹.

2.17. En 2002, le Quatuor s'est formé pour aider les parties à surmonter la profonde défiance qui s'était installée entre elles et apporter son soutien aux efforts de coopération sécuritaire et à la reprise des négociations. Le Conseil de sécurité de l'ONU a alors adopté la résolution 1397 (2002) du 12 mars 2002, aux termes de laquelle il se déclare

¹⁷ Accord intérimaire israélo-palestinien sur la rive occidentale et la bande de Gaza, A/51/889, S/1997/357, annexe.

¹⁸ *Ibid.*, art. XXXI, par. 5.

¹⁹ *Ibid.*, art. XXXI, par. 7.

²⁰ Voir mémorandum de Wye River, 23 octobre 1998, *International Legal Materials*, vol. 37, p. 1251; mémorandum de Charm el-Cheikh, 4 septembre 1999, *ibid.*, vol. 38, p. 1465.

²¹ L'article XXI de l'accord intérimaire stipule : «Tout différend relatif à l'application du présent accord est soumis au mécanisme de coordination et de coopération compétent établi en vertu du présent accord.» Les différends concernant la période intérimaire qui ne sont pas réglés par ce mécanisme doivent l'être par l'intermédiaire du comité de liaison des parties. A défaut, l'article XXI dispose que les parties peuvent convenir de soumettre le différend à un mécanisme de conciliation ou d'arbitrage.

«*Attaché* à la vision d'une région dans laquelle deux Etats, Israël et la Palestine, vivent côte à côte dans des frontières reconnues et sûres, [et]

Se félicit[e] ... des efforts diplomatiques déployés par les envoyés spéciaux des Etats-Unis, de la Fédération de Russie, de l'Union européenne et par le Coordonnateur spécial des Nations Unies et d'autres pour parvenir à une paix complète, juste et durable au Moyen-Orient, et les *encourage...*»²²

2.18. En mai 2003, le Quatuor a obtenu que les Palestiniens et les Israéliens acceptent d'agir de concert sous ses auspices et sur la base de la feuille de route qu'il avait établie. En novembre 2003, le Conseil de sécurité de l'ONU a adopté la résolution 1515, dans laquelle il approuve la feuille de route et demande aux parties de s'acquitter des obligations qui leur incombent en vertu de celle-ci. La feuille de route englobe par référence les accords israélo-palestiniens antérieurs et les résolutions pertinentes du Conseil de sécurité. Elle offre aux parties une structure concrète pour parvenir à la solution de deux Etats par le règlement négocié des questions relatives au statut définitif.

2.19. Comme son texte l'indique, la feuille de route doit déboucher, «en 2005, sur un règlement final de la question du statut définitif, y compris les frontières, Jérusalem, les réfugiés, les colonies»²³. Pendant la troisième et dernière phase,

«[L]es parties parviennent à un accord final et général sur le statut définitif qui met fin au conflit israélo-palestinien en 2005. Il s'agit d'un accord négocié entre les parties sur la base des résolutions 242 (1967), 338 (1973) et 1397 (2002) du Conseil de sécurité, qui met fin à l'occupation commencée en 1967 et prévoit un règlement accepté, juste, équitable et réaliste de la question des réfugiés et un règlement négocié de la question du statut de Jérusalem qui tient compte des préoccupations politiques et religieuses des deux parties, qui protège les intérêts religieux des juifs, des chrétiens et des musulmans du monde entier, et qui est conforme au principe de deux Etats, Israël et une Palestine souveraine, indépendante, démocratique et viable, vivant côte à côte dans la paix et la sécurité.»²⁴

2.20. Le passage d'une phase à l'autre de la feuille de route est laissé à l'appréciation du Quatuor, selon qu'il jugera que la situation le permet ou non, compte tenu des résultats atteints par les deux parties. Les Etats-Unis, de même que les autres membres du Quatuor, continuent à déployer des efforts soutenus, à un haut niveau, pour encourager les parties à progresser dans la réalisation de ces phases successives en vue d'atteindre le but que constitue la solution des deux Etats.

2.21. La considération primordiale qui doit guider la Cour lors de l'examen de la demande que lui a adressée l'Assemblée générale dans la présente affaire est le fait que l'application de la feuille de route, sous la conduite du Quatuor, est la méthode qu'ont approuvée tant l'Assemblée générale que le Conseil de sécurité pour instaurer la paix entre les Israéliens et les Palestiniens. La Cour devrait donc éviter de faire quoi que ce soit qui puisse gêner la mise en oeuvre de la feuille de route ou soit incompatible avec celle-ci.

²² S/RES/1397 (2002).

²³ Feuille de route, S/2003/529, p. 7, annexe (annexe 1).

²⁴ *Ibid.*, p. 8.

CHAPITRE III

CONSIDERATIONS RELATIVES A L'OPPORTUNITE JUDICIAIRE DE DONNER UN AVIS CONSULTATIF

3.1. Les Etats-Unis ont voté contre l'adoption de la résolution de saisine. Dans l'intervention qu'ils ont faite devant l'Assemblée générale au sujet de cette résolution, les Etats-Unis ont notamment déclaré :

«La communauté internationale est depuis longtemps consciente que le règlement du conflit [israélo-palestinien] passe par une solution négociée, ainsi que le demandent les résolutions 242 (1967) et 338 (1973) du Conseil de sécurité. Cela a été indiqué clairement aux parties dans les principes arrêtés par la Conférence de paix de Madrid de 1991. Faire intervenir la Cour internationale de Justice dans ce conflit est incompatible avec cette approche et pourrait, en fait, retarder la solution des deux Etats et avoir une influence négative sur la mise en œuvre de la feuille de route. En outre, saisir la Cour internationale de Justice de cette question risque d'entraîner une politisation de cet organe. Cela ne ferait pas progresser la capacité de la Cour de contribuer à la sécurité mondiale, ni les perspectives de paix.»²⁵

Les Etats-Unis continuent à penser qu'il était inopportun de saisir la Cour de ce différend et que cela ne fera pas progresser, mais au contraire gênera, les efforts déployés pour mettre en œuvre la feuille de route et arriver à la solution des deux Etats.

3.2. Malgré ces dangers, l'Assemblée générale a adopté la résolution par quatre-vingt-dix voix contre huit, avec soixante-quatorze abstentions (dix-neuf Etats Membres n'ayant pas participé au vote). Pour la suite à donner à la demande de l'Assemblée générale, la Cour devra maintenant décider si elle est compétente et si elle doit user de son pouvoir discrétionnaire de rendre ou non un avis consultatif sur les questions particulières qui viendraient à être soulevées au cours de la procédure.

²⁵ A/ES-10/PV.23 (1993), p. 21. Beaucoup d'autres délégations n'ont pas, non plus, appuyé la résolution. Voir par exemple : *ibid.*, p. 16 (l'Italie au nom de l'Union européenne, les pays en cours d'adhésion — Chypre, Estonie, Hongrie, Lettonie, Lituanie, Malte, Pologne, République tchèque, Slovaquie et Slovénie — et les pays associés — Bulgarie et Roumanie —, les pays du processus de stabilisation et d'association européennes et candidats potentiels — Albanie, Bosnie-Herzégovine, Croatie, ex-République yougoslave de Macédoine et Serbie et Monténégro —, ainsi que les pays membres de l'association européenne de libre-échange, membres de l'espace économique européen — Islande et Norvège) : «[L]a proposition visant à demander un avis consultatif à la Cour internationale de Justice ne contribuera pas aux efforts consentis par les deux parties en vue de relancer le dialogue politique et ... est donc inappropriée»; *ibid.*, p. 19 (Fédération de Russie) : «Il importe à présent de rétablir le dialogue direct entre Palestiniens et Israéliens»; *ibid.*, p. 20 (Ouganda) : «La solution réside dans un règlement négocié entre les deux parties. C'est pourquoi nous pensons que porter l'affaire devant la Cour internationale de Justice ne servira guère la cause de la paix»; *ibid.*, p. 24 (Royaume-Uni) : «Le fait de demander un avis consultatif n'aidera en aucun cas les deux parties à relancer le dialogue politique si nécessaire, et la mise en œuvre de la feuille de route devrait constituer une priorité»; *ibid.*, p. 25 (Canada) : «[N]ous nous demandons ... si cette demande d'avis consultatif constitue une mesure constructive ... à l'heure actuelle»; *ibid.* (Suisse) : «[L]a Suisse ... ne juge ... pas opportun, dans les circonstances actuelles, de recourir à une instance juridique pour aborder un thème où prédominent des implications hautement politiques»; *ibid.* (Singapour) : «Nous n'estimons pas qu'il soit approprié d'associer ainsi la Cour internationale de Justice au différend.»

3.3. Sans préjudice d'autres considérations, les Etats-Unis considèrent comme particulièrement important que la Cour ait dûment égard au principe selon lequel sa compétence consultative n'est pas censée être un moyen de faire échec au droit qu'ont les Etats de décider de soumettre ou non leurs différends au règlement judiciaire. Ce principe revêt une importance toute particulière lorsqu'il existe un cadre établi de règlement des questions contestées par la négociation.

A. Eléments essentiels que la Cour doit prendre en considération pour apprécier l'opportunité de donner un avis consultatif

3.4. C'est un point bien établi qu'en application de l'article 65 de son Statut, la décision de donner un avis consultatif est laissée à la discrétion de la Cour, même lorsqu'elle a compétence pour connaître de la demande²⁶. Dans l'exercice de ce pouvoir discrétionnaire, la Cour, pour apprécier de l'opportunité judiciaire d'une telle décision, a surtout cherché à maintenir la distinction qui est faite dans son Statut entre procédure contentieuse et procédure consultative. Dans le premier cas, c'est par l'effet du consentement des Etats intéressés que la Cour est habilitée à régler entre eux avec effet obligatoire un différend d'ordre juridique²⁷. En revanche, le pouvoir qu'a la Cour de rendre des avis consultatifs a un caractère discrétionnaire, et elle peut refuser d'accéder à une demande d'avis consultatif lorsque cela l'obligerait à trancher un différend alors qu'un des Etats parties à celui-ci n'y aurait pas consenti. Ainsi que la Cour l'a déclaré dans l'affaire du *Sahara occidental* :

«[L]e défaut de consentement d'un Etat intéressé peut, dans certaines circonstances, rendre le prononcé d'un avis consultatif incompatible avec le caractère judiciaire de la Cour. Tel serait le cas si les faits montraient qu'accepter de répondre aurait pour effet de tourner le principe selon lequel un Etat n'est pas tenu de soumettre un différend au règlement judiciaire s'il n'est pas consentant. Si une telle situation devait se produire, le pouvoir discrétionnaire que la Cour tient de l'article 65, paragraphe 1, du Statut fournirait des moyens juridiques suffisants pour assurer le respect du principe fondamental du consentement à la juridiction.»²⁸

3.5. La Cour (et sa devancière la Cour permanente de Justice internationale) a expliqué par plusieurs motifs l'importance de ce principe. Premièrement, il est nécessaire de préserver l'indépendance des Etats, qui décident souverainement de soumettre ou non à la Cour un différend

²⁶ Voir, par exemple, *Interprétation des traités de paix conclus avec la Bulgarie, la Hongrie et la Roumanie, première phase, avis consultatif, C.I.J. Recueil 1950*, p. 72; *Réserves à la convention pour la prévention et la répression du crime de génocide, avis consultatif, C.I.J. Recueil 1951*, p. 19; *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 21.

²⁷ Voir *Statut de la Cour internationale de Justice*, art. 36.

²⁸ *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 25. La Cour a réaffirmé ce principe dans l'affaire de *l'Applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies, avis consultatif, C.I.J. Recueil 1989*, p. 191; voir aussi *The charter of the United Nations : A Commentary*, dir. de publ., Bruno Simma, 2^e éd., 2002, vol. 2, p. 1185 : «La décision de déclarer une demande [d'avis consultatif] recevable serait inopportune si cette demande avait pour effet de porter devant la Cour un différend d'ordre juridique relatif à des Etats n'ayant pas reconnu sa juridiction sur la base de l'article 36 du Statut, et ce en l'absence des Etats intéressés.» [Traduction du Greffe.]

auquel ils sont parties²⁹. Deuxièmement, il serait incompatible avec le but de la procédure consultative de s'en servir pour résoudre un différend entre des parties non consentantes, ou d'une façon ayant pour effet de déterminer sur le fond l'issue d'un différend d'ordre juridique particulier entre les parties³⁰. Troisièmement, le cadre consultatif est peu propice à l'application des principes du droit à des situations de fait particulières dans lesquelles le défaut de participation d'une des parties intéressées risque de priver la Cour d'informations nécessaires, et la forme de la procédure est inadaptée à l'établissement des faits³¹.

3.6. Les Etats-Unis sont d'avis que ces considérations sous-jacentes acquièrent une importance particulière lorsqu'il existe déjà un autre cadre pour régler les questions contestées par la négociation. A cet égard, le fait pour la Cour d'intervenir en rendant un avis consultatif risque à la fois d'être incompatible avec ce cadre et de nuire à son application. C'est en grande partie pour cette raison que les Etats-Unis se sont refusés à appuyer la résolution par laquelle l'Assemblée générale a saisi la Cour en la présente affaire.

B. Observations concernant l'opportunité judiciaire de donner un avis consultatif dans la présente procédure

3.7. Il est impossible, à ce stade, de prévoir exactement de quelle manière les considérations qui précèdent s'appliqueront à la procédure en cours. On ne sait pas qui participera à la procédure, ni quelles informations ou questions viendront à être soumises à la Cour pendant les procédures écrite et orale.

3.8. Cependant, il y a au moins un aspect à propos duquel les Etats-Unis estiment qu'il est possible d'offrir un point de vue précis sur la manière d'appliquer ce principe d'opportunité à la présente procédure. Il ne fait aucun doute que les questions relatives au statut définitif qui sont en jeu dans le processus de paix sont des questions contestées, puisque c'est pour cette raison qu'il a été convenu de les soumettre à la négociation. Et aucune des parties n'a consenti à ce qu'elles soient réglées par la Cour, que ce soit dans le cadre de la procédure actuelle ou d'une autre. Par conséquent, la Cour ne doit pas permettre que cette procédure consultative soit utilisée pour contourner le processus de négociation dont relèvent les questions relatives au statut définitif.

²⁹ Voir *Statut de la Carélie orientale, avis consultatif, 1923, C.P.J.I. série B, n° 5*, p. 27 : «Il est bien établi en droit international qu'aucun Etat ne saurait être obligé de soumettre ses différends avec les autres Etats soit à la médiation, soit à l'arbitrage, soit enfin à n'importe quel procédé de solution pacifique, sans son consentement.» La Cour a noté que, dans cette affaire du *Statut de la Carélie orientale*, les circonstances étaient exceptionnelles parce qu'en l'occurrence la Russie, n'était pas membre de la Société des Nations. Voir *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 23. Cette distinction, néanmoins, n'enlève rien de leur vigueur au principe ni aux considérations de base énoncés par la Cour dans l'affaire du *Statut de la Carélie orientale* pour ce qui est de déterminer si la Cour doit, à sa discrétion, refuser de donner suite à une demande. Depuis l'arrêt qu'elle a rendu dans l'affaire de la *Namibie*, la Cour a réaffirmé à deux reprises le principe essentiel posé à propos de la *Carélie orientale*, encore qu'elle l'ait plutôt envisagé sous l'angle de l'opportunité judiciaire et de son pouvoir d'appréciation que sous celui de la compétence. Voir *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 25; *Applicabilité de la section 22 de l'article VI de la convention sur les privilèges et immunités des Nations Unies, avis consultatif, C.I.J. Recueil 1989*, p. 191.

³⁰ Voir, par exemple, *Interprétation des traités de paix conclus avec la Bulgarie, la Hongrie et la Roumanie, première phase, avis consultatif, C.I.J. Recueil 1950*, p. 72 : «[I] est permis d'en conclure qu'elle ne touche assurément pas le fond même de ces différends... Il en résulte que la position juridique des parties à ces différends ne saurait à aucun degré être compromise par les réponses que la Cour pourrait faire...»

³¹ Voir *Statut de la Carélie orientale, avis consultatif, 1923, C.P.J.I. série B n° 5*, p. 28 : «Il paraît, en effet, douteux que la Cour puisse obtenir les renseignements matériels nécessaires pour lui permettre de porter un jugement sur la question de fait...»; *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 28-29 : «Il s'agit de savoir si la Cour dispose de renseignements et d'éléments de preuve suffisants pour être à même de porter un jugement sur toute question de fait contestée et qu'il lui faudrait établir pour se prononcer d'une manière conforme à son caractère judiciaire.»

3.9. Une question analogue s'est posée lors de l'examen de l'affaire du *Sahara occidental*. L'Espagne avait objecté que cette affaire concernait un différend territorial et soutenait que la procédure consultative n'avait pas à être utilisée pour régler judiciairement la question de l'attribution de la souveraineté territoriale, en l'absence du consentement requis des parties³². La Cour n'a pas contesté le bien-fondé de cette préoccupation de l'Espagne, mais elle a souligné que la question dont elle était saisie ne porterait atteinte à la position juridique d'aucune des parties au différend territorial existant³³. La Cour a estimé que la demande d'avis consultatif «n'appel[ait] pas de sa part un prononcé sur des droits territoriaux existants ni sur la souveraineté sur un territoire»³⁴ et serait «sans effet sur les droits que l'Espagne possède actuellement en tant que puissance administrante»³⁵. Elle a indiqué à cet égard que le but de la demande de l'Assemblée générale n'était pas «de porter devant la Cour ... un différend ou une controverse juridique ... en vue de régler pacifiquement [par la suite] ce différend ou cette controverse», mais seulement d'aider l'Assemblée à exercer ses fonctions particulières relatives à la décolonisation du territoire³⁶.

3.10. Le précédent du *Sahara occidental* est instructif pour la présente procédure car le statut territorial est (avec d'autres aspects comme Jérusalem et les implantations) un des aspects du statut définitif sur lesquels une solution devra être trouvée par la négociation. Si, dans le cours de la procédure, des questions venaient à être soulevées au sujet de l'un ou l'autre de ces aspects, la Cour serait bien avisée, à la lumière de sa jurisprudence, de s'abstenir d'y répondre. C'est précisément sur ces sujets concernant le statut définitif — et touchant directement au fond d'un différend qu'il est prévu de régler par la négociation et où les faits sont particulièrement complexes et controversés — qu'une procédure consultative représente pour le caractère judiciaire de la Cour la menace la plus grave. De même, la Cour devra examiner si des considérations similaires ne justifient pas qu'elle s'abstienne également d'exposer ses thèses juridiques sur d'autres questions qui pourraient être soulevées au cours de la procédure.

³² Voir *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 27 et 28.

³³ Voir *ibid.*, p. 28.

³⁴ *Ibid.*

³⁵ *Ibid.*, p. 27.

³⁶ *Ibid.*, p. 26.

CHAPITRE IV

CONSIDERATIONS RELATIVES AU PROCESSUS DE NEGOCIATION EN GENERAL

4.1. Ce qui, à ce stade, intéresse avant tout les Etats-Unis, en tant que coparrain du processus de paix et membre du Quatuor, c'est que tout soit fait pour obtenir que les parties reviennent à la table de négociation pour s'efforcer d'y régler les questions intérimaires et, surtout, les questions relatives au statut définitif qui sont au centre de la vision partagée d'une solution de leur différend prévoyant deux Etats. Comme l'ont reconnu le Conseil de sécurité, l'Assemblée générale, le Quatuor et les parties elles-mêmes, ce n'est qu'ainsi qu'une paix juste et durable pourra être instaurée.

4.2. Dans la résolution par laquelle elle a saisi la Cour, l'Assemblée générale ne lui soumet que l'une des nombreuses questions qui, en cette période intérimaire précédant le statut définitif, sont actuellement contestées entre les Israéliens et les Palestiniens. Au cas où la Cour déciderait de rendre un avis consultatif, les Etats-Unis lui demandent instamment de garder présents à l'esprit deux aspects essentiels du processus de paix : le principe fondamental selon lequel les questions relatives au statut définitif doivent être résolues par la négociation; et le fait que le processus de paix ne pourra aboutir que si, pendant la période intérimaire, les parties s'acquittent de leurs responsabilités en matière de sécurité. De l'avis des Etats-Unis, la résolution de saisine doit s'entendre comme sauvegardant ces deux éléments et, par conséquent, la Cour ne doit rien faire qui interfère avec l'un ou l'autre d'entre eux.

A. Les questions relatives au statut définitif doivent faire l'objet de négociations entre les parties

4.3. Le processus de paix auquel ont souscrit le Conseil de sécurité et l'Assemblée générale des Nations Unies ainsi que les Israéliens et les Palestiniens consiste en un processus de négociation bilatéral par lequel Israéliens et Palestiniens doivent régler leurs sujets de contestation relatifs au statut définitif. Il serait incompatible avec la responsabilité ainsi assignée aux parties d'interpréter la résolution de l'Assemblée générale par laquelle celle-ci a saisi la Cour comme une demande d'avis consultatif portant sur l'un quelconque de ces sujets.

4.4. Des négociations entre les parties ont déjà permis d'avancer dans la recherche de solutions à ces questions extraordinairement difficiles et sensibles. Les Etats-Unis, en leur qualité de coparrain du processus de paix, et les autres membres du Quatuor sont étroitement associés aux efforts déployés pour faire progresser ces négociations, avec le soutien et les encouragements du Conseil de sécurité et de l'Assemblée générale. Il serait extrêmement préjudiciable aux efforts de négociation futurs que la Cour énonce, même à titre consultatif et sans effet obligatoire, des conclusions juridiques ayant trait aux questions qui concernent le statut définitif.

4.5. Pour arriver à un règlement durable et mutuellement acceptable de ces questions, les parties devront trouver des moyens qui leur permettent de traiter à la fois de leurs propres intérêts et de ceux de l'autre partie par la voie de la négociation. Les Israéliens et les Palestiniens sont convenus depuis longtemps de ne pas prendre de mesures unilatérales qui préjugent l'issue de leurs négociations. Par exemple, comme on l'a déjà relevé, plusieurs de leurs accords contiennent la disposition suivante : «Aucune des deux parties n'entreprend ni ne prend de mesure à même de modifier le statut de la Cisjordanie et de la bande de Gaza avant que les négociations sur le statut permanent n'aboutissent.»³⁷

³⁷ Accord intérimaire, art. XXXI, par. 7, A/51/889, S/1997/357, annexe.

4.6. L'expression par la Cour de thèses juridiques sur les questions relatives au statut définitif risquerait de rendre beaucoup plus difficile ou même impossible l'accommodement politique nécessaire entre les parties sur ces questions. Même si, en énonçant ces thèses, la Cour laissait aux parties toute liberté d'ignorer ou d'écarter d'un commun accord la solution «juridique» qu'elle aurait indiquée, de nouvelles contraintes viendraient limiter substantiellement leur capacité de négocier l'une avec l'autre des compromis mutuellement acceptables.

4.7. Eu égard à ces considérations, les Etats-Unis ne pensent pas que la résolution de saisine puisse ou doive s'entendre comme invitant la Cour à créer de la sorte de nouveaux obstacles aux efforts de paix. Cette résolution elle-même réaffirme le principe selon lequel les questions relatives au statut définitif doivent être réglées par la négociation. L'interprétation de la Cour ne doit donc pas être que l'Assemblée générale lui a demandé de donner un avis juridique sur ce que ces solutions devraient être ou de formuler à leur sujet d'autres conclusions juridiques.

B. Les parties doivent s'acquitter de leurs responsabilités en matière de sécurité pour que le processus de paix puisse aboutir

4.8. Ainsi qu'il ressort du «Rapport du Secrétaire général établi en application de la résolution ES-10/13 de l'Assemblée générale»³⁸, le différend entre Israéliens et Palestiniens sur la construction d'une barrière tient en grande partie à ce qu'ils conçoivent différemment la manière dont il convient de traiter le problème des attentats terroristes contre Israël. Au cas où la Cour jugerait bon d'examiner les questions qui sous-tendent ce différend, il faudrait absolument qu'elle insiste à cette occasion sur la responsabilité qui incombe à l'une et l'autre partie de faire face à cette grave menace pesant sur la feuille de route et l'ensemble du processus de paix.

4.9. Il est dit dans la feuille de route que :

«Un règlement du conflit israélo-palestinien prévoyant deux Etats ne verra le jour que lorsque la violence et le terrorisme auront pris fin, que le peuple palestinien aura des dirigeants qui agiront de façon décisive contre le terrorisme et auront la volonté et la capacité de construire une véritable démocratie fondée sur la tolérance et la liberté, qu'Israël se montrera prêt à faire ce que nécessite l'instauration d'un Etat palestinien démocratique et que les deux parties accepteront clairement et sans ambiguïté l'objectif d'un règlement négocié, tel qu'il est décrit ci-dessous.»³⁹

C'est en considération de ce fait que la première phase de la feuille de route est intitulée «Fin du terrorisme et de la violence, normalisation de la vie des Palestiniens et mise en place des institutions palestiniennes.» Parmi les mesures requises, il est prévu que :

«Les Palestiniens déclarent sans ambiguïté qu'ils mettent fin aux actes de violence et de terrorisme et ils font des efforts visibles sur le terrain pour arrêter les individus et les groupes qui préparent ou commettent des attentats contre des Israéliens où que ce soit et pour les désorganiser et les empêcher d'agir.

Les services de sécurité restructurés et recentrés de l'Autorité palestinienne entreprennent des opérations suivies, ciblées et efficaces en vue de s'attaquer à tous ceux qui se livrent à des activités terroristes et de démanteler l'infrastructure et les moyens terroristes. Ces opérations supposent que l'on commence à confisquer des armes illégales et à regrouper les services de sécurité qui ne doivent pas être associés avec la terreur et la corruption.

³⁸ A/ES-10/248 (2003).

³⁹ Feuille de route, S/2003/529, p. 2, annexe (annexe 1).

Le Gouvernement israélien ne prend aucune disposition susceptible de nuire à la confiance, notamment les expulsions, les attaques dirigées contre des civils, la saisie ou la destruction d'habitations et de biens palestiniens comme mesure punitive ou destinée à faciliter des activités de construction par Israël, la destruction d'institutions et d'infrastructures palestiniennes et autres mesures énoncées dans le plan de travail Tenet [une initiative des Etats-Unis en matière de sécurité]

.....

A mesure que la sécurité s'améliore, les forces de défense israéliennes se retirent progressivement des zones occupées depuis le 28 septembre 2000 et les deux parties reviennent au *statu quo* qui existait avant cette date. Les forces de sécurité palestiniennes se redéplient dans les zones évacuées par les forces de défense israéliennes.»⁴⁰

4.10. Cette focalisation de la feuille de route sur la nécessité de mesures de sécurité efficaces et viables entre les parties est conforme aux accords qu'elles ont conclus antérieurement. Dans l'accord intérimaire, qui a mis en place le cadre de la coopération sécuritaire en Cisjordanie, les parties

«Réaffirm[ent] leur engagement mutuel d'agir, conformément au présent accord, immédiatement et effectivement, contre les actes ou menaces de terrorisme, de violence ou d'incitation à la violence, qu'ils soient commis par des Palestiniens ou des Israéliens.»⁴¹

Cet accord contient la disposition générale suivante

«Les deux parties prennent toutes les mesures nécessaires pour prévenir les actes de terrorisme, les délits et les hostilités visant l'autre partie et les particuliers placés sous son autorité et leurs biens et prennent des mesures judiciaires à l'endroit des coupables.»⁴²

4.11. Les arrangements prévus sont complexes, étant donné la division des responsabilités entre les parties et le caractère évolutif de la situation. L'accord divise la Cisjordanie en trois zones. Dans la zone C, la sécurité continue à relever de la compétence exclusive d'Israël. Dans la zone B, Israël a «la responsabilité absolue de la sécurité pour ce qui est de protéger les Israéliens et de faire face aux menaces terroristes», tandis que l'Autorité palestinienne (AP) a la responsabilité de l'ordre public pour les Palestiniens. Dans la zone A, l'AP a, en gros, la responsabilité exclusive de la sécurité⁴³. Cette division géographique et les ajustements territoriaux apportés aux différentes zones subissent depuis trois ans des perturbations liées à la violence. L'un des objectifs de la feuille de route du Quatuor est de rétablir la répartition géographique antérieure des responsabilités entre les parties et de promouvoir de nouveaux ajustements territoriaux pour progresser sur la voie du statut définitif.

4.12. L'accord intérimaire énonce en détail les responsabilités qui incombent à chacune des parties en matière de sécurité dans sa zone d'opérations. Dans le cas des Palestiniens, l'accord dispose :

⁴⁰ *Ibid.*, p. 3-4.

⁴¹ Accord intérimaire, préambule, A/51/889, S/1997/357, annexe.

⁴² *Ibid.*, art. XV, par. 1.

⁴³ *Ibid.*, annexe I, art. V (annexe 4).

«Afin de garantir l'ordre public et la sécurité intérieure des Palestiniens de Cisjordanie et de la bande de Gaza, le conseil [l'AP] constituera une importante force de police comme précisé à l'article XIV ci-dessous...⁴⁴

Aucune force armée autre que la police palestinienne et les forces militaires israéliennes ne peut être créée ni opérer en Cisjordanie et dans la bande de Gaza...⁴⁵

La politique de sécurité palestinienne [sera mise en œuvre dans les zones de Cisjordanie placées sous la responsabilité de l'AP] comme suit :

- a) la police palestinienne est la seule autorité palestinienne en matière de sécurité;
- b) la police palestinienne prendra des mesures systématiques à l'encontre de toutes les manifestations de violence et de terreur;
- c) le conseil [l'AP] délivrera des permis pour légaliser la détention et le port d'armes par des civils. Toutes armes illégales seront confisquées par la police palestinienne;
- d) la police palestinienne arrêtera et poursuivra les individus soupçonnés de perpétrer des actes de violence et de terreur [*traduction du Greffe*].⁴⁶

En même temps, aux termes de l'accord intérimaire,

«Israël continuera d'assumer la responsabilité de la défense contre les menaces extérieures ... ainsi que la responsabilité de la sécurité en général des Israéliens et des implantations, en vue de garantir leur sécurité intérieure et l'ordre public, et aura tous les pouvoirs de prendre les mesures nécessaires en vue d'assumer cette responsabilité.»⁴⁷

4.13. Compte tenu de cet arrière-plan complexe, il est essentiel que la Cour, au cas où elle aborderait si peu que ce soit, cette question ne remette pas en cause les arrangements sécuritaires détaillés convenus précédemment entre les parties. En effet, cela risquerait de créer un vide que l'une ou l'autre des parties pourrait se sentir obligée de remplir unilatéralement, ce qui réduirait encore les chances de mettre un terme à la violence et de relancer le processus de négociation. Pis encore, cela pourrait encourager ceux qui sont opposés à la paix à redoubler de violence pour perturber le processus. Il est vital, pour que les efforts des coparrains et du Quatuor ne soient pas vains, que les Israéliens comme les Palestiniens assument leurs responsabilités en matière de sécurité, tout en s'acquittant des autres obligations qui leur incombent en vertu de la feuille de route. Puisque l'Assemblée générale partage cette opinion⁴⁸, la Cour devrait y voir un des éléments essentiels du cadre dans lequel doit s'inscrire sa réponse à la question posée par cette dernière.

⁴⁴ *Ibid.*, art. XII, par. 1.

⁴⁵ *Ibid.*, art. XVI, par. 3.

⁴⁶ *Ibid.*, annexe 1, art. II, par. 1 (annexe 4).

⁴⁷ *Ibid.*, art. XII, par. 1.

⁴⁸ Voir A/RES/ES-10/13 (2003), par. 2 (citant la feuille de route, S/2003/529, annexe).

CHAPITRE V

CONCLUSION

5.1. Les Etats-Unis prennent au sérieux les responsabilités que leur confère leur qualité de coparrain du processus de paix au Moyen-Orient lancé à Madrid en 1991. A la période la plus récente, ils ont, de concert avec les autres membres du Quatuor — la Fédération de Russie, l'Union européenne et le Secrétaire général de l'Organisation des Nations Unies — déployé des efforts intenses et constants pour mettre fin au conflit qui, depuis plus d'un demi-siècle, a des répercussions tragiques sur la vie des Palestiniens comme des Israéliens. Une vision partagée, celle de deux Etats en paix l'un avec l'autre et avec leurs voisins, a désormais pris corps. Et, tout aussi important, un mécanisme — la feuille de route — a été mis en place pour faire de cette vision une réalité. Le Conseil de sécurité de l'ONU, l'Assemblée générale des Nations Unies, le Quatuor et d'autres membres de la communauté internationale, ainsi que les Israéliens et les Palestiniens, sont convenus du chemin à suivre.

5.2. Aussi les Etats-Unis ont-ils soumis le présent exposé à la Cour pour l'aider à mieux comprendre le processus diplomatique complexe engagé, qui constitue le contexte dans lequel l'Assemblée générale a agi et la présente procédure se situe. Les Etats-Unis prient instamment la Cour d'éviter de faire quoi que ce soit qui risquerait d'interférer avec ce processus de négociation ou de le rendre plus difficile qu'il n'est déjà. Un tel risque pourrait être totalement écarté si la Cour refusait de donner un avis consultatif.

5.3. Si toutefois elle choisit de faire connaître ses vues, la Cour devra alors, dans un souci d'opportunité judiciaire, vérifier si l'examen des questions qui viendraient à lui être soumises n'est pas de nature à porter atteinte au principe selon lequel la procédure consultative n'est pas un moyen de régler des différends entre Etats sans le consentement de ces derniers. Cela vaut en particulier pour le cas où il serait suggéré à la Cour de s'exprimer sur l'une ou l'autre des questions relatives au statut définitif que les parties sont convenues de régler par la négociation. De plus, vu l'appui exprimé par l'Assemblée générale à la feuille de route et aux efforts du Quatuor, la résolution par laquelle l'Assemblée a saisi la Cour ne devrait pas être interprétée comme remettant en cause l'un ou l'autre des deux éléments essentiels qui sous-tendent le processus de paix, à savoir : i) les questions relatives au statut définitif doivent être réglées par la négociation; et ii) les Israéliens et les Palestiniens doivent s'acquitter de leurs responsabilités en matière de sécurité pour assurer le succès du processus de paix. Une paix durable suppose que ces deux conditions soient remplies.

5.4. La question dont l'Assemblée générale a saisi la Cour — celle de la barrière qu'Israël est en train de construire — est de celles qui préoccupent les Etats-Unis. Mais ils se préoccupent également de préserver le processus de paix dont les parties sont convenues et que le Conseil de sécurité et l'Assemblée générale ont approuvé. C'est pourquoi les Etats-Unis prient respectueusement la Cour d'examiner avec attention les points exposés dans la présente communication pour décider de la suite à donner à la demande de l'Assemblée générale, afin de ne

rien faire qui puisse compromettre la mise en œuvre de la feuille de route ou le processus de négociation. Entre-temps, de concert avec les autres membres du Quatuor, les Etats-Unis poursuivront leurs propres efforts pour que l'application de la feuille de route progresse, de manière que les contestations sur des sujets tels que des barrières cèdent la place à des relations pacifiques normales entre deux Etats égaux et souverains.
