

INTERNATIONAL COURT OF JUSTICE

**REQUEST BY THE UNITED NATIONS GENERAL
ASSEMBLY FOR AN ADVISORY OPINION**

**“LEGAL CONSEQUENCES ARISING FROM THE POLICIES
AND PRACTICES OF ISRAEL IN THE OCCUPIED
PALESTINIAN TERRITORY, INCLUDING EAST
JERUSALEM”**

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

JULY 25, 2023

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CHAPTER I

INTRODUCTION

1.1 In its Order dated February 3, 2023, the Court invited, *inter alia*, Member States of the United Nations to submit written statements on the questions referred to the Court by the U.N. General Assembly in its resolution 77/247 of December 30, 2022. The United States appreciates the opportunity to submit this Statement presenting its observations on those questions to assist the Court's consideration of the General Assembly's request.

1.2 The United States has supported the pursuit of a final negotiated settlement to the Israeli-Palestinian conflict for decades, serving as a participant, facilitator, or witness of initiatives that include most prominently the Madrid Conference of 1991; the Oslo Accords; the Middle East Quartet; and the 2000 Camp David Summit, the 2007 Annapolis Conference, and other U.S.-sponsored direct negotiations, most recently in 2013-2014. This year at Aqaba, Jordan and Sharm El Sheikh, Egypt, the United States participated in discussions held in a format intended to foster de-escalation and enhance direct dialogue between Israeli and Palestinian officials. Informed by this unique role, the United States voted against resolution 77/247 out of concern that the referral risks driving the parties to the Israeli-Palestinian conflict further away from the objective of a negotiated two-State solution – an objective enshrined in numerous UN Security Council and General Assembly resolutions, as well as in the aforementioned initiatives and the agreements between the parties.¹

1.3 The United States is deeply concerned over the deterioration in trust between the parties in recent years and the periods of increased violence. In February 2023, the Security Council issued a Presidential Statement, joined by the United States, expressing strong opposition to unilateral measures by either side that impede peace, calling on all parties to

observe calm and restraint, and to refrain from provocative actions, incitement and inflammatory rhetoric, with the aim, *inter alia*, of de-escalating the situation on the ground, rebuilding trust and confidence, demonstrating through policies

¹ U.N. GAOR, 77th Sess., 56th plen. Mtg., at 3-6, U.N. Doc. A/77/PV.56 (Resumption 1) (Dec. 30, 2022); *see also* Andrew Weinstein, United States Mission to the United Nations, *General Statement on the UN General Assembly Fourth Committee Resolutions on Israeli-Palestinian Issues* (Nov. 11, 2022), available at <https://usun.usmission.gov/general-statement-on-the-un-general-assembly-fourth-committee-resolutions-on-israeli-palestinian-issues/> (last visited July 17, 2023); Ambassador Richard Mills, United States Mission to the United Nations, *Remarks at the UN General Assembly's Fourth Committee Meeting on Israeli Practices and Settlement Activities* (Nov. 10, 2022), available at usun.usmission.gov/remarks-at-the-un-general-assembly-fourth-committee-meeting-on-israeli-practices-and-settlement-activities/ (last visited July 17, 2023). (The official records of the Fourth Committee meetings on these dates are not yet available.)

and actions a genuine commitment to the two-State solution, and creating the conditions necessary for promoting peace.²

Events in the ensuing months have only highlighted the importance of that focus on de-escalation as a necessary first step.

1.4 As this Court has recognized, the tragic situation in the Middle East “can be brought to an end only through implementation in good faith of all relevant Security Council resolutions, in particular resolutions 242 (1967) and 338 (1973).”³ Since resolution 242 was adopted in 1967, the foundation for negotiation to achieve a comprehensive, just and durable end to the conflict has been the principle of “land for peace.”⁴ This foundational precept recognizes that achieving peace and security in the region is contingent on two interdependent elements: *both* the withdrawal of forces from occupied territory *and* the end to conflict and respect and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area, and the right of each State to live in peace within secure and recognized borders. Neither element is alone sufficient to establish a comprehensive, just and lasting peace; neither can be achieved without the other. It is on this organizational “land for peace” basis, reaffirmed in Security Council resolution 338,⁵ that the pursuit of a negotiated peace has rested for the last half century. During this time, it has been the basis for historic agreements that include the Egypt-Israel Treaty of Peace, the Israel-Jordan Treaty of Peace, and the Oslo Accords in which the Israelis and Palestinians notably committed themselves, *inter alia*, to negotiating resolution of the conflict between them, and to creating the first interim Palestinian self-governance authority. It remains true to this day that only through such negotiations can the comprehensive, just and lasting peace first envisioned by the United Nations be established, one in which two States exist side-by-side and Israelis and Palestinians enjoy equal measures of freedom, security, and prosperity.

1.5 While there is reason at this time for concern that the conditions necessary for peace, or the negotiations to achieve it, are not present, the United States remains committed to

² U.N. President of the S.C., Statement by the President of the Security Council, 2023/1, U.N. Doc. S/PRST/2023/1 (Feb. 20, 2023) [Dossier No. 1400].

³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* [hereinafter *Construction of a Wall*], *Advisory Opinion*, I.C.J. Reports 2004, pp. 200-01, ¶¶ 162-63.

⁴ See, e.g., G.A. Res. 73/89, Comprehensive, just and lasting peace in the Middle East, U.N. Doc. A/RES/73/89 (Dec. 18, 2018) [Dossier No. 592]; S.C. Res. 2334, ¶ 9, U.N. Doc. S/RES/2334 (Dec. 23, 2016) [Dossier No. 1372]; S.C. Res. 242, ¶ 1, U.N. Doc. S/RES/242 (Nov. 22, 1967) [Dossier No. 1245] (US Annex 1).

⁵ S.C. Res. 338, ¶ 2, U.N. Doc S/RES/338 (Oct. 22, 1973) (US Annex 2).

preserving that pathway for Israelis and Palestinians. As such, the United States' immediate focus is de-escalation, the resumption of productive contacts between Israeli and Palestinian officials, and avoiding the risk of foreclosing a negotiated two-State solution based upon and consistent with the framework first created in the Security Council resolutions mentioned above and continually endorsed in both Security Council and General Assembly resolutions.⁶ The United States continues to engage in efforts to create more propitious conditions for a negotiated solution to the Israeli-Palestinian conflict and urges other members of the international community to redouble efforts to do the same. These efforts include the recent Aqaba and Sharm El Sheikh meetings, involving the United States joining with Egyptian, Jordanian, Israeli, and Palestinian representatives to foster efforts to de-escalate tensions, discourage unilateral actions that take the parties further from peace, and reinforce the parties' commitment to their prior agreements.⁷

1.6 The United States submits that it is through such efforts that the conditions can be established to achieve a negotiated two-State solution that leads to peace and security for both sides, and to the full realization of Palestinian self-determination. As discussed below, the referral resolution itself recognizes the need to advance meaningful negotiations aimed at achieving a peace agreement to this end. The Security Council and General Assembly, in accordance with their respective functions under the U.N. Charter, have played longstanding roles advocating that this conflict be addressed through a negotiating framework. Accordingly, the questions referred should be understood as a request for advice aimed at facilitating the General Assembly's proper role and function within the United Nations for promoting a negotiated resolution to the conflict. It is essential that the Court's opinion advance that objective.

⁶ See, e.g., U.S. Dep't of State, *Secretary Blinken's Call with Israeli Foreign Minister Cohen* (June 27, 2023), available at <https://www.state.gov/secretary-blinkens-call-with-israeli-foreign-minister-cohen-2/> (last visited July 17, 2023); Antony Blinken, Sec'y of State, *Remarks at the 2023 American Israel Public Affairs Committee Policy Summit* (June 5, 2023), available at <https://www.state.gov/secretary-antony-j-blinken-at-the-2023-american-israel-public-affairs-committee-policy-summit/> (last visited July 17, 2023); Sec'y of State, *Remarks at Press Availability* (Jan. 31, 2023), available at <https://www.state.gov/secretary-antony-j-blinken-at-a-press-availability-28/#:~:text=Upon%20arriving%20in%20Israel%2C%20I.a%20synagogue%20in%20Neve%20Yaakov> (last visited July 17, 2023); Weinstein, *supra* note 1.

⁷ Joint Communique from the March 19 meeting in Sharm El Sheikh [hereinafter *Sharm Communique*] (Mar. 19, 2023), available at <https://www.state.gov/joint-communique-from-the-march-19-meeting-in-sharm-el-sheikh/> (last visited July 17, 2023); Aqaba Joint Communique [hereinafter *Aqaba Communique*] (Feb. 26, 2023), available at <https://www.state.gov/aqaba-joint-communique/> (last visited July 17, 2023).

1.7 This Statement begins in Chapter II by describing the framework initially set forth by Security Council resolutions 242 and 338, endorsed by the General Assembly, recognized by the Court in *Construction of a Wall*, and adopted by the State of Israel and the Palestine Liberation Organization (“PLO”) in their own agreements as a basis for a negotiated settlement to the Israeli-Palestinian conflict.

1.8 Drawing from principles the Court has recognized as fundamental to the integrity of its advisory function and its role as a principal organ of the United Nations, Chapter III then identifies compelling reasons for the Court to exercise its discretion to address the referral questions within that established negotiating framework. The fact that the questions referred invite the Court to opine on matters at the heart of the conflict, address alleged actions of only one party and assert conclusions of international law, and were inserted into resolution 77/247 at a very late stage with minimal consultation among UN Member States further warrants such an approach.

1.9 Next, Chapter IV identifies assumptions in the second referred question that disregard settled principles of international law. To the extent the second referred question could be construed as asking the Court to declare that the Israeli occupation has been rendered unlawful or void, the Court should decline that invitation on the basis that such an assessment is not supported by international law.

1.10 Finally, Chapter V concludes the Statement by respectfully requesting that the Court proceed with caution, not disturb the fundamental “land for peace” principle underlying the established framework for Israeli-Palestinian peace and security, and consider in its advice how best to advance the objective of facilitating the General Assembly’s proper role and function in promoting a negotiated resolution to the conflict.

CHAPTER II

THE FRAMEWORK FOR A NEGOTIATED SOLUTION TO RESOLVE THE ISRAELI-PALESTINIAN CONFLICT

2.1 Throughout the tumultuous and often violent history of the Israeli-Palestinian conflict, the United Nations has been consistent in its support for the proposition that a comprehensive, just and lasting peace must be the result of direct negotiations between the parties to the conflict, not one imposed from outside or by one party. This principle is at the center of Security Council resolutions 242 and 338 and has been reiterated in resolutions of the Security Council and General Assembly ever since, including the resolution referring the questions at issue in this proceeding. Likewise, the Israelis and Palestinians themselves adopted this principle in entering into the Declaration of Principles and other agreements known collectively as the “Oslo Accords” in the 1990s. Of particular note, the parties specifically articulated their agreement to negotiate the “permanent status issues” central to resolving their dispute, including Jerusalem, settlements, security arrangements, borders, and other issues.⁸ Despite tragic periods of violence, unilateral actions by both sides, and allegations by each side of the other failing to adhere to its commitments, neither the parties, nor the General Assembly, nor the Security Council have abandoned the central precept that direct negotiation on the basis of “land for peace” is the path to comprehensive, just and lasting peace and security.

2.2 The United States respectfully submits that the Court’s consideration of the questions presented by the General Assembly needs to take place within this context. To aid the Court’s consideration, this Chapter describes the context of the negotiating framework through which the referred questions should be understood. Section A describes the negotiating framework itself, which has its roots in Security Council resolutions 242 and 338 and was further defined and memorialized in the bilateral agreements between the Israelis and Palestinians. Section B demonstrates the continuing commitment of the United Nations to this same negotiating framework. Section C describes the parties’ efforts within this negotiating framework in recent years. Finally, Section D, describes the process by which the referral resolution in this proceeding was adopted and how it too endorses the established negotiating framework.

⁸ Declaration of Principles on Interim Self-Government Arrangements, pmbl., art.1, U.N. Doc. A/48/486-S/26560 (Sept. 13, 1993) [Dossier No. 1302] (US Annex 4); *see also infra* Chapter II.A, C.

A. The Development of the Established Framework for Negotiations

2.3 The established framework for a negotiated resolution to the Israeli-Palestinian conflict was developed over a series of decades, beginning with Security Council resolutions adopted in response to the Arab-Israeli wars of 1967 and 1973, then further defined and adopted by the Israelis and Palestinians in their own agreements with each other, particularly the Oslo Accords. Over this period, the core precept has been that negotiation on the basis of the “land for peace” principle is the path to achieving comprehensive, just and lasting peace and security in the Middle East.

2.4 The foundation for this framework is set forth in Security Council resolution 242 (1967). In this resolution, the Security Council

Affirm[ed] that . . . the establishment of a just and lasting peace in the Middle East . . . 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 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 force.⁹

It is these interdependent elements that define the concept of “land for peace.” In this resolution the Security Council went on to request designation of a Special Representative to “promote agreement” and to “assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles” of the resolution.¹⁰

2.5 Then in resolution 338 (1973), the Security Council reiterated its call for implementation of these provisions and further called for the immediate commencement of negotiations “aimed at establishing a just and durable peace in the Middle East.”¹¹

⁹ S.C. Res. 242, ¶ 1, U.N. Doc. S/RES/242 (Nov. 22, 1967) [Dossier No. 1245] (US Annex 1).

¹⁰ *Id.* ¶ 3.

¹¹ S.C. Res. 338, ¶¶ 2-3, U.N. Doc. S/RES/338 (Oct. 22, 1973) (US Annex 2). More specifically, 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 East.

2.6 These resolutions have served as the cornerstone upon which the pursuit of a comprehensive negotiated peace between Israel and its neighboring States, and Israel and the Palestinians, has rested. Israel and Egypt relied on the principle of “land for peace” in concluding their 1979 Treaty of Peace, as did Jordan and Israel in coming to their own peace agreement in 1994.¹² In 1991, at the Middle East Peace Conference in Madrid, convened by the United States and the Soviet Union, Israelis, Jordanians, Lebanese, Syrians, and notably Palestinians joined together for the first time, along with others, with the common objective of pursuing comprehensive peace through direct negotiations on the basis of this same paradigm.¹³

2.7 Then in 1993 the Oslo Accords extended these successes. The PLO recognized the State of Israel, and the Israelis recognized the PLO as the representative of the Palestinian people.¹⁴ They then further committed themselves, in the first of the Oslo Accords, the Declaration of Principles on Interim Self-Government Arrangements (“Declaration of Principles”) signed in Washington D.C., to achieving a “just, lasting and comprehensive peace settlement” through the agreed political process, to recognizing “their mutual legitimate and political rights,” to negotiations to establish a Palestinian Interim Self-Government Authority for the Palestinian people in the West Bank and Gaza Strip for a transitional period, and to negotiations on permanent status that would be based on and lead to implementation of Security Council resolutions 242 and 338.¹⁵ That is, they adopted in their agreements with each other the “land for peace” negotiating paradigm first articulated in those resolutions.

2.8 More specifically, the Declaration of Principles set out a framework for Israeli-Palestinian negotiations and began the process of building Palestinian self-governance institutions. It confirmed that the parties’ mutual objective was to find a negotiated solution to permanent status issues between them that “will lead to the implementation of Security Council resolutions 242 (1967) and 338 (1973).”¹⁶ It identified that these “permanent status”

¹² See Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, Isr.-Jordan, Oct. 26, 1994, 2042 U.N.T.S. 351; Treaty of Peace, Egypt-Isr., Mar. 26, 1979, 1136 U.N.T.S. 115.

¹³ See G.A. Res. 47/64 (D), Question of Palestine, ¶ 4, U.N. Doc. A/47/64D (Dec. 11, 1992) [Dossier No. 406]; U.N. Secretary-General, *Report of the Secretary-General, Question of Palestine, The Situation in the Middle East*, ¶ 5, U.N. Doc. A/46/623-S/23204 (Nov. 8, 1991) [Dossier No. 524].

¹⁴ Exchange of Letters between Yitzhak Rabin, Prime Minister of Israel, and Yasser Arafat, PLO Chairman, concerning Israel-PLO Recognition (Sept. 9, 1993), available at <https://www.un.org/unispal/document/auto-insert-205528/> (last visited July 17, 2023) (US Annex 3).

¹⁵ Declaration of Principles, *supra* note 8, pmb., art. I.

¹⁶ *Id.* art. I.

negotiations are intended to encompass issues including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest.¹⁷ And, it described a procedure for Palestinian elections “as a significant interim preparatory step towards the realization of the legitimate rights of the Palestinian people and their just requirements,” while setting out the beginnings of the framework for how powers and responsibilities would be allocated in the transitional period between the interim Palestinian governance and the Israeli military government and Civil Administration.¹⁸

2.9 In the second of the Oslo Accords, the 1995 Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (the “Interim Agreement”), the parties reaffirmed “that the negotiations on the permanent status . . . will lead to the implementation of Security Council Resolutions 242 and 338.”¹⁹

2.10 The Interim Agreement sets out detailed agreements reached between the parties on the allocation of responsibilities and jurisdiction in the West Bank and Gaza pending a negotiated solution, establishing, for example, different jurisdictional arrangements between the Israeli military government and its Civil Administration and the Palestinian interim entity (now referred to as the Palestinian Authority) with respect to Areas A, B and C of the West Bank, as well as allocating responsibilities for security between them.²⁰ And, as described in section C below, while the vision in the Oslo Accords that a final negotiation would be concluded within a definite time period was not achieved, the Oslo Accords continue to serve as the frame of reference for the interim allocation of authorities between Israel and the Palestinian Authority and to inform Israeli-Palestinian relations and negotiations. This has remained true even in times of great stress.

B. The United Nations Has Not Wavered in Its Support for Resolution of the Conflict on the Basis of the Longstanding Negotiating Framework

2.11 Even when conditions for negotiation on permanent status issues have been challenged by periods of violence, unilateral actions, and distrust, the United Nations has continued its unwavering support for the established framework as the basis upon which to achieve a two-

¹⁷ *Id.* art. V.

¹⁸ *Id.* arts. III, V, VI.

¹⁹ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, pmbl., U.N. Doc. A/51/889-S/1997/357 (Sept. 28, 1995) [Dossier No. 1306] (US Annex 5).

²⁰ *See generally id.*

State solution and bring the dispute to an end. In 2008, expressing its support for direct negotiations at the Annapolis Conference, the Security Council noted in its resolution 1850 (2008) the “irreversibility of the bilateral negotiations” and that it “supports the parties’ agreed principles for the bilateral negotiating process and their determined efforts to reach their goal of concluding a peace treaty resolving all outstanding issues.”²¹ Again in 2016, the Security Council urged the

intensification and acceleration of international and regional diplomatic efforts and support aimed at achieving, without delay a comprehensive, just and lasting peace in the Middle East on the basis of the relevant United Nations resolutions, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Roadmap and an end to the Israeli occupation that began in 1967.²²

The Council also “[c]onfirm[ed] its determination to support the parties throughout the negotiations and in the implementation of an agreement.”²³

2.12 Just this year, the Security Council issued a Presidential Statement reiterating that:

The Security Council reaffirms its unwavering commitment to the vision of the two-State solution where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders, consistent with international law and relevant UN resolutions.²⁴

2.13 And the General Assembly, the body seeking the Court’s advice, has likewise continued to consistently and robustly underscore the need for the parties to comply with their agreements with each other and to negotiate a final resolution to the conflict on the basis of the established framework, including the principle of “land for peace.”²⁵

²¹ S.C. Res. 1850, pmb., ¶¶ 1- 5, U.N. Doc. S/RES/1850 (Dec. 16, 2008) [Dossier No. 1354]; *see also, e.g.*, S.C. Res. 1515, ¶¶ 1-2, U.N. Doc. S/RES/1515 (Nov. 19, 2003) [Dossier No. 1337]; S.C. Res. 1397, ¶ 2, U.N. Doc. S/RES/1397 (Mar. 12, 2002) [Dossier No. 1316].

²² S.C. Res. 2334, ¶ 9, U.N. Doc. S/RES/2334 (Dec. 23, 2016) [Dossier No. 1372].

²³ *Id.* ¶ 10.

²⁴ U.N. President of the S.C., Statement by the President of the Security Council, 2023/1, U.N. Doc. S/PRST/2023/1 (Feb. 20, 2023) [Dossier No. 1400].

²⁵ *See, e.g.*, Dossier Nos. 252-72 (“The Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources”); 353-81 (“The right of the Palestinian people to self-determination”); 403 & 405 (“International Peace Conference on the Middle East”); 406-409 (“Question of Palestine”); 490-516 (“Peaceful settlement of the question of Palestine”); 811-36 (“Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem”); *see also, e.g.*, G.A. Res. 77/30, Assistance to the Palestinian people, U.N. Doc. A/RES/77/30 (Dec. 8, 2022).

2.14 Indeed, in the weeks prior to the referral resolution, the General Assembly, in its recurring resolution entitled “Peaceful settlement of the question of Palestine,” urged

renewed and coordinated efforts by the international community aimed at restoring a political horizon and advancing and accelerating the conclusion of a peace treaty to achieve without delay an end to the Israeli occupation that began in 1967 by resolving all outstanding issues, including all final status issues, without exception, for a just, lasting and peaceful settlement of the Israeli-Palestinian conflict, in accordance with the internationally recognized basis of the two-State solution, and of the Arab-Israeli conflict, for the realization of a comprehensive peace in the Middle East.²⁶

2.15 In that resolution, specifically on resolving the conflict, the General Assembly went on to reiterate its call for a comprehensive peace “on the basis of the relevant United Nations resolutions . . . the Madrid terms of reference, *including the principle of land for peace* . . . and reaffirm[ed] . . . its unwavering support . . . for the two-State solution of Israel and Palestine, living side by side in peace and security.”²⁷

2.16 As further discussed in Section D, in the very resolution placing these questions before the Court, the General Assembly once again took the opportunity to reiterate its support for a solution to the conflict, leading to two States living side by side in peace and security, on the basis of the longstanding negotiating framework.

C. The Parties Have Maintained This Negotiating Framework

2.17 With the support of the United Nations and the facilitation of the United States and others, since the Oslo Accords the parties have repeatedly come to the bargaining table to negotiate their future and they have recognized the continuing need for direct negotiations on the basis of the established framework.²⁸ Notwithstanding a lack of progress in recent years,

²⁶ G.A. Res. 77/25, Peaceful settlement of the question of Palestine, pmb., U.N. Doc. A/RES/77/25 (Nov. 30, 2022) [Dossier No. 516]; *see also* G.A. Res. 73/89, Comprehensive, just and lasting peace in the Middle East, U.N. Doc. A/RES/73/89 (Dec. 6, 2018) [Dossier No. 592] (“Reiterates its call for the achievement, without delay, of a comprehensive, just and lasting peace in the Middle East on the basis of the relevant United Nations resolutions, including Security Council resolution 2334 (2016) of 23 December 2016, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet road map, and an end to the Israeli occupation that began in 1967, including of East Jerusalem, and reaffirms in this regard its unwavering support, in accordance with international law, for the two-State solution of Israel and Palestine, living side by side in peace and security within recognized borders, based on the pre-1967 borders.”).

²⁷ G.A. Res. 77/25, Peaceful settlement of the question of Palestine, ¶ 1, U.N. Doc. A/RES/77/25 (Nov. 30, 2022) [Dossier No. 516] (emphasis added).

²⁸ *See, e.g.*, S.C. Res. 1850, ¶¶ 1-5, U.N. Doc. S/RES/1850 (Dec. 16, 2008) [Dossier No. 1354] (expressing its support for the Annapolis Conference direct negotiations); S.C. Res. 1515, ¶¶ 1-2, U.N. Doc. S/RES/1515 (Nov. 19, 2003) [Dossier No. 1337] (endorsing the Quartet Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict); S.C. Res. 1397, ¶ 3, U.N. Doc. S/RES/1397 (Mar. 12, 2002) [Dossier

the parties have reaffirmed their commitment to their prior agreements adopting the “land for peace” negotiating framework. For example, on December 20, 2019, the Israeli Attorney General published a memorandum in relation to the question of the jurisdiction of the International Criminal Court (“ICC”) in the “Situation in the State of Palestine,” asserting that

UN Security Council resolutions 242 (1967) and 338 (1973) . . . form the terms of reference for Israeli-Palestinian negotiations (because they have been accepted as such by the parties) [and] Israel also considers that the tragedy of the Israeli-Palestinian conflict can only be resolved by direct dialogue between the parties that is sensitive to the needs and aspirations of Israelis and Palestinians alike.²⁹

2.18 In their 2020 submissions to the ICC’s Pre-Trial Chamber, the Palestinians likewise identified a continued commitment to the Oslo Accords and the established negotiating framework, submitting a statement that

reaffirm[ed] our commitment to a solution to the Palestinian-Israeli conflict based on the two-state solution . . . through negotiations held under international auspices (the International Quartet plus) and through an international peace conference, on the basis of the UN resolutions and international law.³⁰

2.19 And as noted, in February of this year, Palestinians and Israelis came together in Aqaba, Jordan with the United States, Egypt and Jordan for de-escalation talks, where they “affirmed

No. 1316] (expressing support for efforts to resume the peace process); U.N. Secretary-General, *Peaceful settlement of the question of Palestine*, ¶¶ 7-12, U.N. Doc. A/69/371-S/2014/650 (Sept. 4, 2014) [Dossier No. 547] (describing the resumption of final status negotiations in July 2013 and continuing into 2014 with the support of the United States); U.N. Secretary-General, *Peaceful settlement of the question of Palestine*, ¶¶ 8, 11-15, U.N. Doc. A/68/363-S/2013/524 (Sept. 4, 2013) [Dossier No. 546] (describing efforts by the United States to commence the 2013 resumption of final status negotiations); U.N. Committee on the Exercise of the Unalienable Rights of the Palestinian People, *Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People*, U.N. Doc. A/63/35, ¶¶ 5, 19-20, 93 (Oct. 6, 2008) (*prepared by Paul Badji*) [Dossier No.469] (describing the 2007 resumption in permanent status negotiations between the parties at the Annapolis Conference); U.N. Secretary-General, *Report of the Secretary-General, The situation in the Middle East, Question of Palestine*, ¶ 5, U.N. Doc. A/55/639-S/2000/1113 (Nov. 22, 2000) [Dossier No. 533] (describing the historic negotiations at the Camp David Summit); Annapolis Conference Joint Understanding and Statements by Prime Minister Ehud Olmert and Pres. Mahmoud Abbas (Nov. 27, 2007), *available at* <https://peacemaker.un.org/node/457> (last visited July 17, 2023); Trilateral Statement on the Middle East Peace Summit at Camp David by U.S. Pres. William J. Clinton, Israeli Prime Minister Ehud Barak, Palestinian Authority Chairman Yasser Arafat (July 25, 2000), *available at* <https://2001-2009.state.gov/p/nea/rls/22698.htm> (last visited July 17, 2023).

²⁹ *The International Criminal Court’s Lack of Jurisdiction over the So-Called “Situation in Palestine,”* Attorney General (Dec. 20, 2019), *available at* <https://www.gov.il/BlobFolder/reports/20-12-2019/en/Memorandum-Attorney-General.pdf> (last visited July 17, 2023).

³⁰ Situation in the State of Palestine, ICC-01/18, The State of Palestine’s response to the Pre-Trial Chamber’s Order requesting additional information, Annex A, 3 (June 4, 2020), *available at* https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2020_02278.PDF (last visited July 17, 2023).

their commitment to all previous agreements between them, and to work towards a just and lasting peace.”³¹

2.20 The next month, in March 2023, they, alongside the United States and others, met in Sharm El Sheikh, Egypt, further articulating in a Joint Communiqué their unwavering commitment to all previous agreements between them.³² The parties reiterated “their agreement to address all outstanding issues through direct dialogue.”³³ Most importantly, the parties affirmed their commitment to creating the conditions for resolving the conflict through direct negotiations, stating they

are looking forward to cooperating with a view to consolidating the basis for direct negotiations between the Palestinians and the Israelis, towards achieving comprehensive, just and lasting peace, and promote cooperation and coexistence between all people of the Middle East.³⁴

2.21 As such, the Israeli and Palestinian sides, as recently as this year and notwithstanding the current levels of violence and mistrust, have acknowledged the continued relevance of their prior agreements. The parties have also continued to maintain contacts that reinforce the principles to which they agreed.³⁵ These agreements and efforts are founded on the “land for peace” principle for negotiations to achieve a comprehensive, just and lasting peace, first articulated, and continually supported, by the United Nations.

³¹ *Aqaba Communiqué*, *supra* note 7.

³² *Sharm Communiqué*, *supra* note 7.

³³ *Id.*

³⁴ *Id.*

³⁵ The Sharm El Sheikh and Aqaba format de-escalation talks are part of a continuing succession of contacts – public or behind-the-scenes – between senior Israeli and Palestinian leaders. While these discussions have largely promoted de-escalation, that objective is a critical part of setting the conditions for negotiations to resolve permanent status issues and arrive at an eventual two-State solution. Such contacts have continued across Israeli administrations. *See, e.g.*, Emmanuel Fabian & Lazar Berman, “Herzog calls Abbas to urge fight against terror, condemn settler violence,” *The Times of Israel*, June 27, 2023, available at <https://www.timesofisrael.com/herzog-calls-abbas-to-condemn-settler-violence-gallant-pledges-to-combat-riots/> (last visited July 17, 2023) (June 2023 Herzog-Abbas and Gallant-Hussein Al Sheikh Calls (6/27)); Barak Ravid, “Scoop: Israelis and Palestinians have been holding secret talks for weeks,” *Axios*, February 20, 2023, available at <https://www.axios.com/2023/02/20/israelis-palestinians-secret-talks-west-bank> (last visited July 17, 2023) (reporting suggesting broader Hussein Al-Sheikh and Tzachi Hanegbi calls/meetings); Times of Israel Staff, “Gantz meets PA’s Abbas to discuss security coordination ahead of Biden visit,” *The Times of Israel*, July 8, 2022, available at <https://www.timesofisrael.com/gantz-meets-pas-abbas-to-discuss-security-coordination-ahead-of-biden-visit/> (last visited July 17, 2023) (Gantz/Abbas meeting during previous government); Andrew Carey & Kareem Khadder, “Israeli and Palestinian leaders speak by phone for the first time in years,” *CNN*, July 8, 2022, available at <https://www.cnn.com/2022/07/08/middleeast/lapid-abbas-phone-call-intl/index.html> (last visited July 17, 2023) (Lapid/Abbas call during previous government).

D. The General Assembly's Endorsement of the Negotiating Framework in the Referral Resolution

2.22 Against this backdrop, on December 30, 2022, the General Assembly adopted resolution 77/247 by an affirmative vote of only eighty-seven of its Member States.³⁶ Though the resolution is otherwise largely identical to the most recent in a long line of General Assembly resolutions with the same title, it lost the support of sixty Member States from its prior iteration, resolution 75/98 (2020),³⁷ when its text was amended to include a request for an advisory opinion from this Court on two questions:

- (a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?
- (b) How do the policies and practices of Israel referred to . . . above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?³⁸

2.23 As discussed in Chapter III, Member States voiced concern that this referral would damage the prospect of Israeli-Palestinian negotiations in the future – a result dissonant with the General Assembly's consistent and continued support for a resolution of the dispute through negotiations.

2.24 Resolution 77/247 itself reiterates the fundamental proposition that negotiation to resolve the permanent status issues, through the established framework, is the only path to resolving the conflict. It notes the urgent need to

restore a political horizon for advancing and accelerating meaningful negotiations aimed at the achievement of a peace agreement that will bring a complete end to the Israeli occupation that began in 1967 and the resolution of

³⁶ U.N. GAOR, 77th Sess., 56th plen. Mtg., U.N. Doc. A/77/PV.56 (Resumption 1) (Dec. 30, 2022). Over half the membership of the General Assembly, 106 States, either voted against, abstained, or were not present when the resolution passed.

³⁷ G.A. Res. 75/98, Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, U.N. Doc. A/RES/75/98 (Dec. 10, 2020) [Dossier No. 835]; U.N. GAOR, 75th Sess., 41st plen. Mtg. at 8, U.N. Doc. A/75/PV.41 (Dec. 10, 2020).

³⁸ See Dossier Nos. 811-836 ("Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem").

all core final status issues, without exception, leading to a peaceful, just, lasting and comprehensive solution to the question of Palestine,³⁹

2.25 It likewise stresses

the need for full compliance with the Israeli-Palestinian agreements reached within the context of the Middle East peace process, including Sharm el-Sheikh understandings, and the implementation of the Quartet roadmap to a permanent two-State solution to the Israeli-Palestinian conflict,⁴⁰

2.26 Further, the provisions of the referral specify that the Court should render its advisory opinion in consideration of the relevant resolutions of the Security Council and General Assembly, and the Court's opinion in *Construction of a Wall*, all of which affirm the established negotiating framework.⁴¹

2.27 Thus, the referral resolution invokes and endorses this framework for a negotiated peace, including achievement of a permanent two-State solution, and the questions referred need to be considered within this context. The Court's deliberations should also be informed by the long-standing and ongoing view of the General Assembly and the Security Council, which the parties have relied on in their dialogue: that only through negotiations can the conflict be resolved comprehensively, including all permanent status issues such as borders and security arrangements.

³⁹ G.A. Res. 77/247, Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, pmb., U.N. Doc. A/RES/77/247 (Dec. 30, 2022) [Dossier No. 3].

⁴⁰ *Id.*

⁴¹ The referral resolution also asks the Court to give due consideration to relevant resolutions of the Human Rights Council ("HRC"). The HRC, a subsidiary organ of the General Assembly comprised of 47 UN Member States, has an important mandate for the promotion and protection of human rights around the world. It is, however, the General Assembly and Security Council that have the overall responsibility within the United Nations for the maintenance of international peace and security. Moreover, the Human Rights Council likewise, including resolution on the "Right of the Palestinian people to self-determination," has "reaffirm[ed] the need to achieve a just, comprehensive, and lasting solution to the Israeli-Palestinian conflict *in conformity with international law and other internationally agreed parameters, including all relevant United Nations resolutions.*" See, e.g., Human Rights Council Res. 49/28, ¶ 2, U.N. Doc. A/HRC/RES/49/28 (Apr. 1, 2022) [Dossier No. 1589] (emphasis added).

CHAPTER III

COMPELLING REASONS SUPPORT THE COURT ADDRESSING THE REFERRAL QUESTIONS WITHIN THE ESTABLISHED FRAMEWORK

3.1 The United States submits that there are compelling reasons for the Court to address the questions referred by the General Assembly within the established framework for the parties to negotiate a resolution to the permanent status issues at the heart of their dispute such as borders and security arrangements. These reasons stem from two interrelated considerations: first, the important role the United Nations continues to play in efforts to resolve the Israeli-Palestinian conflict, including through the numerous Security Council and General Assembly resolutions calling for a negotiated settlement; and second, the degree to which the questions referred engage the principle of consent to judicial settlement in a dispute concerning territory and for which there is an established framework for addressing disputed issues through a negotiating process. That the questions are framed to encompass and draw legal conclusions about the acts of only one party to the dispute also suggests that caution is warranted.

3.2 It is well established that the Court has “the duty to satisfy itself, each time it is seized of a request for an opinion, as to the propriety of the exercise of its judicial function.”⁴² Both the Court and its predecessor, the Permanent Court of International Justice, have recognized inherent limitations to advisory jurisdiction stemming from the Court’s judicial character.⁴³ Those considerations, which the Court has said may lead it to decline to issue an opinion, have also informed whether the Court addresses the questions posed in their entirety or limits the scope of its response.⁴⁴ The Court has also acknowledged the need for it to consider the “origin

⁴² *Construction of a Wall, Advisory Opinion*, 2004 I.C.J. at 157, ¶ 45; see also *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* [hereinafter *Chagos*], *Advisory Opinion*, I.C.J. Reports 2019, p. 113, ¶ 64; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* [hereinafter *Kosovo*], *Advisory Opinion*, I.C.J. Reports 2010, p. 416, ¶ 31; *id.*, pp. 415, 417, ¶¶ 29, 33 (noting that the Court’s “discretion whether or not to respond to a request for an advisory opinion exists so as to protect the integrity of the Court’s judicial function and its nature as the principal judicial organ of the United Nations”).

⁴³ See *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12, ¶ 23; *Interpretation of Peace Treaties, Advisory Opinion*, I.C.J. Reports 1950, pp. 65, 71; *Status of Eastern Carelia, Advisory Opinion*, 1923, P.C.I.J., Series B, No. 5, p. 29. The Court has explained, for example, that there would be “compelling reasons” to decline to give an advisory opinion where it “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.” *Western Sahara, Advisory Opinion*, 1975 I.C.J. at 25, ¶ 33; see also *infra* note 66.

⁴⁴ In responding to the request for advice, the Court retains discretion to broaden, interpret, or reformulate the question(s) posed, including to identify the applicable and existing principles and rules. *Kosovo, Advisory Opinion*, 2010 I.C.J. at 423, ¶ 50 (noting that the Court may reframe the scope and meaning of the questions

and scope of the dispute” in evaluating the propriety of exercising its advisory jurisdiction, in particular with respect to confirming that the Court’s opinion would assist the General Assembly in “the proper exercise of its function.”⁴⁵ To remain faithful to its judicial character, the Court has determined that it must first ascertain the meaning and full implications of the question in the light of the actual framework of fact and law in which it falls for consideration.⁴⁶

3.3 This Chapter discusses how these important considerations identified by the Court should lead it to address the referral request in a manner that respects the established framework discussed in Chapter II.

3.4 Section A explains why, in the present case, the Court should follow the approach it took to the General Assembly’s previous request for advice relating to the Israeli-Palestinian conflict in *Construction of a Wall* to avoid disturbing the established negotiating framework. Section B then details how the questions referred in this proceeding implicate the principle of consent to judicial settlement to a far greater extent than in *Construction of a Wall*, by inviting the Court to address issues that form the very subject matter of the dispute and address matters the Security Council and General Assembly have repeatedly recognized must be resolved through direct negotiations between the parties.

presented by the referral resolution where: (1) the question was not adequately formulated, (2) the Court determined on the basis of its examination of the background to the request that the request did not reflect the “legal questions really in issue,” or (3) the question asked was unclear or vague). The Court has repeatedly exercised this discretion when called upon by the facts of a case, or the substance or text of a referral resolution. *See, e.g., Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, p. 348, ¶ 46 (Court clarifying vague or ambiguous referral question); *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt [hereinafter 1951 Agreement], Advisory Opinion, I.C.J. Reports 1980*, pp. 87-89, ¶¶ 34-36 (referral question did not correspond to the “true legal question” under consideration); *Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV), Advisory Opinion, 1928, P.C.I.J., Series B, No. 16 (I)*, pp. 14-16 (referral question did not accurately state the question on which the Court’s opinion was being sought); *see also Chagos, Advisory Opinion, Dissenting Opinion of Judge Donoghue, 2019 I.C.J. at 266, ¶ 22* (“The Court could have chosen, in the exercise of its discretion, to provide a more limited response to the Request (possibly reformulating the Request in order to do so). Such a response would have provided legal guidance to the General Assembly without undermining the integrity of the Court’s judicial function.”).

⁴⁵ *Western Sahara, Advisory Opinion, 1975 I.C.J. at 26-27, ¶¶ 39, 42; 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. 24, ¶ 32 (determining that issuance of an advisory opinion was not to assist the Security Council in peacefully resolving a dispute between States, but to gain legal advice on the “consequences and implications of these decisions”).

⁴⁶ *1951 Agreement, Advisory Opinion, 1980 I.C.J. at 76, ¶ 10.*

A. The Court's Respect for the Role of the Security Council and General Assembly in Resolving the Israeli-Palestinian Conflict and the Established Negotiating Framework in Construction of a Wall Remains Appropriate

3.5 The relationship between the Court and the other principal organs of the United Nations has been described as one of “coordination and functional cooperation in the attainment of the common goals of the Organization.”⁴⁷ In this regard, in exercising both its contentious and advisory jurisdiction, the Court has been mindful of the respective competencies of the principal political organs in matters of international peace and security.⁴⁸ As Judge Azevedo stated in *Interpretation of Peace Treaties*:

[T]he Court, which has been raised to the status of a principal organ, and thus more closely geared into the mechanism of the [United Nations Organization], must do its utmost to co-operate with the other organs with a view to attaining the aims and principles that have been set forth.⁴⁹

3.6 In exercising its advisory jurisdiction, the Court has appropriately recognized that its function is to assist the relevant UN organs in carrying out their tasks,⁵⁰ while respecting the responsibilities and decisions of the Security Council and General Assembly in matters of peace and security and taking care to avoid a result that could undermine or render those decisions inconsequential.⁵¹ It follows that in addressing the questions referred in resolution

⁴⁷ V. Gowlland-Debbas & M. Forteau, *Art. 7 UN Charter*, in *THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE – A COMMENTARY* 135, p. 146 (A. Zimmermann et al., eds., 3rd ed. 2019).

⁴⁸ *See infra* ¶ 3.10.

⁴⁹ *Peace Treaties, Advisory Opinion*, Separate Opinion of Judge Azevedo, 1950 I.C.J. at 79, 82; *see also* 1 MALCOLM N. SHAW, *ROSENNE'S LAW AND PRACTICE OF THE INTERNATIONAL COURT 1920-2015*, pp. 110-111 (5th ed. 2016):

. . . in general it cannot be doubted that the mutual relations of the principal organs should be based upon a general theory of co-operation between them in the pursuit of the aims of the Organization (subject to the primary responsibility of the Security Council for the maintenance of international peace and security).

This approach opens the way to a functional conception of the task of the Court in its capacity of a principal organ of the United Nations. According to this, subject to overriding considerations of law (including judicial propriety), the Court, in exercising its judicial function or decision a dispute (Statute, Article 38, paragraph 1) or rendering an advisory opinion (Charter, Article 96 and Statute, Article 65, paragraph 1) must co-operate in the attainment of the aims of the Organization and strive to give effect to the decisions of other principal organs, and not achieve results which would render them inconsequential.

⁵⁰ *See, e.g., Kosovo, Advisory Opinion*, 2010 I.C.J. at 403, ¶ 421; *Construction of a Wall, Advisory Opinion*, 2004 I.C.J. at 159, ¶ 50; *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, pp. 177, 188-89, ¶ 31; *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*, I.C.J. Reports 1951, pp. 15, 19.

⁵¹ *See, e.g., Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Provisional Measures*, I.C.J. Reports 1992, Declaration of Judge Ni, pp. 20, 22; *id.* at 22 (citing *Military and Paramilitary Activities in and Against Nicaragua*

77/247, the Court can and should exercise its discretion to scope any opinion in a manner that does not negate or undermine the established framework the Security Council and General Assembly have decided is the best and only path to a durable peace. In this regard, the Court's approach in *Construction of a Wall* is instructive.

3.7 In *Construction of a Wall*, the Court considered the propriety of advising the General Assembly on aspects of the Israeli-Palestinian conflict arising out of a discrete act, Israel's construction of a separation barrier. The Court was careful to note that the question asked by the General Assembly was "confined to the legal consequences of the construction of the wall,"⁵² and the Court took care not to undermine the established negotiating framework created and supported by Security Council and General Assembly resolutions. The Court avoided rendering an opinion that would have appeared to dictate the outcome of the final status issues that the parties agreed to negotiate, examining only "other issues to the extent that they might be necessary for its consideration of the question put to it," and noting that the broader conflict "can be brought to an end only through implementation in good faith of all relevant Security Council resolutions, in particular resolutions 242 (1967) and 338 (1973)."⁵³

3.8 In those proceedings, the Court carefully considered the role of the United Nations in addressing the Israeli-Palestinian conflict. In particular, it considered whether the referral question was properly before it in light of Security Council resolution 1515 (2003), a then recently passed resolution endorsing a specific plan for achieving a negotiated resolution to the conflict based on the established negotiating framework. It cited the responsibilities of the United Nations in questions relating to international peace and security, and explained that, "[w]ithin the institutional framework of the Organization, this responsibility has been manifested by the adoption of many Security Council and General Assembly resolutions"⁵⁴ related to the conflict.

(*Nicaragua v. United States of America*), *Jurisdiction and Admissibility*, I.C.J. Reports 1984, pp. 392, 434, ¶ 95) (stating that the Court's reference in *Military and Paramilitary Activities* to "complementary functions should not be overlooked" and discussing how the functions of the political and judicial principal organs may address different aspects of the same matter "[b]ut these functions may be correlated with each other. What would be required between the two is co-ordination and co-operation, not competition or mutual exclusion."); see also 1 SHAW, *supra* note 49 at 111; Gowlland-Debbas & Forteau, *supra* note 47, at 147.

⁵² *Construction of a Wall*, *Advisory Opinion*, 2004 I.C.J. at 160, ¶ 54.

⁵³ *Id.* at 200-01, ¶ 162 (emphasis added).

⁵⁴ *Id.* at 159, ¶ 49.

3.9 The Court specifically recognized that “[t]he ‘Roadmap’ approved by Security Council resolution 1515 (2003) represent[ed] the most recent of efforts to initiate negotiations to this end,”⁵⁵ and drew to the General Assembly’s attention

the need for these efforts to be encouraged with a view to achieving as soon as possible, on the basis of international law, a negotiated solution to the outstanding problems and the establishment of a Palestinian State, existing side by side with Israel and its other neighbours, with peace and security for all in the region.⁵⁶

3.10 This recognition of the responsibilities of these other principal organs of the United Nations concerning the conflict is consistent with the Court’s identification in other contexts of the need for caution in dealing with questions related to the particular areas of competence of the different bodies within the United Nations.⁵⁷ The case for such an approach is even more compelling with respect to the questions now before the Court.

3.11 In *Construction of a Wall*, the Court recognized that it was through Security Council and General Assembly resolutions that the United Nations has defined its interest in the Israeli-Palestinian conflict. Those same resolutions, many of which to this day continue to be adopted annually or biannually by the General Assembly – including the very resolution requesting this advisory opinion, time and again endorse the proposition that this dispute can only be resolved through negotiation on the basis of the principle of “land for peace” first established in Security Council resolutions 242 and 338, and within the established framework. They emphasize “the need for full compliance with” the established framework for the parties to the conflict to

⁵⁵ *Id.* at 201, ¶ 162.

⁵⁶ *Id.* at 200-01, ¶ 162; *see also id.* ¶ 161 (taking the opportunity to “emphasize the urgent necessity for the United Nations as a whole to redouble its efforts to bring the Israeli-Palestinian conflict, which continues to pose a threat to international peace and security, to a speedy conclusion, thereby establishing a just and lasting peace in the region.”).

⁵⁷ “In assessing the propriety of rendering an advisory opinion in any given case, consideration must be given to the particular responsibilities accorded to the Court within the architecture of the United Nations Charter.” *Kosovo, Advisory Opinion*, Separate Opinion of Judge Sepúlveda-Amor, 2010 I.C.J. at 492-93, ¶¶ 8-9 (Court’s own responsibilities on maintenance of international peace and security guides it in how to apply resolutions); *see also Kosovo, Advisory Opinion*, Dissenting Opinion of Judge Skotnikov, 2010 I.C.J. at 517-18, ¶ 8 (quoting *Jaworzina, Advisory Opinion*, 1923, P.C.I.J., Series B, No. 8, p. 37 (“It is an established principle that the right to giving an authoritative interpretation of a legal rule belongs solely to the person or body who has power to modify or suppress it”)); *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, *Provisional Measures*, I.C.J. Reports 1992, Dissenting Opinion of Judge Bedjaoui, 1992 I.C.J. 114, 145 (“[I]t is as a rule not the Court’s role to exercise appellate jurisdiction in respect of decisions taken by the Security Council in the fulfilment of its fundamental mission of maintaining international peace and security”).

resolve their disputes.⁵⁸ The shaping and continuing support in these resolutions of the established framework as the means to resolve permanent status issues, including borders and security arrangements, are critical not only for identifying the United Nations' interest in this matter, but also for understanding the referral itself and the appropriate scope for the Court's consideration.⁵⁹

3.12 The Court in *Construction of a Wall* ultimately concluded that it was unclear what influence the Court's opinion in that proceeding might have on negotiations, including those called for under Security Council resolution 1515, and accordingly did not regard negotiations as a compelling reason to decline to exercise its jurisdiction.⁶⁰ The same is far from true here, where the referral questions posed are fundamentally different in nature and scope. In contrast to the narrow question confronting the Court in *Construction of a Wall*, the questions presented in these proceedings have potentially far-reaching implications for issues at the very center of negotiations. Some championing the referral have gone so far as to state that before the Court is "the entire question of Palestine" – effectively suggesting the Court opine definitively on all aspects of the Israeli-Palestinian conflict.⁶¹

3.13 There is no denying that the questions here could invite sweeping advice, absent careful consideration and respect for the framework endorsed by the Security Council and General Assembly and adopted by the parties to the dispute. The first question asks the Court about the legal consequences from three broad categories of alleged acts: (1) "violation by Israel of the right of the Palestinian people to self-determination"; (2) Israel's "prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967"; and (3) "related discriminatory legislation and measures." The second question asks the Court to weigh in on the "legal status" of the Israeli occupation, *in toto*, including with respect to the legal consequences for the United Nations and States. Collectively, these questions – with their conclusory and one-sided framing – could easily be construed as seeking an opinion on the

⁵⁸ G.A. Res. 77/247, Israeli practices affecting the human rights of the Palestinian people in Occupied Palestinian Territory, including East Jerusalem, pmbl., U.N. Doc. A/RES/77/247 (Dec. 30, 2022) [Dossier No. 3].

⁵⁹ See *Construction of a Wall, Advisory Opinion*, Separate Opinion of Judge Owada, 2004 I.C.J. at 265, ¶ 14 ("[T]he Court . . . should focus its task on offering its objective findings of law to the extent necessary and useful to the requesting organ, the General Assembly, in carrying out its functions relating to this question, rather than adjudicating on the subject-matter of the dispute between the parties concerned.").

⁶⁰ *Construction of a Wall, Advisory Opinion*, 2004 I.C.J. at 160, ¶ 53.

⁶¹ *Permanent Observer Briefs Palestinian Rights Committee on Situation in Occupied Territory Situation, Submissions Guidelines for Opinion Case to the World Court*, U.N. Doc. GA/PAL/1452 (May 3, 2023), available at <https://press.un.org/en/2023/gapal1452.doc.htm> (last visited July 17, 2023).

very issues the General Assembly and Security Council have continually reinforced must be resolved through direct negotiations between the parties.

3.14 But again, General Assembly resolution 77/247 reaffirms “the need for full compliance with” the established framework for the parties to the conflict to resolve their dispute. The referral therefore places the Court in the unenviable position of having to consider how to address the potentially far-reaching questions without disturbing the established negotiating framework the General Assembly itself invoked in seeking this advisory opinion.

3.15 That the referral questions themselves may suggest the Court is invited to consider advising beyond this framework was cause for concern even as the General Assembly considered them. As noted in Chapter II, sixty fewer UN Member States voted in favor of resolution 77/247 as compared to its previous iteration without the referral, resolution 75/98.⁶² In the Fourth Committee and at the General Assembly plenary, States expressed concerns that the request for an advisory opinion would not facilitate, but rather would impede, resolution of the Israeli-Palestinian conflict and would not serve the aim of bringing the parties back to dialogue.⁶³ Some noted that there was insufficient notice that the advisory opinion request had been added to the resolution and that there was inadequate consultation and discussion.⁶⁴ The United States thus is but one of a number of Member States that expressed reservations with the referral aspect of the resolution and, particularly, its potential negative impact on the prospect of Israeli-Palestinian negotiations in the future.

⁶² See *supra* ¶¶ 2.22-2.23.

⁶³ U.N. GAOR, 77th Sess., 56th plen. Mtg., at 3-6, U.N. Doc. A/77/PV.56 (Resumption 1) (Dec. 30, 2022) (statements of Mongolia, Romania and the United Kingdom); U.S. Statements before the Fourth Committee, *supra* note 1; see also United Nations, Meetings Coverage and Press Releases, *Fourth Committee, Concluding Its Work, Approves Six Draft Resolutions, Including Request for ICJ Opinion on Israeli Occupation*, U.N. Doc. GA/SPD/771 (Nov. 11, 2022), available at <https://press.un.org/en/2022/gaspd771.doc.htm> (last visited July 17, 2023) (summarizing statements of Australia, Israel, Japan, Singapore, the United Kingdom and Uruguay). (The official Fourth Committee meeting records for these dates are not yet available.)

⁶⁴ See e.g., Journal of the United Nations, Statement of France, on behalf of the European Union, 77th Sess., 26th plen. Mtg. of the UNGA Fourth Committee (Nov. 11, 2022), available at <https://journal.un.org/en/new-york/meeting/officials/f7d34375-ae42-43fa-cd84-08da63695862/2022-11-11/statementsid> (last visited July 17, 2023) (emphasizing that “requests for advisory opinions from the ICJ should be thoroughly discussed and consulted with the UN membership”); Ambassador Mills, *supra* note 1. Even States that voted in favor of the resolution noted the decision to seek an advisory opinion was not thoroughly considered. See, e.g., U.N. GAOR, 77th Sess., 56th plen. Mtg., at 3-5, U.N. Doc. A/77/PV.56 (Resumption 1) (Dec. 30, 2022) (statement of Malta emphasizing that the request for an advisory opinion “would have benefited from further discussion and consultations with the wider United Nations Membership;” and statement of Portugal noting “reasonable procedural doubts” about the paragraph seeking an advisory opinion and that “there should have been more in-depth consultations.”).

3.16 The Court's approach to the question in *Construction of a Wall* is instructive for informing the Court in its approach to the questions referred by resolution 77/247.⁶⁵ The Court there addressed whether certain violations of international law had occurred and the legal consequences of such violations, such as that Israel was under an obligation to end the conduct giving rise to identified violations. In doing so, however, the Court navigated a course that did not prejudice or interfere with the existing framework for negotiations and its "land for peace" principle. The Court here should again give special consideration to the functions of the Security Council and the General Assembly in addressing the conflict and take care to calibrate its advice to preserve the established framework and avoid prejudicing the ability of the parties to negotiate within it matters at the heart of the dispute, such as borders and security arrangements.

3.17 If the Court strays from this approach, there is substantial risk that, rather than facilitating the work of the United Nations to return the parties to negotiations and full respect for the established framework, the Court's advice could prejudice or inadvertently suggest to the parties that there is no utility to negotiations on the interdependent elements of the land for peace principle that the Security Council and General Assembly have so long endorsed and encouraged. Such an opinion would be contrary to, rather than considerate of, relevant UN resolutions and the work of the Security Council and the General Assembly, and thus would not assist the General Assembly in the proper exercise of its functions.

B. Going Beyond the Established Negotiating Framework Would Risk Impinging Upon the Principle of Consent

3.18 The Court has long maintained that there would be "compelling reasons" to decline to give an advisory opinion where it "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."⁶⁶ In *Construction of a Wall*, the Court rejected the contention that its opinion on the

⁶⁵ Of note in this regard, the Court reached conclusions in that proceeding on the legal consequences of settlement activity, actions that alter the demographic composition, character and status of the Occupied Palestinian Territories – including East Jerusalem, and policies and practices that hinder the exercise of the Palestinian right to self-determination. The Court urged an end to all such violations it identified, and, as relevant, reparations. See *Construction of a Wall, Advisory Opinion*, 2004 I.C.J. at 184, 201-02, ¶¶ 120-22, 163.

⁶⁶ *Western Sahara, Advisory Opinion*, 1975 I.C.J. at 25, ¶ 33; see also *Construction of a Wall, Advisory Opinion*, 2004 I.C.J. at 136, ¶ 14; *id.*, Separate Opinion of Judge Owada, at 265, ¶ 13 (stressing that even if the General Assembly's request is not intended to bring before the Court a legal dispute, it remains the case that rendering a response to a request would be incompatible with the Court's judicial function if doing so would be "tantamount to adjudicating on the very subject-matter of the underlying concrete bilateral dispute"); *Case of Monetary Gold Removed from Rome in 1943, Preliminary Question, Judgment, I.C.J. Reports 1954*, p. 32; *Status of Eastern Carelia, Advisory Opinion*, 1923, P.C.I.J., Series B, No. 5, pp. 28-29.

narrower question in that proceeding would have that effect. The Court supported this position by pointing to the responsibilities of the United Nations in questions relating to international peace and security, a responsibility that “has been manifested by the adoption of many Security Council and General Assembly resolutions” related to Middle East Peace.⁶⁷

3.19 Here in contrast, the referral questions are framed to implicate a wide range of issues that go to the disputes at the heart of the Israeli-Palestinian conflict, including the status of the territory in question.⁶⁸ Yet not only has there been no consent to judicial settlement of these matters by the Court, but also the referral questions invite the Court to opine on the alleged actions of only one party to the dispute, without also opining on the acts or omissions of the Palestinian Authority, Palestine Liberation Organization or other entities.⁶⁹ Moreover, as stated already, both the Security Council and General Assembly have continued to maintain that, for there to be an enduring peace, the permanent status issues encompassed in the dispute must be resolved through direct negotiations.

3.20 As discussed above, the Court found in *Construction of a Wall* that the effect of its opinion on the negotiating framework was too unclear to regard as a compelling factor in considering the discretion and propriety aspects of its advisory jurisdiction. Such a finding is not plausible here where the questions presented invite an opinion that is substantially equivalent to adjudicating on the very subject matter of those negotiations. An opinion by the Court that would seemingly or effectively resolve a permanent status issue, set aside the parties’ agreed interim allocations of authority and responsibility, or advise that a legal consequence of Israel’s actions is that it is required to withdraw from the occupied territories *without* the comprehensive, just and lasting peace envisioned as a result of “land for peace”, could contravene and significantly risk supplanting the established framework. It could harm

⁶⁷ *Construction of a Wall, Advisory Opinion*, 2004 I.C.J. at 158-59, ¶ 49.

⁶⁸ Moreover, unlike the question posed in *Construction of a Wall*, here the referral questions are drafted to establish the very conclusions about which they inquire. As the Court explained in *Kosovo*, where a matter remains contested and is capable of affecting the answer to the legal question posed to the Court, “[i]t would be incompatible with the proper exercise of the judicial function for the Court to treat that matter as having been determined by the General Assembly.” *Kosovo, Advisory Opinion*, 2010 I.C.J. at 424, ¶ 52. Both of the questions at issue in the present proceedings implicate this principle. G.A. Res. 77/247, Israeli practices affecting the human rights of the Palestinian people in Occupied Palestinian Territory, including East Jerusalem, ¶ 18(a), U.N. Doc. A/RES/77/247 (Dec. 30, 2022) [Dossier No. 3] (referring to the “ongoing violation” by Israel of the Palestinians’ right to self-determination, characterizing Israel as engaging in various measures “aimed at altering” final status issues such as Jerusalem, and stipulating that Israel has adopted “discriminatory legislation and measures”); *id.* at ¶ 18(b) (asking Court to opine on the legal status of the occupation and legal consequences on the basis of the assumed factual predicates in the first question).

⁶⁹ *Cf. Construction of a Wall, Advisory Opinion*, 2004 I.C.J. at 200, ¶ 162 (noting that “[i]llegal actions and unilateral decisions have been taken on all sides.”).

the parties' ability to negotiate a settlement to their dispute, including by inadvertently complicating efforts to de-escalate rising tensions in the West Bank, such as meetings in the fledgling Aqaba-Sharm El Sheikh format, entrenching the parties in their positions, and driving them further apart. It could also encourage elements on either side to engage in actions that further harm, rather than advance, the prospect of a just and lasting negotiated peace.

3.21 That the Court should consider how to avoid impinging on the very subject matter of the underlying dispute further follows from the Court's advisory opinion in *Western Sahara*. There, the Court noted that advising the General Assembly on the question of settlement of Morocco's rights over the Western Sahara at the time of colonization would not affect the rights of Spain as the administering power.⁷⁰ The Court also noted as relevant the fact that the General Assembly was not seeking the Court's advice in order to, "on the basis of the Court's opinion, exercise its powers and functions for the peaceful settlement of that dispute or controversy."⁷¹

3.22 Responding to the referral questions here by providing advice that, as a practical matter, obviates the means prescribed by the Security Council and recognized by the General Assembly to resolve the dispute – direct negotiations – would place the Court in the role of a dispute resolution mechanism rather than adviser. While this is a role the Court is necessarily tasked with in the context of contentious proceedings premised on the parties' consent, the Court has repeatedly recognized that its advisory jurisdiction is distinct and not the appropriate means of resolving a dispute between parties.⁷² The Court should continue to be mindful of this distinction and decline the invitation of those who would seek to avoid or undermine direct negotiations by asking the Court to decide on the issues that the parties and the Security Council and General Assembly have identified as forming the heart of the dispute and that can only be resolved through such negotiations. It is vital that, every effort be made to preserve

⁷⁰ *Western Sahara, Advisory Opinion*, 1975 I.C.J. at 27, ¶ 42.

⁷¹ *Id.* at pp. 26-27, ¶ 39; *see also Construction of a Wall, Advisory Opinion*, Separate Opinion of Judge Higgins, 2004 I.C.J. at 210, ¶¶ 12-13.

⁷² *See Kosovo, Advisory Opinion*, Dissenting Opinion of Judge Bennouna, 2010 I.C.J. at 503, ¶ 15 ("It is essential for the Court to ensure, in performing its advisory function, that it is not exploited in favour of one specifically political strategy or another . . ."); *Construction of a Wall, Advisory Opinion*, Separate Opinion of Judge Higgins, 2004 I.C.J. at 210, ¶¶ 12-13; *see also Western Sahara, Advisory Opinion*, 1975 I.C.J. at 27, ¶ 42 (lack of consent a less significant factor in favor of discretionary refusal where legal position was not deemed to be compromised by Court's opinion); *Peace Treaties, Advisory Opinion*, 1950 I.C.J. at 72 (where the request for an advisory opinion concerned the procedure for dispute resolution but not the merits of the underlying disputes, "the legal position of the parties to these disputes cannot be in any way compromised by the answers that the Court may give").

the established framework and create the conditions for a return of the parties to direct negotiations where they can resolve all permanent status issues. It is also vital that the parties be encouraged to refrain from unilateral actions at cross purposes with such a return.

CHAPTER IV
**THE REFERRAL INVITES EXAMINATION OF THE ESTABLISHED
FRAMEWORK ON THE BASIS OF ASSUMPTIONS NOT SUPPORTED BY
INTERNATIONAL LAW**

4.1 As noted, to fulfill its duties, the Court “must first ascertain the meaning and full implications of the question in the light of the actual framework of fact and law in which it falls for consideration.”⁷³

4.2 The second referred question rests on a faulty premise. It asks the Court to opine on how the policies, practices and alleged violations referred to in the first question, including Israel’s prolonged occupation, settlement and annexation of occupied territory “affect the legal status of the occupation.” The straightforward answer is the legal *status* of the occupation under international humanitarian law results from the fact of occupation alone. The legal status of a belligerent occupation under international humanitarian law does not change if the occupation is prolonged or if alleged violations of international humanitarian law or other international law have been committed by the Occupying Power.⁷⁴

4.3 Under customary international law, as reflected in Article 42 of the Regulations Respecting the Laws and Customs of War on Land, Annex to Convention (IV) Respecting the Laws and Customs of War on Land (“Hague IV Regulations”), territory is considered occupied when it is actually placed under the authority of the hostile army.⁷⁵ The occupation extends only to the territory where such authority has been established and can be exercised.⁷⁶ The fact of occupation is the basis for the Occupying Power to exercise authority, including through a security presence, over the occupied territory and for the application of a framework of legal rights and duties to which the Occupying Power is bound.⁷⁷ Although belligerent occupation

⁷³ *1951 Agreement, Advisory Opinion*, 1980 I.C.J. at 76, ¶10.

⁷⁴ States must adhere to the *jus in bello*—including the law of belligerent occupation— regardless of whether a State may be considered the aggressor or whether the initial resort to force was lawful under the *jus ad bellum*. In an occupation resulting from aggression, the fact of occupation continues to be recognized under the *jus in bello* and the rights and duties of the Occupying Power continue to apply.

⁷⁵ Hague IV Regulations, art. 42, Oct. 18, 1907, 36 Stat. 2277, 205 CTS 277; *Construction of a Wall, Advisory Opinion*, 2004 I.C.J. at 167, ¶ 78; see also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, pp. 229-30, ¶ 172.

⁷⁶ *Id.*

⁷⁷ See *id.* at 230, ¶ 173 (“In order to reach a conclusion as to whether a State, the military forces of which are present on the territory of another State as a result of an intervention, is an ‘occupying Power’ in the meaning of the term as understood in the *jus in bello*, the Court must examine whether there is sufficient evidence to demonstrate that the said authority was in fact established and exercised by the intervening State in the areas in question.”)

is temporary in nature, international humanitarian law continues to apply for however long an occupation exists in fact.⁷⁸

4.4 In *Construction of a Wall*, the Court opined that Israel had violated particular prohibitions under international humanitarian law applicable to Occupying Powers and accordingly that Israel must cease such violations and provide compensation for them.⁷⁹ At the same time, the Court recognized that Israel's status as an Occupying Power had continued for many years and affirmed the applicability of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War ("Fourth Geneva Convention") to the territory occupied by Israel since 1967.⁸⁰

4.5 The Security Council and General Assembly have declared that any actions to change the status of occupied territory are null and void and do not affect the continued application of the Fourth Geneva Convention.⁸¹ Occupation law also makes clear that protected persons in occupied territory remain subject to the protections of that law, regardless of any purported legal changes introduced by the Occupying Power, until the occupation ceases.⁸²

4.6 As it did in *Construction of a Wall*, should the Court address the second question, it should reaffirm that occupation law continues to apply based on the fact of occupation. As the

⁷⁸ Experts convened by the International Committee of the Red Cross were not able to identify any limits imposed by international humanitarian law on the duration of an occupation. See TRISTAN FERRARO, INT'L COMM. OF THE RED CROSS, EXPERT MEETING: OCCUPATION AND OTHER FORMS OF ADMINISTRATION OF FOREIGN TERRITORY 72, (Mar. 2012) ("[T]he participants agreed that IHL did not set any limits to the time span of an occupation. It was therefore recognized that nothing under IHL would prevent occupying powers from embarking on a long-term occupation and that occupation law would continue to provide the legal framework applicable.")

⁷⁹ E.g., *Construction of a Wall*, Advisory Opinion, 2004 I.C.J. at 184, 189, 198, ¶¶ 120, 132, 153.

⁸⁰ *Id.* at 167, 177, ¶¶ 78, 101.

⁸¹ See, e.g., S.C. Res. 478, ¶ 3, U.N. Doc. S/RES/478 (Aug. 20, 1980) [Dossier No. 1274] ("Determines that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent "basic law" on Jerusalem, are null and void and must be rescinded forthwith."); G.A. Res. 36/120 E, Question of Palestine, ¶ 1, U.N. Doc. A/RES/36/120 E (Dec. 10, 1981) [Dossier No. 389]; see also G.A. Res. ES-11/4, ¶ 3, U.N. Doc. A/RES/ES-11/4 (Oct. 12, 2022) ("Declares that the unlawful actions of the Russian Federation with regard to the illegal so-called referendums held from 23 to 27 September 2022 in parts of the Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine that, in part, are or have been under the temporary military control of the Russian Federation, and the subsequent attempted illegal annexation of these regions, have no validity under international law and do not form the basis for any alteration of the status of these regions of Ukraine."); S.C. Res. 670, ¶ 13, U.N. Doc. S/RES/670 (Sept. 25, 1990) ("Reaffirms that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, applies to Kuwait and that, as a High Contracting Party to the Convention, Iraq is bound to comply fully with all its terms and in particular is liable under the Convention in respect of the grave breaches committed by it, as are individuals who commit or order the commission of grave breaches."); S.C. Res. 662, ¶ 1, U.N. Doc. S/RES/662 (Aug. 9, 1990) ("Decides that annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void.").

⁸² See *Construction of a Wall*, Advisory Opinion, 2004 I.C.J. at 185-87, ¶ 126 (citing Fourth Geneva Convention, art. 47).

Occupying Power, Israel has important rights and obligations under international humanitarian law that continue to apply regardless of alleged violations of international humanitarian law or other international law.⁸³ Thus, to the extent the second question could be construed as asking the Court to declare that the Israeli occupation has been rendered unlawful or void, the Court should decline that invitation on the basis that such an assessment is not supported by international law.

⁸³ See *Armed Activities on the Territory of the Congo*, Separate Opinion of Judge Kooijmans, 2005 I.C.J. at 157, ¶ 58 (“In their interrelationship the rules on occupation form an important part of the *jus in bello* or international humanitarian law. The main purpose of that law is to protect persons caught up in conflict, even if it does take into account the interests of the belligerent parties. It does not differentiate between belligerents. In particular, no distinction is made in the *jus in bello* between an occupation resulting from a lawful use of force and one which is the result of aggression. The latter issue is decided by application of the *jus ad bellum*, the law on the use of force, which attributes responsibility for the commission of the acts of which the occupation is the result.”).

CHAPTER V

CONCLUSION: A JUST AND LASTING PEACE REQUIRES DIRECT NEGOTIATIONS BETWEEN THE PARTIES

5.1 It remains vital that every effort be made to create the conditions for a return of the parties to direct negotiations where they can address the permanent status issues central to realizing the goal of two States living side-by-side in peace and security. As recognized by the Security Council, the General Assembly, this Court, and the parties themselves, only through such negotiation within the established framework based on the “land for peace” principle can a comprehensive, just and lasting resolution to the conflict be achieved. As such, and in light of the current context, it is urgent that steps are taken by the United Nations, its Member States, and the parties to create such conditions. It is likewise critical that the Court’s opinion here serves this objective and does not inadvertently undermine the established framework, consistent with the interests and proper functions of the Security Council and General Assembly and the fundamental principle of consent to judicial settlement.

5.2 That direct permanent status negotiations between the parties are not currently occurring does not mean that a negotiated two-State solution is no longer viable. While escalated violence and deep mistrust may hinder progress, practical steps can still be taken to create the requisite conditions for a return to the negotiations needed to achieve peace, security, and the full realization of Palestinian self-determination. As the General Assembly stressed in its December 2022 resolution “Peaceful settlement of the question of Palestine,” there is a

need to urgently exert collective efforts to launch credible negotiations on all final status issues in the Middle East peace process . . . and calls once more for the intensification of efforts by the parties, including through meaningful negotiations, with the support of the international community, towards the conclusion of a final just, lasting and comprehensive peace settlement . . .⁸⁴

5.3 Such efforts include, but are not limited to, the meetings in the Aqaba-Sharm El Sheikh format that began earlier this year, aimed at de-escalation and reinvigorating political dialogue between the parties. With the support of the United States and regional partners Egypt and Jordan, the Israelis and Palestinians recommitted themselves to their prior agreements and affirmed their interest in “consolidating the basis for direct negotiations between the Palestinians and Israelis, towards achieving comprehensive, just and lasting peace.”⁸⁵ While

⁸⁴ G.A. Res. 77/25, ¶ 2, U.N. Doc. A/RES/77/25 (Nov. 30, 2022) [Dossier No. 516].

⁸⁵ *Sharm Communique*, *supra* note 7.

the United States is mindful of the concerns that informed the General Assembly’s decision to submit its request to the Court, such meetings and dialogue demonstrate the continued relevance of a negotiated solution and can be built upon by the international community to lay the groundwork for a return to negotiations, as the Security Council and General Assembly have urged. The parties have also continued, despite difficulties and overt differences, to maintain contacts that reinforce principles to which they agreed in the Oslo Accords, especially on security cooperation.⁸⁶

5.4 To make progress, however, it is also essential that the parties abide by their commitments and agreements and cease unilateral actions that do nothing but exacerbate tensions, hinder the prospect of a two-State solution, and drive them further from peace. These unilateral actions include advancement of settlements, the pursuit of statehood objectives outside of negotiations, demolition of homes, and the incitement to or glorification of acts of violence.⁸⁷ When the Israelis and Palestinians pursue such unilateral measures instead of negotiation in the established framework, violence and mistrust rise and serve neither of their interests. Nor does it serve the purposes of the framework continuously supported by the Security Council and General Assembly. Instead, the parties must pursue direct negotiation, as only through negotiations under the established framework can they achieve a durable peace that gives rise to an independent and viable Palestinian State living safely and securely alongside Israel, with both populations enjoying equal measures of freedom and prosperity. As the Court observed in *Construction of a Wall*, there is an “urgent necessity for the United Nations as a whole to redouble its efforts to bring the Israeli-Palestinian conflict . . . to a speedy conclusion, thereby establishing a just and lasting peace in the region.”⁸⁸ The Court’s opinion here should reinforce this exhortation, which remains no less true today.

5.5 While the Court has previously provided an advisory opinion on a discrete aspect of the Israeli-Palestinian conflict, the expansive yet one-sided and conclusory questions presented

⁸⁶ See *supra* note 35.

⁸⁷ The General Assembly recently called upon

both parties to act responsibly and in compliance with international law and their previous agreements and obligations, in both their policies and actions, in order to, with the support of the Quartet and other interested parties, urgently reverse negative trends, including all measures taken on the ground that are contrary to international law, and create the conditions necessary for a credible political horizon and the advancement of peace efforts.

G.A. Res. 77/25, ¶ 5, U.N. Doc. A/RES/77/25 (Nov. 30, 2022) [Dossier No. 516]; see also *id.* ¶ 7 (“[s]tresses the need, in particular, for an immediate halt to all settlement activities, land confiscation and home demolitions”).

⁸⁸ *Construction of a Wall, Advisory Opinion*, 2004 I.C.J. at 200, ¶ 161.

here could be understood to invite the Court to resolve the very permanent status issues that the parties agreed to negotiate in the Oslo Accords, and to draw legal conclusions that strike at the heart of the interdependent “land for peace” principle that is the foundation of the established negotiating framework continually endorsed and supported by the United Nations.

5.6 The Court, to preserve the integrity of its judicial function, should exercise its discretion to render its opinion with due respect for the responsibilities both the Security Council and General Assembly have exercised in addressing this conflict through a negotiating framework, and consistent with the principle of consent. It is imperative for the Court to ensure that its opinion, even if addressing legal consequences of alleged violations of international law, is tailored to preserve the parties’ ability to negotiate peace and a two-State solution consistent with the established framework stemming from Security Council resolutions 242 and 338, continually supported by the General Assembly and adopted in the agreements of the parties.⁸⁹ If the Court were to identify any concerns with its ability to address the questions referred within the established negotiating framework, it is essential that the Court exercise its discretion to opine on matters such that it does not imperil that framework.

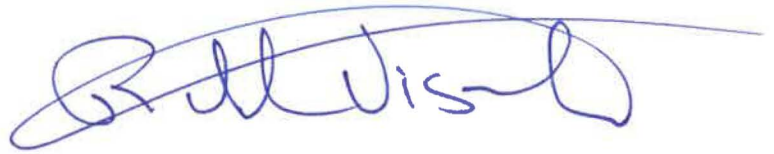
5.7 The United States respectfully urges the Court to proceed with caution in weighing its response to the General Assembly’s request. Were the Court to issue an opinion that encompasses “the entire Question of Palestine,”⁹⁰ as some have suggested, or that prejudices or seemingly decides permanent status issues reserved for negotiations, such as borders and security arrangements, this would not advance the objectives of the established negotiating framework, help develop the conditions for a negotiated peace, or ultimately serve the interests and functions of the United Nations. Accordingly, the referral questions should be understood as a request for advice aimed at facilitating the General Assembly’s proper role and function in promoting a negotiated resolution to the conflict within the established framework. The Court’s opinion should advance that objective.⁹¹

⁸⁹ See G.A. Res. 77/25, Peaceful settlement of the question of Palestine, ¶ 2, U.N. Doc. A/RES/77/25 (Nov. 30, 2022) [Dossier No. 516].

⁹⁰ Meetings Coverage, U.N. G.A. Comm. on the Inalienable Rights of the Palestinian People, 411th Mtg., *Permanent Observer Briefs Palestinian Rights Committee on Situation in Occupied Territory Situation, Submissions Guidelines for Opinion Case to the World Court*, U.N. Doc. GA/PAL/1452 (May 3, 2023), available at <https://press.un.org/en/2023/gapal1452.doc.htm> (last visited July 27, 2023).

⁹¹ See *Chagos, Advisory Opinion*, Declaration of Judge Tomka, 2019 I.C.J. at 148, 150, ¶ 6 (“If one can accept this course of action, one must also exercise caution not to go further than what is strictly necessary and useful for the requesting organ.”).

Respectfully submitted,

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Richard C. Vissek
Acting Legal Adviser
United States Department of State

July 25, 2023

CERTIFICATION

I, Richard C. Visek, representative of the United States of America, hereby certify that the copies of this statement and all documents annexed to it are true copies of the originals.

A handwritten signature in blue ink, appearing to read "R. C. Visek", with a long horizontal flourish extending to the right.

Richard C. Visek
Acting Legal Adviser
United States Department of State

July 25, 2023

**List of Annexes Accompanying the Written Statement
of the United States of America**

July 25, 2023

ANNEX	DESCRIPTION
1	S.C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967) [Dossier No. 1245]
2	S.C. Res. 338, U.N. Doc. S/RES/338 (Oct. 22, 1973)
3	Exchange of Letters between Yitzhak Rabin, Prime Minister of Israel, and Yasser Arafat, PLO Chairman, concerning Israel-PLO Recognition (Sept. 9, 1993)
4	Declaration of Principles on Interim Self-Government Arrangements, A/48/486-S/26560 (Sept. 13, 1993) [Dossier No. 1302]
5	Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, A/51/889-S/1997/357 (Sept. 28, 1995) [Dossier No. 1306]

ANNEX 1

Decisions

At its 1373rd meeting, on 9 November 1967, the Council decided to invite the representatives of the United Arab Republic, Israel and Jordan to participate, without vote, in the discussion of the item entitled "The situation in the Middle East: Letter dated 7 November 1967 from the Permanent Representative of the United Arab Republic addressed to the President of the Security Council (S/8226)".¹¹

At its 1375th meeting, on 13 November 1967, the Council decided to invite the representative of Syria to participate, without vote, in the discussion of the question.

Resolution 242 (1967)

of 22 November 1967

The Security Council,

Expressing its continuing concern with the grave situation in the Middle East,

Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. *Affirms* that the fulfilment of 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 Israel armed forces from territories occupied in the recent conflict;
- (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political 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 force;

2. *Affirms further* the necessity

(a) For guaranteeing freedom of navigation through international waterways in the area;

(b) For achieving a just settlement of the refugee problem;

(c) For guaranteeing the territorial inviolability and political independence of every State in the area,

¹¹ *Ibid.*

Décisions

A sa 1373^e séance, le 9 novembre 1967, le Conseil a décidé d'inviter les représentants de la République arabe unie, d'Israël et de la Jordanie à participer, sans droit de vote, à la discussion de la question intitulée "La situation au Moyen-Orient : Lettre, en date du 7 novembre 1967, adressée au Président du Conseil de sécurité par le représentant permanent de la République arabe unie (S/8226¹¹)".

A sa 1375^e séance, le 13 novembre 1967, le Conseil a décidé d'inviter le représentant de la Syrie à participer, sans droit de vote, à la discussion de la question.

Résolution 242 (1967)

du 22 novembre 1967

Le Conseil de sécurité,

Exprimant l'inquiétude que continue de lui causer la grave situation au Moyen-Orient,

Soulignant l'inadmissibilité de l'acquisition de territoire par la guerre et la nécessité d'œuvrer pour une paix juste et durable permettant à chaque Etat de la région de vivre en sécurité,

Soulignant en outre que tous les Etats Membres, en acceptant la Charte des Nations Unies, ont contracté l'engagement d'agir conformément à l'Article 2 de la Charte,

1. *Affirme* que l'accomplissement des principes de la Charte 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;
- 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;

2. *Affirme en outre* la nécessité

a) De garantir la liberté de navigation sur les voies d'eau internationales de la région;

b) De réaliser un juste règlement du problème des réfugiés;

c) De garantir l'inviolabilité territoriale et l'indépendance politique de chaque Etat de la région, par

¹¹ *Ibid.*

through measures including the establishment of demilitarized zones;

3. *Requests* the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;

4. *Requests* the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.

Adopted unanimously at the 1382nd meeting.

Decision

On 8 December 1967, the following statement which reflected the view of the members of the Council was circulated by the President as a Security Council document (S/8289):¹²

"As regards document S/8053/Add.3,¹² brought to the attention of the Security Council, the members, recalling the consensus reached at its 1366th meeting on 9 July 1967, recognize the necessity of the enlargement by the Secretary-General of the number of observers in the Suez Canal zone and the provision of additional technical material and means of transportation."

des mesures comprenant la création de zones démilitarisées;

3. *Prie* le Secrétaire général de désigner un représentant spécial pour se rendre au Moyen-Orient afin d'y établir et d'y maintenir des rapports avec les Etats intéressés en vue de favoriser un accord et de seconder les efforts tendant à aboutir à un règlement pacifique et accepté, conformément aux dispositions et aux principes de la présente résolution;

4. *Prie* le Secrétaire général de présenter aussitôt que possible au Conseil de sécurité un rapport d'activité sur les efforts du représentant spécial.

Adoptée à l'unanimité à la 1382^e séance.

Décision

Le 8 décembre 1967, le Président a fait distribuer, en tant que document du Conseil (S/8289¹²), la déclaration ci-après qui reflétait l'avis des membres du Conseil :

"En ce qui concerne le document S/8053/Add.3¹², soumis à l'attention du Conseil de sécurité, les membres de celui-ci, rappelant le consensus intervenu à sa 1366^e séance, le 9 juillet 1967, reconnaissent la nécessité de l'accroissement, par le Secrétaire général, du nombre des observateurs dans le secteur du canal de Suez et de la mise à la disposition de ceux-ci de matériel technique et de moyens de transport supplémentaires."

THE CYPRUS QUESTION¹³

Decision

At its 1362nd meeting, on 19 June 1967, the Council decided to invite the representatives of Cyprus, Turkey and Greece to participate, without vote, in the discussion of the item entitled "Letter dated 26 December 1963 from the Permanent Representative of Cyprus addressed to the President of the Security Council (S/5488):¹⁴ report of the Secretary-General on the United Nations Operation in Cyprus (S/7969)".¹⁵

¹² *Ibid.*

¹³ Resolutions or decisions on this question were also adopted in 1963, 1964, 1965 and 1966.

¹⁴ See *Official Records of the Security Council, Eighteenth Year, Supplement for October, November and December 1963.*

¹⁵ *Ibid.*, *Twenty-second Year, Supplement for April, May and June 1967.*

LA QUESTION DE CHYPRE¹³

Décision

A sa 1362^e séance, le 19 juin 1967, le Conseil a décidé d'inviter les représentants de Chypre, de la Turquie et de la Grèce à participer, sans droit de vote, à la discussion de la question intitulée "Lettre, en date du 26 décembre 1963, adressée au Président du Conseil de sécurité par le représentant permanent de Chypre (S/5488¹⁴) : rapport du Secrétaire général sur l'Opération des Nations Unies à Chypre (S/7969¹⁵)".

¹² *Ibid.*

¹³ Question ayant fait l'objet de résolutions ou décisions de la part du Conseil en 1963, 1964, 1965 et 1966.

¹⁴ Voir *Documents officiels du Conseil de sécurité, dix-huitième année, Supplément d'octobre, novembre et décembre 1963.*

¹⁵ *Ibid.*, *vingt-deuxième année, Supplément d'avril, mai et juin 1967.*

ANNEX 2

Resolution 338 (1973)

of 22 October 1973

The Security Council

1. *Calls upon* all parties to the present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the positions they now occupy;

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

3. *Decides* 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 East.

Adopted at the 1747th meeting by 14 votes to none²⁷

²⁷ One member (China) did not participate in the voting.

ANNEX 3

Israel-PLO Recognition: Exchange of Letters between PM Rabin and Chairman Arafat

1. LETTER FROM YASSER ARAFAT TO PRIME MINISTER RABIN:

September 9, 1993

Yitzhak Rabin
Prime Minister of Israel

Mr. Prime Minister,

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

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

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

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

The PLO considers that the signing of the Declaration of Principles constitutes a historic event, inaugurating a new epoch of peaceful coexistence, free from violence and all other acts which endanger peace and stability. Accordingly, the PLO renounces the use of terrorism and other acts of violence and will assume responsibility over all PLO elements and personnel in order to assure their compliance, prevent violations and discipline violators.

In view of the promise of a new era and the signing of the Declaration of Principles and based on Palestinian acceptance of Security Council Resolutions 242 and 338, the PLO affirms that those articles of the Palestinian Covenant which deny Israel's right to exist, and the provisions of the Covenant which are inconsistent with the commitments of this letter are now inoperative and no longer valid. Consequently, the PLO undertakes to submit to the Palestinian National Council for formal approval the necessary changes in regard to the Palestinian Covenant.

Sincerely,

Yasser Arafat
Chairman
The Palestine Liberation Organization

2. LETTER FROM YASSER ARAFAT TO NORWEGIAN FOREIGN MINISTER:

September 9, 1993

His Excellency
Johan Jorgen Holst
Foreign Minister of Norway

Dear Minister Holst,

I would like to confirm to you that, upon the signing of the Declaration of Principles, the PLO encourages and calls upon the Palestinian people in the West Bank and Gaza Strip to take part in the steps leading to the normalization of life, rejecting violence and terrorism, contributing to peace and stability and participating actively in shaping reconstruction, economic development and cooperation.

Sincerely,

Yasser Arafat
Chairman
The Palestine Liberation Organization

3. LETTER FROM PRIME MINISTER RABIN TO YASSER ARAFAT:

September 9, 1993

Yasser Arafat
Chairman
The Palestinian Liberation Organization

Mr. Chairman,

In response to your letter of September 9, 1993, I wish to confirm to you that, in light of the PLO commitments included in your letter, the Government of Israel has decided to recognize the PLO as the representative of the Palestinian people and commence negotiations with the PLO within the Middle East peace process.

Yitzhak Rabin

Prime Minister of Israel

ANNEX 4



**General Assembly
Security Council**

Distr.
GENERAL

A/48/486
S/26560
11 October 1993

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Forty-eighth session
Agenda item 10
REPORT OF THE SECRETARY-GENERAL ON
THE WORK OF THE ORGANIZATION

SECURITY COUNCIL
Forty-eighth year

Letter dated 8 October 1993 from the Permanent Representatives
of the Russian Federation and the United States of America to
the United Nations addressed to the Secretary-General

As co-sponsors of the peace process launched at Madrid in October 1991 and witnesses to the signing at Washington, D.C., on 13 September 1993 of the Declaration of Principles on Interim Self-Government Arrangements, including its Annexes, and its Agreed Minutes, by the Government of the State of Israel and the Palestine Liberation Organization, we have the honour to enclose the above document (see annex).

We would be grateful if you would have the present letter and its attachment circulated as an official document of the forty-eighth session of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Madeleine K. ALBRIGHT
Ambassador
Permanent Representative
to the United Nations of the
United States of America

(Signed) Yuliy M. VORONTSOV
Ambassador
Permanent Representative
to the United Nations of
the Russian Federation

Letter dated 8 October 1993 from the Permanent
Representative of Israel to the United Nations
addressed to the Secretary-General

I have the honour to enclose the Declaration of Principles on Interim Self-Government Arrangements, including its Annexes, and its Agreed Minutes, signed at Washington, D.C., on 13 September 1993 by the Government of the State of Israel and the Palestine Liberation Organization and witnessed by the United States of America and the Russian Federation (see annex).

I would be grateful if you would have the present letter and its attachment circulated as an official document of the forty-eighth session of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Gad YAACOB
Ambassador
Permanent Representative

Letter dated 8 October 1993 from the Permanent
Observer of Palestine to the United Nations
addressed to the Secretary-General

I have the honour to enclose the Declaration of Principles on Interim Self-Government Arrangements, including its Annexes, and its Agreed Minutes, signed at Washington, D.C., on 13 September 1993 by the Government of the State of Israel and the Palestine Liberation Organization and witnessed by the United States of America and the Russian Federation (see annex).

I would be grateful if you would have the present letter and its attachment circulated as an official document of the forty-eighth session of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Dr. Nasser AL-KIDWA
Permanent Observer of Palestine
to the United Nations

ANNEX

Declaration of Principles on Interim
Self-Government Arrangements

The Government of the State of Israel and the PLO team (in the Jordanian-Palestinian delegation to the Middle East Peace Conference) (the "Palestinian Delegation"), representing the Palestinian people, agree that it is time to put an end to decades of confrontation and conflict, recognize their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process. Accordingly, the two sides agree to the following principles:

Article I

AIM OF THE NEGOTIATIONS

The aim of the Israeli-Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian Interim Self-Government Authority, the elected Council (the "Council"), for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council resolutions 242 (1967) and 338 (1973). It is understood that the interim arrangements are an integral part of the whole peace process and that the negotiations on the permanent status will lead to the implementation of Security Council resolutions 242 (1967) and 338 (1973).

Article II

FRAMEWORK FOR THE INTERIM PERIOD

The agreed framework for the interim period is set forth in this Declaration of Principles.

Article III

ELECTIONS

1. In order that the Palestinian people in the West Bank and Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council under agreed supervision and international observation, while the Palestinian police will ensure public order.

2. An agreement will be concluded on the exact mode and conditions of the elections in accordance with the protocol attached as Annex I, with the goal of holding the elections not later than nine months after the entry into force of this Declaration of Principles.

3. These elections will constitute a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements.

Article IV

JURISDICTION

Jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations. The two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period.

Article V

TRANSITIONAL PERIOD AND PERMANENT STATUS NEGOTIATIONS

1. The five-year transitional period will begin upon the withdrawal from the Gaza Strip and Jericho area.
2. Permanent status negotiations will commence as soon as possible, but not later than the beginning of the third year of the interim period, between the Government of Israel and the Palestinian people's representatives.
3. 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 interest.
4. The two parties agree that the outcome of the permanent status negotiations should not be prejudiced or preempted by agreements reached for the interim period.

Article VI

PREPARATORY TRANSFER OF POWERS AND RESPONSIBILITIES

1. Upon the entry into force of this Declaration of Principles and the withdrawal from the Gaza Strip and the Jericho area, a transfer of authority from the Israeli military government and its Civil Administration to the authorized Palestinians for this task, as detailed herein, will commence. This transfer of authority will be of a preparatory nature until the inauguration of the Council.
2. Immediately after the entry into force of this Declaration of Principles and the withdrawal from the Gaza Strip and Jericho area, with the view to promoting economic development in the West Bank and Gaza Strip, authority will be transferred to the Palestinians in the following spheres: education and culture, health, social welfare, direct taxation and tourism. The Palestinian side will commence in building the Palestinian police force, as agreed upon.

Pending the inauguration of the Council, the two parties may negotiate the transfer of additional powers and responsibilities, as agreed upon.

Article VII

INTERIM AGREEMENT

1. The Israeli and Palestinian delegations will negotiate an agreement on the interim period (the "Interim Agreement").
2. The Interim Agreement shall specify, among other things, the structure of the Council, the number of its members, and the transfer of powers and responsibilities from the Israeli military government and its Civil Administration to the Council. The Interim Agreement shall also specify the Council's executive authority, legislative authority in accordance with Article IX below, and the independent Palestinian judicial organs.
3. The Interim Agreement shall include arrangements, to be implemented upon the inauguration of the Council, for the assumption by the Council of all of the powers and responsibilities transferred previously in accordance with Article VI above.
4. In order to enable the Council to promote economic growth, upon its inauguration, the Council will establish, among other things, a Palestinian Electricity Authority, a Gaza Sea Port Authority, a Palestinian Development Bank, a Palestinian Export Promotion Board, a Palestinian Environmental Authority, a Palestinian Land Authority and a Palestinian Water Administration Authority and any other Authorities agreed upon, in accordance with the Interim Agreement, that will specify their powers and responsibilities.
5. After the inauguration of the Council, the Civil Administration will be dissolved, and the Israeli military government will be withdrawn.

Article VIII

PUBLIC ORDER AND SECURITY

In order to guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip, the Council will establish a strong police force, while Israel will continue to carry the responsibility for defending against external threats, as well as the responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order.

Article IX

LAWS AND MILITARY ORDERS

1. The Council will be empowered to legislate, in accordance with the Interim Agreement, within all authorities transferred to it.

2. Both parties will review jointly laws and military orders presently in force in remaining spheres.

Article X

JOINT ISRAELI-PALESTINIAN LIAISON COMMITTEE

In order to provide for a smooth implementation of this Declaration of Principles and any subsequent agreements pertaining to the interim period, upon the entry into force of this Declaration of Principles, a Joint Israeli-Palestinian Liaison Committee will be established in order to deal with issues requiring coordination, other issues of common interest and disputes.

Article XI

ISRAELI-PALESTINIAN COOPERATION IN ECONOMIC FIELDS

Recognizing the mutual benefit of cooperation in promoting the development of the West Bank, the Gaza Strip and Israel, upon the entry into force of this Declaration of Principles, an Israeli-Palestinian Economic Cooperation Committee will be established in order to develop and implement in a cooperative manner the programmes identified in the protocols attached as Annex III and Annex IV.

Article XII

LIAISON AND COOPERATION WITH JORDAN AND EGYPT

The two parties will invite the Governments of Jordan and Egypt to participate in establishing further liaison and cooperation arrangements between the Government of Israel and the Palestinian representatives, on the one hand, and the Governments of Jordan and Egypt, on the other hand, to promote cooperation between them. These arrangements will include the constitution of a Continuing Committee that will decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder. Other matters of common concern will be dealt with by this Committee.

Article XIII

REDEPLOYMENT OF ISRAELI FORCES

1. After the entry into force of this Declaration of Principles, and not later than the eve of elections for the Council, a redeployment of Israeli military forces in the West Bank and the Gaza Strip will take place, in addition to withdrawal of Israeli forces carried out in accordance with Article XIV.

2. In redeploying its military forces, Israel will be guided by the principle that its military forces should be redeployed outside populated areas.

3. Further redeployments to specified locations will be gradually implemented commensurate with the assumption of responsibility for public order and internal security by the Palestinian police force pursuant to Article VIII above.

Article XIV

ISRAELI WITHDRAWAL FROM THE GAZA STRIP AND JERICHO AREA

Israel will withdraw from the Gaza Strip and Jericho area, as detailed in the protocol attached as Annex II.

Article XV

RESOLUTION OF DISPUTES

1. Disputes arising out of the application or interpretation of this Declaration of Principles, or any subsequent agreements pertaining to the interim period, shall be resolved by negotiations through the Joint Liaison Committee to be established pursuant to Article X above.
2. Disputes which cannot be settled by negotiations may be resolved by a mechanism of conciliation to be agreed upon by the parties.
3. The parties may agree to submit to arbitration disputes relating to the interim period, which cannot be settled through conciliation. To this end, upon the agreement of both parties, the parties will establish an Arbitration Committee.

Article XVI

ISRAELI-PALESTINIAN COOPERATION CONCERNING REGIONAL PROGRAMMES

Both parties view the multilateral working groups as an appropriate instrument for promoting a "Marshall Plan", the regional programmes and other programmes, including special programmes for the West Bank and Gaza Strip, as indicated in the protocol attached as Annex IV.

Article XVII

MISCELLANEOUS PROVISIONS

1. This Declaration of Principles will enter into force one month after its signing.
2. All protocols annexed to this Declaration of Principles and Agreed Minutes pertaining thereto shall be regarded as an integral part hereof.

DONE at Washington, D.C., this thirteenth day of September 1993.

For the Government of Israel:

(Signed) Shimon PERES

For the PLO:

(Signed) Mahmud ABBAS

Witnessed By:

The United States of America

(Signed) Warren CHRISTOPHER

The Russian Federation

(Signed) Andrei V. KOZYREV

ANNEX I

Protocol on the Mode and Conditions of Elections

1. Palestinians of Jerusalem who live there will have the right to participate in the election process, according to an agreement between the two sides.

2. In addition, the election agreement should cover, among other things, the following issues:

(a) The system of elections;

(b) The mode of the agreed supervision and international observation and their personal composition;

(c) Rules and regulations regarding election campaigns, including agreed arrangements for the organizing of mass media, and the possibility of licensing a broadcasting and television station.

3. The future status of displaced Palestinians who were registered on 4 June 1967 will not be prejudiced because they are unable to participate in the election process owing to practical reasons.

ANNEX II

Protocol on Withdrawal of Israeli Forces
from the Gaza Strip and Jericho Area

1. The two sides will conclude and sign within two months from the date of entry into force of this Declaration of Principles an agreement on the withdrawal of Israeli military forces from the Gaza Strip and Jericho area. This agreement will include comprehensive arrangements to apply in the Gaza Strip and the Jericho area subsequent to the Israeli withdrawal.

2. Israel will implement an accelerated and scheduled withdrawal of Israeli military forces from the Gaza Strip and Jericho area, beginning immediately with the signing of the agreement on the Gaza Strip and Jericho area and to be completed within a period not exceeding four months after the signing of this agreement.

3. The above agreement will include, among other things:

(a) Arrangements for a smooth and peaceful transfer of authority from the Israeli military government and its Civil Administration to the Palestinian representatives;

(b) Structure, powers and responsibilities of the Palestinian authority in these areas, except: external security, settlements, Israelis, foreign relations and other mutually agreed matters;

(c) Arrangements for the assumption of internal security and public order by the Palestinian police force consisting of police officers recruited locally and from abroad (holding Jordanian passports and Palestinian documents issued by Egypt). Those who will participate in the Palestinian police force coming from abroad should be trained as police and police officers;

(d) A temporary international or foreign presence, as agreed upon;

(e) Establishment of a joint Palestinian-Israeli Coordination and Cooperation Committee for mutual security purposes;

(f) An economic development and stabilization programme including the establishment of an Emergency Fund, to encourage foreign investment and financial and economic support. Both sides will coordinate and cooperate jointly and unilaterally with regional and international parties to support these aims;

(g) Arrangements for a safe passage for persons and transportation between the Gaza Strip and Jericho area.

4. The above agreement will include arrangements for coordination between both parties regarding passages:

(a) Gaza - Egypt;

(b) Jericho - Jordan.

5. The offices responsible for carrying out the powers and responsibilities of the Palestinian authority under this Annex II and Article VI of the Declaration of Principles will be located in the Gaza Strip and in the Jericho area pending the inauguration of the Council.

6. Other than these agreed arrangements, the status of the Gaza Strip and Jericho area will continue to be an integral part of the West Bank and Gaza Strip, and will not be changed in the interim period.

ANNEX III

Protocol on Israeli-Palestinian Cooperation
in Economic and Development Programmes

The two sides agree to establish an Israeli-Palestinian Continuing Committee for Economic Cooperation, focusing, among other things, on the following:

1. Cooperation in the field of water, including a Water Development Programme prepared by experts from both sides, which will also specify the mode of cooperation in the management of water resources in the West Bank and Gaza Strip, and will include proposals for studies and plans on water rights of each party, as well as on the equitable utilization of joint water resources for implementation in and beyond the interim period.
2. Cooperation in the field of electricity, including an Electricity Development Programme, which will also specify the mode of cooperation for the production, maintenance, purchase and sale of electricity resources.
3. Cooperation in the field of energy, including an Energy Development Programme, which will provide for the exploitation of oil and gas for industrial purposes, particularly in the Gaza Strip and in the Negev, and will encourage further joint exploitation of other energy resources. This Programme may also provide for the construction of a petrochemical industrial complex in the Gaza Strip and the construction of oil and gas pipelines.
4. Cooperation in the field of finance, including a Financial Development and Action Programme for the encouragement of international investment in the West Bank and the Gaza Strip, and in Israel, as well as the establishment of a Palestinian Development Bank.
5. Cooperation in the field of transport and communications, including a Programme, which will define guidelines for the establishment of a Gaza Sea Port Area, and will provide for the establishing of transport and communications lines to and from the West Bank and the Gaza Strip to Israel and to other countries. In addition, this Programme will provide for carrying out the necessary construction of roads, railways, communications lines, etc.
6. Cooperation in the field of trade, including studies, and Trade Promotion Programmes, which will encourage local, regional and interregional trade, as well as a feasibility study of creating free trade zones in the Gaza Strip and in Israel, mutual access to these zones and cooperation in other areas related to trade and commerce.
7. Cooperation in the field of industry, including Industrial Development Programmes, which will provide for the establishment of joint Israeli-Palestinian Industrial Research and Development Centres, will promote Palestinian-Israeli joint ventures, and provide guidelines for cooperation in the textile, food, pharmaceutical, electronics, diamonds, computer and science-based industries.

8. A Programme for cooperation in, and regulation of, labour relations and cooperation in social welfare issues.

9. A Human Resource Development and Cooperation Plan, providing for joint Israeli-Palestinian workshops and seminars, and for the establishment of joint vocational training centres, research institutes and data banks.

10. An Environmental Protection Plan, providing for joint and/or coordinated measures in this sphere.

11. A Programme for developing coordination and cooperation in the field of communications and media.

12. Any other programmes of mutual interest.

ANNEX IV

Protocol on Israeli-Palestinian Cooperation
concerning Regional Development Programmes

1. The two sides will cooperate in the context of the multilateral peace efforts in promoting a Development Programme for the region, including the West Bank and the Gaza Strip, to be initiated by the Group of Seven. The parties will request the Group of Seven to seek the participation in this Programme of other interested States, such as members of the Organisation for Economic Cooperation and Development, regional Arab States and institutions, as well as members of the private sector.

2. The Development Programme will consist of two elements:

(a) An Economic Development Programme for the West Bank and the Gaza Strip;

(b) A Regional Economic Development Programme.

A. The Economic Development Programme for the West Bank and the Gaza Strip will consist of the following elements:

- (1) A Social Rehabilitation Programme, including a Housing and Construction Programme;
- (2) A Small and Medium Business Development Plan;
- (3) An Infrastructure Development Programme (water, electricity, transportation and communications, etc.);
- (4) A Human Resources Plan;
- (5) Other programmes.

B. The Regional Economic Development Programme may consist of the following elements:

- (1) The establishment of a Middle East Development Fund, as a first step, and a Middle East Development Bank, as a second step;
- (2) The development of a joint Israeli-Palestinian-Jordanian Plan for coordinated exploitation of the Dead Sea area;
- (3) The Mediterranean Sea (Gaza) - Dead Sea Canal;
- (4) Regional desalinization and other water development projects;
- (5) A regional plan for agricultural development, including a coordinated regional effort for the prevention of desertification;

- (6) Interconnection of electricity grids;
- (7) Regional cooperation for the transfer, distribution and industrial exploitation of gas, oil and other energy resources;
- (8) A Regional Tourism, Transportation and Telecommunications Development Plan;
- (9) Regional cooperation in other spheres.

3. The two sides will encourage the multilateral working groups and will coordinate towards their success. The two parties will encourage inter-sessional activities, as well as pre-feasibility and feasibility studies, within the various multilateral working groups.

Agreed Minutes to the Declaration of Principles
on Interim Self-Government Arrangements

A. GENERAL UNDERSTANDINGS AND AGREEMENTS

Any powers and responsibilities transferred to the Palestinians pursuant to the Declaration of Principles prior to the inauguration of the Council will be subject to the same principles pertaining to Article IV, as set out in these Agreed Minutes below.

B. SPECIFIC UNDERSTANDINGS AND AGREEMENTS

Article IV

It is understood that:

1. Jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, military locations and Israelis.
2. The Council's jurisdiction will apply with regard to the agreed powers, responsibilities, spheres and authorities transferred to it.

Article VI (2)

It is agreed that the transfer of authority will be as follows:

1. The Palestinian side will inform the Israeli side of the names of the authorized Palestinians who will assume the powers, authorities and responsibilities that will be transferred to the Palestinians according to the Declaration of Principles in the following fields: education and culture, health, social welfare, direct taxation, tourism and any other authorities agreed upon.
2. It is understood that the rights and obligations of these offices will not be affected.
3. Each of the spheres described above will continue to enjoy existing budgetary allocations in accordance with arrangements to be mutually agreed upon. These arrangements also will provide for the necessary adjustments required in order to take into account the taxes collected by the direct taxation office.
4. Upon the execution of the Declaration of Principles, the Israeli and Palestinian delegations will immediately commence negotiations on a detailed plan for the transfer of authority on the above offices in accordance with the above understandings.

Article VII (2)

The Interim Agreement will also include arrangements for coordination and cooperation.

Article VII (5)

The withdrawal of the military government will not prevent Israel from exercising the powers and responsibilities not transferred to the Council.

Article VIII

It is understood that the Interim Agreement will include arrangements for cooperation and coordination between the two parties in this regard. It is also agreed that the transfer of powers and responsibilities to the Palestinian police will be accomplished in a phased manner, as agreed in the Interim Agreement.

Article X

It is agreed that, upon the entry into force of the Declaration of Principles, the Israeli and Palestinian delegations will exchange the names of the individuals designated by them as members of the Joint Israeli-Palestinian Liaison Committee. It is further agreed that each side will have an equal number of members in the Joint Committee. The Joint Committee will reach decisions by agreement. The Joint Committee may add other technicians and experts, as necessary. The Joint Committee will decide on the frequency and place or places of its meetings.

ANNEX II

It is understood that, subsequent to the Israeli withdrawal, Israel will continue to be responsible for external security, and for internal security and public order of settlements and Israelis. Israeli military forces and civilians may continue to use roads freely within the Gaza Strip and the Jericho area.

DONE at Washington, D.C., this thirteenth day of September 1993.

For the Government of Israel:

(Signed) Shimon PERES

For the PLO:

(Signed) Mahmud ABBAS

Witnessed By:

The United States of America

(Signed) Warren CHRISTOPHER

The Russian Federation

(Signed) Andrei V. KOZYREV

ANNEX 5



General Assembly
Security Council

Distr.
GENERAL

A/51/889
S/1997/357
5 May 1997

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Fifty-first session
Agenda item 10
REPORT OF THE SECRETARY-GENERAL
ON THE WORK OF THE ORGANIZATION

SECURITY COUNCIL
Fifty-second year

Letter dated 27 December 1995 from the Permanent Representatives
of the Russian Federation and the United States of America to
the United Nations addressed to the Secretary-General

As co-sponsors of the peace process launched at Madrid in October 1991, and witnesses to the signing at Washington, D.C., on 28 September 1995, of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, by the Government of Israel and the Palestine Liberation Organization, we have the honour to enclose the above document (see annex).

We would be grateful if you would have the present letter and its attachment circulated as an official document of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Madeleine K. ALBRIGHT
Ambassador
Permanent Representative
of the United States of
America to the United Nations

(Signed) Sergey V. LAVROV
Ambassador
Permanent Representative
of the Russian Federation
to the United Nations



Letter dated 28 December 1995 from the Permanent Representative of
Israel to the United Nations addressed to the Secretary-General

I have the honour to enclose the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed at Washington, D.C., on 28 September 1995, by the Government of the State of Israel and the Palestine Liberation Organization and witnessed by the United States of America, the Russian Federation, Egypt, Jordan, Norway and the European Union (see annex).

I would be grateful if you would have the present letter and its attachment circulated as an official document of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Gad YAACOB
Ambassador
Permanent Representative of
Israel to the United Nations

/...

Letter dated 19 December 1995 from the Permanent Observer
of Palestine to the United Nations addressed to the
Secretary-General

I have the honour to enclose the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed at Washington, D.C., on 28 September 1995, by the Government of the State of Israel and the Palestine Liberation Organization and witnessed by the United States of America, the Russian Federation, Egypt, Jordan, Norway and the European Union (see annex).

I would be grateful if you would have the present letter and its attachment circulated as an official document of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Dr. Nasser AL-KIDWA
Permanent Observer of
Palestine to the United Nations

/...

ANNEX

Israeli-Palestinian Interim Agreement on the West Bank
and the Gaza Strip*

Washington, D.C., 28 September 1995

* The original annexes to the Agreement, including the maps, have been placed in the Treaty Section of the Office of Legal Affairs, and are available for consultation by interested Member States.

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The Government of the State of Israel and the Palestine Liberation Organization (hereinafter "the PLO"), the representative of the Palestinian people;

PREAMBLE

- WITHIN** the framework of the Middle East peace process initiated at Madrid in October 1991;
- REAFFIRMING** their determination to put an end to decades of confrontation and to live in peaceful coexistence, mutual dignity and security, while recognizing their mutual legitimate and political rights;
- REAFFIRMING** their desire to achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process;
- RECOGNIZING** that the peace process and the new era that it has created, as well as the new relationship established between the two Parties as described above, are irreversible, and the determination of the two Parties to maintain, sustain and continue the peace process;
- RECOGNIZING** that the aim of the Israeli-Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian Interim Self-Government Authority, *i.e.* the elected Council (hereinafter "the Council" or "the Palestinian Council"), and the elected Ra'ees of the Executive Authority, for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years from the date of signing the Agreement on the Gaza Strip and the Jericho Area (hereinafter "the Gaza-Jericho Agreement") on May 4, 1994, leading to a permanent settlement based on Security Council Resolutions 242 and 338;
- REAFFIRMING** their understanding that the interim self-government arrangements contained in this Agreement are an integral part of the whole peace process, that the negotiations on the permanent status, that will start as soon as possible but not later than May 4, 1996, will lead to the implementation of Security Council Resolutions 242 and 338, and that the Interim Agreement shall settle all the issues of the interim period and that no such issues will be deferred to the agenda of the permanent status negotiations;
- REAFFIRMING** their adherence to the mutual recognition and commitments expressed in the letters dated September 9, 1993, signed by and

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exchanged between the Prime Minister of Israel and the Chairman of the PLO;

- DESIROUS** of putting into effect the Declaration of Principles on Interim Self-Government Arrangements signed at Washington, DC on September 13, 1993, and the Agreed Minutes thereto (hereinafter "the DOP") and in particular Article III and Annex I concerning the holding of direct, free and general political elections for the Council and the Ra'ees of the Executive Authority in order that the Palestinian people in the West Bank, Jerusalem and the Gaza Strip may democratically elect accountable representatives;
- RECOGNIZING** that these elections will constitute a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements and will provide a democratic basis for the establishment of Palestinian institutions;
- REAFFIRMING** 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 Israelis;
- FOLLOWING** the Gaza-Jericho Agreement; the Agreement on Preparatory Transfer of Powers and Responsibilities signed at Erez on August 29, 1994 (hereinafter "the Preparatory Transfer Agreement"); and the Protocol on Further Transfer of Powers and Responsibilities signed at Cairo on August 27, 1995 (hereinafter "the Further Transfer Protocol"); which three agreements will be superseded by this Agreement;
- HEREBY AGREE** as follows:

CHAPTER 1 - THE COUNCIL

ARTICLE I

Transfer of Authority

1. Israel shall transfer powers and responsibilities as specified in this Agreement from the Israeli military government and its Civil Administration to the Council in accordance with this Agreement. Israel shall continue to exercise powers and responsibilities not so transferred.
2. Pending the inauguration of the Council, the powers and responsibilities transferred to the Council shall be exercised by the Palestinian Authority established in accordance with the Gaza-Jericho Agreement, which shall also have all the rights, liabilities and obligations to be assumed by the Council in this regard. Accordingly, the term "Council" throughout this Agreement shall, pending the inauguration of the Council, be construed as meaning the Palestinian Authority.
3. The transfer of powers and responsibilities to the police force established by the Palestinian Council in accordance with Article XIV below (hereinafter "the Palestinian Police") shall be accomplished in a phased manner, as detailed in this Agreement and in the Protocol concerning Redeployment and Security Arrangements attached as Annex I to this Agreement (hereinafter "Annex I").
4. As regards the transfer and assumption of authority in civil spheres, powers and responsibilities shall be transferred and assumed as set out in the Protocol Concerning Civil Affairs attached as Annex III to this Agreement (hereinafter "Annex III").
5. After the inauguration of the Council, the Civil Administration in the West Bank will be dissolved, and the Israeli military government shall be withdrawn. The withdrawal of the military government shall not prevent it from exercising the powers and responsibilities not transferred to the Council.
6. A Joint Civil Affairs Coordination and Cooperation Committee (hereinafter "the CAC"), Joint Regional Civil Affairs Subcommittees, one for the Gaza Strip and the other for the West Bank, and District Civil Liaison Offices in the West Bank shall be established in order to provide for coordination and cooperation in civil affairs between the Council and Israel, as detailed in Annex III.
7. The offices of the Council, and the offices of its Ra'ees and its Executive Authority and other committees, shall be located in areas under Palestinian territorial jurisdiction in the West Bank and the Gaza Strip.

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ARTICLE II

Elections

1. In order that the Palestinian people of the West Bank and the Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council and the Ra'ees of the Executive Authority of the Council in accordance with the provisions set out in the Protocol concerning Elections attached as Annex II to this Agreement (hereinafter "Annex II").
2. These elections will constitute a significant interim preparatory step towards the realization of the legitimate rights of the Palestinian people and their just requirements and will provide a democratic basis for the establishment of Palestinian institutions.
3. Palestinians of Jerusalem who live there may participate in the election process in accordance with the provisions contained in this Article and in Article VI of Annex II (Election Arrangements concerning Jerusalem).
4. The elections shall be called by the Chairman of the Palestinian Authority immediately following the signing of this Agreement to take place at the earliest practicable date following the redeployment of Israeli forces in accordance with Annex I, and consistent with the requirements of the election timetable as provided in Annex II, the Election Law and the Election Regulations, as defined in Article I of Annex II.

ARTICLE III

Structure of the Palestinian Council

1. The Palestinian Council and the Ra'ees of the Executive Authority of the Council constitute the Palestinian Interim Self-Government Authority, which will be elected by the Palestinian people of the West Bank, Jerusalem and the Gaza Strip for the transitional period agreed in Article I of the DOP.
2. The Council shall possess both legislative power and executive power, in accordance with Articles VII and IX of the DOP. The Council shall carry out and be responsible for all the legislative and executive powers and responsibilities transferred to it under this Agreement. The exercise of legislative powers shall be in accordance with Article XVIII of this Agreement (Legislative Powers of the Council).
3. The Council and the Ra'ees of the Executive Authority of the Council shall be directly and simultaneously elected by the Palestinian people of the West Bank, Jerusalem and the Gaza Strip, in accordance with the provisions of this

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Agreement and the Election Law and Regulations, which shall not be contrary to the provisions of this Agreement.

4. The Council and the Ra'ees of the Executive Authority of the Council shall be elected for a transitional period not exceeding five years from the signing of the Gaza-Jericho Agreement on May 4, 1994.
5. Immediately upon its inauguration, the Council will elect from among its members a Speaker. The Speaker will preside over the meetings of the Council, administer the Council and its committees, decide on the agenda of each meeting, and lay before the Council proposals for voting and declare their results.
6. The jurisdiction of the Council shall be as determined in Article XVII of this Agreement (Jurisdiction).
7. The organization, structure and functioning of the Council shall be in accordance with this Agreement and the Basic Law for the Palestinian Interim Self-Government Authority, which Law shall be adopted by the Council. The Basic Law and any regulations made under it shall not be contrary to the provisions of this Agreement.
8. The Council shall be responsible under its executive powers for the offices, services and departments transferred to it and may establish, within its jurisdiction, ministries and subordinate bodies, as necessary for the fulfillment of its responsibilities.
9. The Speaker will present for the Council's approval proposed internal procedures that will regulate, among other things, the decision-making processes of the Council.

ARTICLE IV

Size of the Council

The Palestinian Council shall be composed of 82 representatives and the Ra'ees of the Executive Authority, who will be directly and simultaneously elected by the Palestinian people of the West Bank, Jerusalem and the Gaza Strip.

ARTICLE V

The Executive Authority of the Council

1. The Council will have a committee that will exercise the executive authority of the Council, formed in accordance with paragraph 4 below (hereinafter "the Executive Authority").
2. The Executive Authority shall be bestowed with the executive authority of the Council and will exercise it on behalf of the Council. It shall determine its own internal procedures and decision making processes.
3. The Council will publish the names of the members of the Executive Authority immediately upon their initial appointment and subsequent to any changes.
4.
 - a. The Ra'ees of the Executive Authority shall be an *ex officio* member of the Executive Authority.
 - b. All of the other members of the Executive Authority, except as provided in subparagraph c. below, shall be members of the Council, chosen and proposed to the Council by the Ra'ees of the Executive Authority and approved by the Council.
 - c. The Ra'ees of the Executive Authority shall have the right to appoint some persons, in number not exceeding twenty percent of the total membership of the Executive Authority, who are not members of the Council, to exercise executive authority and participate in government tasks. Such appointed members may not vote in meetings of the Council.
 - d. Non-elected members of the Executive Authority must have a valid address in an area under the jurisdiction of the Council.

ARTICLE VI

Other Committees of the Council

1. The Council may form small committees to simplify the proceedings of the Council and to assist in controlling the activity of its Executive Authority.
2. Each committee shall establish its own decision-making processes within the general framework of the organization and structure of the Council.

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ARTICLE VII

Open Government

1. All meetings of the Council and of its committees, other than the Executive Authority, shall be open to the public, except upon a resolution of the Council or the relevant committee on the grounds of security, or commercial or personal confidentiality.
2. Participation in the deliberations of the Council, its committees and the Executive Authority shall be limited to their respective members only. Experts may be invited to such meetings to address specific issues on an *ad hoc* basis.

ARTICLE VIII

Judicial Review

Any person or organization affected by any act or decision of the Ra'ees of the Executive Authority of the Council or of any member of the Executive Authority, who believes that such act or decision exceeds the authority of the Ra'ees or of such member, or is otherwise incorrect in law or procedure, may apply to the relevant Palestinian Court of Justice for a review of such activity or decision.

ARTICLE IX

Powers and Responsibilities of the Council

1. Subject to the provisions of this Agreement, the Council will, within its jurisdiction, have legislative powers as set out in Article XVIII of this Agreement, as well as executive powers.
2. The executive power of the Palestinian Council shall extend to all matters within its jurisdiction under this Agreement or any future agreement that may be reached between the two Parties during the interim period. It shall include the power to formulate and conduct Palestinian policies and to supervise their implementation, to issue any rule or regulation under powers given in approved legislation and administrative decisions necessary for the realization of Palestinian self-government, the power to employ staff, sue and be sued and conclude contracts, and the power to keep and administer registers and records of the population, and issue certificates, licenses and documents.
3. The Palestinian Council's executive decisions and acts shall be consistent with the provisions of this Agreement. /...

4. The Palestinian Council may adopt all necessary measures in order to enforce the law and any of its decisions, and bring proceedings before the Palestinian courts and tribunals.
5.
 - a. In accordance with the DOP, the Council will not have powers and responsibilities in the sphere of foreign relations, which sphere includes the establishment abroad of embassies, consulates or other types of foreign missions and posts or permitting their establishment in the West Bank or the Gaza Strip, the appointment of or admission of diplomatic and consular staff, and the exercise of diplomatic functions.
 - b. Notwithstanding the provisions of this paragraph, the PLO may conduct negotiations and sign agreements with states or international organizations for the benefit of the Council in the following cases only:
 - (1) economic agreements, as specifically provided in Annex V of this Agreement;
 - (2) agreements with donor countries for the purpose of implementing arrangements for the provision of assistance to the Council ;
 - (3) agreements for the purpose of implementing the regional development plans detailed in Annex IV of the DOP or in agreements entered into in the framework of the multilateral negotiations; and
 - (4) cultural, scientific and educational agreements.
 - c. Dealings between the Council and representatives of foreign states and international organizations, as well as the establishment in the West Bank and the Gaza Strip of representative offices other than those described in subparagraph 5.a above, for the purpose of implementing the agreements referred to in subparagraph 5.b above, shall not be considered foreign relations.
6. Subject to the provisions of this Agreement, the Council shall, within its jurisdiction, have an independent judicial system composed of independent Palestinian courts and tribunals.

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CHAPTER 2 - REDEPLOYMENT AND SECURITY ARRANGEMENTS

ARTICLE X

Redeployment of Israeli Military Forces

1. The first phase of the Israeli military forces redeployment will cover populated areas in the West Bank - cities, towns, villages, refugee camps and hamlets - as set out in Annex I, and will be completed prior to the eve of the Palestinian elections, *i.e.*, 22 days before the day of the elections.
2. Further redeployments of Israeli military forces to specified military locations will commence after the inauguration of the Council and will be gradually implemented commensurate with the assumption of responsibility for public order and internal security by the Palestinian Police, to be completed within 18 months from the date of the inauguration of the Council as detailed in Articles XI (Land) and XIII (Security), below and in Annex I.
3. The Palestinian Police shall be deployed and shall assume responsibility for public order and internal security for Palestinians in a phased manner in accordance with Article XIII (Security) below and Annex I.
4. Israel shall continue to carry the responsibility for external security, as well as the responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order.
5. For the purpose of this Agreement, "Israeli military forces" includes Israel Police and other Israeli security forces.

ARTICLE XI

Land

1. The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.
2. The two sides agree that West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations, will come under the jurisdiction of the Palestinian Council in a phased manner, to be completed within 18 months from the date of the inauguration of the Council, as specified below:
 - a. Land in populated areas (Areas A and B), including government and Al Waqf land, will come under the jurisdiction of the Council during the first phase of redeployment.

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- b. All civil powers and responsibilities, including planning and zoning, in Areas A and B, set out in Annex III, will be transferred to and assumed by the Council during the first phase of redeployment.
 - c. In Area C, during the first phase of redeployment Israel will transfer to the Council civil powers and responsibilities not relating to territory, as set out in Annex III.
 - d. 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.
 - e. During the further redeployment phases to be completed within 18 months from the date of the inauguration of the Council, powers and responsibilities relating to territory will be transferred gradually to Palestinian jurisdiction that will cover West Bank and Gaza Strip territory, except for the issues that will be negotiated in the permanent status negotiations.
 - f. The specified military locations referred to in Article X, paragraph 2 above 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.
3. For the purpose of this Agreement and until the completion of the first phase of the further redeployments:
- a. "Area A" means the populated areas delineated by a red line and shaded in brown on attached map No. 1;
 - b. "Area B" means the populated areas delineated by a red line and shaded in yellow on attached map No. 1, and the built-up area of the hamlets listed in Appendix 6 to Annex I; and
 - c. "Area C" means areas of the West Bank outside Areas A and B, which, except for the issues that will be negotiated in the permanent status negotiations, will be gradually transferred to Palestinian jurisdiction in accordance with this Agreement.

ARTICLE XII

Arrangements for Security and Public Order

1. In order to guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip, the Council shall establish a strong police force as set out in Article XIV below. Israel shall continue to carry the responsibility for defense against external threats, including the responsibility for protecting the Egyptian and Jordanian borders, and for defense against external threats from the sea and from the air, 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 responsibility.
2. Agreed security arrangements and coordination mechanisms are specified in Annex I.
3. A Joint Coordination and Cooperation Committee for Mutual Security Purposes (hereinafter "the JSC"), as well as Joint Regional Security Committees (hereinafter "RSCs") and Joint District Coordination Offices (hereinafter "DCOs"), are hereby established as provided for in Annex I.
4. The security arrangements provided for in this Agreement and in Annex I may be reviewed at the request of either Party and may be amended by mutual agreement of the Parties. Specific review arrangements are included in Annex I.
5. For the purpose of this Agreement, "the Settlements" means, in the West Bank - the settlements in Area C; and in the Gaza Strip - the Gush Katif and Erez settlement areas, as well as the other settlements in the Gaza Strip, as shown on attached map No. 2.

ARTICLE XIII

Security

1. The Council will, upon completion of the redeployment of Israeli military forces in each district, as set out in Appendix 1 to Annex I, assume the powers and responsibilities for internal security and public order in Area A in that district.
2. 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.

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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 2 to Annex I 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 Annex 1.
- (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.

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- (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.

ARTICLE XIV

The Palestinian Police

1. The Council shall establish a strong police force. The duties, functions, structure, deployment and composition of the Palestinian Police, together with provisions regarding its equipment and operation, as well as rules of conduct, are set out in Annex I.
2. The Palestinian police force established under the Gaza-Jericho Agreement will be fully integrated into the Palestinian Police and will be subject to the provisions of this Agreement.
3. 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.
4. Except for the arms, ammunition and equipment of the Palestinian Police described in Annex I, and those of the Israeli military forces, no organization, group or individual in the West Bank and the Gaza Strip shall manufacture, sell, acquire, possess, import or otherwise introduce into the West Bank or the Gaza Strip any firearms, ammunition, weapons, explosives, gunpowder or any related equipment, unless otherwise provided for in Annex I.

ARTICLE XV

Prevention of Hostile Acts

1. 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 offenders.
2. Specific provisions for the implementation of this Article are set out in Annex I. /...

ARTICLE XVI

Confidence Building Measures

With a view to fostering a positive and supportive public atmosphere to accompany the implementation of this Agreement, to establish a solid basis of mutual trust and good faith, and in order to facilitate the anticipated cooperation and new relations between the two peoples, both Parties agree to carry out confidence building measures as detailed herewith:

1. Israel will release or turn over to the Palestinian side, Palestinian detainees and prisoners, residents of the West Bank and the Gaza Strip. The first stage of release of these prisoners and detainees will take place on the signing of this Agreement and the second stage will take place prior to the date of the elections. There will be a third stage of release of detainees and prisoners. Detainees and prisoners will be released from among categories detailed in Annex VII (Release of Palestinian Prisoners and Detainees). Those released will be free to return to their homes in the West Bank and the Gaza Strip.
2. Palestinians who have maintained contact with the Israeli authorities will not be subjected to acts of harassment, violence, retribution or prosecution. Appropriate ongoing measures will be taken, in coordination with Israel, in order to ensure their protection.
3. Palestinians from abroad whose entry into the West Bank and the Gaza Strip is approved pursuant to this Agreement, and to whom the provisions of this Article are applicable, will not be prosecuted for offenses committed prior to September 13, 1993.

CHAPTER 3 - LEGAL AFFAIRS

ARTICLE XVII

Jurisdiction

1. In accordance with the DOP, the jurisdiction of the Council will cover West Bank and Gaza Strip territory as a single territorial unit, except for:
 - a. issues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis; and
 - b. powers and responsibilities not transferred to the Council.

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2. Accordingly, the authority of the Council encompasses all matters that fall within its territorial, functional and personal jurisdiction, as follows:
 - a. The territorial jurisdiction of the Council shall encompass Gaza Strip territory, except for the Settlements and the Military Installation Area shown on map No. 2, and West Bank territory, except for Area C which, except for the issues that will be negotiated in the permanent status negotiations, will be gradually transferred to Palestinian jurisdiction in three phases, each to take place after an interval of six months, to be completed 18 months after the inauguration of the Council. At this time, the jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for the issues that will be negotiated in the permanent status negotiations.

Territorial jurisdiction includes land, subsoil and territorial waters, in accordance with the provisions of this Agreement.
 - b. The functional jurisdiction of the Council extends to all powers and responsibilities transferred to the Council, as specified in this Agreement or in any future agreements that may be reached between the Parties during the interim period.
 - c. The territorial and functional jurisdiction of the Council will apply to all persons, except for Israelis, unless otherwise provided in this Agreement.
 - d. Notwithstanding subparagraph a. above, the Council shall have functional jurisdiction in Area C, as detailed in Article IV of Annex III.
3. The Council has, within its authority, legislative, executive and judicial powers and responsibilities, as provided for in this Agreement.
4.
 - a. Israel, through its military government, has the authority over areas that are not under the territorial jurisdiction of the Council, powers and responsibilities not transferred to the Council and Israelis.
 - b. To this end, the Israeli military government shall retain the necessary legislative, judicial and executive powers and responsibilities, in accordance with international law. This provision shall not derogate from Israel's applicable legislation over Israelis *in personam*.
5. The exercise of authority with regard to the electromagnetic sphere and air space shall be in accordance with the provisions of this Agreement.
6. Without derogating from the provisions of this Article, legal arrangements, detailed in the Protocol Concerning Legal Matters attached as Annex IV to this Agreement (hereinafter "Annex IV") shall be observed. Israel and the Council /... may negotiate further legal arrangements.

7. Israel and the Council shall cooperate on matters of legal assistance in criminal and civil matters through a legal committee (hereinafter "the Legal Committee"), hereby established.
8. The Council's jurisdiction will extend gradually to cover West Bank and Gaza Strip territory, except for the issues to be negotiated in the permanent status negotiations, through a series of redeployments of the Israeli military forces. The first phase of the redeployment of Israeli military forces will cover populated areas in the West Bank - cities, towns, refugee camps and hamlets, as set out in Annex I - and will be completed prior to the eve of the Palestinian elections, *i.e.* 22 days before the day of the elections. Further redeployments of Israeli military forces to specified military locations will commence immediately upon the inauguration of the Council and will be effected in three phases, each to take place after an interval of six months, to be concluded no later than eighteen months from the date of the inauguration of the Council.

ARTICLE XVIII

Legislative Powers of the Council

1. For the purposes of this Article, legislation shall mean any primary and secondary legislation, including basic laws, laws, regulations and other legislative acts.
2. The Council has the power, within its jurisdiction as defined in Article XVII of this Agreement, to adopt legislation.
3. While the primary legislative power shall lie in the hands of the Council as a whole, the Ra'ees of the Executive Authority of the Council shall have the following legislative powers:
 - a. the power to initiate legislation or to present proposed legislation to the Council;
 - b. the power to promulgate legislation adopted by the Council; and
 - c. the power to issue secondary legislation, including regulations, relating to any matters specified and within the scope laid down in any primary legislation adopted by the Council.
4. a. Legislation, including legislation which amends or abrogates existing laws or military orders, which exceeds the jurisdiction of the Council or which is otherwise inconsistent with the provisions of the DOP, this Agreement, or of any other agreement that may be reached between the two sides during the interim period, shall have no effect and shall be void *ab initio*.

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- b. The Ra'ees of the Executive Authority of the Council shall not promulgate legislation adopted by the Council if such legislation falls under the provisions of this paragraph.
5. All legislation shall be communicated to the Israeli side of the Legal Committee.
6. Without derogating from the provisions of paragraph 4 above, the Israeli side of the Legal Committee may refer for the attention of the Committee any legislation regarding which Israel considers the provisions of paragraph 4 apply, in order to discuss issues arising from such legislation. The Legal Committee will consider the legislation referred to it at the earliest opportunity.

ARTICLE XIX

Human Rights and the Rule of Law

Israel and the Council shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law.

ARTICLE XX

Rights, Liabilities and Obligations

1.
 - a. The transfer of powers and responsibilities from the Israeli military government and its civil administration to the Council, as detailed in Annex III, includes all related rights, liabilities and obligations arising with regard to acts or omissions which occurred prior to such transfer. Israel will cease to bear any financial responsibility regarding such acts or omissions and the Council will bear all financial responsibility for these and for its own functioning.
 - b. Any financial claim made in this regard against Israel will be referred to the Council.
 - c. Israel shall provide the Council with the information it has regarding pending and anticipated claims brought before any court or tribunal against Israel in this regard.
 - d. Where legal proceedings are brought in respect of such a claim, Israel will notify the Council and enable it to participate in defending the claim and raise any arguments on its behalf.
 - e. In the event that an award is made against Israel by any court or tribunal in respect of such a claim, the Council shall immediately reimburse Israel the full amount of the award.

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- f. Without prejudice to the above, where a court or tribunal hearing such a claim finds that liability rests solely with an employee or agent who acted beyond the scope of the powers assigned to him or her, unlawfully or with willful malfeasance, the Council shall not bear financial responsibility.
2.
 - a. Notwithstanding the provisions of paragraphs 1.d through 1.f above, each side may take the necessary measures, including promulgation of legislation, in order to ensure that such claims by Palestinians, including pending claims in which the hearing of evidence has not yet begun, are brought only before Palestinian courts or tribunals in the West Bank and the Gaza Strip, and are not brought before or heard by Israeli courts or tribunals.
 - b. Where a new claim has been brought before a Palestinian court or tribunal subsequent to the dismissal of the claim pursuant to subparagraph a. above, the Council shall defend it and, in accordance with subparagraph 1.a above, in the event that an award is made for the plaintiff, shall pay the amount of the award.
 - c. The Legal Committee shall agree on arrangements for the transfer of all materials and information needed to enable the Palestinian courts or tribunals to hear such claims as referred to in subparagraph b. above, and, when necessary, for the provision of legal assistance by Israel to the Council in defending such claims.
3. The transfer of authority in itself shall not affect rights, liabilities and obligations of any person or legal entity, in existence at the date of signing of this Agreement.
4. The Council, upon its inauguration, will assume all the rights, liabilities and obligations of the Palestinian Authority.
5. For the purpose of this Agreement, "Israelis" also includes Israeli statutory agencies and corporations registered in Israel.

ARTICLE XXI

Settlement of Differences and Disputes

Any difference relating to the application of this Agreement shall be referred to the appropriate coordination and cooperation mechanism established under this Agreement. The provisions of Article XV of the DOP shall apply to any such difference which is not settled through the appropriate coordination and cooperation mechanism, namely:

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1. Disputes arising out of the application or interpretation of this Agreement or any related agreements pertaining to the interim period shall be settled through the Liaison Committee.
2. Disputes which cannot be settled by negotiations may be settled by a mechanism of conciliation to be agreed between the Parties.
3. The Parties may agree to submit to arbitration disputes relating to the interim period, which cannot be settled through conciliation. To this end, upon the agreement of both Parties, the Parties will establish an Arbitration Committee.

CHAPTER 4 - COOPERATION

ARTICLE XXII

Relations between Israel and the Council

1. Israel and the Council shall seek to foster mutual understanding and tolerance and shall accordingly abstain from incitement, including hostile propaganda, against each other and, without derogating from the principle of freedom of expression, shall take legal measures to prevent such incitement by any organizations, groups or individuals within their jurisdiction.
2. Israel and the Council will ensure that their respective educational systems contribute to the peace between the Israeli and Palestinian peoples and to peace in the entire region, and will refrain from the introduction of any motifs that could adversely affect the process of reconciliation.
3. Without derogating from the other provisions of this Agreement, Israel and the Council shall cooperate in combating criminal activity which may affect both sides, including offenses related to trafficking in illegal drugs and psychotropic substances, smuggling, and offenses against property, including offenses related to vehicles.

ARTICLE XXIII

Cooperation with Regard to Transfer of Powers and Responsibilities

In order to ensure a smooth, peaceful and orderly transfer of powers and responsibilities, the two sides will cooperate with regard to the transfer of security powers and responsibilities in accordance with the provisions of Annex I, and the transfer of civil powers and responsibilities in accordance with the provisions of Annex III.

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ARTICLE XXIV

Economic Relations

The economic relations between the two sides are set out in the Protocol on Economic Relations, signed in Paris on April 29, 1994, and the Appendices thereto, and the Supplement to the Protocol on Economic Relations, all attached as Annex V, and will be governed by the relevant provisions of this Agreement and its Annexes.

ARTICLE XXV

Cooperation Programs

1. The Parties agree to establish a mechanism to develop programs of cooperation between them. Details of such cooperation are set out in Annex VI.
2. A Standing Cooperation Committee to deal with issues arising in the context of this cooperation is hereby established as provided for in Annex VI.

ARTICLE XXVI

The Joint Israeli-Palestinian Liaison Committee

1. The Liaison Committee established pursuant to Article X of the DOP shall ensure the smooth implementation of this Agreement. It shall deal with issues requiring coordination, other issues of common interest and disputes.
2. The Liaison Committee shall be composed of an equal number of members from each Party. It may add other technicians and experts as necessary.
3. The Liaison Committee shall adopt its rules of procedures, including the frequency and place or places of its meetings.
4. The Liaison Committee shall reach its decisions by agreement.
5. The Liaison Committee shall establish a subcommittee that will monitor and steer the implementation of this Agreement (hereinafter "the Monitoring and Steering Committee"). It will function as follows:
 - a. The Monitoring and Steering Committee will, on an ongoing basis, monitor the implementation of this Agreement, with a view to enhancing the cooperation and fostering the peaceful relations between the two sides.
 - b. The Monitoring and Steering Committee will steer the activities of the various joint committees established in this Agreement (the JSC, the CAC, the Legal Committee, the Joint Economic Committee and the Standing /...

Cooperation Committee) concerning the ongoing implementation of the Agreement, and will report to the Liaison Committee.

- c. The Monitoring and Steering Committee will be composed of the heads of the various committees mentioned above.
- d. The two heads of the Monitoring and Steering Committee will establish its rules of procedures, including the frequency and places of its meetings.

ARTICLE XXVII

Liaison and Cooperation with Jordan and Egypt

1. Pursuant to Article XII of the DOP, the two Parties have invited the Governments of Jordan and Egypt to participate in establishing further liaison and cooperation arrangements between the Government of Israel and the Palestinian representatives on the one hand, and the Governments of Jordan and Egypt on the other hand, to promote cooperation between them. As part of these arrangements a Continuing Committee has been constituted and has commenced its deliberations.
2. The Continuing Committee shall decide by agreement on the modalities of admission of persons displaced from the West Bank and the Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder.
3. The Continuing Committee shall also deal with other matters of common concern.

ARTICLE XXVIII

Missing Persons

1. Israel and the Council shall cooperate by providing each other with all necessary assistance in the conduct of searches for missing persons and bodies of persons which have not been recovered, as well as by providing information about missing persons.
2. The PLO undertakes to cooperate with Israel and to assist it in its efforts to locate and to return to Israel Israeli soldiers who are missing in action and the bodies of soldiers which have not been recovered.

CHAPTER 5 - MISCELLANEOUS PROVISIONS

ARTICLE XXIX

Safe Passage between the West Bank and the Gaza Strip

Arrangements for safe passage of persons and transportation between the West Bank and the Gaza Strip are set out in Annex I.

ARTICLE XXX

Passages

Arrangements for coordination between Israel and the Council regarding passage to and from Egypt and Jordan, as well as any other agreed international crossings, are set out in Annex I.

ARTICLE XXXI

Final Clauses

1. This Agreement shall enter into force on the date of its signing.
2. The Gaza-Jericho Agreement, except for Article XX (Confidence-Building Measures), the Preparatory Transfer Agreement and the Further Transfer Protocol will be superseded by this Agreement.
3. The Council, upon its inauguration, shall replace the Palestinian Authority and shall assume all the undertakings and obligations of the Palestinian Authority under the Gaza-Jericho Agreement, the Preparatory Transfer Agreement, and the Further Transfer Protocol.
4. The two sides shall pass all necessary legislation to implement this Agreement.
5. Permanent status negotiations will commence as soon as possible, but not later than May 4, 1996, between the Parties. It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest.
6. Nothing in this Agreement shall prejudice or preempt the outcome of the negotiations on the permanent status to be conducted pursuant to the DOP. Neither Party shall be deemed, by virtue of having entered into this Agreement, to have renounced or waived any of its existing rights, claims or positions.

/...

7. Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations.
8. The two Parties view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.
9. The PLO undertakes that, within two months of the date of the inauguration of the Council, the Palestinian National Council will convene and formally approve the necessary changes in regard to the Palestinian Covenant, as undertaken in the letters signed by the Chairman of the PLO and addressed to the Prime Minister of Israel, dated September 9, 1993 and May 4, 1994.
10. Pursuant to Annex I, Article IX of this Agreement, Israel confirms that the permanent checkpoints on the roads leading to and from the Jericho Area (except those related to the access road leading from Mousa Alami to the Allenby Bridge) will be removed upon the completion of the first phase of redeployment.
11. Prisoners who, pursuant to the Gaza-Jericho Agreement, were turned over to the Palestinian Authority on the condition that they remain in the Jericho Area for the remainder of their sentence, will be free to return to their homes in the West Bank and the Gaza Strip upon the completion of the first phase of redeployment.
12. As regards relations between Israel and the PLO, and without derogating from the commitments contained in the letters signed by and exchanged between the Prime Minister of Israel and the Chairman of the PLO, dated September 9, 1993 and May 4, 1994, the two sides will apply between them the provisions contained in Article XXII, paragraph 1, with the necessary changes.
13.
 - a. The Preamble to this Agreement, and all Annexes, Appendices and maps attached hereto, shall constitute an integral part hereof.
 - b. The Parties agree that the maps attached to the Gaza-Jericho Agreement as:
 - a. map No. 1 (The Gaza Strip), an exact copy of which is attached to this Agreement as map No. 2 (in this Agreement "map No. 2");
 - b. map No. 4 (Deployment of Palestinian Police in the Gaza Strip), an exact copy of which is attached to this Agreement as map No. 5 (in this Agreement "map No. 5"); and
 - c. map No. 6 (Maritime Activity Zones), an exact copy of which is attached to this Agreement as map No. 8 (in this Agreement "map No. 8");

/...

are an integral part hereof and will remain in effect for the duration of this Agreement.

14. While the Jeftlik area will come under the functional and personal jurisdiction of the Council in the first phase of redeployment, the area's transfer to the territorial jurisdiction of the Council will be considered by the Israeli side in the first phase of the further redeployment phases.

Done at Washington DC, this 28th day of September, 1995.

(Signed) Yitzhak RABIN

(Signed) Shimon PERES
For the Government of the
State of Israel

(Signed) Yasser ARAFAT
For the PLO

Witnessed by:

(Signed) William J. CLINTON

(Signed) Warren CHRISTOPHER
The United States of America

(Signed) Amre MOUSSA
The Arab Republic of Egypt

(Signed) Bjørn Tore GODAL
The Kingdom of Norway

(Signed) Andrei V. KOZYREV
The Russian Federation

(Signed) Hussein IBN TALAL
The Hashemite Kingdom of Jordan

(Signed) Felipe GONZALEZ
The European Union

Note: Cette traduction a été établie par le Greffe à des fins internes et n'a aucun caractère officiel

COUR INTERNATIONALE DE JUSTICE

**CONSÉQUENCES JURIDIQUES DÉCOULANT DES POLITIQUES ET PRATIQUES
D'ISRAËL DANS LE TERRITOIRE PALESTINIEN OCCUPÉ,
Y COMPRIS JÉRUSALEM-EST**

(REQUÊTE POUR AVIS CONSULTATIF)

EXPOSÉ ÉCRIT DES ÉTATS-UNIS D'AMÉRIQUE

25 juillet 2023

[Traduction du Greffe]

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CHAPITRE I

INTRODUCTION

1.1. Dans son ordonnance datée du 3 février 2023, la Cour a invité, entre autres, les États Membres de l'Organisation des Nations Unies (ONU) à présenter des exposés écrits sur les questions dont l'Assemblée générale l'a saisie par la résolution 77/247 du 30 décembre 2022. Les États-Unis se félicitent de l'occasion qui leur est donnée de soumettre le présent exposé, dans lequel sont formulées leurs observations sur ces questions en vue d'aider la Cour dans l'examen de la demande de l'Assemblée générale.

1.2. Les États-Unis soutiennent depuis des décennies la recherche d'un règlement définitif négocié du conflit israélo-palestinien, en tant que participants, facilitateurs ou témoins de certaines initiatives, dont les plus notables sont la conférence de Madrid de 1991, les accords d'Oslo, le quatuor pour le Moyen-Orient, le sommet de Camp David de 2000, la conférence d'Annapolis de 2007 et d'autres négociations directes parrainées par eux, les plus récentes ayant eu lieu en 2013 et 2014. À Aqaba, en Jordanie, et à Charm el-Cheikh, en Égypte, les États-Unis ont pris part cette année à des pourparlers qui se sont déroulés selon un format visant à favoriser une désescalade et à faciliter le dialogue direct entre représentants israéliens et palestiniens. Forts de ce rôle unique, ils ont voté contre la résolution 77/247 par crainte de voir la demande qui y est formulée détourner les parties au conflit israélo-palestinien de l'objectif d'une solution négociée à deux États — lequel est consacré par nombre de résolutions du Conseil de sécurité et de l'Assemblée générale, ainsi que par les initiatives et accords bilatéraux susmentionnés¹.

1.3. Les États-Unis sont profondément préoccupés par l'érosion de la confiance entre les parties constatée ces dernières années et les épisodes de violence accrue. En février 2023, le président du Conseil de sécurité a publié une déclaration, à laquelle se sont joints les États-Unis, dans laquelle il exprimait sa ferme opposition aux mesures unilatérales adoptées par l'une ou l'autre partie pour entraver la paix, demandant à tous de

« faire preuve de calme et de retenue et de s'abstenir de tout acte de provocation et d'incitation à la violence, et de toute déclaration incendiaire, dans le but, notamment, de désamorcer la situation sur le terrain, de rétablir la confiance, de montrer par leurs politiques et leurs actes, un véritable attachement à la solution des deux États et de créer les conditions nécessaires à la promotion de la paix »².

Les événements survenus dans les mois qui ont suivi n'ont fait que souligner l'importance de cette priorité donnée à la désescalade en tant que première étape indispensable.

¹ Nations Unies, *Documents officiels de l'Assemblée générale, soixante-dix-septième session*, 56^e séance plénière, 30 décembre 2022, doc. A/77/PV.56 (Resumption 1), p. 3-6 ; voir aussi Andrew Weinstein, mission des États-Unis d'Amérique auprès des Nations Unies, General Statement on the UN General Assembly Fourth Committee Resolutions on Israeli-Palestinian Issues, 11 novembre 2022, accessible à l'adresse suivante : <https://usun.usmission.gov/general-statement-on-the-un-general-assembly-fourth-committee-resolutions-on-israeli-palestinian-issues/> (page consultée le 17 juillet 2023) ; Richard Mills, ambassadeur, mission des États-Unis d'Amérique auprès des Nations Unies, 10 novembre 2022, accessible à l'adresse suivante : usun.usmission.gov/remarks-at-the-un-general-assembly-fourth-committee-meeting-on-israeli-practices-and-settlement-activities/ (page consultée le 17 juillet 2023). (Les documents officiels des réunions de la Quatrième Commission qui se sont tenues à ces dates ne sont pas encore disponibles.)

² Nations Unies, déclaration de la présidente du Conseil de sécurité, 20 février 2023, doc. S/PRST/2023/1 [dossier, pièce n° 1400].

1.4. Comme l'a relevé la Cour, « seule la mise en œuvre de bonne foi de toutes les résolutions pertinentes du Conseil de sécurité, en particulier les résolutions 242 (1967) et 338 (1973) », est susceptible de mettre un terme à la situation tragique au Moyen-Orient³. Depuis l'adoption de la résolution 242 en 1967, les négociations pour parvenir à une fin globale, juste et durable du conflit sont fondées sur le principe de « l'échange de territoires contre la paix »⁴. Ce principe de base prévoit que l'instauration de la paix et de la sécurité dans la région repose sur deux éléments interdépendants : le retrait des forces armées du territoire occupé *et* la fin du conflit et le respect et la reconnaissance de la souveraineté, de l'intégrité territoriale et de l'indépendance politique de chaque État dans la zone, auxquels s'ajoute le droit de chaque État de vivre en paix, à l'intérieur de frontières sûres et reconnues. Aucun de ces éléments ne suffit à lui seul pour assurer une paix globale, juste et durable ; aucun ne peut être atteint sans l'autre. C'est sur ce socle organisationnel de « l'échange de territoires contre la paix », réaffirmé dans la résolution 338 du Conseil de sécurité⁵, que s'appuie la recherche d'une paix négociée depuis un demi-siècle. Au cours de cette période, ce principe a été à la base de plusieurs accords historiques, tels que le traité de paix égypto-israélien, le traité de paix israélo-jordanien et les accords d'Oslo, aux termes desquels Israéliens et Palestiniens s'étaient notamment engagés à négocier ensemble un règlement du conflit et à mettre sur pied la première autorité autonome palestinienne intérimaire. Il demeure vrai à ce jour que c'est seulement par des négociations de ce type qu'il sera possible d'atteindre la paix globale, juste et durable initialement envisagée par les Nations Unies, qui permettrait à deux États de coexister et aux Israéliens et Palestiniens de bénéficier à part égale de la paix, de la sécurité et de la prospérité.

1.5. Même s'il est actuellement permis de s'inquiéter de ce que les conditions requises pour instaurer la paix ou conduire des négociations à cette fin ne soient pas réunies, les États-Unis restent déterminés à préserver cette voie pour les Israéliens et les Palestiniens. De ce fait, ils s'attachent dans l'immédiat à favoriser la désescalade et la reprise d'échanges fructueux entre représentants des deux parties ainsi qu'à éviter que ne s'éloigne la perspective d'une solution négociée à deux États, fondée sur le cadre défini par les résolutions précitées, puis sans cesse réaffirmé tant par le Conseil de sécurité que par l'Assemblée générale, et conforme à ce cadre⁶. Les États-Unis continuent de déployer des efforts pour créer des conditions plus propices à un règlement négocié du conflit israélo-palestinien et demandent instamment aux autres membres de la communauté internationale d'œuvrer à cette même fin. Ces efforts incluent notamment les récentes rencontres d'Aqaba et de Charm el-Cheikh, qui ont vu les États-Unis se joindre aux délégations égyptienne, jordanienne, israélienne et palestinienne pour favoriser une désescalade des tensions, dissuader les actions

³ *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I)* (ci-après l'avis consultatif sur l'« édification d'un mur »), p. 200-201, par. 162-163.

⁴ Voir, par exemple, Nations Unies, Assemblée générale, résolution 73/89 du 18 décembre 2018, « Pour une paix globale, juste et durable au Moyen-Orient », doc. A/RES/73/89 [dossier, pièce n° 592] ; Conseil de sécurité, résolution 2334 du 23 décembre 2016, doc. S/RES/2334, par. 9 [dossier, pièce n° 1372] ; Conseil de sécurité, résolution 242 du 22 novembre 1967, doc. S/RES/242, par. 1 [dossier, pièce n° 1245] (annexe 1).

⁵ Nations Unies, Conseil de sécurité, résolution 338 du 22 octobre 1973, doc. S/RES/338, par. 2 (annexe 2).

⁶ Voir, par exemple, département d'État des États-Unis, Secretary Blinken's Call with Israeli Foreign Minister Cohen, 27 juin 2023, accessible à l'adresse suivante : <https://www.state.gov/secretary-blinkens-call-with-israeli-foreign-minister-cohen-2/> (page consultée le 17 juillet 2023) ; Antony Blinken, secrétaire d'État, Remarks at the 2023 American Israel Public Affairs Committee Policy Summit, 5 juin 2023, accessible à l'adresse suivante : <https://www.state.gov/secretary-antony-j-blinken-at-the-2023-american-israel-public-affairs-committee-policy-summit/> (page consultée le 17 juillet 2023) ; secrétaire d'État, Remarks at Press Availability, 31 janvier 2023, accessible à l'adresse suivante : <https://www.state.gov/secretary-antony-j-blinken-at-a-press-availability-28/#:~:text=Upon%20arriving%20in%20Israel%2C%20I,a%20synagogue%20in%20Neve%20Yaakov> (page consultée le 17 juillet 2023) ; Weinstein, voir *supra*, note 1.

unilatérales qui éloignent les parties de la paix et renforcer l'engagement de celles-ci à respecter leurs accords antérieurs⁷.

1.6. Les États-Unis font valoir que c'est par de tels efforts que pourront être créées les conditions nécessaires pour parvenir à une solution négociée à deux États qui conduirait à l'instauration de la paix et de la sécurité pour les deux parties, ainsi qu'à la pleine réalisation de l'autodétermination palestinienne. Comme cela est exposé ci-après, la résolution par laquelle l'Assemblée a saisi la Cour reconnaît elle-même la nécessité de faire avancer des négociations constructives visant à conclure un accord de paix à cette fin. En conformité avec les fonctions respectives que leur confère la Charte des Nations Unies, le Conseil de sécurité et l'Assemblée générale ont plaidé de longue date en faveur de l'établissement d'un cadre de négociation pour régler le conflit. Les questions posées à la Cour doivent donc être comprises comme une demande d'avis dont l'objet est de faciliter l'exercice par l'Assemblée générale du rôle et des fonctions qui lui sont propres au sein du système des Nations Unies afin de promouvoir un règlement négocié du conflit. Il est essentiel que l'avis consultatif de la Cour aide à atteindre cet objet.

1.7. Le présent exposé commence, au chapitre II, par décrire le cadre initialement défini par les résolutions 242 et 338 du Conseil de sécurité, entériné par l'Assemblée générale, reconnu par la Cour dans son avis consultatif sur l'*édification d'un mur*, et adopté par l'État d'Israël et l'Organisation de libération de la Palestine (OLP) dans leurs propres accords comme base de règlement négocié du conflit israélo-palestinien.

1.8. S'appuyant sur des principes que la Cour a jugés fondamentaux pour l'intégrité de sa fonction consultative et de son rôle en tant qu'organe principal de l'ONU, le chapitre III expose ensuite des raisons décisives pour lesquelles la Cour devrait exercer son pouvoir discrétionnaire en examinant les questions dont elle a été saisie dans le cadre de négociation établi. Cette approche est également justifiée par le fait que les questions de l'Assemblée invitent la Cour à se prononcer sur certains points qui sont au cœur du conflit, traitent d'actes présumés commis par une seule partie en avançant des conclusions de droit international, et ont été incorporées très tardivement dans la résolution 77/247 après des consultations *a minima* entre États Membres de l'ONU.

1.9. Le chapitre IV met en lumière certaines présomptions qui sous-tendent la seconde question posée et méconnaissent les principes constants du droit international. Dans la mesure où cette question peut être interprétée comme l'invitant à dire que l'occupation israélienne a été frappée d'illicéité ou de nullité, la Cour devrait s'y refuser, au motif qu'une telle appréciation est sans fondement en droit international.

1.10. Enfin, dans le chapitre V, les États-Unis concluent le présent exposé en priant respectueusement la Cour de faire montre de prudence, de ne pas écorner le principe fondamental de « l'échange de territoires contre la paix » qui sous-tend le cadre établi pour la paix et la sécurité israélo-palestiniennes et de rechercher, dans son avis, la meilleure manière de servir l'objectif de facilitation du rôle et de la fonction de l'Assemblée générale par la promotion d'un règlement négocié du conflit.

⁷ Communiqué conjoint publié à l'issue de la réunion du 19 mars à Charm el-Cheikh (ci-après « communiqué de Charm el-Cheikh »), 19 mars 2023, accessible à l'adresse suivante : <https://www.state.gov/joint-communicue-from-the-march-19-meeting-in-sharm-el-sheikh/> (page consultée le 17 juillet 2023) ; communiqué conjoint d'Aqaba (ci-après le « communiqué d'Aqaba »), 26 février 2023, accessible à l'adresse suivante : <https://www.state.gov/aqaba-joint-communicue/> (page consultée le 17 juillet 2023).

CHAPITRE II

LE CADRE ÉTABLI POUR PARVENIR À UN RÈGLEMENT NÉGOCIÉ DU CONFLIT ISRAËLO-PALESTINIEN

2.1. Tout au long de l'histoire tumultueuse et souvent violente du conflit israélo-palestinien, l'ONU n'a eu de cesse de soutenir la proposition selon laquelle une paix globale, juste et durable devait résulter de négociations directes entre les parties au conflit, et non être imposée de l'extérieur ou par une seule partie. Ce principe est au cœur des résolutions 242 et 338 du Conseil de sécurité et a été repris dans des résolutions adoptées depuis lors par celui-ci et l'Assemblée générale, y compris celle par laquelle la Cour a été saisie en l'espèce. De même, Israéliens et Palestiniens ont eux-mêmes entériné ce principe dans les années 1990 en l'incluant dans la déclaration de principes et d'autres accords, dénommés collectivement les « accords d'Oslo ». Il convient notamment de noter que les parties ont précisément élaboré leur accord afin de négocier les « [questions touchant] le statut permanent » essentielles au règlement de leur différend, notamment celles de Jérusalem, des colonies, des dispositifs de sécurité, des frontières et autres⁸. Malgré les tragiques épisodes de violence, les actions unilatérales entreprises de part et d'autre et les allégations de chacune des parties dénonçant les manquements de l'autre à ses engagements, ni les parties, ni l'Assemblée générale, ni le Conseil de sécurité n'ont renoncé au précepte central selon lequel des négociations directes sur la base du principe de « l'échange de territoires contre la paix » constituent la voie vers une paix et une sécurité globales, justes et durables.

2.2. Les États-Unis soutiennent respectueusement que c'est dans ce contexte que la Cour doit examiner les questions soumises par l'Assemblée générale. Pour l'aider dans cette tâche, le présent chapitre expose le cadre de négociation à la lumière duquel les questions posées doivent être entendues. Dans la section A est décrit le cadre de négociation en tant que tel, qui trouve son origine dans les résolutions 242 et 338 du Conseil de sécurité, et a été précisé et consigné dans les accords bilatéraux conclus par la suite par les Israéliens et les Palestiniens. La section B montre l'adhésion constante de l'ONU à ce même cadre de négociation. La section C revient sur les efforts déployés ces dernières années par les parties dans ce cadre de négociation. Enfin, la section D décrit le processus par lequel la résolution de saisine a été adoptée et la manière dont elle fait également sien le cadre de négociation établi.

A. L'élaboration du cadre de négociation établi

2.3. Le cadre établi en vue d'un règlement négocié du conflit israélo-palestinien est le fruit de plusieurs décennies d'élaboration, qui ont débuté par des résolutions du Conseil de sécurité adoptées en réponse aux guerres arabo-israéliennes de 1967 et de 1973 ; il a ensuite été précisé et entériné par les Israéliens et les Palestiniens dans leurs accords bilatéraux, en particulier les accords d'Oslo. Au cours de cette période, le principe fondamental était que la voie à suivre pour parvenir à une paix et une sécurité globales, justes et durables au Moyen-Orient était la négociation fondée sur le principe de « l'échange de territoires contre la paix ».

2.4. Les bases du cadre de négociation ont été établies par la résolution 242 (1967) du Conseil de sécurité, dans laquelle il

« [a]ffirm[ait] que ... l'instauration d'une paix juste et durable au Moyen-Orient ... devrait comprendre l'application des deux principes suivants :

⁸ Déclaration de principes sur des arrangements intérimaires d'autonomie, préambule et art. I, doc. A/48/486-S/26560, 13 septembre 1993 [dossier, pièce n° 1302] (annexe 4) ; voir aussi *infra*, chap. II. A. C.

- i) [r]etrait des forces armées israéliennes des territoires occupés lors du récent conflit ; [et]
- ii) [c]essation 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 État 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.

Ce sont ces éléments interdépendants qui définissent la notion d'« échange de territoires contre la paix ». Dans ce texte, le Conseil de sécurité poursuivait en demandant que soit désigné un représentant spécial pour « favoriser un accord » et « seconder les efforts tendant à aboutir à un règlement pacifique et accepté, conformément aux dispositions et aux principes » de la résolution¹⁰.

2.5. Dans sa résolution 338 (1973), le Conseil de sécurité a ensuite réitéré son appel à l'application des dispositions susdites et exhorté au commencement immédiat de négociations « en vue d'instaurer une paix juste et durable au Moyen-Orient »¹¹.

2.6. Ces résolutions ont été le socle sur lequel a reposé la recherche d'une paix globale négociée entre Israël et ses États voisins, mais aussi entre Israël et les Palestiniens. Israël et l'Égypte se sont appuyés sur le principe de « l'échange de territoires contre la paix » pour conclure le traité de paix de 1979, tout comme l'ont fait la Jordanie et Israël lorsqu'ils sont parvenus à leur propre accord de paix en 1994¹². En 1991, à la conférence de paix de Madrid sur le Moyen-Orient, convoquée par les États-Unis et l'Union soviétique, les Israéliens, Jordaniens, Libanais et Syriens, mais aussi les Palestiniens, se sont réunis pour la première fois, aux côtés d'autres interlocuteurs, avec pour objectif commun de parvenir à une paix globale par la voie de négociations directes sur la base de ce même paradigme¹³.

2.7. Par la suite, en 1993, les accords d'Oslo ont permis d'engranger d'autres réussites. L'OLP a reconnu l'État d'Israël et les Israéliens ont reconnu l'OLP comme représentant du peuple

⁹ Nations Unies, Conseil de sécurité, résolution 242 du 22 novembre 1967, doc. S/RES/242, par. 1 [dossier, pièce n° 1245] (annexe 1).

¹⁰ *Ibid.*, par. 3.

¹¹ Nations Unies, Conseil de sécurité, résolution 338 du 22 octobre 1973, doc. S/RES/338, par. 2-3 (annexe 2). Plus précisément, le Conseil de sécurité

.....
« 2. [d]emand[ait] 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. [d]écid[ait] que, immédiatement et en même temps que le cessez-le-feu, des négociations commencer[ai]ent entre les parties en cause sous des auspices appropriés en vue d'instaurer une paix juste et durable au Moyen-Orient. »

¹² Voir traité de paix entre l'État d'Israël et le Royaume hachémite de Jordanie, Israël-Jordanie, 26 octobre 1994, *Recueil des traités (RTNU)*, vol. 2042, p. 351 ; traité de paix, Égypte-Israël, 26 mars 1979, *RTNU*, vol. 1136, p. 115.

¹³ Voir, Nations Unies, Assemblée générale, résolution 47/64 du 11 décembre 1992, « Question de Palestine », doc. A/47/64, sect. D, par. 4 [dossier, pièce n° 406] ; rapport du Secrétaire général sur la « Question de Palestine — La situation au Moyen-Orient », 8 novembre 1991, doc. A/46/623-S/23204, par. 5 [dossier, pièce n° 524].

palestinien¹⁴. Les parties se sont en outre engagées, dans le premier des accords d'Oslo, à savoir la déclaration de principes sur des arrangements intérimaires d'autonomie (ci-après la « déclaration de principes ») signée à Washington, à parvenir à un « règlement de paix juste, durable et global » par le processus politique convenu, à reconnaître « leurs droits légitimes et politiques mutuels » et à mener des négociations pour établir une autorité palestinienne intérimaire autonome pour les Palestiniens de Cisjordanie et de la bande de Gaza pendant une période transitoire, ainsi que des négociations sur le statut permanent qui seraient fondées sur les résolutions 242 et 338 du Conseil de sécurité et conduiraient à leur application¹⁵. Autrement dit, elles ont adopté dans leurs accords bilatéraux le paradigme de négociation de « l'échange de territoires contre la paix » qui avait été énoncé dans ces résolutions.

2.8. Plus spécifiquement, la déclaration de principes définissait un cadre pour les négociations israélo-palestiniennes et inaugurait le processus de mise en place d'institutions palestiniennes autonomes. Il y était réaffirmé que les parties avaient pour objectif commun de trouver une solution négociée à des questions liées au statut permanent qui « aboutir[ait] à l'application des résolutions 242 (1967) et 338 (1973) du Conseil de sécurité »¹⁶ et précisé que ces négociations « sur le statut permanent » visaient à couvrir un certain nombre de questions, parmi lesquelles Jérusalem, les réfugiés, les colonies, les dispositifs de sécurité, les frontières, les relations et la coopération avec d'autres voisins, et d'autres questions d'intérêt commun¹⁷. Enfin, elle décrivait les modalités de la tenue d'élections palestiniennes en tant qu'« étape préparatoire intérimaire importante sur la voie de la réalisation des droits légitimes du peuple palestinien et de ses justes revendications », tout en exposant un premier cadre de distribution des pouvoirs et responsabilités entre l'autorité palestinienne intérimaire et le gouvernement militaire israélien et son administration civile¹⁸.

2.9. Dans le deuxième accord d'Oslo, l'accord intérimaire israélo-palestinien de 1995 sur la Rive occidentale [Cisjordanie] et la bande de Gaza (ci-après l'« accord intérimaire »), les parties réaffirmaient « que les négociations sur le statut permanent ... conduir[aie]nt à la mise en œuvre des résolutions 242 et 338 du Conseil de sécurité »¹⁹.

2.10. L'accord intérimaire exposait en détail les arrangements auxquels étaient parvenues les parties quant à l'attribution des responsabilités et de la compétence en Cisjordanie et à Gaza dans l'attente d'une solution négociée, établissant, par exemple, différents arrangements en matière de compétence entre le gouvernement militaire israélien et son administration civile, d'un côté, et l'entité intérimaire palestinienne (désormais appelée « autorité palestinienne »), de l'autre, en ce qui concerne les zones A, B et C de la Cisjordanie, ainsi que sur la répartition des responsabilités en matière de sécurité²⁰. De plus, ainsi que cela est indiqué dans la section C ci-après, bien que le souhait, qui y était formulé, de parvenir à un règlement négocié définitif au terme d'un délai bien défini n'ait pas été exaucé, les accords d'Oslo n'en demeurent pas moins le cadre de référence pour la répartition intérimaire des pouvoirs entre Israël et l'autorité palestinienne et les relations et

¹⁴ Échange de lettres entre Yitzhak Rabin, premier ministre d'Israël, et Yasser Arafat, président de l'OLP, concernant la reconnaissance d'Israël et de l'OLP, 9 septembre 1993, accessible à l'adresse suivante : <https://www.un.org/unispal/document/auto-insert-205528/> (page consultée le 17 juillet 2023) (annexe 3).

¹⁵ Déclaration de principes, *supra*, note 8, préambule et art. I.

¹⁶ *Ibid.* art. I.

¹⁷ *Ibid.* art. V.

¹⁸ *Ibid.*, art. III, V, VI.

¹⁹ Accord intérimaire israélo-palestinien sur la Rive occidentale [Cisjordanie] et la bande de Gaza, 28 septembre 1995, doc. A/51/889-S/1997/357, préambule [dossier, pièce n° 1306] (annexe 5).

²⁰ Voir, d'une manière générale, *ibid.*

négociations israélo-palestiniennes. Tel a toujours été le cas, même dans les périodes de fortes tensions.

B. L'ONU a apporté un soutien indéfectible à un règlement du conflit fondé sur ce cadre de négociation établi de longue date

2.11. Même lorsque les conditions pour des négociations sur le statut permanent ont été troublées par des épisodes de violence, d'actions unilatérales et de défiance, l'ONU n'a cessé d'apporter son soutien au cadre établi en tant que base pour parvenir à une solution à deux États et mettre fin au différend. En 2008, exprimant son soutien aux négociations directes qui se déroulaient à la conférence d'Annapolis, le Conseil de sécurité a ainsi relevé, dans sa résolution 1850 (2008), l'« irréversibilité des négociations bilatérales » et déclaré qu'il « appu[yait] les principes convenus par les parties pour le processus de négociations bilatérales et leurs efforts résolus visant à atteindre l'objectif de la conclusion d'un traité de paix qui résoudrait toutes les questions non réglées »²¹. En 2016, il a de nouveau préconisé vivement

« l'intensification et l'accélération des efforts diplomatiques entrepris et de l'appui apporté aux niveaux international et régional en vue de parvenir sans tarder à une paix globale, juste et durable au Moyen-Orient, sur la base de résolutions pertinentes de l'Organisation des Nations Unies, du mandat de la conférence de Madrid, y compris le principe de l'échange de territoires contre la paix, de l'Initiative de paix arabe et de la Feuille de route du Quatuor, et de mettre fin à l'occupation israélienne qui a commencé en 1967 »²².

Le Conseil a aussi « [r]appel[é] qu'il [était] déterminé à apporter son appui aux parties tout au long des négociations et dans la mise en œuvre d'un accord »²³.

2.12. Cette année encore, le Conseil de sécurité a publié une déclaration de sa présidente ainsi libellée :

« Le Conseil réaffirme son attachement indéfectible à la vision de la solution des deux États où deux États démocratiques, Israël et la Palestine, vivent côte à côte, en paix, à l'intérieur de frontières sûres et reconnues, dans le respect du droit international et des résolutions pertinentes de l'Organisation des Nations Unies. »²⁴

2.13. Quant à l'Assemblée générale, organe qui a sollicité l'avis de la Cour en l'espèce, elle a, de la même manière, continué de souligner avec constance et vigueur la nécessité pour les parties de

²¹ Nations Unies, Conseil de sécurité, résolution 1850 du 16 décembre 2008, doc. S/RES/1850, préambule, par. 1-5 [dossier, pièce n° 1354] ; voir également résolutions 1515 du 19 novembre 2003, doc. S/RES/1515, par. 1-2 [dossier, pièce n° 1337] et 1397 du 12 mars 2002, doc. S/RES/1397, par. 2 [dossier, pièce n° 1316].

²² Nations Unies, Conseil de sécurité, résolution 2334 du 23 décembre 2016, doc. S/RES/2334, par. 9 [dossier, pièce n° 1372].

²³ *Ibid.*, par. 10.

²⁴ Nations Unies, déclaration de la présidente du Conseil de sécurité, 20 février 2023, doc. S/PRST/2023/1 [dossier, pièce n° 1400].

se conformer à leurs accords bilatéraux et de négocier un règlement définitif de leur différend sur la base du cadre établi à cette fin, y compris le principe de « l'échange de territoires contre la paix »²⁵.

2.14. De fait, dans les semaines qui ont précédé l'adoption de la résolution par laquelle elle a saisi la Cour, l'Assemblée générale a, dans sa résolution récurrente intitulée « Règlement pacifique de la question de Palestine », engagé

« la communauté internationale à redoubler d'efforts coordonnés pour rétablir un horizon politique et pour favoriser et accélérer la conclusion d'un traité de paix dans la perspective de mettre fin sans délai à l'occupation israélienne remontant à 1967 en réglant toutes les questions en suspens, y compris toutes celles relatives au statut final, sans exception, en vue de parvenir à un règlement juste, durable et pacifique du conflit israélo-palestinien sur la base de la solution des deux États reconnue sur le plan international et, à terme, du conflit arabo-israélien dans son ensemble afin d'instaurer une paix globale au Moyen-Orient »²⁶.

2.15. Dans la résolution précitée, s'agissant en particulier du règlement du différend, l'Assemblée générale a de nouveau appelé à l'instauration d'une paix globale « sur le fondement des résolutions pertinentes de l'Organisation des Nations Unies ... du mandat de la Conférence de Madrid, y compris le principe de l'échange de territoires contre la paix ... et [...] réaffirm[é] son appui indéfectible ... au règlement prévoyant deux États, Israël et la Palestine, vivant côte à côte dans la paix et la sécurité »²⁷.

2.16. Ainsi que cela est exposé plus avant dans la section D, dans la résolution même par laquelle elle adressait ses questions à la Cour, l'Assemblée générale a une fois encore saisi l'occasion pour réaffirmer son appui à un règlement du différend qui aboutirait à deux États vivant côte à côte dans la paix et la sécurité, sur le fondement du cadre de négociation établi de longue date.

C. Les parties ont maintenu le cadre de négociation en question

2.17. Avec l'appui de l'ONU et par l'entremise des États-Unis et d'autres, les parties se sont régulièrement, depuis les accords d'Oslo, retrouvées à la table des négociations pour échanger sur leur avenir et elles ont reconnu le besoin persistant de négociations directes sur la base du cadre établi

²⁵ Voir, par exemple, dossier, pièces n° 252-72 (« Souveraineté permanente du peuple palestinien dans le Territoire palestinien occupé, y compris Jérusalem-Est, et de la population arabe dans le Golan syrien occupé sur leurs ressources naturelles ») ; par. 353-381 (« Le droit du peuple palestinien à l'autodétermination ») ; par. 403 et 405 (« Conférence internationale de la paix sur le Moyen-Orient ») ; par. 406-409 (« Question de Palestine ») ; par. 490-516 (« Règlement pacifique de la question de Palestine ») ; par. 811-836 (« Pratiques israéliennes affectant les droits de l'homme du peuple palestinien dans le Territoire palestinien occupé, y compris Jérusalem-Est ») ; voir également, par exemple, Nations Unies, Assemblée générale, résolution 77/30 du 8 décembre 2022, doc. A/RES/77/30, « Assistance au peuple palestinien ».

²⁶ Nations Unies, Assemblée générale, résolution 77/25 du 30 novembre 2022, doc. A/RES/77/25, « Règlement pacifique de la question de Palestine », préambule [dossier, pièce n° 516] ; voir également résolution 73/89 du 6 décembre 2018, doc. A/RES/73/89, « Pour une paix globale, juste et durable au Moyen-Orient » [dossier, pièce n° 592] (« *Demande à nouveau* qu'une paix globale, juste et durable soit instaurée sans délai au Moyen-Orient sur le fondement des résolutions pertinentes de l'Organisation des Nations Unies, notamment la résolution 2334 (2016) du Conseil de sécurité en date du 23 décembre 2016, du mandat de la Conférence de Madrid, y compris le principe de l'échange de territoires contre la paix, de l'Initiative de paix arabe et de la feuille de route du Quatuor, et que soit mis fin à l'occupation israélienne qui a commencé en 1967, y compris à Jérusalem-Est, et, à cet égard, réaffirme son appui indéfectible, conforme au droit international, au règlement prévoyant deux États, Israël et la Palestine, vivant côte à côte dans la paix et la sécurité, à l'intérieur de frontières reconnues sur la base de celles d'avant 1967. »)

²⁷ Nations Unies, Assemblée générale, résolution 77/25 du 30 novembre 2022, doc. A/RES/77/25, « Règlement pacifique de la question de Palestine », par. 1 [dossier, pièce n° 516] (les italiques sont de nous).

à cet effet²⁸. Malgré l'absence de progrès réalisés ces dernières années, elles ont réaffirmé leur volonté de respecter leurs accords antérieurs dans lesquels avait été adopté le principe de « l'échange de territoires contre la paix ». Par exemple, le 20 décembre 2019, le procureur général d'Israël a publié un mémorandum concernant la question de la compétence de la Cour pénale internationale (CPI) dans l'affaire de la *Situation dans l'État de Palestine*, dans lequel il affirmait ce qui suit :

« Les résolutions 242 (1967) et 338 (1973) du Conseil de sécurité de l'ONU ... énoncent le mandat des négociations israélo-palestiniennes (étant donné qu'elles ont été acceptées comme telles par les parties) [et] Israël considère également que la tragédie du conflit israélo-palestinien ne peut trouver d'issue que par un dialogue direct entre les parties qui soit sensible aux besoins et aspirations des Israéliens comme des Palestiniens. »²⁹

2.18. Dans les observations qu'ils ont présentées devant la CPI en 2020, les Palestiniens ont eux aussi confirmé leur volonté de respecter les accords d'Oslo et le cadre de négociation établi en

« réaffirm[ant] [leur] engagement en faveur d'un règlement du conflit israélo-palestinien fondé sur une solution à deux États ... par la voie de négociations se déroulant sous une égide internationale (telle que le Quatuor international) et dans le cadre d'une conférence de paix internationale, sur la base des résolutions de l'ONU et du droit international »³⁰.

2.19. De plus, ainsi que cela a déjà été indiqué, en février de cette année, Palestiniens et Israéliens se sont réunis à Aqaba, en Jordanie, aux côtés des États-Unis, de l'Égypte et de la Jordanie pour des pourparlers de désescalade, au cours desquels ils « ont affirmé leur volonté de respecter tous leurs accords bilatéraux antérieurs et d'œuvrer en vue de parvenir à une paix juste et durable »³¹.

²⁸ Voir, par exemple, Nations Unies, Conseil de sécurité, résolution 1850 du 16 décembre 2008, doc. S/RES/1850, par. 1-5 [dossier, pièce n° 1354] (exprimant son soutien aux négociations directes ayant eu lieu à la Conférence d'Annapolis) ; Nations Unies, Conseil de sécurité, résolution 1515 du 19 novembre 2003, doc. S/RES/1515, par. 1-2, [dossier, pièce n° 1337] (approuvant la feuille de route axée sur les résultats en vue d'un règlement permanent du conflit israélo-palestinien prévoyant deux États, établie par le Quatuor) ; Nations Unies, Conseil de sécurité, résolution 1397 du 12 mars 2002, doc. S/RES/1397, par. 3 [dossier, pièce n° 1316] (exprimant son soutien aux efforts déployés pour reprendre le processus de paix) ; Nations Unies, Secrétaire général, Règlement pacifique de la question de Palestine, 4 septembre 2014, doc. A/69/371-S/2014/650, par. 7-12 [dossier, pièce n° 547] (décrivant la reprise des négociations sur le statut définitif en juillet 2013 et leur poursuite jusqu'en 2014 avec le soutien des États-Unis) ; Nations Unies, Secrétaire général, Règlement pacifique de la question de Palestine, 4 septembre 2013, doc. A/68/363-S/2013/524, par. 8, 11-15 [dossier, pièce n° 546] (décrivant les efforts consentis par les États-Unis pour initier la reprise des négociations sur le statut définitif en 2013) ; Nations Unies, Comité pour l'exercice des droits inaliénables du peuple palestinien, rapport du Comité pour l'exercice des droits inaliénables du peuple palestinien, 6 octobre 2008, doc. A/63/35, par. 5, 19, 20, 93 (préparé par Paul Badji) [dossier, pièce n° 469] (décrivant la reprise en 2007, à la conférence d'Annapolis, des négociations bilatérales sur le statut permanent) ; Nations Unies, Secrétaire général, rapport du Secrétaire général, La situation au Moyen-Orient, Question de Palestine, 22 novembre 2000, doc. A/55/639-S/2000/1113, par. 5 [dossier, pièce n° 533] (décrivant les négociations historiques qui se sont tenues au sommet de Camp David) ; accord et déclarations communs d'Annapolis adoptés par le premier ministre Ehud Olmert et le président Mahmoud Abbas (27 novembre 2007), accessible à l'adresse suivante : <https://peacemaker.un.org/node/457> (page consultée le 17 juillet 2023) ; déclaration trilatérale sur le sommet pour la paix au Moyen-Orient de Camp David, faite par le président des États-Unis William J. Clinton, le premier ministre israélien Ehud Barak et le président de l'Autorité palestinienne Yasser Arafat, 25 juillet 2000, accessible à l'adresse suivante : <https://2001-2009.state.gov/p/nea/rls/22698.htm> (page consultée le 17 juillet 2023).

²⁹ The International Criminal Court's Lack of Jurisdiction over the So-Called "Situation in Palestine", procureur général, 20 décembre 2019, accessible à l'adresse suivante : <https://www.gov.il/BlobFolder/reports/20-12-2019/en/Memorandum-Attorney-General.pdf> (page consultée le 17 juillet 2023).

³⁰ « Situation dans l'État de Palestine », n° ICC-01/18, The State of Palestine's response to the Pre-Trial Chamber's Order requesting additional information, annexe A, p. 3, 4 juin 2020, accessible à l'adresse suivante : https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2020_02278.PDF (page consultée le 17 juillet 2023).

³¹ Communiqué d'Aqaba, *supra*, note 7.

2.20 Le mois suivant, en mars 2023, Palestiniens et Israéliens se sont rencontrés, en présence des États-Unis et d'autres, à Charm el-Cheikh, en Égypte, où ils ont de nouveau exprimé, dans un communiqué conjoint, leur engagement indéfectible envers tous les accords antérieurs qui les lient³². Les parties ont réitéré « leur accord en vue de traiter toutes les questions en suspens par un dialogue direct »³³. Il convient surtout de relever qu'elles ont affirmé leur engagement à créer les conditions d'un règlement du conflit par des négociations directes, déclarant qu'elles

« se réjouiss[ai]ent de coopérer ensemble afin de consolider les fondements des négociations directes entre Palestiniens et Israéliens, dans la perspective de parvenir à une paix globale, juste et durable, et entend[ai]ent encourager la coopération et la coexistence entre tous les peuples du Moyen-Orient »³⁴.

2.21. Ainsi, les parties israélienne et palestinienne ont reconnu, pas plus tard que cette année et nonobstant les niveaux actuels de violence et de défiance, que leurs accords antérieurs demeuraient pertinents. En outre, elles n'ont cessé de maintenir des échanges confortant les principes auxquels elles ont toutes deux souscrit³⁵. Ces accords et efforts sont fondés sur le principe de négociation de l'« échange de territoires contre la paix » en vue d'atteindre une paix globale, juste et durable, principe initialement formulé, et sans cesse confirmé par la suite, par l'ONU.

D. La confirmation du cadre de négociation dans la résolution par laquelle l'Assemblée générale a saisi la Cour

2.22. Dans ce contexte, le 30 décembre 2022, l'Assemblée générale a adopté la résolution 77/247 par le vote affirmatif de seulement 87 de ses États membres³⁶. Bien qu'il soit pour le reste largement identique à la plus récente d'une longue série de résolutions de l'Assemblée générale ayant le même intitulé — la résolution 75/98 (2020)³⁷ —, ce texte a, depuis cette résolution,

³² Communiqué de Charm el-Cheikh, *supra*, note 7.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Les pourparlers de Charm el-Cheikh et d'Aqaba visant à désamorcer les tensions s'inscrivent dans une succession d'échanges — se déroulant publiquement ou en coulisses — entre de hauts dirigeants israéliens et palestiniens. Ces discussions s'efforcent dans une large mesure de promouvoir la désescalade, objectif essentiel à la création des conditions pour mener les négociations visant à régler les questions liées au statut définitif et parvenir en fin de compte à une solution à deux États. Ces échanges se sont poursuivis sous les différents gouvernements israéliens. Voir, par exemple, E. Fabian et L. Berman, "Herzog calls Abbas to urge fight against terror, condemn settler violence", *The Times of Israel*, 27 juin 2023, accessible à l'adresse suivante : <https://www.timesofisrael.com/herzog-calls-abbas-to-condemn-settler-violence-gallant-pledges-to-combat-riots/> (page consultée le 17 juillet 2023) (appels de juin 2023 entre Herzog-Abbas et Gallant-Hussein Al Sheikh, 27 juin ; B. Ravid, "Scoop: Israelis and Palestinians have been holding secret talks for weeks", *Axios*, 20 février 2023, accessible à l'adresse suivante : <https://www.axios.com/2023/02/20/israelis-palestinians-secret-talks-west-bank> (page consultée le 17 juillet 2023) (article laissant entendre que des appels/réunions de portée plus importante ont eu lieu entre Hussein Al-Sheikh et Tzachi Hanegbi) ; T. Staff, "Gantz meets PA's Abbas to discuss security coordination ahead of Biden visit", *The Times of Israel*, 8 juillet 2022, accessible à l'adresse suivante : <https://www.timesofisrael.com/gantz-meets-pas-abbas-to-discuss-security-coordination-ahead-of-biden-visit/> (page consultée le 17 juillet 2023) (rencontre Gantz/Abbas sous le précédent gouvernement) ; A. Carey et K. Khadder, "Israeli and Palestinian leaders speak by phone for the first time in years", *CNN*, 8 juillet 2022, accessible à l'adresse suivante : <https://www.cnn.com/2022/07/08/middleeast/lapid-abbas-phone-call-intl/index.html> (page consultée le 17 juillet 2023) (appel entre Lapid/Abbas sous le précédent gouvernement).

³⁶ Nations Unies, *Documents officiels de l'Assemblée générale, soixante-dix-septième session*, 56^e séance plénière, 30 décembre 2022, doc. A/77/PV.56 (Resumption 1). Plus de la moitié des États membres de l'Assemblée générale, soit 106 États, ont voté contre, se sont abstenus ou n'étaient pas présents au moment de l'adoption de la résolution.

³⁷ Nations Unies, Assemblée générale, résolution 75/98 du 10 décembre 2020, « Pratiques israéliennes affectant les droits de l'homme du peuple palestinien dans le Territoire palestinien occupé, y compris Jérusalem-Est », doc. A/RES/75/98 [dossier, pièce n° 835] ; Nations Unies, *Documents officiels de l'Assemblée générale, soixante-quinzième session*, 41^e séance plénière, 10 décembre 2020, doc. A/75/PV.41, p. 8.

perdu l'appui de 60 États membres lorsqu'il a été modifié pour inclure une demande d'avis consultatif adressée à la Cour sur les deux questions suivantes :

- a) Quelles sont les conséquences juridiques de la violation persistante par Israël du droit du peuple palestinien à l'autodétermination, de son occupation, de sa colonisation et de son annexion prolongées du territoire palestinien occupé depuis 1967, notamment des mesures visant à modifier la composition démographique, le caractère et le statut de la ville sainte de Jérusalem, et de l'adoption par Israël des lois et mesures discriminatoires connexes ?
- b) Quelle incidence les politiques et pratiques d'Israël visées ... ci-dessus ont-elles sur le statut juridique de l'occupation et quelles sont les conséquences juridiques qui en découlent pour tous les États et l'Organisation des Nations Unies ?³⁸

2.23. Ainsi qu'exposé dans le chapitre III, certains États membres se sont dits préoccupés de ce que cet appel à la Cour puisse compromettre la perspective de la tenue de négociations israélo-palestiniennes à l'avenir — ce qui ne serait pas en phase avec l'appui constant apporté par l'Assemblée générale au règlement du différend par voie de négociations.

2.24. La résolution 77/247 elle-même réitère la proposition fondamentale selon laquelle la seule voie à emprunter pour résoudre le conflit est celle de la négociation sur les questions liées au statut permanent, conformément au cadre établi. Elle relève la nécessité urgente de

« rétablir un horizon politique qui permette de faire avancer et d'accélérer des négociations constructives visant à conclure un accord de paix qui mettra totalement fin à l'occupation israélienne commencée en 1967 et à résoudre, sans exception, toutes les questions fondamentales relatives au statut final afin de parvenir à un règlement pacifique, juste, durable et global de la question de Palestine³⁹ ».

2.25. La résolution souligne également

« que les accords israélo-palestiniens conclus dans le cadre du processus de paix au Moyen-Orient, y compris les accords de Charm el-Cheikh, doivent être pleinement respectés et que la feuille de route du Quatuor en vue d'un règlement permanent du conflit israélo-palestinien prévoyant deux États doit être mise en œuvre »⁴⁰.

2.26. De surcroît, il est précisé dans le libellé de la demande adressée à la Cour que celle-ci doit rendre son avis consultatif en prenant en considération les résolutions pertinentes du Conseil de

³⁸ Voir dossier, pièces n° 811-836 (« Pratiques israéliennes affectant les droits de l'homme du peuple palestinien dans le territoire palestinien occupé, y compris Jérusalem-Est »).

³⁹ Nations Unies, Assemblée générale, résolution 77/247 du 30 décembre 2022, « Pratiques israéliennes affectant les droits humains du peuple palestinien dans le Territoire palestinien occupé, y compris Jérusalem-Est », préambule, doc. A/RES/77/247 [dossier, pièce n° 3].

⁴⁰ *Ibid.*

sécurité et de l'Assemblée générale ainsi que son avis sur l'*édification d'un mur*, qui, tous, confirment le cadre de négociation établi⁴¹.

2.27. Par conséquent, la résolution par laquelle l'Assemblée générale s'est adressée à la Cour se réfère et souscrit au cadre susmentionné visant à parvenir à une paix négociée, notamment par une solution permanente à deux États, les questions soumises devant donc être examinées dans ce contexte. La Cour devra également tenir compte des vues qui ont toujours été celles de l'Assemblée générale et du Conseil de sécurité, et sur lesquelles les parties se sont appuyées dans leur dialogue, à savoir que ce n'est que par la voie des négociations que le conflit peut être réglé globalement, en ce compris toutes les questions relatives au statut définitif telles que les frontières et les arrangements de sécurité.

⁴¹ L'Assemblée générale prie aussi la Cour de prendre dûment en considération les résolutions pertinentes du Conseil des droits de l'homme (CDH). Le CDH, organe subsidiaire de l'Assemblée générale réunissant 47 États Membres de l'Organisation des Nations Unies, a un mandat important : celui de contribuer à promouvoir et à protéger les droits de l'homme dans le monde. C'est néanmoins à l'Assemblée générale et au Conseil de sécurité qu'incombe, au sein de l'ONU, la responsabilité générale du maintien de la paix et de la sécurité internationales. De surcroît, le CDH a aussi, comme dans la résolution sur le « Droit du peuple palestinien à l'autodétermination », « réaffirm[é] [] la nécessité de parvenir à un règlement pacifique juste, global et durable du conflit israélo-palestinien, *conformément au droit international et aux autres paramètres convenus au niveau international, y compris toutes les résolutions pertinentes de l'Organisation des Nations Unies* ». Voir, par exemple, Nations Unies, Conseil des droits de l'homme, résolution 49/28 du 1^{er} avril 2022, doc. A/HRC/RES/49/28, par. 2, [dossier, pièce n° 1589] (les italiques sont de nous).

CHAPITRE III

DES RAISONS DÉCISIVES JUSTIFIENT QUE LA COUR TRAITE LES QUESTIONS DONT ELLE EST SAISIE DANS LES LIMITES DU CADRE ÉTABLI

3.1. Les États-Unis font valoir qu'il existe des raisons décisives pour que la Cour traite les questions que lui a posées l'Assemblée générale dans les limites du cadre établi afin que les parties négocient le règlement des questions liées au statut permanent qui sont au cœur de leur différend, telles que la question des frontières ou celle des arrangements de sécurité. Ces raisons procèdent de deux considérations étroitement liées : en premier lieu, le rôle important que continue de jouer l'ONU dans les efforts entrepris pour régler le conflit israélo-palestinien, notamment au moyen des multiples résolutions du Conseil de sécurité et de l'Assemblée générale appelant à un règlement négocié ; et, en second lieu, la mesure dans laquelle les questions posées à la Cour mettent en jeu le principe du consentement au règlement judiciaire d'un différend d'ordre territorial pour lequel il existe un cadre établi aux fins de l'examen des questions litigieuses par voie de négociation. En outre, étant donné que les questions sont rédigées de sorte à couvrir les actes d'une seule des parties au différend et à ne tirer des conclusions juridiques qu'à leur égard, la prudence est de mise.

3.2. Il est bien établi que la Cour est dans « l'obligation de s'assurer, chaque fois qu'elle est saisie d'une demande d'avis, de l'opportunité d'exercer sa fonction judiciaire »⁴². La Cour, tout comme sa devancière la Cour permanente de Justice internationale, a reconnu les limites inhérentes à la compétence consultative qui découlent de son caractère judiciaire⁴³. Ces considérations, dont elle a estimé qu'elles pouvaient la conduire à refuser de donner un avis, lui permettent aussi de décider de répondre aux questions posées dans leur totalité ou de restreindre la portée de sa réponse⁴⁴. La Cour a également reconnu la nécessité de tenir compte de « l'origine et [de] la portée du différend » pour apprécier l'opportunité d'exercer sa compétence consultative, notamment lorsqu'il s'agit de confirmer que son avis aiderait l'Assemblée générale à « exercer comme il convient ses

⁴² Avis consultatif sur l'édification d'un mur, p. 157, par. 45 ; voir aussi *Effets juridiques de la séparation de l'archipel des Chagos de Maurice en 1965, avis consultatif, C.I.J. Recueil 2019 (I)*, p. 113, par. 64 ; *Conformité au droit international de la déclaration unilatérale d'indépendance relative au Kosovo, avis consultatif, C.I.J. Recueil 2010 (II)*, p. 416, par. 31 ; p. 415 et 417, par. 29 et 33 (relevant que « [l]e pouvoir discrétionnaire de répondre ou non à une demande d'avis consultatif vise à protéger l'intégrité de la fonction judiciaire de la Cour et sa nature en tant qu'organe judiciaire principal de l'Organisation des Nations Unies »).

⁴³ Voir *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 12, par. 23 ; *Interprétation des traités de paix conclus avec la Bulgarie, la Hongrie et la Roumanie, première phase, avis consultatif, C.I.J. Recueil 1950*, p. 65, 71 ; *Statut de la Carélie orientale, avis consultatif, 1923, C.P.J.I. série B n° 5*, p. 29. La Cour a par exemple indiqué qu'il pouvait y avoir des « raisons décisives » de refuser de donner un avis consultatif lorsque cet avis « aurait pour effet de tourner le principe selon lequel un État n'est pas tenu de soumettre un différend au règlement judiciaire s'il n'est pas consentant ». *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 25, par. 33 ; voir également *infra*, note 66.

⁴⁴ En répondant à une demande d'avis consultatif, la Cour garde le pouvoir discrétionnaire d'élargir, d'interpréter ou de reformuler les questions qui lui sont posées, notamment dans le but de dégager les principes et règles applicables et existants. *Conformité au droit international de la déclaration unilatérale d'indépendance relative au Kosovo, avis consultatif, C.I.J. Recueil 2010 (II)*, p. 423, par. 50 (notant que la Cour peut redéfinir la portée et le sens des questions qui lui sont présentées dans les cas suivants : 1) lorsque la question n'est pas correctement formulée, 2) lorsque la Cour constate, en examinant le contexte de la demande, que celle-ci ne met pas en évidence les « points de droit ... véritablement ... en jeu », ou 3) lorsque la question posée est peu claire ou vague). La Cour a maintes fois exercé ce pouvoir discrétionnaire lorsqu'elle y a été amenée par les faits de l'espèce, le fond ou le libellé d'une résolution de saisine. Voir, par exemple, *Demande de réformation du jugement n° 273 du Tribunal administratif des Nations Unies, avis consultatif, C.I.J. Recueil 1982*, p. 348, par. 46 (la Cour y clarifiant une question de saisine vague ou ambiguë) ; *Interprétation de l'accord du 25 mars 1951 entre l'OMS et l'Égypte, avis consultatif, C.I.J. Recueil 1980*, p. 87-89, par. 34-36 (la question posée ne correspondait pas à la « véritable question juridique » à l'examen) ; *Interprétation de l'accord gréco-turc du 1^{er} décembre 1926 (protocole final, article IV), avis consultatif, 1928, C.P.J.I. série B n° 16*, p. 14-16 (la question sur laquelle l'avis de la Cour était sollicité n'était pas correctement énoncée) ; voir *Effets juridiques de la séparation de l'archipel des Chagos de Maurice en 1965, avis consultatif, C.I.J. Recueil 2019 (I)*, opinion dissidente de la juge Donoghue, p. 266, par. 22 (« La Cour aurait pu choisir d'exercer son pouvoir discrétionnaire en donnant une réponse plus limitée à la demande (qu'elle aurait pu reformuler dans ce but). ... L'Assemblée générale aurait pu bénéficier de cette réponse juridique sans que l'intégrité judiciaire de la Cour ne soit compromise. »)

fonctions »⁴⁵. Elle a jugé que, pour rester fidèle à son caractère judiciaire, elle devait d'abord s'assurer de la signification de la question présentée et en mesurer toute la portée dans la situation de fait et de droit où il convenait de l'examiner⁴⁶.

3.3. Dans le présent chapitre est exposé le fait que ces importantes considérations énoncées par la Cour doivent la conduire à examiner la résolution par laquelle elle a été saisie en respectant le cadre établi exposé au chapitre II.

3.4. La section A explique pourquoi la Cour devrait adopter, en l'espèce, la méthode qu'elle a déjà employée dans la procédure consultative sur l'*édification d'un mur* pour répondre à la précédente demande d'avis présentée par l'Assemblée générale au sujet du conflit israélo-palestinien, afin de ne pas perturber le cadre de négociation existant. Dans la section B est exposée en détail la manière dont les questions posées en l'espèce mettent en jeu le principe du consentement au règlement judiciaire, et ce, bien davantage que dans la procédure sur l'*édification d'un mur*, car elles invitent la Cour à examiner des questions qui constituent l'objet même du différend et portent sur des points dont le Conseil de sécurité et l'Assemblée générale ont maintes fois reconnu qu'ils devaient être réglés par voie de négociations directes entre les parties.

**A. Le respect manifesté par la Cour, dans la procédure sur l'*édification d'un mur*,
pour le rôle joué par le Conseil de sécurité et l'Assemblée générale dans
le règlement du différend israélo-palestinien et pour le cadre
de négociation établi reste de mise**

3.5. La relation entre la Cour et les autres organes principaux de l'ONU a été décrite comme étant une relation de « coordination et [de] coopération fonctionnelle en vue d'atteindre les objectifs communs de l'Organisation »⁴⁷. À cet égard, dans l'exercice de sa compétence tant contentieuse que consultative, la Cour s'attache à tenir compte des pouvoirs respectifs des organes politiques principaux en ce qui concerne toute question relevant de la paix et de la sécurité internationales⁴⁸. Comme l'a affirmé le juge Azevedo dans l'avis consultatif sur l'*Interprétation des traités de paix*,

« la Cour, désignée comme organe principal et ainsi plus dans l'engrenage de l'O.N.U., doit faire de son mieux pour collaborer avec les autres organes en vue d'atteindre les buts et principes visés »⁴⁹.

⁴⁵ *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 26-27, par. 39, 42 ; voir également *Conséquences juridiques pour les États 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. 24, par. 32 (déterminant que le prononcé d'un avis consultatif n'était pas destiné à assister le Conseil de sécurité dans le règlement pacifique d'un différend entre États, mais à offrir un avis juridique sur « les conséquences et les incidences de ces décisions »).

⁴⁶ *Interprétation de l'accord du 25 mars 1951 entre l'OMS et l'Égypte, avis consultatif, C.I.J. Recueil 1980*, p. 76, par. 10.

⁴⁷ V. Gowlland-Debbas, M. Forteau, « Art. 7 UN Charter », dans *The Statute of the International Court of Justice: A Commentary*, A. Zimmermann et al. (sous la dir. de), troisième édition, 2019, p. 146.

⁴⁸ Voir *infra*, par. 3.10.

⁴⁹ *Interprétation des traités de paix conclus avec la Bulgarie, la Hongrie et la Roumanie, première phase, avis consultatif, C.I.J. Recueil 1950*, opinion individuelle du juge Azevedo, p. 82 ; voir également M. N. Shaw, *Rosenne's Law and Practice of the International Court 1920-2015*, cinquième édition, 2016, vol. 1, p. 110-111 :

« D'une façon générale, il est hors de doute que les relations mutuelles entre les organes principaux doivent être fondées sur le principe général que ces organes doivent coopérer en vue de réaliser les objectifs de l'Organisation (sous réserve de la responsabilité principale du Conseil de sécurité dans le maintien de la paix et de la sécurité internationales).

3.6. La Cour a reconnu à juste titre que, en exerçant sa compétence consultative, son rôle consistait à prêter assistance aux autres organes intéressés de l'ONU dans l'accomplissement de leurs tâches⁵⁰, tout en respectant les responsabilités et décisions du Conseil de sécurité et de l'Assemblée générale sur les questions de paix et de sécurité et en s'efforçant d'éviter un résultat qui pourrait compromettre ces décisions ou les priver d'effet⁵¹. Il s'ensuit que, en se penchant sur les questions formulées dans la résolution 77/247, elle peut et doit exercer son pouvoir discrétionnaire en formulant tout avis qu'elle pourrait donner de sorte à ne pas invalider ou compromettre le cadre établi dont le Conseil de sécurité et l'Assemblée générale ont jugé qu'il constituait la meilleure et unique voie à suivre pour parvenir à une paix durable. À cet égard, l'approche adoptée par la Cour dans son avis consultatif sur l'*édification d'un mur* est instructive.

3.7. Dans la procédure sur l'*édification d'un mur*, la Cour a dû examiner l'opportunité de donner un avis à l'Assemblée générale sur certains aspects du différend israélo-palestinien nés d'un acte particulier, à savoir la construction par Israël d'une barrière de séparation. Elle a pris soin de préciser que la question posée par l'Assemblée générale était « limitée aux conséquences juridiques de la construction du mur »⁵² et s'est attachée à ne pas fragiliser le cadre de négociation établi et confirmé par les résolutions du Conseil de sécurité et de l'Assemblée générale. La Cour a bien veillé à ne pas donner un avis qui aurait semblé dicter l'issue des questions liées au statut définitif sur lesquelles les parties étaient convenues de négocier, n'examinant « d'autres éléments que dans la mesure où ceux-ci [étaient] nécessaires aux fins de l'examen de cette question » et faisant observer que « seule la mise en œuvre de bonne foi de toutes les résolutions pertinentes du Conseil de sécurité, en particulier les résolutions 242 (1967) et 338 (1973) » pouvait permettre de mettre un terme au conflit envisagé plus globalement⁵³.

3.8. Dans ladite procédure, la Cour a soigneusement pris en considération le rôle de l'ONU à l'égard du conflit israélo-palestinien. Elle a notamment recherché si elle avait été dûment saisie de la question au regard de la résolution 1515 (2003) du Conseil de sécurité, texte alors récemment adopté dans lequel avait été approuvé un plan précis visant à parvenir à un règlement négocié du conflit sur la base du cadre de négociation établi. Elle a mentionné la responsabilité de l'ONU à l'égard des questions concernant le maintien de la paix et de la sécurité internationales, précisant

Cette approche ouvre la voie à une conception fonctionnelle de la tâche que remplit la Cour en sa qualité d'organe principal de l'ONU. Selon cette conception, sous réserve de certaines considérations juridiques primordiales (concernant notamment l'opportunité judiciaire), la Cour, en exerçant sa fonction judiciaire consistant à régler des différends (paragraphe 1 de l'article 38 du Statut) ou en donnant des avis consultatifs (article 96 de la Charte et paragraphe 1 de l'article 65 du Statut), doit coopérer à la réalisation des buts de l'Organisation et s'efforcer de donner effet aux décisions des principaux organes de celle-ci, et non de parvenir à des conclusions qui les rendraient sans effet. »

⁵⁰ Voir, par exemple, *Conformité au droit international de la déclaration unilatérale d'indépendance relative au Kosovo*, avis consultatif, C.I.J. Recueil 2010 (II), p. 403, par. 421 ; la procédure sur l'*édification d'un mur*, p. 159, par. 50 ; *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. 188-189, par. 31 ; *Réserves à la convention pour la prévention et la répression du crime de génocide*, avis consultatif, C.I.J. Recueil 1951, p. 19.

⁵¹ Voir, par exemple, *Questions d'interprétation et d'application de la convention de Montréal de 1971 résultant de l'incident aérien de Lockerbie (Jamahiriya arabe libyenne c. Royaume-Uni)*, mesures conservatoires, ordonnance du 14 avril 1992, C.I.J. Recueil 1992, déclaration du juge Ni, p. 132 ; *ibid.*, p. 134 (citant *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. États-Unis d'Amérique)*, compétence et recevabilité, arrêt, C.I.J. Recueil 1984, p. 434, par. 95) (où il est indiqué qu'« [i]l ne faut pas négliger » la référence faite par la Cour dans *Activités militaires et paramilitaires* à des « fonctions complémentaires » et où est examinée la façon dont les organes politique et judiciaire principaux peuvent traiter de différents aspects de la même question : « ces fonctions peuvent être liées les unes aux autres. Les relations entre les deux organes doivent être caractérisées par une coordination et une coopération et non par une concurrence ou une exclusion réciproque. ») ; voir aussi M. N. Shaw, vol. 1, *supra*, note 49, p. 111 ; V. Gowlland-Debbas et M. Forteau, *supra*, note 47, p. 147.

⁵² Avis consultatif sur l'*édification d'un mur*, p. 160, par. 54.

⁵³ *Ibid.* p. 200-201, par. 162.

que, « [d]ans le cadre institutionnel de l'Organisation, cette responsabilité s'[était] concrétisée par l'adoption de nombreuses résolutions du Conseil de sécurité et de l'Assemblée générale »⁵⁴ relatives au conflit.

3.9. Plus précisément, la Cour a reconnu que « [l]a “feuille de route” approuvée par la résolution 1515 (2003) du Conseil de sécurité constitu[ait] l'effort le plus récent en vue de provoquer des négociations à cette fin »⁵⁵, et appelé l'attention de l'Assemblée générale sur

« la nécessité d'encourager ces efforts en vue d'aboutir le plus tôt possible, sur la base du droit international, à une solution négociée des problèmes pendants et à la constitution d'un État palestinien vivant côte à côte avec Israël et ses autres voisins, et d'assurer à chacun dans la région paix et sécurité »⁵⁶.

3.10. Cette reconnaissance par la Cour des responsabilités des autres organes principaux de l'ONU à l'égard du conflit cadre avec le fait qu'elle a, dans d'autres contextes, souligné la nécessité de faire preuve de prudence en traitant de questions liées aux domaines de compétence des différentes entités de l'Organisation⁵⁷. Une telle approche s'impose d'autant plus en ce qui concerne les questions dont est aujourd'hui saisie la Cour.

3.11. Dans la procédure sur l'*édification d'un mur*, la Cour a constaté que c'est par des résolutions du Conseil de sécurité et de l'Assemblée générale que l'ONU avait défini son intérêt à l'égard du conflit israélo-palestinien. Ces mêmes résolutions, dont beaucoup continuent à ce jour d'être adoptées tous les ans ou semestres par l'Assemblée générale — la résolution par laquelle la Cour a été saisie en l'espèce en étant d'ailleurs un exemple —, ont confirmé à maintes reprises l'idée selon laquelle le différend ne pouvait être réglé que par une négociation fondée sur le principe de « l'échange de territoires contre la paix » énoncé pour la première fois dans les résolutions 242 et 338 du Conseil de sécurité, et dans le cadre établi à cet effet. Ces résolutions soulignent que les parties au conflit « doivent ... pleinement respect[er] » le cadre établi pour régler leurs différends⁵⁸. Le fait qu'elles aient élaboré ce cadre et y aient apporté un soutien continu en tant que moyen de résoudre les questions liées au statut permanent, dont les frontières et les arrangements de sécurité, est crucial

⁵⁴ Avis consultatif sur l'*édification d'un mur*, p. 159, par. 49.

⁵⁵ *Ibid.* p. 201, par. 162.

⁵⁶ *Ibid.* ; voir également *ibid.*, p. 201, par. 161 (saisissant l'occasion pour « souligner la nécessité urgente que l'Organisation des Nations Unies dans son ensemble redouble ses efforts en vue de mettre rapidement un terme au conflit israélo-palestinien, qui continue de poser une menace à la paix et à la sécurité internationales, et d'établir ainsi une paix juste et durable dans la région »).

⁵⁷ « Pour apprécier l'opportunité de donner un avis consultatif, la Cour doit tenir compte des responsabilités particulières qui lui sont conférées dans l'architecture de la Charte des Nations Unies. » *Conformité au droit international de la déclaration unilatérale d'indépendance relative au Kosovo, avis consultatif*, C.I.J. Recueil 2010 (II), opinion individuelle du juge Sepúlveda-Amor, p. 492-493, par. 8-9 (les responsabilités propres à la Cour en matière de maintien de la paix et de la sécurité internationales l'éclairent sur la manière dont elle doit appliquer les résolutions) ; voir également *ibid.*, opinion dissidente du juge Skotnikov, p. 517-518, par. 8 (citant *Jaworzina, avis consultatif*, 1923, C.P.J.I., série B n° 8, p. 37 (« [S]uivant une doctrine constante, le droit d'interpréter authentiquement une règle juridique appartient à celui-là seul qui a le pouvoir de la modifier ou de la supprimer »)) ; *Questions d'interprétation et d'application de la convention de Montréal de 1971 résultant de l'incident aérien de Lockerbie (Jamahiriya arabe libyenne c. États-Unis d'Amérique), mesures conservatoires, ordonnance du 14 avril 1992*, C.I.J. Recueil 1992, opinion dissidente du juge Bedjaoui, p. 145, par. 7 (« [L]a Cour n'a généralement pas pour rôle de contrôler en forme d'appel les décisions du Conseil de sécurité dans sa haute mission de maintien de la paix et de la sécurité internationales[.] »).

⁵⁸ Nations Unies, Assemblée générale, résolution 77/247, « Pratiques israéliennes affectant les droits humains du peuple palestinien dans le Territoire palestinien occupé, y compris Jérusalem-Est », préambule, 30 décembre 2022, doc. A/RES/77/247 [dossier, pièce n° 3].

non seulement pour définir l'intérêt de l'Organisation à cet égard, mais aussi pour comprendre la saisine elle-même et la portée appropriée de l'examen de la Cour⁵⁹.

3.12. Enfin, dans la procédure sur l'*édification d'un mur*, la Cour a conclu qu'il était difficile de savoir quelle influence son avis aurait sur les négociations, y compris celles auxquelles invitait la résolution 1515 du Conseil de sécurité ; aussi n'a-t-elle pas considéré ce facteur comme une raison décisive de refuser d'exercer sa compétence⁶⁰. Il est loin d'en être de même en l'espèce, où les questions posées sont fondamentalement différentes, tant par leur nature que par leur portée. Contrairement à la question bien circonscrite à laquelle la Cour était appelée à répondre dans la procédure sur l'*édification d'un mur*, les questions soumises en l'espèce risquent d'entraîner des répercussions considérables sur des points qui sont au cœur même des négociations. Certains chantres de cette saisine sont allés jusqu'à dire qu'était soumise à la Cour « la question de la Palestine dans son intégralité », laissant en réalité entendre que la Cour devait se prononcer définitivement sur tous les aspects du conflit israélo-palestinien⁶¹.

3.13. Il ne fait aucun doute que les questions soulevées en l'espèce pourraient, à défaut d'un examen minutieux et d'un respect scrupuleux du cadre approuvé par le Conseil de sécurité et l'Assemblée générale et adopté par les parties au différend, donner lieu à un avis de très large portée. La première question interroge la Cour sur les conséquences juridiques de trois grandes catégories d'actes allégués : 1) la « violation ... par Israël du droit du peuple palestinien à l'autodétermination » ; 2) « [l']occupation, [l]a colonisation et [l']annexion prolongées [par Israël] du territoire palestinien occupé depuis 1967 » ; et 3) les « lois et mesures discriminatoires connexes ». La seconde question demande à la Cour de se prononcer sur le « statut juridique » de l'occupation israélienne *in toto*, y compris en ce qui concerne les conséquences juridiques qui en découlent pour l'ONU et pour les États tiers. Considérées conjointement, ces questions — avec le caractère péremptoire et partiel de leur formulation — peuvent aisément être lues comme tendant à obtenir un avis sur les questions mêmes dont l'Assemblée générale et le Conseil de sécurité n'ont eu de cesse de souligner qu'elles devaient être réglées par voie de négociations directes entre les parties.

3.14. Or, là encore, la résolution 77/247 de l'Assemblée générale réaffirme que le cadre établi « doi[t] être pleinement respecté[] » pour que les parties au conflit puissent régler leur différend. Cela place donc la Cour dans la situation peu enviable de devoir tenter de répondre à des questions dont la portée peut être importante sans mettre à mal le cadre de négociation établi auquel l'Assemblée générale elle-même s'est référée en sollicitant le présent avis consultatif.

3.15. Dès le moment où elle les a examinées, l'Assemblée générale s'est inquiétée de ce que les questions posées elles-mêmes puissent donner à penser que la Cour était invitée à donner un avis dépassant le cadre établi. Ainsi que cela est indiqué dans le chapitre II, la résolution 77/247 a recueilli 60 voix de moins que la précédente, la résolution 75/98, qui ne contenait pas les questions adressées à la Cour⁶². Pendant les travaux de la Quatrième Commission et les séances plénières de l'Assemblée

⁵⁹ Voir l'avis consultatif sur l'*édification d'un mur*, opinion individuelle du juge Owada, p. 265, par. 14 (« [L]a Cour doit avant tout s'attacher à présenter, certes, les conclusions en droit qu'elle aura objectivement tirées, mais dans la stricte mesure du nécessaire et d'une manière qui soit utile à l'organe qui l'a saisie, à savoir l'Assemblée générale, permettant à celui-ci de s'acquitter de ses fonctions relativement à la situation qui est à l'origine de la demande, et s'abstenir de statuer sur l'objet du différend entre les parties concernées. »)

⁶⁰ *Ibid.*, p. 160, par. 53.

⁶¹ Permanent Observer Briefs Palestinian Rights Committee on Situation in Occupied Territory Situation, Submissions Guidelines for Opinion Case to the World Court, 3 mai 2023, Nations Unies, doc. GA/PAL/1452, accessible à l'adresse suivante : <https://press.un.org/en/2023/gapal1452.doc.htm> (page consultée le 17 juillet 2023).

⁶² Voir *supra*, par. 2.22-2.23.

générale, des États ont dit craindre de voir la demande d'avis consultatif entraver, plutôt que de faciliter, le règlement du conflit israélo-palestinien et ne pas servir l'objectif d'une reprise du dialogue entre les parties⁶³. Certains ont estimé n'avoir pas été avisés suffisamment à l'avance de ce que la demande d'avis consultatif avait été ajoutée à la résolution et que les concertations et débats préalables à ce sujet avaient été insuffisants⁶⁴. Les États-Unis ne sont donc pas le seul État Membre de l'Organisation à exprimer des réserves sur la partie de la résolution consacrée à la saisine de la Cour et, en particulier, les effets négatifs que cela pourrait avoir sur la perspective de futures négociations israélo-palestiniennes.

3.16. Le traitement par la Cour de la question posée dans la procédure sur l'*édification d'un mur* peut éclairer la manière dont elle devrait répondre à celles qui sont contenues dans la résolution 77/247⁶⁵. À l'époque, la Cour avait recherché si certaines violations du droit international avaient été commises et quelles en étaient les conséquences juridiques, telles que l'obligation pour Israël de mettre fin au comportement ayant entraîné les violations en cause. Ce faisant, elle avait toutefois procédé d'une manière qui ne compromettait ou n'entravait pas le cadre de négociation existant et son principe de « l'échange de territoires contre la paix ». En l'espèce, il lui faudra également accorder une attention particulière aux fonctions exercées par le Conseil de sécurité et l'Assemblée générale dans le traitement du conflit et s'efforcer d'ajuster son avis de façon à préserver le cadre établi, sans porter atteinte à la capacité des parties de négocier dans ce cadre sur les questions qui sont au cœur du différend, telles que les frontières et les arrangements de sécurité.

3.17. Si la Cour devait s'écarter de cette approche, le risque serait grand que, plutôt que de faciliter les efforts déployés par l'ONU pour que les parties reprennent les négociations et respectent pleinement le cadre établi, son avis ne préjuge de l'issue desdites négociations ou donne malencontreusement à entendre aux parties qu'il est inutile de négocier sur les éléments interdépendants du principe de « l'échange de territoires contre la paix », pourtant approuvé et encouragé de si longue date par le Conseil de sécurité et l'Assemblée générale. Un tel avis serait en

⁶³ Nations Unies, *Documents officiels de l'Assemblée générale, soixante-dix-septième session*, 56^e séance plénière, 30 décembre 2022, doc. A/77/PV.56 (Resumption 1), p. 3-6 (déclarations de la Mongolie, de la Roumanie et du Royaume-Uni) ; déclarations des États-Unis devant la Quatrième Commission, *supra*, note 1 ; voir également Nations Unies, Couverture des réunions et communiqués de presse, Fourth Committee, Concluding Its Work, Approves Six Draft Resolutions, Including Request for ICJ Opinion on Israeli Occupation, 11 novembre 2022, Nations Unies, doc. GA/SPD/771, accessible à l'adresse suivante : <https://press.un.org/en/2022/gaspd771.doc.htm> (page consultée le 17 juillet 2023) (résumant les déclarations de l'Australie, d'Israël, du Japon, du Royaume-Uni, de Singapour et de l'Uruguay). (Les documents officiels des réunions de la Quatrième Commission qui se sont tenues à ces dates ne sont pas encore disponibles.)

⁶⁴ Voir, par exemple, *Journal des Nations Unies*, « Déclaration de la France au nom de l'Union européenne », *soixante-dix-septième session*, 26^e séance plénière de la Quatrième Commission de l'Assemblée générale, 11 novembre 2022, accessible à l'adresse suivante : <https://journal.un.org/en/new-york/meeting/officials/f7d34375-ae42-43fa-cd84-08da63695862/2022-11-11/statementsid> (page consultée le 17 juillet 2023) (soulignant que « les demandes d'avis consultatif auprès de la CIJ doivent être soigneusement examinés et débattus avec les États Membres des Nations Unies ») ; M. l'ambassadeur Richard Mills, *supra*, note 1. Même des États ayant voté en faveur de la résolution ont relevé que la décision de demander un avis consultatif n'avait pas été étudiée de façon approfondie. Voir, par exemple, Nations Unies, *Documents officiels de l'Assemblée générale, soixante-dix-septième session*, 56^e séance plénière, 30 décembre 2022, doc. A/77/PV.56 (Resumption 1), p. 3-5 (déclaration de Malte soulignant que la demande tendant à obtenir un avis consultatif « aurait bénéficié de discussions et de consultations plus approfondies avec l'ensemble des Membres de l'ONU » et déclaration du Portugal faisant état de « doutes raisonnables en matière de procédure » concernant le paragraphe de la résolution demandant un avis consultatif et indiquant qu'« il aurait dû y avoir des consultations plus approfondies »).

⁶⁵ Il convient de noter à cet égard que la Cour, dans cette procédure, était parvenue à des conclusions sur les conséquences des activités de colonisation, d'actions modifiant la composition démographique, le caractère et le statut des territoires palestiniens occupés — y compris Jérusalem-Est —, et de politiques et pratiques faisant obstacle à l'exercice du droit palestinien à l'autodétermination. La Cour a appelé à mettre fin à toutes les violations de cet ordre qu'elle avait constatées et, le cas échéant, à réparer les dommages causés. Voir l'avis sur l'*édification d'un mur*, p. 184, par. 120-122 ; p. 201-202, par. 163.

contradiction avec les résolutions pertinentes de l'ONU et les travaux du Conseil de sécurité et de l'Assemblée générale, et n'aiderait donc pas celle-ci dans l'exercice de ses fonctions.

B. Le fait de dépasser le cadre de négociation établi risquerait de porter atteinte au principe du consentement

3.18. La Cour a toujours jugé que le fait qu'un avis ait « pour effet de tourner le principe selon lequel un État n'est pas tenu de soumettre un différend au règlement judiciaire s'il n'est pas consentant »⁶⁶ entrainé dans la catégorie des « raisons décisives » pour ne pas répondre à la demande. Dans la procédure sur l'*édification d'un mur*, elle a rejeté l'argument selon lequel son avis sur la question plus restreinte qui lui était alors posée aurait un tel effet, étayant cette position en se référant à la responsabilité de l'ONU à l'égard des questions relatives à la paix et à la sécurité internationales, responsabilité qui « s'est concrétisée par l'adoption de nombreuses résolutions du Conseil de sécurité et de l'Assemblée générale » concernant la paix au Moyen-Orient⁶⁷.

3.19. En l'espèce, en revanche, les questions de l'Assemblée sont formulées de façon à couvrir un large spectre de problèmes touchant les différends qui sont au cœur du conflit israélo-palestinien, y compris le statut du territoire en cause⁶⁸. Or, non seulement aucun consentement n'a été recueilli aux fins d'un règlement judiciaire de ces problèmes par la Cour, mais les questions posées invitent celle-ci à apprécier les actes allégués d'une seule partie au différend, sans se prononcer sur les actes ou omissions de l'Autorité [nationale] palestinienne, de l'Organisation de libération de la Palestine ou d'autres entités⁶⁹. De surcroît, ainsi que cela a déjà été indiqué, tant le Conseil de sécurité que l'Assemblée générale n'ont cessé d'affirmer que, pour parvenir à une paix durable, les questions liées au statut permanent que recouvre le différend doivent être réglées par voie de négociations directes.

3.20. Comme cela vient d'être rappelé, la Cour, dans la procédure sur l'*édification d'un mur*, a estimé que l'effet que pourrait avoir son avis sur le cadre de négociation n'était pas assez évident pour être considéré comme un facteur décisif devant l'amener à se poser la question de l'opportunité d'exercer sa compétence consultative. Une telle conclusion ne serait pas plausible en l'espèce, où les questions posées invitent à donner un avis qui reviendrait, en substance, à statuer sur l'objet même

⁶⁶ *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 25, par. 33 ; voir également la procédure sur l'*édification d'un mur*, p. 136, par. 14 ; *ibid.*, opinion individuelle du juge Owada, p. 265, par. 13 (soulignant que, même si la demande de l'Assemblée générale ne vise pas à saisir la Cour d'un différend juridique, il n'en reste pas moins que la réponse apportée à cette demande serait incompatible avec la fonction judiciaire de la Cour si elle « rev[enait] ... à statuer sur l'objet même du différend bilatéral ») ; affaire de l'*Or monétaire pris à Rome en 1943 (Italie c. France, Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et États-Unis d'Amérique)*, question préliminaire, arrêt, *C.I.J. Recueil 1954*, p. 32 ; *Statut de la Carélie orientale, avis consultatif, 1923, C.P.J.I., série B n° 5*, p. 28-29.

⁶⁷ Avis consultatif sur l'*édification d'un mur*, p. 158-159, par. 49.

⁶⁸ De surcroît, à la différence de la question posée dans la procédure sur l'*édification d'un mur*, les questions formulées en l'espèce sont rédigées de façon à établir les conclusions mêmes au sujet desquelles l'avis est sollicité. Or, ainsi que l'a expliqué la Cour dans la procédure au sujet du *Kosovo*, lorsqu'un point reste contesté et pourrait avoir une incidence sur la réponse qui serait donnée à la question juridique dont est saisie la Cour, « [i]l serait incompatible avec le bon exercice de sa fonction judiciaire que la Cour considère ce point comme ayant été tranché par l'Assemblée générale ». *Conformité au droit international de la déclaration unilatérale d'indépendance relative au Kosovo, avis consultatif, C.I.J. Recueil 2010 (II)*, p. 424, par. 52. Les deux questions en cause en l'espèce font intervenir ce principe. Nations Unies, Assemblée générale, résolution 77/247 du 30 décembre 2022, « Pratiques israéliennes affectant les droits humains du peuple palestinien dans le Territoire palestinien occupé, y compris Jérusalem-Est », par. 18, al. a), doc. A/RES/77/247 [dossier, pièce n° 3] (où il est fait référence à la « violation persistante » par Israël du droit des Palestiniens à l'autodétermination et indiqué qu'Israël prend diverses mesures « visant à modifier » des questions liées au statut définitif, comme Jérusalem, et qu'il a adopté « des lois et mesures discriminatoires connexes ») ; *ibid.*, par. 18, al. b) (où il est demandé à la Cour de se prononcer sur le statut juridique de l'occupation et sur les conséquences juridiques qui en découlent sur la base des postulats factuels énoncés dans la première question).

⁶⁹ Cf. procédure sur l'*édification d'un mur*, p. 200, par. 162 (où il est indiqué que « [d]es actions illicites ont été menées et des décisions unilatérales ont été prises par les uns et par les autres »).

des négociations. Un avis de la Cour qui semblerait régler, ou réglerait effectivement, toute question liée au statut permanent, ne tiendrait pas compte de la distribution intérimaire des pouvoirs et des responsabilités convenue par les parties ou indiquerait que l'une des conséquences juridiques des actes d'Israël l'oblige à se retirer des territoires occupés *sans qu'ait été réalisée* la paix globale, juste et durable par « l'échange de territoires contre la paix », pourrait contrevenir au cadre établi et risquerait fort de le supplanter. Il pourrait nuire à la capacité des parties de négocier un règlement de leur différend, notamment en compliquant de manière involontaire les efforts déployés pour parvenir à une désescalade des tensions croissantes en Cisjordanie, tels que les rencontres organisées selon le format encore balbutiant d'Aqaba-Charh El-Cheikh, en poussant les parties à camper sur leurs positions et en les divisant davantage. Pareil avis pourrait aussi encourager certains éléments de chaque côté à se livrer à des actes qui éloigneraient encore la perspective d'une paix négociée juste et pérenne, au lieu d'œuvrer dans ce sens.

3.21. Le fait que la Cour doive veiller à ne pas empiéter sur l'objet même du différend sous-jacent ressort en outre de l'avis consultatif qu'elle a donné dans la procédure au sujet du *Sahara occidental*. La Cour y a indiqué que l'avis qu'elle donnerait à l'Assemblée générale sur la question des droits du Maroc sur le Sahara occidental à l'époque de la colonisation serait sans effet sur les droits détenus par l'Espagne en tant que puissance administrante du territoire⁷⁰. Elle a aussi précisé que l'Assemblée générale ne l'avait pas consultée afin d'« exercer ... ses pouvoirs et ses fonctions en vue de régler pacifiquement ce différend ou cette controverse »⁷¹.

3.22. Répondre aux questions posées en l'espèce en donnant un avis qui reviendrait, en pratique, à rendre superflu le moyen prescrit par le Conseil de sécurité et approuvé par l'Assemblée générale pour régler le différend — à savoir les négociations directes — ferait jouer à la Cour le rôle de mécanisme de règlement du différend et non d'organe consultatif. Bien qu'il s'agisse d'un rôle qu'elle est nécessairement amenée à jouer dans le cadre des procédures contentieuses fondées sur le consentement des parties, la Cour a maintes fois souligné que sa compétence consultative était distincte et ne constituait pas le moyen approprié pour régler un différend⁷². Elle devrait garder cette distinction à l'esprit et ne pas céder à ceux qui cherchent à éviter ou à compromettre le recours à des négociations directes en lui demandant de trancher des questions dont les parties, comme le Conseil de sécurité et l'Assemblée générale, ont considéré qu'elles étaient au cœur du différend et ne pouvaient être résolues que par la voie de telles négociations. Il est essentiel que tout soit fait pour préserver le cadre établi et créer les conditions d'une reprise des négociations directes entre les parties, qui permettraient à celles-ci de régler toutes les questions liées au statut permanent. Il est également crucial d'encourager les parties à s'abstenir de toutes actions unilatérales qui iraient à l'encontre d'un retour à la table des négociations.

⁷⁰ *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 27, par. 42.

⁷¹ *Ibid.* p. 26-27, par. 39 ; voir aussi l'avis sur l'*édification d'un mur*, opinion individuelle de la juge Higgins, p. 210, par. 12-13.

⁷² Voir *Conformité au droit international de la déclaration unilatérale d'indépendance relative au Kosovo, avis consultatif, C.I.J. Recueil 2010 (II)*, opinion dissidente du juge Bennouna, p. 503, par. 15 (« Il est essentiel pour la Cour de veiller, dans l'exercice de sa fonction consultative, à ce qu'elle ne soit pas instrumentalisée en faveur de telle ou telle stratégie proprement politique... ») ; procédure sur l'*édification d'un mur*, opinion individuelle du juge Higgins, p. 210, par. 12-13 ; voir également *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 27, par. 42 (le défaut de consentement est un facteur moins important pesant en faveur d'un refus discrétionnaire de statuer lorsque la position juridique de l'État n'apparaît pas compromise par l'avis de la Cour) ; *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 (où la demande d'avis consultatif concernait la procédure de règlement de différend, et non le fond des différends sous-jacents, « la position juridique des parties à ces différends ne saurait à aucun degré être compromise par les réponses que la Cour pourrait faire aux questions qui lui sont posées »).

CHAPITRE IV

LA DEMANDE INVITE À PROCÉDER À UN EXAMEN DU CADRE ÉTABLI SUR LA BASE DE PRÉSOMPTIONS SANS FONDEMENT EN DROIT INTERNATIONAL

4.1. Ainsi que cela a été précisé, pour s'acquitter de ses obligations, la Cour « doit d'abord s'assurer de [l]a signification [de la question] et en mesurer toute la portée dans la situation de fait et de droit où il convient de l'examiner »⁷³.

4.2. La deuxième question de l'Assemblée générale repose sur un postulat erroné. Elle prie la Cour d'émettre un avis sur « [l']incidence » que les politiques, pratiques et violations alléguées visées dans la première question, notamment l'occupation, la colonisation et l'annexion prolongées du territoire occupé « ont[] sur le statut juridique de l'occupation ». La réponse qui s'impose d'évidence est que le *statut* juridique de l'occupation en droit international humanitaire résulte du seul fait de l'occupation. Selon le droit international humanitaire, le statut juridique d'une occupation de guerre ne change pas en cas de prolongement de l'occupation ou de commission alléguée, par la puissance occupante, de violations du droit international humanitaire ou d'autres règles du droit international⁷⁴.

4.3. Conformément au droit international coutumier, qui trouve son expression à l'article 42 du règlement concernant les lois et coutumes de la guerre sur terre, annexé à la convention (IV) concernant les lois et coutumes de la guerre sur terre (ci-après le « règlement IV de La Haye »), un territoire est considéré comme occupé lorsqu'il se trouve placé de fait sous l'autorité de l'armée ennemie⁷⁵. L'occupation ne s'étend qu'aux territoires où cette autorité est établie et en mesure de s'exercer⁷⁶. Le fait de l'occupation est le fondement de l'exercice, par la puissance occupante, de son autorité — notamment au moyen d'une présence de sécurité sur le territoire occupé —, et de l'application, par cette puissance, d'un cadre juridique de droits et d'obligations auquel elle est tenue⁷⁷. Bien que l'occupation de guerre soit par nature provisoire, le droit international humanitaire continue de s'appliquer pendant toute la durée effective, quelle qu'elle soit, d'une occupation⁷⁸.

⁷³ *Interprétation de l'accord du 25 mars 1951 entre l'OMS et l'Égypte, avis consultatif, C.I.J. Recueil 1980, p. 76, par. 10.*

⁷⁴ Les États doivent se conformer au *jus in bello* — y compris le droit de l'occupation de guerre —, indépendamment des questions de savoir si un État peut être considéré comme étant l'agresseur ou si le recours initial à la force était licite selon le *jus ad bellum*. Dans une occupation faisant suite à une agression, le fait de l'occupation demeure reconnu selon le *jus in bello* et les droits et devoirs de la puissance occupante restent applicables.

⁷⁵ Règlement IV de La Haye, art. 42, 18 octobre 1907, Comité international de la Croix-Rouge (CICR) ; avis consultatif sur l'édification d'un mur, p. 167, par. 78 ; voir également *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda)*, arrêt, C.I.J. Recueil 2005, p. 229-230, par. 172.

⁷⁶ *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda)*, arrêt, C.I.J. Recueil 2005, p. 229-230, par. 172.

⁷⁷ Voir *ibid.*, p. 230, par. 173 (« En vue de parvenir à une conclusion sur la question de savoir si un État dont les forces militaires sont présentes sur le territoire d'un autre État du fait d'une intervention est une « puissance occupante » au sens où l'entend le *jus in bello*, la Cour examinera tout d'abord s'il existe des éléments de preuve suffisants démontrant que ladite autorité se trouvait effectivement établie et exercée dans les zones en question par l'État auteur de l'intervention. »)

⁷⁸ Des experts réunis par le Comité international de la Croix-Rouge n'ont pas été en mesure d'établir une quelconque limite qu'imposerait le droit international humanitaire à la durée d'une occupation. Voir T. Ferrero, Expert Meeting: Occupation and Other Forms of Administration of Foreign Territory, CICR, mars 2012, p. 72, (« [L]es participants s'accordent à dire que le droit international humanitaire ne fixe pas de limite à la durée d'une occupation. Il s'ensuit que ce droit n'empêche en rien une puissance occupante de s'engager dans une occupation à long terme et que, dans cette hypothèse, le droit de l'occupation demeure le cadre juridique applicable. »)

4.4. Dans la procédure sur l'*édification d'un mur*, la Cour a estimé qu'Israël avait enfreint certaines interdictions imposées aux puissances occupantes par le droit international humanitaire et qu'il devait, par conséquent, y mettre fin et fournir une indemnisation appropriée⁷⁹. Dans le même temps, elle a reconnu que le statut d'Israël en tant que puissance occupante s'était poursuivi pendant de nombreuses années et réaffirmé l'applicabilité de la convention de Genève relative à la protection des personnes civiles en temps de guerre (ci-après la « quatrième convention de Genève ») au territoire occupé depuis 1967⁸⁰.

4.5. Le Conseil de sécurité et l'Assemblée générale ont déclaré que toute action visant à modifier le statut d'un territoire occupé était nulle et non avenue et ne pouvait avoir d'incidence sur le maintien de l'application de la quatrième convention de Genève⁸¹. Le droit de l'occupation prévoit en outre clairement que les personnes protégées se trouvant dans le territoire occupé continuent de bénéficier des protections qu'il accorde, quelles que soient les modifications juridiques qu'ait pu vouloir apporter la puissance occupante, et ce, jusqu'à ce que l'occupation prenne fin⁸².

4.6. Comme elle l'a fait dans son avis sur l'*édification d'un mur*, la Cour, dans l'hypothèse où elle répondrait à la seconde question, devrait rappeler que le droit de l'occupation continue de s'appliquer du seul fait de l'occupation. En tant que puissance occupante, Israël a d'importants droits et obligations au regard du droit international humanitaire qui continuent de s'appliquer, indépendamment des violations alléguées de ce droit ou d'autres règles de droit international⁸³. Ainsi, dans la mesure où la seconde question peut être interprétée comme l'invitant à déclarer que l'occupation israélienne a été frappée de nullité ou d'illicéité, la Cour devrait s'y refuser, au motif qu'une telle appréciation est sans fondement en droit international.

⁷⁹ Voir notamment « *édification d'un mur* », p. 184, par. 120 ; p. 189, par. 132 ; p. 198, par. 153.

⁸⁰ *Ibid.*, p. 167, par. 78 ; p. 177, par. 101.

⁸¹ Voir, par exemple, Nations Unies, Conseil de sécurité, résolution 478 du 20 août 1980, doc. S/RES/478, par. 3 [dossier, pièce n° 1274] (« Considère que toutes les mesures et dispositions législatives et administratives prises par Israël, la Puissance occupante, qui ont modifié ou visent à modifier le caractère et le statut de la Ville sainte de Jérusalem, et en particulier la récente « loi fondamentale » sur Jérusalem, sont nulles et non avenues et doivent être rapportées immédiatement ») ; Assemblée générale, résolution 36/120 E du 10 décembre 1981, « Question de Palestine », doc. A/RES/36/120 E, par. 1 [dossier, pièce n° 389] ; voir également Assemblée générale, résolution ES-11/4 du 12 octobre 2022, doc. A/RES/ES-11/4, par. 3 (« Déclare que les actes illicites de la Fédération de Russie concernant les soi-disant référendums illégaux organisés du 23 au 27 septembre 2022 dans des parties des régions ukrainiennes de Donetsk, de Kherson, de Louhansk et de Zaporijia qui se trouvent ou se sont trouvées en partie sous le contrôle militaire temporaire de la Fédération de Russie ainsi que la tentative d'annexion illégale de ces régions qui a suivi n'ont aucune validité au regard du droit international et ne sauraient servir de fondement à une quelconque modification du statut de ces régions d'Ukraine ») ; Conseil de sécurité, résolutions 670 du 25 septembre 1990, doc. S/RES/670, par. 13 (« Réaffirme que la Convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949, s'applique au Koweït et que, en tant que Haute Partie contractante à la Convention, l'Iraq est tenu d'en respecter pleinement toutes les dispositions et, en particulier, que sa responsabilité est engagée, en vertu de la Convention, en ce qui concerne les infractions graves commises par lui, comme est engagée la responsabilité des particuliers qui commettent ou donnent l'ordre de commettre de telles infractions. ») ; et 662 du 9 août 1990, doc. S/RES/662, 9 août 1990, par. 1 (« Déclare que l'annexion du Koweït par l'Iraq, quels qu'en soient la forme et le prétexte, n'a aucun fondement juridique et est nulle et non avenue »).

⁸² Voir l'avis sur l'*édification d'un mur*, p. 185-187, par. 126 (citant la quatrième convention de Genève, art. 47).

⁸³ Voir *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda)*, arrêt, C.I.J. Recueil 2005, opinion individuelle du juge Kooijmans, p. 157, par. 58 (« Du fait de leur corrélation, les règles relatives à l'occupation constituent une part importante du *jus in bello* ou droit international humanitaire. Le principal objectif de ce droit est de protéger des personnes prises dans un conflit, même s'il prend effectivement en compte les intérêts des parties belligérantes, entre lesquelles il n'opère aucune distinction. En particulier, une occupation résultant d'un recours licite à l'emploi de la force n'est pas distinguée, dans le *jus in bello*, de celle qui découle d'une agression. Cette dernière question est tranchée par l'application du *jus ad bellum*, le droit relatif à l'emploi de la force, qui permet d'attribuer la responsabilité d'actes dont l'occupation est le résultat. »)

CHAPITRE V

CONCLUSION : UNE PAIX JUSTE ET DURABLE EXIGE LA TENUE DE NÉGOCIATIONS DIRECTES ENTRE LES PARTIES

5.1. Il demeure crucial de déployer tous les efforts possibles pour créer les conditions nécessaires à une reprise par les parties de négociations directes leur permettant de traiter des questions liées au statut permanent, qui sont essentielles pour atteindre l'objectif de deux États vivant côte à côte dans la paix et la sécurité. Comme l'ont reconnu le Conseil de sécurité, l'Assemblée générale, la Cour et les parties elles-mêmes, ce n'est que par de telles négociations se tenant dans le cadre établi fondé sur le principe de « l'échange de territoires contre la paix » qu'il sera possible de parvenir à un règlement global, juste et durable du conflit. Dès lors, et compte tenu du contexte actuel, il est urgent que l'ONU, ses États Membres et les parties prennent des mesures pour créer les conditions requises à cette fin. Il est également crucial que l'avis de la Cour en l'espèce serve cet objectif et ne compromette pas involontairement le cadre établi, conformément aux intérêts du Conseil de sécurité et de l'Assemblée générale, aux fonctions qui leur sont propres et au principe fondamental du consentement au règlement judiciaire.

5.2. Le fait que des négociations directes sur le statut permanent n'aient pas lieu à l'heure actuelle entre les parties ne signifie pas qu'une solution négociée à deux États ne soit plus viable. Si l'escalade de la violence et l'existence d'une profonde défiance peuvent entraver le processus, des mesures pragmatiques peuvent toutefois encore être adoptées afin de créer les conditions requises pour une reprise des négociations nécessaires à l'instauration de la paix, de la sécurité et de la pleine réalisation de l'autodétermination palestinienne. Comme l'a souligné l'Assemblée générale dans sa résolution de décembre 2022 intitulée « Règlement pacifique de la question de Palestine », il est

« urgent de déployer collectivement des efforts pour engager des négociations crédibles sur toutes les questions relatives au statut final dans le processus de paix au Moyen-Orient ... [L'Assemblée] demande une fois de plus aux parties de redoubler d'efforts, y compris par la voie de négociations constructives, avec l'appui de la communauté internationale, en vue de parvenir à un règlement juste, durable et global »⁸⁴.

5.3. Ces efforts recouvrent notamment les rencontres organisées selon le format d'Aqaba-Char el-Cheikh, qui ont commencé cette année afin de parvenir à une désescalade des tensions et à un regain du dialogue politique entre les parties. Avec l'appui des États-Unis et des partenaires régionaux que sont l'Égypte et la Jordanie, Israéliens et Palestiniens se sont de nouveau engagés à respecter leurs précédents accords et ont exprimé leur intérêt à « consolider les bases de négociations directes entre [eux] en vue d'atteindre une paix globale, juste et durable »⁸⁵. Bien que les États-Unis aient conscience des préoccupations qui ont conduit l'Assemblée générale à solliciter le présent avis consultatif, ces rencontres et ce dialogue démontrent qu'un règlement négocié demeure d'actualité et peuvent servir à la communauté internationale pour jeter les bases d'une reprise des négociations, telle que préconisée par le Conseil de sécurité et l'Assemblée générale. Les parties ont aussi, malgré les difficultés rencontrées et les désaccords affichés, continué d'entretenir des contacts qui confortent les principes auxquels elles ont souscrit dans les accords d'Oslo, notamment en ce qui concerne la coopération en matière de sécurité⁸⁶.

⁸⁴ Nations Unies, Assemblée générale, résolution 77/25 du 30 novembre 2022, doc. A/RES/77/25, par. 2 [dossier, pièce n° 516].

⁸⁵ Communiqué de Charm el-Cheikh, *supra*, note 7.

⁸⁶ Voir *supra*, note 35.

5.4. Ce nonobstant, pour faire avancer le processus, il est également fondamental que les parties respectent leurs engagements et accords et cessent d'entreprendre des actions unilatérales qui ne font qu'exacerber les tensions, éloigner la perspective de la solution à deux États et les détourner davantage de la paix. Parmi ces actions, on mentionnera le développement des colonies, la poursuite d'objectifs étatiques en dehors du cadre des négociations, la démolition d'habitations et l'incitation à des actes de violence ou leur glorification⁸⁷. Lorsque les Israéliens et les Palestiniens se livrent à de tels actes unilatéraux au lieu de mener des négociations selon le cadre établi, il s'ensuit une montée des violences et de la défiance qui dessert leurs intérêts respectifs. Cela dessert aussi les objectifs du cadre sans cesse soutenu par le Conseil de sécurité et l'Assemblée générale. Les parties doivent au contraire mener des négociations directes, puisque ce n'est que par cette voie, dans le respect du cadre établi, qu'elles pourront parvenir à une paix durable conduisant à la création d'un État palestinien indépendant et viable qui vivrait en toute sécurité et sérénité aux côtés d'Israël, les deux populations pouvant jouir à part égale de la liberté et de la prospérité. Ainsi que l'a fait observer la Cour dans son avis sur *l'édification d'un mur*, il existe une « nécessité urgente que l'Organisation des Nations Unies dans son ensemble redouble ses efforts en vue de mettre rapidement un terme au conflit israélo-palestinien ... et d'établir ainsi une paix juste et durable dans la région »⁸⁸. En la présente espèce, la Cour devrait appuyer cette exhortation, qui n'a à ce jour rien perdu de sa justesse.

5.5. Alors que la Cour a, en 2004, donné un avis consultatif sur un aspect particulier du conflit israélo-palestinien, les questions étendues en même temps que partiales et conclusives formulées en l'espèce pourraient être interprétées comme l'invitant à régler les problèmes liés au statut permanent eux-mêmes — au sujet desquels les parties étaient convenues de négocier dans les accords d'Oslo — et à tirer des conclusions juridiques touchant au cœur du principe corrélé de « l'échange de territoires contre la paix », lequel sous-tend le cadre de négociation établi toujours approuvé et soutenu par l'ONU.

5.6. Afin de préserver l'intégrité de sa fonction judiciaire, la Cour devrait faire usage du pouvoir discrétionnaire qui est le sien en matière consultative en tenant dûment compte des responsabilités que le Conseil de sécurité et l'Assemblée générale ont exercées à l'égard de ce conflit au moyen d'un cadre de négociation, et en respectant le principe du consentement. Il est impératif que la Cour, même si elle se penche sur les conséquences juridiques des violations alléguées du droit international, veille à formuler son avis de sorte à préserver la capacité des parties de négocier les termes de la paix et d'une solution à deux États, conformément au cadre établi tel qu'il résulte des résolutions 242 et 338 du Conseil de sécurité, constamment appuyé par l'Assemblée générale et adopté dans les accords conclus entre les parties⁸⁹. Face à toute préoccupation quant à sa capacité de traiter les questions qui lui sont posées sans sortir du cadre de négociation établi, il est essentiel que la Cour exerce son pouvoir discrétionnaire en matière consultative afin ne pas mettre ce cadre en péril.

⁸⁷ L'Assemblée générale a récemment demandé aux

« deux parties d'agir de façon responsable dans le respect du droit international et de leurs précédents accords et obligations, tant dans leurs politiques que dans leur action, afin d'inverser d'urgence, avec l'appui du Quatuor et d'autres parties intéressées, les tendances négatives, y compris toutes les mesures prises sur le terrain qui contreviennent au droit international, et de mettre en place les conditions nécessaires à la création d'un horizon politique crédible et à la promotion des efforts de paix ».

Nations Unies, Assemblée générale, résolution 77/25 du 30 novembre 2022, doc. A/RES/77/25, par. 5 [dossier, pièce n° 516] ; voir également *ibid.*, par. 7 (« [s]ouligne qu'il importe, en particulier, de mettre immédiatement fin à toutes les activités d'implantation de colonies de peuplement, à la confiscation de terres et aux démolitions de maisons »).

⁸⁸ Avis sur *l'édification d'un mur*, p. 200, par. 161.

⁸⁹ Voir Nations Unies, Assemblée générale, résolution 77/25 du 30 novembre 2022, « Règlement pacifique de la question de Palestine », doc. A/RES/77/25, par. 2 [dossier, pièce n° 516].

5.7. Les États-Unis appellent respectueusement la Cour à faire montre de prudence en pesant la réponse qu'elle donnera à la demande de l'Assemblée générale. Si la Cour venait à rendre un avis qui recouvrirait « la question de la Palestine dans son intégralité »⁹⁰, comme d'aucuns ont pu l'avancer, ou préjugerait — ou semblerait trancher — des questions liées au statut permanent réservées aux négociations, telles que les frontières ou les arrangements de sécurité, cette décision ne contribuerait ni à atteindre les objectifs poursuivis par le cadre de négociation établi, ni à réunir les conditions favorables à une paix négociée, ni, en définitive, à servir les intérêts et fonctions de l'ONU. Il s'ensuit que les questions posées devraient être comprises comme une demande d'avis consultatif visant à faciliter l'exercice par l'Assemblée générale de son rôle et de ses fonctions en promouvant un règlement négocié du conflit, conformément au cadre établi. L'avis de la Cour devrait aider à atteindre cet objectif⁹¹.

Le 25 juillet 2023.

Le conseiller juridique par intérim,
département d'État des États-Unis,
(Signé) Richard C. VISEK.

⁹⁰ Nations Unies, Assemblée générale, Comité pour les droits inaliénables du peuple palestinien, 411^e séance, couverture des réunions, Permanent Observer Briefs Palestinian Rights Committee on Situation in Occupied Territory Situation, Submissions Guidelines for Opinion Case to the World Court, doc. GA/PAL/1452, 3 mai 2023, accessible à l'adresse suivante : <https://press.un.org/en/2023/gapal1452.doc.htm> (page consultée le 27 juillet 2023).

⁹¹ Voir *Effets juridiques de la séparation de l'archipel des Chagos de Maurice en 1965, avis consultatif, C.I.J. Recueil 2019 (I)*, déclaration du juge Tomka, p. 150, par. 6 (« Si la Cour adopte ce raisonnement, elle doit aussi prendre garde de ne pas aller au-delà de ce qui est strictement nécessaire et utile pour l'organe dont émane la demande. »)

**List of Annexes Accompanying the Written Statement
of the United States of America**

July 25, 2023

ANNEX	DESCRIPTION
1	S.C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967) [Dossier No. 1245]
2	S.C. Res. 338, U.N. Doc. S/RES/338 (Oct. 22, 1973)
3	Exchange of Letters between Yitzhak Rabin, Prime Minister of Israel, and Yasser Arafat, PLO Chairman, concerning Israel-PLO Recognition (Sept. 9, 1993)
4	Declaration of Principles on Interim Self-Government Arrangements, A/48/486-S/26560 (Sept. 13, 1993) [Dossier No. 1302]
5	Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, A/51/889-S/1997/357 (Sept. 28, 1995) [Dossier No. 1306]

ANNEX 1

Decisions

At its 1373rd meeting, on 9 November 1967, the Council decided to invite the representatives of the United Arab Republic, Israel and Jordan to participate, without vote, in the discussion of the item entitled "The situation in the Middle East: Letter dated 7 November 1967 from the Permanent Representative of the United Arab Republic addressed to the President of the Security Council (S/8226)".¹¹

At its 1375th meeting, on 13 November 1967, the Council decided to invite the representative of Syria to participate, without vote, in the discussion of the question.

Resolution 242 (1967)

of 22 November 1967

The Security Council,

Expressing its continuing concern with the grave situation in the Middle East,

Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. *Affirms* that the fulfilment of 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 Israel armed forces from territories occupied in the recent conflict;
- (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political 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 force;

2. *Affirms further* the necessity

(a) For guaranteeing freedom of navigation through international waterways in the area;

(b) For achieving a just settlement of the refugee problem;

(c) For guaranteeing the territorial inviolability and political independence of every State in the area,

¹¹ *Ibid.*

Décisions

A sa 1373^e séance, le 9 novembre 1967, le Conseil a décidé d'inviter les représentants de la République arabe unie, d'Israël et de la Jordanie à participer, sans droit de vote, à la discussion de la question intitulée "La situation au Moyen-Orient : Lettre, en date du 7 novembre 1967, adressée au Président du Conseil de sécurité par le représentant permanent de la République arabe unie (S/8226¹¹)".

A sa 1375^e séance, le 13 novembre 1967, le Conseil a décidé d'inviter le représentant de la Syrie à participer, sans droit de vote, à la discussion de la question.

Résolution 242 (1967)

du 22 novembre 1967

Le Conseil de sécurité,

Exprimant l'inquiétude que continue de lui causer la grave situation au Moyen-Orient,

Soulignant l'inadmissibilité de l'acquisition de territoire par la guerre et la nécessité d'œuvrer pour une paix juste et durable permettant à chaque Etat de la région de vivre en sécurité,

Soulignant en outre que tous les Etats Membres, en acceptant la Charte des Nations Unies, ont contracté l'engagement d'agir conformément à l'Article 2 de la Charte,

1. *Affirme* que l'accomplissement des principes de la Charte 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;
- 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;

2. *Affirme en outre* la nécessité

a) De garantir la liberté de navigation sur les voies d'eau internationales de la région;

b) De réaliser un juste règlement du problème des réfugiés;

c) De garantir l'inviolabilité territoriale et l'indépendance politique de chaque Etat de la région, par

¹¹ *Ibid.*

through measures including the establishment of demilitarized zones;

3. *Requests* the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;

4. *Requests* the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.

Adopted unanimously at the 1382nd meeting.

Decision

On 8 December 1967, the following statement which reflected the view of the members of the Council was circulated by the President as a Security Council document (S/8289):¹²

"As regards document S/8053/Add.3,¹² brought to the attention of the Security Council, the members, recalling the consensus reached at its 1366th meeting on 9 July 1967, recognize the necessity of the enlargement by the Secretary-General of the number of observers in the Suez Canal zone and the provision of additional technical material and means of transportation."

des mesures comprenant la création de zones démilitarisées;

3. *Prie* le Secrétaire général de désigner un représentant spécial pour se rendre au Moyen-Orient afin d'y établir et d'y maintenir des rapports avec les Etats intéressés en vue de favoriser un accord et de seconder les efforts tendant à aboutir à un règlement pacifique et accepté, conformément aux dispositions et aux principes de la présente résolution;

4. *Prie* le Secrétaire général de présenter aussitôt que possible au Conseil de sécurité un rapport d'activité sur les efforts du représentant spécial.

Adoptée à l'unanimité à la 1382^e séance.

Décision

Le 8 décembre 1967, le Président a fait distribuer, en tant que document du Conseil (S/8289¹²), la déclaration ci-après qui reflétait l'avis des membres du Conseil :

"En ce qui concerne le document S/8053/Add.3¹², soumis à l'attention du Conseil de sécurité, les membres de celui-ci, rappelant le consensus intervenu à sa 1366^e séance, le 9 juillet 1967, reconnaissent la nécessité de l'accroissement, par le Secrétaire général, du nombre des observateurs dans le secteur du canal de Suez et de la mise à la disposition de ceux-ci de matériel technique et de moyens de transport supplémentaires."

THE CYPRUS QUESTION¹³

Decision

At its 1362nd meeting, on 19 June 1967, the Council decided to invite the representatives of Cyprus, Turkey and Greece to participate, without vote, in the discussion of the item entitled "Letter dated 26 December 1963 from the Permanent Representative of Cyprus addressed to the President of the Security Council (S/5488):¹⁴ report of the Secretary-General on the United Nations Operation in Cyprus (S/7969)".¹⁵

¹² *Ibid.*

¹³ Resolutions or decisions on this question were also adopted in 1963, 1964, 1965 and 1966.

¹⁴ See *Official Records of the Security Council, Eighteenth Year, Supplement for October, November and December 1963.*

¹⁵ *Ibid.*, *Twenty-second Year, Supplement for April, May and June 1967.*

LA QUESTION DE CHYPRE¹³

Décision

A sa 1362^e séance, le 19 juin 1967, le Conseil a décidé d'inviter les représentants de Chypre, de la Turquie et de la Grèce à participer, sans droit de vote, à la discussion de la question intitulée "Lettre, en date du 26 décembre 1963, adressée au Président du Conseil de sécurité par le représentant permanent de Chypre (S/5488¹⁴) : rapport du Secrétaire général sur l'Opération des Nations Unies à Chypre (S/7969¹⁵)".

¹² *Ibid.*

¹³ Question ayant fait l'objet de résolutions ou décisions de la part du Conseil en 1963, 1964, 1965 et 1966.

¹⁴ Voir *Documents officiels du Conseil de sécurité, dix-huitième année, Supplément d'octobre, novembre et décembre 1963.*

¹⁵ *Ibid.*, *vingt-deuxième année, Supplément d'avril, mai et juin 1967.*

ANNEX 2

Resolution 338 (1973)

of 22 October 1973

The Security Council

1. *Calls upon* all parties to the present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the positions they now occupy;

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

3. *Decides* 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 East.

Adopted at the 1747th meeting by 14 votes to none²⁷

²⁷ One member (China) did not participate in the voting.

ANNEX 3

Israel-PLO Recognition: Exchange of Letters between PM Rabin and Chairman Arafat

1. LETTER FROM YASSER ARAFAT TO PRIME MINISTER RABIN:

September 9, 1993

Yitzhak Rabin
Prime Minister of Israel

Mr. Prime Minister,

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

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

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

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

The PLO considers that the signing of the Declaration of Principles constitutes a historic event, inaugurating a new epoch of peaceful coexistence, free from violence and all other acts which endanger peace and stability. Accordingly, the PLO renounces the use of terrorism and other acts of violence and will assume responsibility over all PLO elements and personnel in order to assure their compliance, prevent violations and discipline violators.

In view of the promise of a new era and the signing of the Declaration of Principles and based on Palestinian acceptance of Security Council Resolutions 242 and 338, the PLO affirms that those articles of the Palestinian Covenant which deny Israel's right to exist, and the provisions of the Covenant which are inconsistent with the commitments of this letter are now inoperative and no longer valid. Consequently, the PLO undertakes to submit to the Palestinian National Council for formal approval the necessary changes in regard to the Palestinian Covenant.

Sincerely,

Yasser Arafat
Chairman
The Palestine Liberation Organization

2. LETTER FROM YASSER ARAFAT TO NORWEGIAN FOREIGN MINISTER:

September 9, 1993

His Excellency
Johan Jorgen Holst
Foreign Minister of Norway

Dear Minister Holst,

I would like to confirm to you that, upon the signing of the Declaration of Principles, the PLO encourages and calls upon the Palestinian people in the West Bank and Gaza Strip to take part in the steps leading to the normalization of life, rejecting violence and terrorism, contributing to peace and stability and participating actively in shaping reconstruction, economic development and cooperation.

Sincerely,

Yasser Arafat
Chairman
The Palestine Liberation Organization

3. LETTER FROM PRIME MINISTER RABIN TO YASSER ARAFAT:

September 9, 1993

Yasser Arafat
Chairman
The Palestinian Liberation Organization

Mr. Chairman,

In response to your letter of September 9, 1993, I wish to confirm to you that, in light of the PLO commitments included in your letter, the Government of Israel has decided to recognize the PLO as the representative of the Palestinian people and commence negotiations with the PLO within the Middle East peace process.

Yitzhak Rabin

Prime Minister of Israel

ANNEX 4



**General Assembly
Security Council**

Distr.
GENERAL

A/48/486
S/26560
11 October 1993

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Forty-eighth session
Agenda item 10
REPORT OF THE SECRETARY-GENERAL ON
THE WORK OF THE ORGANIZATION

SECURITY COUNCIL
Forty-eighth year

Letter dated 8 October 1993 from the Permanent Representatives
of the Russian Federation and the United States of America to
the United Nations addressed to the Secretary-General

As co-sponsors of the peace process launched at Madrid in October 1991 and witnesses to the signing at Washington, D.C., on 13 September 1993 of the Declaration of Principles on Interim Self-Government Arrangements, including its Annexes, and its Agreed Minutes, by the Government of the State of Israel and the Palestine Liberation Organization, we have the honour to enclose the above document (see annex).

We would be grateful if you would have the present letter and its attachment circulated as an official document of the forty-eighth session of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Madeleine K. ALBRIGHT
Ambassador
Permanent Representative
to the United Nations of the
United States of America

(Signed) Yuliy M. VORONTSOV
Ambassador
Permanent Representative
to the United Nations of
the Russian Federation

Letter dated 8 October 1993 from the Permanent
Representative of Israel to the United Nations
addressed to the Secretary-General

I have the honour to enclose the Declaration of Principles on Interim Self-Government Arrangements, including its Annexes, and its Agreed Minutes, signed at Washington, D.C., on 13 September 1993 by the Government of the State of Israel and the Palestine Liberation Organization and witnessed by the United States of America and the Russian Federation (see annex).

I would be grateful if you would have the present letter and its attachment circulated as an official document of the forty-eighth session of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Gad YAACOB
Ambassador
Permanent Representative

Letter dated 8 October 1993 from the Permanent
Observer of Palestine to the United Nations
addressed to the Secretary-General

I have the honour to enclose the Declaration of Principles on Interim Self-Government Arrangements, including its Annexes, and its Agreed Minutes, signed at Washington, D.C., on 13 September 1993 by the Government of the State of Israel and the Palestine Liberation Organization and witnessed by the United States of America and the Russian Federation (see annex).

I would be grateful if you would have the present letter and its attachment circulated as an official document of the forty-eighth session of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Dr. Nasser AL-KIDWA
Permanent Observer of Palestine
to the United Nations

ANNEX

Declaration of Principles on Interim
Self-Government Arrangements

The Government of the State of Israel and the PLO team (in the Jordanian-Palestinian delegation to the Middle East Peace Conference) (the "Palestinian Delegation"), representing the Palestinian people, agree that it is time to put an end to decades of confrontation and conflict, recognize their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process. Accordingly, the two sides agree to the following principles:

Article I

AIM OF THE NEGOTIATIONS

The aim of the Israeli-Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian Interim Self-Government Authority, the elected Council (the "Council"), for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council resolutions 242 (1967) and 338 (1973). It is understood that the interim arrangements are an integral part of the whole peace process and that the negotiations on the permanent status will lead to the implementation of Security Council resolutions 242 (1967) and 338 (1973).

Article II

FRAMEWORK FOR THE INTERIM PERIOD

The agreed framework for the interim period is set forth in this Declaration of Principles.

Article III

ELECTIONS

1. In order that the Palestinian people in the West Bank and Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council under agreed supervision and international observation, while the Palestinian police will ensure public order.

2. An agreement will be concluded on the exact mode and conditions of the elections in accordance with the protocol attached as Annex I, with the goal of holding the elections not later than nine months after the entry into force of this Declaration of Principles.

3. These elections will constitute a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements.

Article IV

JURISDICTION

Jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations. The two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period.

Article V

TRANSITIONAL PERIOD AND PERMANENT STATUS NEGOTIATIONS

1. The five-year transitional period will begin upon the withdrawal from the Gaza Strip and Jericho area.
2. Permanent status negotiations will commence as soon as possible, but not later than the beginning of the third year of the interim period, between the Government of Israel and the Palestinian people's representatives.
3. 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 interest.
4. The two parties agree that the outcome of the permanent status negotiations should not be prejudiced or preempted by agreements reached for the interim period.

Article VI

PREPARATORY TRANSFER OF POWERS AND RESPONSIBILITIES

1. Upon the entry into force of this Declaration of Principles and the withdrawal from the Gaza Strip and the Jericho area, a transfer of authority from the Israeli military government and its Civil Administration to the authorized Palestinians for this task, as detailed herein, will commence. This transfer of authority will be of a preparatory nature until the inauguration of the Council.
2. Immediately after the entry into force of this Declaration of Principles and the withdrawal from the Gaza Strip and Jericho area, with the view to promoting economic development in the West Bank and Gaza Strip, authority will be transferred to the Palestinians in the following spheres: education and culture, health, social welfare, direct taxation and tourism. The Palestinian side will commence in building the Palestinian police force, as agreed upon.

Pending the inauguration of the Council, the two parties may negotiate the transfer of additional powers and responsibilities, as agreed upon.

Article VII

INTERIM AGREEMENT

1. The Israeli and Palestinian delegations will negotiate an agreement on the interim period (the "Interim Agreement").
2. The Interim Agreement shall specify, among other things, the structure of the Council, the number of its members, and the transfer of powers and responsibilities from the Israeli military government and its Civil Administration to the Council. The Interim Agreement shall also specify the Council's executive authority, legislative authority in accordance with Article IX below, and the independent Palestinian judicial organs.
3. The Interim Agreement shall include arrangements, to be implemented upon the inauguration of the Council, for the assumption by the Council of all of the powers and responsibilities transferred previously in accordance with Article VI above.
4. In order to enable the Council to promote economic growth, upon its inauguration, the Council will establish, among other things, a Palestinian Electricity Authority, a Gaza Sea Port Authority, a Palestinian Development Bank, a Palestinian Export Promotion Board, a Palestinian Environmental Authority, a Palestinian Land Authority and a Palestinian Water Administration Authority and any other Authorities agreed upon, in accordance with the Interim Agreement, that will specify their powers and responsibilities.
5. After the inauguration of the Council, the Civil Administration will be dissolved, and the Israeli military government will be withdrawn.

Article VIII

PUBLIC ORDER AND SECURITY

In order to guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip, the Council will establish a strong police force, while Israel will continue to carry the responsibility for defending against external threats, as well as the responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order.

Article IX

LAWS AND MILITARY ORDERS

1. The Council will be empowered to legislate, in accordance with the Interim Agreement, within all authorities transferred to it.

2. Both parties will review jointly laws and military orders presently in force in remaining spheres.

Article X

JOINT ISRAELI-PALESTINIAN LIAISON COMMITTEE

In order to provide for a smooth implementation of this Declaration of Principles and any subsequent agreements pertaining to the interim period, upon the entry into force of this Declaration of Principles, a Joint Israeli-Palestinian Liaison Committee will be established in order to deal with issues requiring coordination, other issues of common interest and disputes.

Article XI

ISRAELI-PALESTINIAN COOPERATION IN ECONOMIC FIELDS

Recognizing the mutual benefit of cooperation in promoting the development of the West Bank, the Gaza Strip and Israel, upon the entry into force of this Declaration of Principles, an Israeli-Palestinian Economic Cooperation Committee will be established in order to develop and implement in a cooperative manner the programmes identified in the protocols attached as Annex III and Annex IV.

Article XII

LIAISON AND COOPERATION WITH JORDAN AND EGYPT

The two parties will invite the Governments of Jordan and Egypt to participate in establishing further liaison and cooperation arrangements between the Government of Israel and the Palestinian representatives, on the one hand, and the Governments of Jordan and Egypt, on the other hand, to promote cooperation between them. These arrangements will include the constitution of a Continuing Committee that will decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder. Other matters of common concern will be dealt with by this Committee.

Article XIII

REDEPLOYMENT OF ISRAELI FORCES

1. After the entry into force of this Declaration of Principles, and not later than the eve of elections for the Council, a redeployment of Israeli military forces in the West Bank and the Gaza Strip will take place, in addition to withdrawal of Israeli forces carried out in accordance with Article XIV.

2. In redeploying its military forces, Israel will be guided by the principle that its military forces should be redeployed outside populated areas.

3. Further redeployments to specified locations will be gradually implemented commensurate with the assumption of responsibility for public order and internal security by the Palestinian police force pursuant to Article VIII above.

Article XIV

ISRAELI WITHDRAWAL FROM THE GAZA STRIP AND JERICHO AREA

Israel will withdraw from the Gaza Strip and Jericho area, as detailed in the protocol attached as Annex II.

Article XV

RESOLUTION OF DISPUTES

1. Disputes arising out of the application or interpretation of this Declaration of Principles, or any subsequent agreements pertaining to the interim period, shall be resolved by negotiations through the Joint Liaison Committee to be established pursuant to Article X above.
2. Disputes which cannot be settled by negotiations may be resolved by a mechanism of conciliation to be agreed upon by the parties.
3. The parties may agree to submit to arbitration disputes relating to the interim period, which cannot be settled through conciliation. To this end, upon the agreement of both parties, the parties will establish an Arbitration Committee.

Article XVI

ISRAELI-PALESTINIAN COOPERATION CONCERNING REGIONAL PROGRAMMES

Both parties view the multilateral working groups as an appropriate instrument for promoting a "Marshall Plan", the regional programmes and other programmes, including special programmes for the West Bank and Gaza Strip, as indicated in the protocol attached as Annex IV.

Article XVII

MISCELLANEOUS PROVISIONS

1. This Declaration of Principles will enter into force one month after its signing.
2. All protocols annexed to this Declaration of Principles and Agreed Minutes pertaining thereto shall be regarded as an integral part hereof.

DONE at Washington, D.C., this thirteenth day of September 1993.

For the Government of Israel:

(Signed) Shimon PERES

For the PLO:

(Signed) Mahmud ABBAS

Witnessed By:

The United States of America

(Signed) Warren CHRISTOPHER

The Russian Federation

(Signed) Andrei V. KOZYREV

ANNEX I

Protocol on the Mode and Conditions of Elections

1. Palestinians of Jerusalem who live there will have the right to participate in the election process, according to an agreement between the two sides.

2. In addition, the election agreement should cover, among other things, the following issues:

(a) The system of elections;

(b) The mode of the agreed supervision and international observation and their personal composition;

(c) Rules and regulations regarding election campaigns, including agreed arrangements for the organizing of mass media, and the possibility of licensing a broadcasting and television station.

3. The future status of displaced Palestinians who were registered on 4 June 1967 will not be prejudiced because they are unable to participate in the election process owing to practical reasons.

ANNEX II

Protocol on Withdrawal of Israeli Forces
from the Gaza Strip and Jericho Area

1. The two sides will conclude and sign within two months from the date of entry into force of this Declaration of Principles an agreement on the withdrawal of Israeli military forces from the Gaza Strip and Jericho area. This agreement will include comprehensive arrangements to apply in the Gaza Strip and the Jericho area subsequent to the Israeli withdrawal.

2. Israel will implement an accelerated and scheduled withdrawal of Israeli military forces from the Gaza Strip and Jericho area, beginning immediately with the signing of the agreement on the Gaza Strip and Jericho area and to be completed within a period not exceeding four months after the signing of this agreement.

3. The above agreement will include, among other things:

(a) Arrangements for a smooth and peaceful transfer of authority from the Israeli military government and its Civil Administration to the Palestinian representatives;

(b) Structure, powers and responsibilities of the Palestinian authority in these areas, except: external security, settlements, Israelis, foreign relations and other mutually agreed matters;

(c) Arrangements for the assumption of internal security and public order by the Palestinian police force consisting of police officers recruited locally and from abroad (holding Jordanian passports and Palestinian documents issued by Egypt). Those who will participate in the Palestinian police force coming from abroad should be trained as police and police officers;

(d) A temporary international or foreign presence, as agreed upon;

(e) Establishment of a joint Palestinian-Israeli Coordination and Cooperation Committee for mutual security purposes;

(f) An economic development and stabilization programme including the establishment of an Emergency Fund, to encourage foreign investment and financial and economic support. Both sides will coordinate and cooperate jointly and unilaterally with regional and international parties to support these aims;

(g) Arrangements for a safe passage for persons and transportation between the Gaza Strip and Jericho area.

4. The above agreement will include arrangements for coordination between both parties regarding passages:

(a) Gaza - Egypt;

(b) Jericho - Jordan.

5. The offices responsible for carrying out the powers and responsibilities of the Palestinian authority under this Annex II and Article VI of the Declaration of Principles will be located in the Gaza Strip and in the Jericho area pending the inauguration of the Council.

6. Other than these agreed arrangements, the status of the Gaza Strip and Jericho area will continue to be an integral part of the West Bank and Gaza Strip, and will not be changed in the interim period.

ANNEX III

Protocol on Israeli-Palestinian Cooperation
in Economic and Development Programmes

The two sides agree to establish an Israeli-Palestinian Continuing Committee for Economic Cooperation, focusing, among other things, on the following:

1. Cooperation in the field of water, including a Water Development Programme prepared by experts from both sides, which will also specify the mode of cooperation in the management of water resources in the West Bank and Gaza Strip, and will include proposals for studies and plans on water rights of each party, as well as on the equitable utilization of joint water resources for implementation in and beyond the interim period.
2. Cooperation in the field of electricity, including an Electricity Development Programme, which will also specify the mode of cooperation for the production, maintenance, purchase and sale of electricity resources.
3. Cooperation in the field of energy, including an Energy Development Programme, which will provide for the exploitation of oil and gas for industrial purposes, particularly in the Gaza Strip and in the Negev, and will encourage further joint exploitation of other energy resources. This Programme may also provide for the construction of a petrochemical industrial complex in the Gaza Strip and the construction of oil and gas pipelines.
4. Cooperation in the field of finance, including a Financial Development and Action Programme for the encouragement of international investment in the West Bank and the Gaza Strip, and in Israel, as well as the establishment of a Palestinian Development Bank.
5. Cooperation in the field of transport and communications, including a Programme, which will define guidelines for the establishment of a Gaza Sea Port Area, and will provide for the establishing of transport and communications lines to and from the West Bank and the Gaza Strip to Israel and to other countries. In addition, this Programme will provide for carrying out the necessary construction of roads, railways, communications lines, etc.
6. Cooperation in the field of trade, including studies, and Trade Promotion Programmes, which will encourage local, regional and interregional trade, as well as a feasibility study of creating free trade zones in the Gaza Strip and in Israel, mutual access to these zones and cooperation in other areas related to trade and commerce.
7. Cooperation in the field of industry, including Industrial Development Programmes, which will provide for the establishment of joint Israeli-Palestinian Industrial Research and Development Centres, will promote Palestinian-Israeli joint ventures, and provide guidelines for cooperation in the textile, food, pharmaceutical, electronics, diamonds, computer and science-based industries.

8. A Programme for cooperation in, and regulation of, labour relations and cooperation in social welfare issues.

9. A Human Resource Development and Cooperation Plan, providing for joint Israeli-Palestinian workshops and seminars, and for the establishment of joint vocational training centres, research institutes and data banks.

10. An Environmental Protection Plan, providing for joint and/or coordinated measures in this sphere.

11. A Programme for developing coordination and cooperation in the field of communications and media.

12. Any other programmes of mutual interest.

ANNEX IV

Protocol on Israeli-Palestinian Cooperation
concerning Regional Development Programmes

1. The two sides will cooperate in the context of the multilateral peace efforts in promoting a Development Programme for the region, including the West Bank and the Gaza Strip, to be initiated by the Group of Seven. The parties will request the Group of Seven to seek the participation in this Programme of other interested States, such as members of the Organisation for Economic Cooperation and Development, regional Arab States and institutions, as well as members of the private sector.

2. The Development Programme will consist of two elements:

(a) An Economic Development Programme for the West Bank and the Gaza Strip;

(b) A Regional Economic Development Programme.

A. The Economic Development Programme for the West Bank and the Gaza Strip will consist of the following elements:

- (1) A Social Rehabilitation Programme, including a Housing and Construction Programme;
- (2) A Small and Medium Business Development Plan;
- (3) An Infrastructure Development Programme (water, electricity, transportation and communications, etc.);
- (4) A Human Resources Plan;
- (5) Other programmes.

B. The Regional Economic Development Programme may consist of the following elements:

- (1) The establishment of a Middle East Development Fund, as a first step, and a Middle East Development Bank, as a second step;
- (2) The development of a joint Israeli-Palestinian-Jordanian Plan for coordinated exploitation of the Dead Sea area;
- (3) The Mediterranean Sea (Gaza) - Dead Sea Canal;
- (4) Regional desalinization and other water development projects;
- (5) A regional plan for agricultural development, including a coordinated regional effort for the prevention of desertification;

- (6) Interconnection of electricity grids;
- (7) Regional cooperation for the transfer, distribution and industrial exploitation of gas, oil and other energy resources;
- (8) A Regional Tourism, Transportation and Telecommunications Development Plan;
- (9) Regional cooperation in other spheres.

3. The two sides will encourage the multilateral working groups and will coordinate towards their success. The two parties will encourage inter-sessional activities, as well as pre-feasibility and feasibility studies, within the various multilateral working groups.

Agreed Minutes to the Declaration of Principles
on Interim Self-Government Arrangements

A. GENERAL UNDERSTANDINGS AND AGREEMENTS

Any powers and responsibilities transferred to the Palestinians pursuant to the Declaration of Principles prior to the inauguration of the Council will be subject to the same principles pertaining to Article IV, as set out in these Agreed Minutes below.

B. SPECIFIC UNDERSTANDINGS AND AGREEMENTS

Article IV

It is understood that:

1. Jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, military locations and Israelis.
2. The Council's jurisdiction will apply with regard to the agreed powers, responsibilities, spheres and authorities transferred to it.

Article VI (2)

It is agreed that the transfer of authority will be as follows:

1. The Palestinian side will inform the Israeli side of the names of the authorized Palestinians who will assume the powers, authorities and responsibilities that will be transferred to the Palestinians according to the Declaration of Principles in the following fields: education and culture, health, social welfare, direct taxation, tourism and any other authorities agreed upon.
2. It is understood that the rights and obligations of these offices will not be affected.
3. Each of the spheres described above will continue to enjoy existing budgetary allocations in accordance with arrangements to be mutually agreed upon. These arrangements also will provide for the necessary adjustments required in order to take into account the taxes collected by the direct taxation office.
4. Upon the execution of the Declaration of Principles, the Israeli and Palestinian delegations will immediately commence negotiations on a detailed plan for the transfer of authority on the above offices in accordance with the above understandings.

Article VII (2)

The Interim Agreement will also include arrangements for coordination and cooperation.

Article VII (5)

The withdrawal of the military government will not prevent Israel from exercising the powers and responsibilities not transferred to the Council.

Article VIII

It is understood that the Interim Agreement will include arrangements for cooperation and coordination between the two parties in this regard. It is also agreed that the transfer of powers and responsibilities to the Palestinian police will be accomplished in a phased manner, as agreed in the Interim Agreement.

Article X

It is agreed that, upon the entry into force of the Declaration of Principles, the Israeli and Palestinian delegations will exchange the names of the individuals designated by them as members of the Joint Israeli-Palestinian Liaison Committee. It is further agreed that each side will have an equal number of members in the Joint Committee. The Joint Committee will reach decisions by agreement. The Joint Committee may add other technicians and experts, as necessary. The Joint Committee will decide on the frequency and place or places of its meetings.

ANNEX II

It is understood that, subsequent to the Israeli withdrawal, Israel will continue to be responsible for external security, and for internal security and public order of settlements and Israelis. Israeli military forces and civilians may continue to use roads freely within the Gaza Strip and the Jericho area.

DONE at Washington, D.C., this thirteenth day of September 1993.

For the Government of Israel:

(Signed) Shimon PERES

For the PLO:

(Signed) Mahmud ABBAS

Witnessed By:

The United States of America

(Signed) Warren CHRISTOPHER

The Russian Federation

(Signed) Andrei V. KOZYREV

ANNEX 5



General Assembly
Security Council

Distr.
GENERAL

A/51/889
S/1997/357
5 May 1997

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Fifty-first session
Agenda item 10
REPORT OF THE SECRETARY-GENERAL
ON THE WORK OF THE ORGANIZATION

SECURITY COUNCIL
Fifty-second year

Letter dated 27 December 1995 from the Permanent Representatives
of the Russian Federation and the United States of America to
the United Nations addressed to the Secretary-General

As co-sponsors of the peace process launched at Madrid in October 1991, and witnesses to the signing at Washington, D.C., on 28 September 1995, of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, by the Government of Israel and the Palestine Liberation Organization, we have the honour to enclose the above document (see annex).

We would be grateful if you would have the present letter and its attachment circulated as an official document of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Madeleine K. ALBRIGHT
Ambassador
Permanent Representative
of the United States of
America to the United Nations

(Signed) Sergey V. LAVROV
Ambassador
Permanent Representative
of the Russian Federation
to the United Nations



Letter dated 28 December 1995 from the Permanent Representative of
Israel to the United Nations addressed to the Secretary-General

I have the honour to enclose the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed at Washington, D.C., on 28 September 1995, by the Government of the State of Israel and the Palestine Liberation Organization and witnessed by the United States of America, the Russian Federation, Egypt, Jordan, Norway and the European Union (see annex).

I would be grateful if you would have the present letter and its attachment circulated as an official document of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Gad YAACOBI
Ambassador
Permanent Representative of
Israel to the United Nations

/...

Letter dated 19 December 1995 from the Permanent Observer
of Palestine to the United Nations addressed to the
Secretary-General

I have the honour to enclose the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed at Washington, D.C., on 28 September 1995, by the Government of the State of Israel and the Palestine Liberation Organization and witnessed by the United States of America, the Russian Federation, Egypt, Jordan, Norway and the European Union (see annex).

I would be grateful if you would have the present letter and its attachment circulated as an official document of the General Assembly, under agenda item 10, and of the Security Council.

(Signed) Dr. Nasser AL-KIDWA
Permanent Observer of
Palestine to the United Nations

/...

ANNEX

Israeli-Palestinian Interim Agreement on the West Bank
and the Gaza Strip*

Washington, D.C., 28 September 1995

* The original annexes to the Agreement, including the maps, have been placed in the Treaty Section of the Office of Legal Affairs, and are available for consultation by interested Member States.

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The Government of the State of Israel and the Palestine Liberation Organization (hereinafter "the PLO"), the representative of the Palestinian people;

PREAMBLE

- WITHIN** the framework of the Middle East peace process initiated at Madrid in October 1991;
- REAFFIRMING** their determination to put an end to decades of confrontation and to live in peaceful coexistence, mutual dignity and security, while recognizing their mutual legitimate and political rights;
- REAFFIRMING** their desire to achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process;
- RECOGNIZING** that the peace process and the new era that it has created, as well as the new relationship established between the two Parties as described above, are irreversible, and the determination of the two Parties to maintain, sustain and continue the peace process;
- RECOGNIZING** that the aim of the Israeli-Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian Interim Self-Government Authority, *i.e.* the elected Council (hereinafter "the Council" or "the Palestinian Council"), and the elected Ra'ees of the Executive Authority, for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years from the date of signing the Agreement on the Gaza Strip and the Jericho Area (hereinafter "the Gaza-Jericho Agreement") on May 4, 1994, leading to a permanent settlement based on Security Council Resolutions 242 and 338;
- REAFFIRMING** their understanding that the interim self-government arrangements contained in this Agreement are an integral part of the whole peace process, that the negotiations on the permanent status, that will start as soon as possible but not later than May 4, 1996, will lead to the implementation of Security Council Resolutions 242 and 338, and that the Interim Agreement shall settle all the issues of the interim period and that no such issues will be deferred to the agenda of the permanent status negotiations;
- REAFFIRMING** their adherence to the mutual recognition and commitments expressed in the letters dated September 9, 1993, signed by and

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exchanged between the Prime Minister of Israel and the Chairman of the PLO;

DESIROUS

of putting into effect the Declaration of Principles on Interim Self-Government Arrangements signed at Washington, DC on September 13, 1993, and the Agreed Minutes thereto (hereinafter "the DOP") and in particular Article III and Annex I concerning the holding of direct, free and general political elections for the Council and the Ra'ees of the Executive Authority in order that the Palestinian people in the West Bank, Jerusalem and the Gaza Strip may democratically elect accountable representatives;

RECOGNIZING

that these elections will constitute a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements and will provide a democratic basis for the establishment of Palestinian institutions;

REAFFIRMING

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 Israelis;

FOLLOWING

the Gaza-Jericho Agreement; the Agreement on Preparatory Transfer of Powers and Responsibilities signed at Erez on August 29, 1994 (hereinafter "the Preparatory Transfer Agreement"); and the Protocol on Further Transfer of Powers and Responsibilities signed at Cairo on August 27, 1995 (hereinafter "the Further Transfer Protocol"); which three agreements will be superseded by this Agreement;

HEREBY AGREE as follows:

CHAPTER 1 - THE COUNCIL

ARTICLE I

Transfer of Authority

1. Israel shall transfer powers and responsibilities as specified in this Agreement from the Israeli military government and its Civil Administration to the Council in accordance with this Agreement. Israel shall continue to exercise powers and responsibilities not so transferred.
2. Pending the inauguration of the Council, the powers and responsibilities transferred to the Council shall be exercised by the Palestinian Authority established in accordance with the Gaza-Jericho Agreement, which shall also have all the rights, liabilities and obligations to be assumed by the Council in this regard. Accordingly, the term "Council" throughout this Agreement shall, pending the inauguration of the Council, be construed as meaning the Palestinian Authority.
3. The transfer of powers and responsibilities to the police force established by the Palestinian Council in accordance with Article XIV below (hereinafter "the Palestinian Police") shall be accomplished in a phased manner, as detailed in this Agreement and in the Protocol concerning Redeployment and Security Arrangements attached as Annex I to this Agreement (hereinafter "Annex I").
4. As regards the transfer and assumption of authority in civil spheres, powers and responsibilities shall be transferred and assumed as set out in the Protocol Concerning Civil Affairs attached as Annex III to this Agreement (hereinafter "Annex III").
5. After the inauguration of the Council, the Civil Administration in the West Bank will be dissolved, and the Israeli military government shall be withdrawn. The withdrawal of the military government shall not prevent it from exercising the powers and responsibilities not transferred to the Council.
6. A Joint Civil Affairs Coordination and Cooperation Committee (hereinafter "the CAC"), Joint Regional Civil Affairs Subcommittees, one for the Gaza Strip and the other for the West Bank, and District Civil Liaison Offices in the West Bank shall be established in order to provide for coordination and cooperation in civil affairs between the Council and Israel, as detailed in Annex III.
7. The offices of the Council, and the offices of its Ra'ees and its Executive Authority and other committees, shall be located in areas under Palestinian territorial jurisdiction in the West Bank and the Gaza Strip.

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ARTICLE II

Elections

1. In order that the Palestinian people of the West Bank and the Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council and the Ra'ees of the Executive Authority of the Council in accordance with the provisions set out in the Protocol concerning Elections attached as Annex II to this Agreement (hereinafter "Annex II").
2. These elections will constitute a significant interim preparatory step towards the realization of the legitimate rights of the Palestinian people and their just requirements and will provide a democratic basis for the establishment of Palestinian institutions.
3. Palestinians of Jerusalem who live there may participate in the election process in accordance with the provisions contained in this Article and in Article VI of Annex II (Election Arrangements concerning Jerusalem).
4. The elections shall be called by the Chairman of the Palestinian Authority immediately following the signing of this Agreement to take place at the earliest practicable date following the redeployment of Israeli forces in accordance with Annex I, and consistent with the requirements of the election timetable as provided in Annex II, the Election Law and the Election Regulations, as defined in Article I of Annex II.

ARTICLE III

Structure of the Palestinian Council

1. The Palestinian Council and the Ra'ees of the Executive Authority of the Council constitute the Palestinian Interim Self-Government Authority, which will be elected by the Palestinian people of the West Bank, Jerusalem and the Gaza Strip for the transitional period agreed in Article I of the DOP.
2. The Council shall possess both legislative power and executive power, in accordance with Articles VII and IX of the DOP. The Council shall carry out and be responsible for all the legislative and executive powers and responsibilities transferred to it under this Agreement. The exercise of legislative powers shall be in accordance with Article XVIII of this Agreement (Legislative Powers of the Council).
3. The Council and the Ra'ees of the Executive Authority of the Council shall be directly and simultaneously elected by the Palestinian people of the West Bank, Jerusalem and the Gaza Strip, in accordance with the provisions of this

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Agreement and the Election Law and Regulations, which shall not be contrary to the provisions of this Agreement.

4. The Council and the Ra'ees of the Executive Authority of the Council shall be elected for a transitional period not exceeding five years from the signing of the Gaza-Jericho Agreement on May 4, 1994.
5. Immediately upon its inauguration, the Council will elect from among its members a Speaker. The Speaker will preside over the meetings of the Council, administer the Council and its committees, decide on the agenda of each meeting, and lay before the Council proposals for voting and declare their results.
6. The jurisdiction of the Council shall be as determined in Article XVII of this Agreement (Jurisdiction).
7. The organization, structure and functioning of the Council shall be in accordance with this Agreement and the Basic Law for the Palestinian Interim Self-Government Authority, which Law shall be adopted by the Council. The Basic Law and any regulations made under it shall not be contrary to the provisions of this Agreement.
8. The Council shall be responsible under its executive powers for the offices, services and departments transferred to it and may establish, within its jurisdiction, ministries and subordinate bodies, as necessary for the fulfillment of its responsibilities.
9. The Speaker will present for the Council's approval proposed internal procedures that will regulate, among other things, the decision-making processes of the Council.

ARTICLE IV

Size of the Council

The Palestinian Council shall be composed of 82 representatives and the Ra'ees of the Executive Authority, who will be directly and simultaneously elected by the Palestinian people of the West Bank, Jerusalem and the Gaza Strip.

ARTICLE V

The Executive Authority of the Council

1. The Council will have a committee that will exercise the executive authority of the Council, formed in accordance with paragraph 4 below (hereinafter "the Executive Authority").
2. The Executive Authority shall be bestowed with the executive authority of the Council and will exercise it on behalf of the Council. It shall determine its own internal procedures and decision making processes.
3. The Council will publish the names of the members of the Executive Authority immediately upon their initial appointment and subsequent to any changes.
4.
 - a. The Ra'ees of the Executive Authority shall be an *ex officio* member of the Executive Authority.
 - b. All of the other members of the Executive Authority, except as provided in subparagraph c. below, shall be members of the Council, chosen and proposed to the Council by the Ra'ees of the Executive Authority and approved by the Council.
 - c. The Ra'ees of the Executive Authority shall have the right to appoint some persons, in number not exceeding twenty percent of the total membership of the Executive Authority, who are not members of the Council, to exercise executive authority and participate in government tasks. Such appointed members may not vote in meetings of the Council.
 - d. Non-elected members of the Executive Authority must have a valid address in an area under the jurisdiction of the Council.

ARTICLE VI

Other Committees of the Council

1. The Council may form small committees to simplify the proceedings of the Council and to assist in controlling the activity of its Executive Authority.
2. Each committee shall establish its own decision-making processes within the general framework of the organization and structure of the Council.

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ARTICLE VII

Open Government

1. All meetings of the Council and of its committees, other than the Executive Authority, shall be open to the public, except upon a resolution of the Council or the relevant committee on the grounds of security, or commercial or personal confidentiality.
2. Participation in the deliberations of the Council, its committees and the Executive Authority shall be limited to their respective members only. Experts may be invited to such meetings to address specific issues on an *ad hoc* basis.

ARTICLE VIII

Judicial Review

Any person or organization affected by any act or decision of the Ra'ees of the Executive Authority of the Council or of any member of the Executive Authority, who believes that such act or decision exceeds the authority of the Ra'ees or of such member, or is otherwise incorrect in law or procedure, may apply to the relevant Palestinian Court of Justice for a review of such activity or decision.

ARTICLE IX

Powers and Responsibilities of the Council

1. Subject to the provisions of this Agreement, the Council will, within its jurisdiction, have legislative powers as set out in Article XVIII of this Agreement, as well as executive powers.
2. The executive power of the Palestinian Council shall extend to all matters within its jurisdiction under this Agreement or any future agreement that may be reached between the two Parties during the interim period. It shall include the power to formulate and conduct Palestinian policies and to supervise their implementation, to issue any rule or regulation under powers given in approved legislation and administrative decisions necessary for the realization of Palestinian self-government, the power to employ staff, sue and be sued and conclude contracts, and the power to keep and administer registers and records of the population, and issue certificates, licenses and documents.
3. The Palestinian Council's executive decisions and acts shall be consistent with the provisions of this Agreement.

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4. The Palestinian Council may adopt all necessary measures in order to enforce the law and any of its decisions, and bring proceedings before the Palestinian courts and tribunals.
5.
 - a. In accordance with the DOP, the Council will not have powers and responsibilities in the sphere of foreign relations, which sphere includes the establishment abroad of embassies, consulates or other types of foreign missions and posts or permitting their establishment in the West Bank or the Gaza Strip, the appointment of or admission of diplomatic and consular staff, and the exercise of diplomatic functions.
 - b. Notwithstanding the provisions of this paragraph, the PLO may conduct negotiations and sign agreements with states or international organizations for the benefit of the Council in the following cases only:
 - (1) economic agreements, as specifically provided in Annex V of this Agreement;
 - (2) agreements with donor countries for the purpose of implementing arrangements for the provision of assistance to the Council ;
 - (3) agreements for the purpose of implementing the regional development plans detailed in Annex IV of the DOP or in agreements entered into in the framework of the multilateral negotiations; and
 - (4) cultural, scientific and educational agreements.
 - c. Dealings between the Council and representatives of foreign states and international organizations, as well as the establishment in the West Bank and the Gaza Strip of representative offices other than those described in subparagraph 5.a above, for the purpose of implementing the agreements referred to in subparagraph 5.b above, shall not be considered foreign relations.
6. Subject to the provisions of this Agreement, the Council shall, within its jurisdiction, have an independent judicial system composed of independent Palestinian courts and tribunals.

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CHAPTER 2 - REDEPLOYMENT AND SECURITY ARRANGEMENTS

ARTICLE X

Redeployment of Israeli Military Forces

1. The first phase of the Israeli military forces redeployment will cover populated areas in the West Bank - cities, towns, villages, refugee camps and hamlets - as set out in Annex I, and will be completed prior to the eve of the Palestinian elections, *i.e.*, 22 days before the day of the elections.
2. Further redeployments of Israeli military forces to specified military locations will commence after the inauguration of the Council and will be gradually implemented commensurate with the assumption of responsibility for public order and internal security by the Palestinian Police, to be completed within 18 months from the date of the inauguration of the Council as detailed in Articles XI (Land) and XIII (Security), below and in Annex I.
3. The Palestinian Police shall be deployed and shall assume responsibility for public order and internal security for Palestinians in a phased manner in accordance with Article XIII (Security) below and Annex I.
4. Israel shall continue to carry the responsibility for external security, as well as the responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order.
5. For the purpose of this Agreement, "Israeli military forces" includes Israel Police and other Israeli security forces.

ARTICLE XI

Land

1. The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.
2. The two sides agree that West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations, will come under the jurisdiction of the Palestinian Council in a phased manner, to be completed within 18 months from the date of the inauguration of the Council, as specified below:
 - a. Land in populated areas (Areas A and B), including government and Al Waqf land, will come under the jurisdiction of the Council during the first phase of redeployment.

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- b. All civil powers and responsibilities, including planning and zoning, in Areas A and B, set out in Annex III, will be transferred to and assumed by the Council during the first phase of redeployment.
 - c. In Area C, during the first phase of redeployment Israel will transfer to the Council civil powers and responsibilities not relating to territory, as set out in Annex III.
 - d. 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.
 - e. During the further redeployment phases to be completed within 18 months from the date of the inauguration of the Council, powers and responsibilities relating to territory will be transferred gradually to Palestinian jurisdiction that will cover West Bank and Gaza Strip territory, except for the issues that will be negotiated in the permanent status negotiations.
 - f. The specified military locations referred to in Article X, paragraph 2 above 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.
3. For the purpose of this Agreement and until the completion of the first phase of the further redeployments:
- a. "Area A" means the populated areas delineated by a red line and shaded in brown on attached map No. 1;
 - b. "Area B" means the populated areas delineated by a red line and shaded in yellow on attached map No. 1, and the built-up area of the hamlets listed in Appendix 6 to Annex I; and
 - c. "Area C" means areas of the West Bank outside Areas A and B, which, except for the issues that will be negotiated in the permanent status negotiations, will be gradually transferred to Palestinian jurisdiction in accordance with this Agreement.

ARTICLE XII

Arrangements for Security and Public Order

1. In order to guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip, the Council shall establish a strong police force as set out in Article XIV below. Israel shall continue to carry the responsibility for defense against external threats, including the responsibility for protecting the Egyptian and Jordanian borders, and for defense against external threats from the sea and from the air, 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 responsibility.
2. Agreed security arrangements and coordination mechanisms are specified in Annex I.
3. A Joint Coordination and Cooperation Committee for Mutual Security Purposes (hereinafter "the JSC"), as well as Joint Regional Security Committees (hereinafter "RSCs") and Joint District Coordination Offices (hereinafter "DCOs"), are hereby established as provided for in Annex I.
4. The security arrangements provided for in this Agreement and in Annex I may be reviewed at the request of either Party and may be amended by mutual agreement of the Parties. Specific review arrangements are included in Annex I.
5. For the purpose of this Agreement, "the Settlements" means, in the West Bank - the settlements in Area C; and in the Gaza Strip - the Gush Katif and Erez settlement areas, as well as the other settlements in the Gaza Strip, as shown on attached map No. 2.

ARTICLE XIII

Security

1. The Council will, upon completion of the redeployment of Israeli military forces in each district, as set out in Appendix 1 to Annex I, assume the powers and responsibilities for internal security and public order in Area A in that district.
2. 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.

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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 2 to Annex I 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 Annex 1.
- (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.

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- (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.

ARTICLE XIV

The Palestinian Police

1. The Council shall establish a strong police force. The duties, functions, structure, deployment and composition of the Palestinian Police, together with provisions regarding its equipment and operation, as well as rules of conduct, are set out in Annex I.
2. The Palestinian police force established under the Gaza-Jericho Agreement will be fully integrated into the Palestinian Police and will be subject to the provisions of this Agreement.
3. 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.
4. Except for the arms, ammunition and equipment of the Palestinian Police described in Annex I, and those of the Israeli military forces, no organization, group or individual in the West Bank and the Gaza Strip shall manufacture, sell, acquire, possess, import or otherwise introduce into the West Bank or the Gaza Strip any firearms, ammunition, weapons, explosives, gunpowder or any related equipment, unless otherwise provided for in Annex I.

ARTICLE XV

Prevention of Hostile Acts

1. 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 offenders.
2. Specific provisions for the implementation of this Article are set out in Annex I. /...

ARTICLE XVI

Confidence Building Measures

With a view to fostering a positive and supportive public atmosphere to accompany the implementation of this Agreement, to establish a solid basis of mutual trust and good faith, and in order to facilitate the anticipated cooperation and new relations between the two peoples, both Parties agree to carry out confidence building measures as detailed herewith:

1. Israel will release or turn over to the Palestinian side, Palestinian detainees and prisoners, residents of the West Bank and the Gaza Strip. The first stage of release of these prisoners and detainees will take place on the signing of this Agreement and the second stage will take place prior to the date of the elections. There will be a third stage of release of detainees and prisoners. Detainees and prisoners will be released from among categories detailed in Annex VII (Release of Palestinian Prisoners and Detainees). Those released will be free to return to their homes in the West Bank and the Gaza Strip.
2. Palestinians who have maintained contact with the Israeli authorities will not be subjected to acts of harassment, violence, retribution or prosecution. Appropriate ongoing measures will be taken, in coordination with Israel, in order to ensure their protection.
3. Palestinians from abroad whose entry into the West Bank and the Gaza Strip is approved pursuant to this Agreement, and to whom the provisions of this Article are applicable, will not be prosecuted for offenses committed prior to September 13, 1993.

CHAPTER 3 - LEGAL AFFAIRS

ARTICLE XVII

Jurisdiction

1. In accordance with the DOP, the jurisdiction of the Council will cover West Bank and Gaza Strip territory as a single territorial unit, except for:
 - a. issues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis; and
 - b. powers and responsibilities not transferred to the Council.

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2. Accordingly, the authority of the Council encompasses all matters that fall within its territorial, functional and personal jurisdiction, as follows:
 - a. The territorial jurisdiction of the Council shall encompass Gaza Strip territory, except for the Settlements and the Military Installation Area shown on map No. 2, and West Bank territory, except for Area C which, except for the issues that will be negotiated in the permanent status negotiations, will be gradually transferred to Palestinian jurisdiction in three phases, each to take place after an interval of six months, to be completed 18 months after the inauguration of the Council. At this time, the jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for the issues that will be negotiated in the permanent status negotiations.

Territorial jurisdiction includes land, subsoil and territorial waters, in accordance with the provisions of this Agreement.
 - b. The functional jurisdiction of the Council extends to all powers and responsibilities transferred to the Council, as specified in this Agreement or in any future agreements that may be reached between the Parties during the interim period.
 - c. The territorial and functional jurisdiction of the Council will apply to all persons, except for Israelis, unless otherwise provided in this Agreement.
 - d. Notwithstanding subparagraph a. above, the Council shall have functional jurisdiction in Area C, as detailed in Article IV of Annex III.
3. The Council has, within its authority, legislative, executive and judicial powers and responsibilities, as provided for in this Agreement.
4.
 - a. Israel, through its military government, has the authority over areas that are not under the territorial jurisdiction of the Council, powers and responsibilities not transferred to the Council and Israelis.
 - b. To this end, the Israeli military government shall retain the necessary legislative, judicial and executive powers and responsibilities, in accordance with international law. This provision shall not derogate from Israel's applicable legislation over Israelis *in personam*.
5. The exercise of authority with regard to the electromagnetic sphere and air space shall be in accordance with the provisions of this Agreement.
6. Without derogating from the provisions of this Article, legal arrangements, detailed in the Protocol Concerning Legal Matters attached as Annex IV to this Agreement (hereinafter "Annex IV") shall be observed. Israel and the Council /... may negotiate further legal arrangements.

7. Israel and the Council shall cooperate on matters of legal assistance in criminal and civil matters through a legal committee (hereinafter "the Legal Committee"), hereby established.
8. The Council's jurisdiction will extend gradually to cover West Bank and Gaza Strip territory, except for the issues to be negotiated in the permanent status negotiations, through a series of redeployments of the Israeli military forces. The first phase of the redeployment of Israeli military forces will cover populated areas in the West Bank - cities, towns, refugee camps and hamlets, as set out in Annex I - and will be completed prior to the eve of the Palestinian elections, *i.e.* 22 days before the day of the elections. Further redeployments of Israeli military forces to specified military locations will commence immediately upon the inauguration of the Council and will be effected in three phases, each to take place after an interval of six months, to be concluded no later than eighteen months from the date of the inauguration of the Council.

ARTICLE XVIII

Legislative Powers of the Council

1. For the purposes of this Article, legislation shall mean any primary and secondary legislation, including basic laws, laws, regulations and other legislative acts.
2. The Council has the power, within its jurisdiction as defined in Article XVII of this Agreement, to adopt legislation.
3. While the primary legislative power shall lie in the hands of the Council as a whole, the Ra'ees of the Executive Authority of the Council shall have the following legislative powers:
 - a. the power to initiate legislation or to present proposed legislation to the Council;
 - b. the power to promulgate legislation adopted by the Council; and
 - c. the power to issue secondary legislation, including regulations, relating to any matters specified and within the scope laid down in any primary legislation adopted by the Council.
4. a. Legislation, including legislation which amends or abrogates existing laws or military orders, which exceeds the jurisdiction of the Council or which is otherwise inconsistent with the provisions of the DOP, this Agreement, or of any other agreement that may be reached between the two sides during the interim period, shall have no effect and shall be void *ab initio*.

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- b. The Ra'ees of the Executive Authority of the Council shall not promulgate legislation adopted by the Council if such legislation falls under the provisions of this paragraph.
- 5. All legislation shall be communicated to the Israeli side of the Legal Committee.
- 6. Without derogating from the provisions of paragraph 4 above, the Israeli side of the Legal Committee may refer for the attention of the Committee any legislation regarding which Israel considers the provisions of paragraph 4 apply, in order to discuss issues arising from such legislation. The Legal Committee will consider the legislation referred to it at the earliest opportunity.

ARTICLE XIX

Human Rights and the Rule of Law

Israel and the Council shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law.

ARTICLE XX

Rights, Liabilities and Obligations

- 1. a. The transfer of powers and responsibilities from the Israeli military government and its civil administration to the Council, as detailed in Annex III, includes all related rights, liabilities and obligations arising with regard to acts or omissions which occurred prior to such transfer. Israel will cease to bear any financial responsibility regarding such acts or omissions and the Council will bear all financial responsibility for these and for its own functioning.
- b. Any financial claim made in this regard against Israel will be referred to the Council.
- c. Israel shall provide the Council with the information it has regarding pending and anticipated claims brought before any court or tribunal against Israel in this regard.
- d. Where legal proceedings are brought in respect of such a claim, Israel will notify the Council and enable it to participate in defending the claim and raise any arguments on its behalf.
- e. In the event that an award is made against Israel by any court or tribunal in respect of such a claim, the Council shall immediately reimburse Israel the full amount of the award.

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- f. Without prejudice to the above, where a court or tribunal hearing such a claim finds that liability rests solely with an employee or agent who acted beyond the scope of the powers assigned to him or her, unlawfully or with willful malfeasance, the Council shall not bear financial responsibility.
2.
 - a. Notwithstanding the provisions of paragraphs 1.d through 1.f above, each side may take the necessary measures, including promulgation of legislation, in order to ensure that such claims by Palestinians, including pending claims in which the hearing of evidence has not yet begun, are brought only before Palestinian courts or tribunals in the West Bank and the Gaza Strip, and are not brought before or heard by Israeli courts or tribunals.
 - b. Where a new claim has been brought before a Palestinian court or tribunal subsequent to the dismissal of the claim pursuant to subparagraph a. above, the Council shall defend it and, in accordance with subparagraph 1.a above, in the event that an award is made for the plaintiff, shall pay the amount of the award.
 - c. The Legal Committee shall agree on arrangements for the transfer of all materials and information needed to enable the Palestinian courts or tribunals to hear such claims as referred to in subparagraph b. above, and, when necessary, for the provision of legal assistance by Israel to the Council in defending such claims.
3. The transfer of authority in itself shall not affect rights, liabilities and obligations of any person or legal entity, in existence at the date of signing of this Agreement.
4. The Council, upon its inauguration, will assume all the rights, liabilities and obligations of the Palestinian Authority.
5. For the purpose of this Agreement, "Israelis" also includes Israeli statutory agencies and corporations registered in Israel.

ARTICLE XXI

Settlement of Differences and Disputes

Any difference relating to the application of this Agreement shall be referred to the appropriate coordination and cooperation mechanism established under this Agreement. The provisions of Article XV of the DOP shall apply to any such difference which is not settled through the appropriate coordination and cooperation mechanism, namely:

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1. Disputes arising out of the application or interpretation of this Agreement or any related agreements pertaining to the interim period shall be settled through the Liaison Committee.
2. Disputes which cannot be settled by negotiations may be settled by a mechanism of conciliation to be agreed between the Parties.
3. The Parties may agree to submit to arbitration disputes relating to the interim period, which cannot be settled through conciliation. To this end, upon the agreement of both Parties, the Parties will establish an Arbitration Committee.

CHAPTER 4 - COOPERATION

ARTICLE XXII

Relations between Israel and the Council

1. Israel and the Council shall seek to foster mutual understanding and tolerance and shall accordingly abstain from incitement, including hostile propaganda, against each other and, without derogating from the principle of freedom of expression, shall take legal measures to prevent such incitement by any organizations, groups or individuals within their jurisdiction.
2. Israel and the Council will ensure that their respective educational systems contribute to the peace between the Israeli and Palestinian peoples and to peace in the entire region, and will refrain from the introduction of any motifs that could adversely affect the process of reconciliation.
3. Without derogating from the other provisions of this Agreement, Israel and the Council shall cooperate in combating criminal activity which may affect both sides, including offenses related to trafficking in illegal drugs and psychotropic substances, smuggling, and offenses against property, including offenses related to vehicles.

ARTICLE XXIII

Cooperation with Regard to Transfer of Powers and Responsibilities

In order to ensure a smooth, peaceful and orderly transfer of powers and responsibilities, the two sides will cooperate with regard to the transfer of security powers and responsibilities in accordance with the provisions of Annex I, and the transfer of civil powers and responsibilities in accordance with the provisions of Annex III.

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ARTICLE XXIV

Economic Relations

The economic relations between the two sides are set out in the Protocol on Economic Relations, signed in Paris on April 29, 1994, and the Appendices thereto, and the Supplement to the Protocol on Economic Relations, all attached as Annex V, and will be governed by the relevant provisions of this Agreement and its Annexes.

ARTICLE XXV

Cooperation Programs

1. The Parties agree to establish a mechanism to develop programs of cooperation between them. Details of such cooperation are set out in Annex VI.
2. A Standing Cooperation Committee to deal with issues arising in the context of this cooperation is hereby established as provided for in Annex VI.

ARTICLE XXVI

The Joint Israeli-Palestinian Liaison Committee

1. The Liaison Committee established pursuant to Article X of the DOP shall ensure the smooth implementation of this Agreement. It shall deal with issues requiring coordination, other issues of common interest and disputes.
2. The Liaison Committee shall be composed of an equal number of members from each Party. It may add other technicians and experts as necessary.
3. The Liaison Committee shall adopt its rules of procedures, including the frequency and place or places of its meetings.
4. The Liaison Committee shall reach its decisions by agreement.
5. The Liaison Committee shall establish a subcommittee that will monitor and steer the implementation of this Agreement (hereinafter "the Monitoring and Steering Committee"). It will function as follows:
 - a. The Monitoring and Steering Committee will, on an ongoing basis, monitor the implementation of this Agreement, with a view to enhancing the cooperation and fostering the peaceful relations between the two sides.
 - b. The Monitoring and Steering Committee will steer the activities of the various joint committees established in this Agreement (the JSC, the CAC, the Legal Committee, the Joint Economic Committee and the Standing /...

Cooperation Committee) concerning the ongoing implementation of the Agreement, and will report to the Liaison Committee.

- c. The Monitoring and Steering Committee will be composed of the heads of the various committees mentioned above.
- d. The two heads of the Monitoring and Steering Committee will establish its rules of procedures, including the frequency and places of its meetings.

ARTICLE XXVII

Liaison and Cooperation with Jordan and Egypt

1. Pursuant to Article XII of the DOP, the two Parties have invited the Governments of Jordan and Egypt to participate in establishing further liaison and cooperation arrangements between the Government of Israel and the Palestinian representatives on the one hand, and the Governments of Jordan and Egypt on the other hand, to promote cooperation between them. As part of these arrangements a Continuing Committee has been constituted and has commenced its deliberations.
2. The Continuing Committee shall decide by agreement on the modalities of admission of persons displaced from the West Bank and the Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder.
3. The Continuing Committee shall also deal with other matters of common concern.

ARTICLE XXVIII

Missing Persons

1. Israel and the Council shall cooperate by providing each other with all necessary assistance in the conduct of searches for missing persons and bodies of persons which have not been recovered, as well as by providing information about missing persons.
2. The PLO undertakes to cooperate with Israel and to assist it in its efforts to locate and to return to Israel Israeli soldiers who are missing in action and the bodies of soldiers which have not been recovered.

CHAPTER 5 - MISCELLANEOUS PROVISIONS

ARTICLE XXIX

Safe Passage between the West Bank and the Gaza Strip

Arrangements for safe passage of persons and transportation between the West Bank and the Gaza Strip are set out in Annex I.

ARTICLE XXX

Passages

Arrangements for coordination between Israel and the Council regarding passage to and from Egypt and Jordan, as well as any other agreed international crossings, are set out in Annex I.

ARTICLE XXXI

Final Clauses

1. This Agreement shall enter into force on the date of its signing.
2. The Gaza-Jericho Agreement, except for Article XX (Confidence-Building Measures), the Preparatory Transfer Agreement and the Further Transfer Protocol will be superseded by this Agreement.
3. The Council, upon its inauguration, shall replace the Palestinian Authority and shall assume all the undertakings and obligations of the Palestinian Authority under the Gaza-Jericho Agreement, the Preparatory Transfer Agreement, and the Further Transfer Protocol.
4. The two sides shall pass all necessary legislation to implement this Agreement.
5. Permanent status negotiations will commence as soon as possible, but not later than May 4, 1996, between the Parties. It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest.
6. Nothing in this Agreement shall prejudice or preempt the outcome of the negotiations on the permanent status to be conducted pursuant to the DOP. Neither Party shall be deemed, by virtue of having entered into this Agreement, to have renounced or waived any of its existing rights, claims or positions.

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7. Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations.
8. The two Parties view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.
9. The PLO undertakes that, within two months of the date of the inauguration of the Council, the Palestinian National Council will convene and formally approve the necessary changes in regard to the Palestinian Covenant, as undertaken in the letters signed by the Chairman of the PLO and addressed to the Prime Minister of Israel, dated September 9, 1993 and May 4, 1994.
10. Pursuant to Annex I, Article IX of this Agreement, Israel confirms that the permanent checkpoints on the roads leading to and from the Jericho Area (except those related to the access road leading from Mousa Alami to the Allenby Bridge) will be removed upon the completion of the first phase of redeployment.
11. Prisoners who, pursuant to the Gaza-Jericho Agreement, were turned over to the Palestinian Authority on the condition that they remain in the Jericho Area for the remainder of their sentence, will be free to return to their homes in the West Bank and the Gaza Strip upon the completion of the first phase of redeployment.
12. As regards relations between Israel and the PLO, and without derogating from the commitments contained in the letters signed by and exchanged between the Prime Minister of Israel and the Chairman of the PLO, dated September 9, 1993 and May 4, 1994, the two sides will apply between them the provisions contained in Article XXII, paragraph 1, with the necessary changes.
13.
 - a. The Preamble to this Agreement, and all Annexes, Appendices and maps attached hereto, shall constitute an integral part hereof.
 - b. The Parties agree that the maps attached to the Gaza-Jericho Agreement as:
 - a. map No. 1 (The Gaza Strip), an exact copy of which is attached to this Agreement as map No. 2 (in this Agreement "map No. 2");
 - b. map No. 4 (Deployment of Palestinian Police in the Gaza Strip), an exact copy of which is attached to this Agreement as map No. 5 (in this Agreement "map No. 5"); and
 - c. map No. 6 (Maritime Activity Zones), an exact copy of which is attached to this Agreement as map No. 8 (in this Agreement "map No. 8");

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are an integral part hereof and will remain in effect for the duration of this Agreement.

14. While the Jeftlik area will come under the functional and personal jurisdiction of the Council in the first phase of redeployment, the area's transfer to the territorial jurisdiction of the Council will be considered by the Israeli side in the first phase of the further redeployment phases.

Done at Washington DC, this 28th day of September, 1995.

(Signed) Yitzhak RABIN

(Signed) Shimon PERES
For the Government of the
State of Israel

(Signed) Yasser ARAFAT
For the PLO

Witnessed by:

(Signed) William J. CLINTON

(Signed) Warren CHRISTOPHER
The United States of America

(Signed) Amre MOUSSA
The Arab Republic of Egypt

(Signed) Bjørn Tore GODAL
The Kingdom of Norway

(Signed) Andrei V. KOZYREV
The Russian Federation

(Signed) Hussein IBN TALAL
The Hashemite Kingdom of Jordan

(Signed) Felipe GONZALEZ
The European Union
