



United Nations Educational,  
Scientific and Cultural Organization

Executive Board

ex

Hundred and thirty-first Session

131 EX/43

PARIS, 12 May 1989

Original: French and Arabic

Item 9.4 of the provisional agenda

REQUEST FOR THE ADMISSION OF THE STATE OF PALESTINE  
TO UNESCO AS A MEMBER STATE

SUMMARY

The explanatory note reproduced below is submitted  
by Algeria, Indonesia, Mauritania, Niger, Senegal  
and Yemen.

23 MAI 1989

EXPLANATORY NOTE CONCERNING THE REQUEST FOR THE  
ADMISSION OF THE STATE OF PALESTINE TO UNESCO

The Declaration of Independence of the State of Palestine, formally and unanimously adopted on 15 November 1988 by the Palestine National Council meeting in Algiers, is a historical event of far-reaching significance.

It clarifies the situation and fulfils the final pre-condition for the establishment of the Palestinian State, whose existence it sanctions.

Article II of Unesco's Constitution concerns membership of the Organization. Paragraph 1 of that Article refers to membership of the United Nations which carries with it 'the right of membership of the United Nations Educational, Scientific and Cultural Organization'. Paragraph 2 stipulates that States not members of the United Nations 'may be admitted to membership of the Organization, upon recommendation of the Executive Board, by a two-thirds majority vote of the General Conference'.

Paragraph 2 thus specifies the condition for becoming a member of Unesco, namely statehood, and also the procedure for admission, namely a two-thirds majority decision by the General Conference, upon recommendation of the Executive Board.

This leaves Member States with considerable discretionary power in assessing candidates' qualifications.

It is stipulated that the candidate must be a State but no definition of a State is given. The same is true of the Charter of the United Nations but, unlike Article II(2) of Unesco's Constitution, Article 4 of the Charter lays down a number of conditions for admission to membership. Prior to the 1955 'package deal', the question had thus arisen as to whether the United Nations would be open to sovereign States only.<sup>1</sup>

Under public international law, a State is made up of three constituents: a population, a territory and a government. The State is furthermore defined in terms of a basic attribute possessed by no other political entity and described as 'sovereignty' and 'independence'.

## I. PALESTINE AND THE CONSTITUENTS OF A STATE

### 1. POPULATION

The existence of the Palestinian people has been recognized and confirmed in many documents of irreproachable legal status and import. Suffice it to mention:

Article 16 of the Treaty of Sèvres (1920), under which Turkey renounced its sovereignty over Palestine;

the Lausanne Treaty (1983) denouncing Turkish sovereignty over Palestine;

the Palestine mandate granted to the United Kingdom by the League of Nations on 24 July 1922, in particular Article 22(4), which makes the United Kingdom responsible for guiding the Palestinian people towards independence;

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1. One source of uncertainty at the time was the reference to dominions and colonies in the Covenant of the League of Nations. It was also known that India, Ukraine and Byelorussia would be admitted as members from the start although their status as sovereign States was open to discussion. Difficulties subsequently arose in connection with the application for membership of States with certain unconventional characteristics.

United Nations General Assembly resolution 181 of 29 November 1947 on the partitioning of Palestine, which provided, inter alia, for the establishment of an independent (Palestinian) Arab State (para. 3);

the relevant resolutions adopted since 1967 on the right of the Palestinian people to self-determination;

the Venice Declaration (12 June 1980) by heads of State and government and ministers of foreign affairs on behalf of the European Community, which states that: 'The Palestinian people, who are conscious of existing as such, must be placed in a position, by an appropriate process defined within the framework of the comprehensive peace settlement, to exercise fully their right to self-determination'.

The rights of the Palestinian people were set out in detail in 1974 following the inclusion of the 'Question of Palestine' on the agenda of the United Nations General Assembly. Moreover, in resolution 3376 (XXX) adopted on 10 November 1975, the General Assembly, having expressed its grave concern that no progress had been made towards the exercise by the Palestinian people of its inalienable rights, including the right to self-determination without external interference and the right to national independence and sovereignty, established the Committee on the Exercise of the Inalienable Rights of the Palestinian People with the mandate of recommending to the General Assembly a programme designed to enable the Palestinian people to exercise its inalienable national rights.

The existence of the first constituent of a State cannot therefore be called in question.

## 2. TERRITORY

The acquisition or loss of a territory can either stem from certain de facto situations or be based on a legal instrument.

Decisions by international organizations are mentioned under public international law as belonging to this second category of ways of acquiring or losing a territory.

It should be noted in this connection that United Nations General Assembly resolution 181 of 29 November 1947 called for the establishment of an Arab State and a Jewish State in Palestine and that resolution 242 of 1967 called for the withdrawal of Israeli armed forces from the occupied territories and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the region.

### Demarcation of the territory of Palestine

A preliminary point to be noted is that while the demarcation of a State's territory is a useful means of preventing conflict between adjacent States, it is not legally necessary and is frequently carried out at a later juncture. The absence or uncertainty of territorial boundaries does not impede the recognition of a State's existence (Nguyen Quoc O Dinh, Patrick Daillier and Alain Pellet, 'Droit international public', 2nd edition, Paris, 1980, p. 358).

In his treatise entitled 'Droit international public', Rousseau writes: 'The function thus attributed to territory in the general theory of the State has been contested by the doctrine and has waned in practice in the modern world. Whereas the traditional doctrine holds that there can be no State without territory (the latter being viewed as a basic constituent of the State, the *raison d'être* of State power or even, according to the Austrian

school, the framework from which the State order derives its validity), some authors have gone even further in denying its importance, for example Professor Scelle for whom territory, far from being a logically necessary element, is merely an "adventitious circumstance" representing a certain phase in political development' (Vol. II, p. 37).

At all events, it is important to note that the Palestine National Council, in its Political Communiqué of 15 November 1988, agreed to the convening of an international conference on the basis of Security Council resolution 242 of 22 November 1967 which, together with resolution 181 referred to above, fixes the boundaries of the Palestinian State.

#### Prohibition on the use of force for the acquisition of a territory

It is relevant in this context to quote the terms of Article 2, paragraph 4, of the Charter of the United Nations:

'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations'.

This principle largely coincides with that found in customary international law. Moreover, the International Court of Justice has stated on several occasions that an 'opinio juris' also existed in customary law regarding the binding force of such abstention and that this was confirmed by the attitude of States to certain General Assembly resolutions, in particular resolution 2625 (XXVI) entitled 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations' of 24 October 1970. Consent to these resolutions is one of the forms of expression of opinio juris regarding the principle of abstention from the use of force, which is considered as a principle of customary law independent of the provisions, mainly of an institutional nature, to which it is subject in conventional terms under the Charter.

#### The conditions governing the legitimate use of force are not applicable in the case in point

There are certain exceptions to this general rule of customary law outlawing the use of force. One of these exceptions, the right of individual or collective self-defence, has also been established by customary law, as reflected in the Charter of the United Nations which refers to 'inherent right' and in the Declaration contained in resolution 2625 (XXV) referred to above. However, the right to self-defence, whether individual or collective, can only be exercised as a response to 'armed aggression'. According to the International Court of Justice, this refers not only to action by regular armed forces but also to the sending by a State of armed bands into the territory of another State when the scale and impact of that operation are such that it would have been described as armed aggression if carried out by regular armed forces. The International Court of Justice refers in this connection to the definition of armed aggression in United Nations General Assembly resolution 3314 (XXIX). The Court does not consider that the notion of 'armed aggression' can be applied to assistance to rebels in the form of arms supplies, logistic assistance, etc. Furthermore, the Court notes that customary international law contains no provision permitting the use of legitimate collective self-defence in the absence of a request by the State claiming to be the victim of armed aggression, a further requirement being that the State in question should itself proclaim that it has been attacked.

It has been asserted that the use of force is lawful if it is not aimed against a State's territorial integrity or political independence but designed, for example, to serve humanitarian ends such as saving the lives of nationals previously in danger (the Belgian intervention in the Congo in 1960 for example).

With a view to impeding another interpretation, resolution 2625 declares that every State has the duty to refrain from the use of force to violate the existing international boundaries of another State and extends the same prohibition to violations of 'international lines of demarcation, such as armistice lines', a provision applicable to many cases, including the lines separating the two parts of a divided State.

#### Freedom of support given to a liberation movement

Lastly, support given to a liberation movement is not described as a violation of the territorial integrity of another State inasmuch as a non-self-governing territory has, according to resolution 2625, 'a status separate and distinct from the territory of the State administering it'. Neither would such support be given in a manner 'inconsistent with the purposes of the United Nations'. It is therefore also lawful in that respect.

#### Conclusion

It follows from the foregoing considerations that the principle of the non-use of force precludes any acquisition of territory as a result of recourse to the threat or to the use of force. Israel could not therefore on this account claim sovereignty over the occupied Arab territories.

Furthermore, the occupation of a territory by armed forces cannot cause a State to cease to exist. It is in fact recognized that 'no matter how great may be the authority exercised by the occupying power which, to the extent of its requirements, is substituted for the authority of the occupied State, the latter's quality as a State is not affected by this provisional situation which, by virtue of the Hague Convention No. 4 of 1907, merely has the effect of suspending the exercise of its sovereignty. When, however, the situation becomes stable, the ineffectiveness of the State is not always an obstacle to its legal survival, even in cases where the annexation of its territory has been recognized. Those States that were annexed by force between 1935 and 1940, like Ethiopia, Austria, Czechoslovakia or Albania, were in 1945 thus not re-created but considered to have never ceased to exist. This is none the less an altogether exceptional situation linked to the always specific characteristics of territorial settlements in the wake of wars' (Hubert Thierry, S  rge Sur, Jean Combacau and Charles Vall  e in Droit International Public, p. 225).

In addition, it is generally acknowledged in customary law that only a general attitude of tolerance in regard to a territorial change may ultimately have the effect of consolidating a given situation.

### 3. GOVERNMENT

The existence of a government is necessary for the existence of a State since, as a legal entity, the State needs an organ to represent it and express its will.

If the State enjoys constitutional autonomy in relation to international law, the government must fulfil two requirements - that of effectiveness and that of sovereignty and independence.

To say that a State is constitutionally autonomous is to acknowledge that the structure of the State's government and the form of its political regime do not come within the scope of the international legal order.

Article 4 of the Charter of the United Nations for its part merely requires that States applying for admission to the United Nations should be 'peace-loving states'. General Assembly resolution 32 of 9 February 1946, while not providing any definition of what constitutes a peace-loving State, nevertheless considers not to be eligible for admission 'States whose regimes have been installed with the help of armed forces of countries which have fought against the United Nations so long as these regimes are in power'. Although the question has been raised several times in Assembly and the Security Council, apparently no one has sought to propose a generally applicable interpretation.

It is to be noted in this connection that the Declaration of Independence of the State of Palestine, adopted by the Palestine National Council on 15 November 1988, declares that the State of Palestine 'is a peace-loving state committed to the principles of peaceful coexistence' and that it 'will work together with all other states and peoples to achieve a lasting peace based on justice and respect for rights, enabling the potential of human beings for constructive action and creative competition to develop to the full in a world where fear of the future is unknown, for the future has nothing but security in store for the just and for those who have recovered their sense of justice.

In the context of its struggle to bring peace to a land of love and peace, the State of Palestine appeals to the United Nations, which has a special responsibility to the Palestinian Arab people and their homeland, and to all peoples and States that cherish peace and freedom, to assist it in achieving its aims in bringing the tragedy of its people to an end, in ensuring their safety and security, and in ending the Israeli occupation of the Palestinian territories.

In this connection, the State of Palestine further declares its belief in the peaceful settlement of international and regional disputes in accordance with the Charter and resolutions of the United Nations. Without prejudice to its inherent right to defend its territory and its independence, it rejects the threat or use of force, violence or terrorism against its territorial integrity and political independence or against the territorial integrity of any other state'.

The condition laid down in Article 4 of the Charter of the United Nations seems therefore to be fulfilled by the State of Palestine. As for the government's effectiveness, that is, its real ability to discharge all the functions of a State, it should be noted, before dealing with this problem in respect of the State of Palestine, that there exist within the Palestine Liberation Organization (PLO) structures which determine and give effect to its basic lines of foreign and domestic policy.

The Palestine National Council (parliament in exile) is the highest authority within the PLO and represents all the Palestinian people, with due regard for geographical, political and practical considerations.

It is the legislative organ and comprises specialized commissions.

The Executive Committee is the executing authority whose members are appointed by the Palestine National Council to which it is responsible.

It exercises supervisory power over the different bodies, promulgates directives, draws up programmes and takes decisions concerning the activities of the PLO.

The Executive Committee comprises departments responsible for the different areas of life of Palestinian society (education, health, culture, youth, information, economics, finance, agriculture, justice, etc.). It also has responsibility for military questions.

Within the Palestinian territory, organized structures attached to these departments deal with the problems that fall within their competence. Formerly, they did not cover all activities on account of the Israeli occupation, but since the Intifada (popular uprising) which has, among other things, caused the collapse of the structures established by the occupying power, they play an important role in organizing and serving the population of the towns, villages and refugee camps in the occupied territory, while Israel continues to perform the sinister tasks of repression (army, police, criminal courts and prisons).

Outside the occupied territory, the two million Palestinians are organized within structures and are closely associated with the activities of the Palestinian authorities.

They make an effective contribution to the action of those authorities of which they constitute an extension in the different continents of the world.

On 15 November 1988, the Palestine National Council (PNC), meeting in Algiers, adopted two important documents: the Declaration of Independence of the State of Palestine and the Political Communiqué.

In the Communiqué, the PNC decided, pending the establishment of a provisional Palestinian government, to instruct the Executive Committee to assume all its functions and to exercise all the necessary prerogatives to that end.

On 26 March 1989, the Executive Committee, by virtue of the mandate entrusted to it by the PNC, appointed Mr Yasser Arafat President of the State of Palestine.

This decision was approved on 31 March 1989 by the Central Council of the PLO, thereby assigning to Mr Yasser Arafat the functions of 'President of the independent State of Palestine until the organization of free and democratic presidential elections in the State of Palestine, after the end of the Israeli occupation'.

On the same day, the Central Council appointed Mr Faruk Kaddumi to be Minister of Foreign Affairs.

We therefore find ourselves with an Executive Committee responsible for the functions of government, with a Head of State and a Minister of Foreign Affairs, and this body exercises outside the Palestinian territory all the responsibilities incumbent upon it, along with certain functions within the territory, sometimes clandestinely since it is temporarily unable to exercise full territorial authority as a result of the Israeli occupation.

Hence this body has all the characteristics of a provisional government established outside its country.

It draws its legitimacy from the highest body in the institutional hierarchy of the PLO, which itself draws its legitimacy from its being appointed by the Palestinian people and recognized by 106 sovereign States. There is no lack of precedents here:



- (1) During the Second World War, the Czechoslovak National Committee and the Polish National Committee, at a time when the two countries concerned had been annexed by the Reich, were considered to be exercising the prerogatives of provisional governments of their respective countries and were recognized as such by the Allies.
- (2) The French National Liberation Committee (1943), headed by General De Gaulle, was recognized as the official body endowed with prerogatives for directing the war effort in France and representing that country.
- (3) An even more striking case is that of Albania, which was recognized as a State at the London Conference of 1913 at a time when it did not possess a government. The government was not in fact formed until 1920.

## II. SOVEREIGNTY

The principle of State sovereignty forms the basis of relations among Members of the United Nations, in accordance with Article 2, paragraph 1, of the Charter, which provides: 'The Organization is based on the principle of the sovereign equality of all its Members', and this principle is the very criterion of a State.

The affirmation of 'sovereign equality' amounts to the assertion of the independence of the State, and both prevailing doctrine and international jurisprudence would quite simply equate independence with sovereignty.

Here, reference should be made to Article 1, paragraph 2 of the Charter of the United Nations, which lays down the principle of 'equal rights and self-determination of peoples'. In the context of putting this principle into practice, having proclaimed the need for peoples subjected to colonial domination to accede to freedom by calling for independence (resolution 1514 (XV) of 14 December 1960), the United Nations recognized that peoples subjected to alien subjugation, namely, peoples living in territories occupied by foreign powers, had the right freely to determine their destiny.

With regard to peoples that have not yet formed a State, the exercise of this right implies first and foremost the right of accession to independence recognized by resolution 1514 (XV), paragraph 1, regarding 'the subjection of peoples to alien subjugation, domination and exploitation'.

It should be borne in mind that resolution 181, adopted by the United Nations General Assembly in 1947 and reaffirmed on several occasions, inter alia by the Security Council on 5 March 1948, stipulates that 'Independent Arab and Jewish States and the Special International Regime for the City of Jerusalem, set forth in part III of this plan, shall come into existence in Palestine two months after the evacuation of the armed forces of the mandatory Power has been completed but in any case not later than 1 October 1948'.

Furthermore, the right of the Palestinian people to self-determination was enshrined in the 'Declaration of Independence of the State of Palestine' adopted on 15 November 1988 by the Palestine National Council.

These texts constitute the legal basis of the independence and sovereignty of the Palestinian State, which is a full member of the League of Arab States and its specialized agencies and of the Organization of the Islamic Conference. It has acceded to their Constitutions. It is also a member of the Movement of Non-Aligned Countries.

In reality, the Palestinian executive body functions as a government and enjoys sovereignty in the exercise of its duties in the field of foreign policy.

Its foreign policy is formulated in full independence. It is supported by the countries which have recognized the State of Palestine, and is followed with interest and sympathy, and sometimes even supported on certain issues, by States which have not yet recognized it.

The nature, functioning and duties of local Palestinian institutions, commissions and committees in the occupied Palestinian Arab territory have been described above. Their responsibilities have become even more weighty since the Intifada (popular uprising), since Israeli administrative and social services have been reduced to playing repressive roles.

Admittedly, sovereignty in the occupied Palestinian territory is not exercised in full, according to the conventional standards prevailing in independent countries.

The Israeli occupation of that territory is the obvious cause of this, but it cannot in any way affect it.

In his report on the succession of States submitted to the International Law Commission and in the Commission's report to the United Nations General Assembly concerning the succession of States, Mr Mohammed Bedjaoui writes that 'According to sound legal doctrine, military occupation following a war is essentially precarious in nature and can under no circumstances affect a State's sovereignty over that part of its territory which is occupied by foreign forces' (Yearbook of the International Law Commission - 1971 - Volume II - Part One, p. 167).

Professor Basdevant considers that the term sovereignty contains 'the idea of the power of being in command, combined with the prerogative of not being dependent on another'. (Dictionnaire de la Terminologie du droit international, p. 573).

Sovereignty has three components:

exclusive jurisdiction;

autonomous jurisdiction;

full jurisdiction.

The Palestinian State enjoys the autonomy of exclusive jurisdiction. This has been borne out in the course of time by its policy, declarations and acts.

Its full jurisdiction is for the time being in abeyance, owing to the Israeli occupation, which, in itself, cannot negate the sovereignty of the State of Palestine.

Sovereignty is exercised by the people directly and over themselves, pending the liberation of their homeland, when it will be delegated to the institutions that they shall appoint.

### III. RECOGNITION

While a State does not need to be recognized in order to exist, the fact remains that its 'recognition' marks its admission to the system of international relations.

Recognition, which takes the form of a declaration and not a constitution, merely notes the existence of the new State. It may be inferred that States recognizing the new State thereby recognize its capacity as a State.

In that connection, the point should be made that, since the Declaration of Independence of the State of Palestine on 15 November 1988, 98 States so far have issued declarations of recognition, thus consolidating the legal, political, internal and external foundations of the Palestinian State.

Although it is merely a declaration in law, recognition none the less has legal consequences.

In his preface to Joe Verhoeven's book La reconnaissance internationale dans la pratique contemporaine, Paris-Pedrone, 1975, p. IX, Paul de Visscher writes: 'From the viewpoint of public international law, the author does not, however, consider recognition to be of no consequence. Recognition is one act among many, and, as such, it is not only a formative factor of objective law, but also a factor which makes individualized legal situations effective and, more particularly, the status of a State, since the State, in essence, is a rational entity'.

J. Charpentier considers that 'as recognition is always tantamount to commitment, it always has the direct effect of obliging the State that grants it to respect the status thus recognized' (La reconnaissance internationale et l'évolution du droit des gens, 1956, p. 202).

In The Law of Nations, 1949, p. 124, Professor Brierly states that 'the primary function of recognition is to acknowledge as a fact something which has hitherto been uncertain, namely, the independence of the body claiming to be a state, and to declare the recognizing state's readiness to accept the normal consequences of that fact'.

Although certain people consider recognition to be premature if it is granted before the process of creating and establishing the new State has been completed, it is also important to note that recognition is often governed by political motives.

In La reconnaissance internationale dans la pratique contemporaine (Paris-Pedrone, 1975, p. 28), referring to the recognition of Israel on 15 May 1948, Joe Verhoeven explains that 'questions of recognition occupy an important place in the life of Israel. The importance attached to them, however, seems to be far removed from the law. Indeed, legal considerations seem to have played very little part in the American and Soviet recognition which gave decisive impetus to the new State'.

In fact, the first declarations recognizing Israel came not only when its borders had not yet been established but, more particularly, when Israel had begun, as early as 1948, to expand beyond the borders established by resolution 181 of the United Nations General Assembly.

How can one explain the fact that what was considered valid for one party, yesterday, is not so considered for the other today, despite the fact that the selfsame resolution 181, which was officially recognized by the Palestinian party, was addressed to both?

Other examples of recognition which may be regarded as legally premature are scattered throughout history.

In 1778, France officially recognized the United States of America, although the War of Independence had not yet come to an end and the very existence of the United States was a matter of controversy, so much so that the United Kingdom declared war on France.

In 1918, Latvia, severed from Russia by the 1917 German occupation, had barely shaken off the latter when the United Kingdom recognized it on 23 October, at a time when the National Council of Latvia did not yet exercise authority over the territory.

On 13 November 1903, the United States of America recognized Panama, only nine days after the start of the revolution through secession from Colombia.

In 1913, Albania was recognized as a State at the Conference of London, although it as yet had no government, and Albania was still without a government when it was admitted to the League of Nations, despite the secret treaty for the partition and occupation of that country by the great powers.

#### IV. RECOGNITION AND ADMISSION TO THE ORGANIZATIONS OF THE UNITED NATIONS SYSTEM

No constitution of these Organizations makes recognition by its Member States a prior condition for the admission of any State.

In its opinion of 28 May 1948, (Rec. 1948,85), the International Court of Justice stressed, on the subject of the requirements for membership laid down in Article 4 of the Charter of the United Nations, that it was not possible to establish recognition as a requirement for membership apart from those requirements laid down in the above-mentioned Article 4.

On the other hand, recognition is regarded by some as evidence for statehood which militates in favour of admission. This holds good of the State of Palestine, which has now been recognized by 98 States.

Others even draw a distinction between the concept of a State peculiar to International Law and another concept of a State peculiar to international organizations.

With regard to the implications of the decision to grant membership, in the aforementioned La reconnaissance internationale dans la pratique contemporaine (p. 509) Verhoeven states that 'in principle, any decision of an Organization is effective only within the "internal" order peculiar to it, within which it is binding, in principle, only on the Member States'. The decision to grant membership cannot therefore be interpreted as recognition by those who have opposed it, outside the context of that 'internal' order of the Organization.

The Arab States are certainly members of the United Nations and its Specialized Agencies, but this does not imply that they recognize Israel, which is also a Member.

The United Nations Secretary-General, in his Memorandum dated 9 March 1950 concerning the legal aspects of the problem of representation in the United Nations, observes that 'in (...) practice ... there are, of course, several instances of admission to membership of States which had not been recognized by all other Members, and other instances of States for whose admission votes were cast by Members which had not recognized the candidates as States'. The Memorandum mentions the examples of Yemen, Burma, Jordan and Nepal.

#### V. THE PRINCIPLE OF UNIVERSALITY DICTATES THAT THE STATE OF PALESTINE BE ADMITTED TO UNESCO AND TO THE OTHER AGENCIES OF THE UNITED NATIONS SYSTEM

In this context, it should be borne in mind that:

1. The State of Palestine exists. For a start, the resolution on the Partition of Palestine, resolution 181 of 29 November 1947, adopted by the United Nations General Assembly, states in paragraph 3 that: 'Independent Arab and Jewish States (...) shall come into existence in Palestine two months after the evacuation of the armed forces of the mandatory Power has been completed but in any case not later than 1 October 1948. The boundaries of the Arab State, the Jewish State (...) shall be as described in Parts II and III below'.
2. On 15 December 1988, the General Assembly adopted, by 138 votes in favour, 2 against and 2 abstentions, resolution 43/177, in the first paragraph of which it 'acknowledges the proclamation of the State of Palestine by the Palestine National Council on 15 November 1988'.
3. The above-mentioned Declaration of Independence of 15 November 1988 stipulates that: 'the State of Palestine declares its commitment to the principles and aims of the United Nations, to the Universal Declaration of Human Rights and to the principles and policy of non-alignment' and also states that 'the State of Palestine (...) is a peace-loving State committed to the principles of peaceful coexistence'.

With regard to Unesco's fields of competence, the Palestinian people aspires, as do other peoples, to enjoying its rights to education, culture, science, communication and other activities concerning Peace.

It also aspires to participate in the development of international co-operation.

The international community would thus be failing in its duty if it persisted in rejecting it by refusing to admit the State of Palestine to membership of Unesco.

ANNEX I

DECLARATION OF INDEPENDENCE

In the name of God, the Merciful, the Compassionate

It was in Palestine, the land of God's revelations to humanity, that the Palestinian Arab people came into being, grew and developed, creating their distinctive human and national character in an organic, indissoluble and unbroken relationship between the people and their land and history.

By virtue of their heroic steadfastness in space and time, the people of Palestine forged a national identity and carried their determination to defend it to prodigious levels of endurance. Although the fascination exercised by this ancient land and its strategic position at the crossroads of great powers and civilizations gave rise to ambitions, schemes and invasions that prevented the Palestinian Arab people from achieving political independence, the constancy of their attachment to the land none the less gave it an identity and imbued the people with a spirit of nationhood.

Nourished by successive civilizations and many different cultures, and inspired by their spiritual and historical heritage, the Palestinian Arab people have continued throughout history to develop their identity in full symbiosis between the land and its people. In this blessed land that so many prophets have tread, prayers have freely resounded from every minaret in praise of the Creator and hymns of mercy and peace have rung out with the bells of every church and temple.

From generation to generation, the Palestinian Arab people have never faltered in their valiant defence of the homeland, and the successive revolts of our people bear heroic witness to their pursuit of national independence.

When the modern world was forging its new system of values, the prevailing local and international balance of power excluded the Palestinians from the common destiny, showing once again that justice alone cannot turn the wheels of history.

The gaping wound inflicted on the Palestinian people by the withholding of independence and the subjection of their land to a new form of occupation was exacerbated by an attempt to spread the fiction that Palestine was 'a land without people'. In spite of this falsification of history, the international community, in Article 22 of the Covenant of the League of Nations adopted in 1919 and in the Treaty of Lausanne signed in 1923, recognized that the Palestinian Arab people, just like the other Arab peoples detached from the Ottoman Empire, were a free and independent people.

Despite the historical injustice done to the Palestinian Arab people when they were driven from their homeland and deprived of the right to self-determination following the adoption by the United Nations General Assembly of resolution 181 (1947) which partitioned Palestine into two States, one Arab and one Jewish, that resolution nevertheless continues to provide international legitimacy for the right of the Palestinian Arab people to sovereignty and national independence.

The occupation of Palestinian territory and other Arab territories by Israeli forces, the uprooting of the bulk of the Palestinian people and their expulsion by organized terrorism, and the subjection of the remainder to occupation and oppression and the destruction of the distinctive characteristics of their national life, are a flagrant violation of legal principles and of the Charter of the United Nations and its resolutions recognizing the national rights of the Palestinian people, including the right of return and the right to self-determination, independence and sovereignty over its national soil.

In the heart of their homeland and on its peripheries, in places of exile near and far, the Palestinian Arab people have never lost their unwavering faith in their right to return and in their right to independence. The continuing scourge of occupation, massacres and banishment never succeeded in depriving Palestinians of their awareness and identity. As their heroic struggle intensified, so did their national character gain in strength. This national determination led to the establishment of a political framework: the Palestine Liberation Organization, sole legitimate representative of the Palestinian people recognized by the international community represented by the United Nations and its agencies and other regional and international organizations. Basing itself on a belief in inalienable rights, on the consensus of the Arab nation and on international legitimacy, the Palestine Liberation Organization has been in the forefront of the struggles of its great people, a people fused together in exemplary national unity and steadfastness in the face of massacres and encirclement, both within its homeland and outside. This heroic Palestinian resistance has made its mark on Arab and international consciousness as one of the most impressive national liberation movements of our time.

The great popular uprising (the Intifada) gaining ground in the occupied territories and the extraordinary capacity for resistance displayed in the camps, both within and outside the homeland, have greatly enhanced general awareness and led to a more mature understanding of the true nature of the Palestinian issue and of Palestinian national rights. The curtain has finally fallen over a whole era of falsification and moral apathy. The Intifada has laid siege to the official Israeli mentality, which has always relied on fabrication and terrorism to deny the existence of the Palestinian people.

As a result of the Intifada and the accumulated revolutionary experience of all parties involved in the struggle, the Palestinian cause has reached a crucial historical turning-point. The Palestinian Arab people reaffirm at this juncture their inalienable rights and their determination to exercise those rights in their Palestinian homeland.

By virtue of the inherent, historical and legal right of the Palestinian Arab people to their homeland Palestine and of the sacrifices of successive generations in defence of its freedom and independence,

Basing itself on the resolutions of the Arab summit conferences and on the international legitimacy conferred by the United Nations resolutions since 1947,

Exercising the right of the Palestinian Arab people to self-determination, political independence and sovereignty over its territory,

The Palestine National Council hereby proclaims, in the name of God and on behalf of the Palestinian Arab people, the establishment of the State of Palestine in our land of Palestine, with Jerusalem (Al-Quds Al-Sharif) as its capital.

The State of Palestine is for all Palestinians, wherever they may be. Within that State they will have every opportunity to develop their national and cultural identity and will enjoy full equality of rights. Their religious and political convictions and human dignity will be safeguarded under a democratic parliamentary system based on freedom of opinion, freedom to form parties, respect by the majority for the rights of minorities and by minorities for the decisions of the majority, social justice, equality and non-discrimination in civil rights on grounds of race, religion, colour or sex, under a Constitution guaranteeing the rule of law and an independent judiciary and on the basis of unfailing allegiance to Palestine's age-old spiritual and cultural heritage of tolerance and peaceful coexistence of different religions.

The State of Palestine is an Arab State. It is an integral part of the Arab nation and of its heritage and civilization, and shares its present aspirations to freedom, development, democracy and unity. Reaffirming its adherence to the Charter of the League of Arab States and its determination to work for the strengthening of joint Arab action, the State of Palestine appeals to its fellow members of the Arab nation for assistance in completing its practical establishment by mobilizing their material and spiritual resources and intensifying their efforts to bring the Israeli occupation to an end.

The State of Palestine proclaims its adherence to the principles and aims of the United Nations, to the Universal Declaration of Human Rights and to the principles and policy of non-alignment.

The State of Palestine declares that it is a peace-loving State committed to the principles of peaceful coexistence. It will work together with all other States and peoples to achieve a lasting peace based on justice and respect for rights, enabling the potential of human beings for constructive action and creative competition to develop to the full in a world where fear of the future is unknown, for the future has nothing but security in store for the just and for those who have recovered their sense of justice.

In the context of its struggle to bring peace to a land of love and peace, the State of Palestine appeals to the United Nations, which has a special responsibility to the Palestinian Arab people and their homeland, and to all peoples and States that cherish peace and freedom, to assist it in achieving its aims, in bringing the tragedy of its people to an end, in ensuring their safety and security, and in ending the Israeli occupation of the Palestinian territories.

In this connection, the State of Palestine further declares its belief in the peaceful settlement of international and regional disputes in accordance with the Charter and resolutions of the United Nations. Without prejudice to its inherent right to defend its territory and its independence, it rejects the threat or use of force, violence or terrorism against its territorial integrity and political independence or against the territorial integrity of any other State.

On this momentous day, 15 November 1988, as we stand on the threshold of a new era, we bow our heads in humble deference to the memory of our martyrs and those of the Arab nation, whose generous sacrifice lit the flame of a new and auspicious dawn and who gave their lives so that the homeland might live. We lift up our hearts so that they may be suffused with the light generated by the blessed Intifada and the heroic resistance of those in the camps, in the diaspora and in exile and those who raise the banner of freedom: our children, our old people and our youth, our prisoners, detainees and wounded on the hallowed soil of our land and in every camp and every town and village, and



our valiant Palestinian women, guardians of our life and survival and custodians of the eternal flame of our people. We hereby solemnly pledge to the souls of our noble martyrs, to the mass of the Palestinian Arab people, to the Arab nation and to all free and upright men and women, that we shall continue our struggle to end the occupation and to secure our sovereignty and independence. We call on our great people to rally to the Palestinian flag, to take pride in it and to defend it so that it remains for all time a symbol of our freedom and dignity in a land that shall never cease to be a free homeland for a free people.

In the name of God, the Merciful, the Compassionate 'Say: "O God, Master of the Kingdom, Thou givest the Kingdom to whom Thou wilt, and seizest the Kingdom from whom Thou wilt, Thou exaltest whom Thou wilt, and Thou abasest whom Thou wilt; in Thy hand is the good; Thou art powerful over everything"'.

The Palestine National Council  
Algiers, 15 November 1988/5 Rabia II 1409 (H.)

ANNEX II

COUNTRIES THAT HAVE RECOGNIZED THE  
STATE OF PALESTINE

<u>COUNTRY</u>	<u>DATE</u>
1. AFGHANISTAN	16/11/1988
2. ALBANIA	17/11/1988
3. ALGERIA	15/11/1988
4. ANGOLA	6/12/1988
5. AUSTRIA	14/12/1988
6. BAHRAIN	15/11/1988
7. BANGLADESH	16/11/1988
8. BENIN	
9. BHUTAN	25/12/1988
10. BOTSWANA	19/12/1988
11. BRUNEI	17/11/1988
12. BULGARIA	25/11/1988
13. BURKINA	21/11/1988
14. BURUNDI	22/12/1988
15. BYELORUSSIAN SSR	19/11/1988
16. CAPE VERDE	24/11/1988
17. CENTRAL AFRICAN REPUBLIC	23/12/1988
18. CHAD	1/12/1988
19. CHINA	20/11/1988
20. COMOROS	21/11/1988
21. CONGO	5/12/1988
22. CUBA	16/11/1988
23. CYPRUS	18/11/1988

24.	CZECHOSLOVAKIA	18/11/1988
25.	DEMOCRATIC KAMPUCHEA	18/11/1988
26.	DEMOCRATIC PEOPLE'S REPUBLIC of KOREA	24/11/1988
27.	DEMOCRATIC YEMEN	15/11/1988
28.	DJIBOUTI	17/11/1988
29.	EGYPT	18/11/1988
30.	EQUATORIAL GUINEA	
31.	ETHIOPIA	4/2/1989
32.	GABON	12/12/1988
33.	GAMBIA	
34.	GERMAN DEMOCRATIC REPUBLIC	18/11/1988
35.	GHANA	29/11/1988
36.	GUINEA	19/11/1988
37.	GUINEA-BISSAU	21/11/1988
38.	HUNGARY	23/11/1988
39.	INDIA	18/11/1988
40.	INDONESIA	15/11/1988
41.	IRAN	4/2/1989
42.	IRAQ	15/11/1988
43.	JORDAN	16/11/1988
44.	KENYA	
45.	KUWAIT	15/11/1988
46.	LAO PEOPLE'S DEMOCRATIC REPUBLIC	2/12/1988
47.	LEBANON	
48.	LIBYAN ARAB JAMAHIRIYA	15/11/1988
49.	MADAGASCAR	16/11/1988
50.	MALAYSIA	15/11/1988
51.	MALDIVES	28/11/1988
52.	MALI	21/11/1988
53.	MALTA	16/11/1988

54.	MAURITANIA	15/11/1988
55.	MAURITIUS	17/11/1988
56.	MONGOLIA	22/11/1988
57.	MOROCCO	15/11/1988
58.	MOZAMBIQUE	8/12/1988
59.	NAMIBIA (SWAPO)	19/11/1988
60.	NEPAL	19/12/1988
61.	NICARAGUA	16/11/1988
62.	NIGER	24/11/1988
63.	NIGERIA	18/11/1988
64.	OMAN	13/12/1988
65.	PAKISTAN	16/11/1988
66.	PEOPLE'S REPUBLIC OF KAMPUCHEA	21/11/1988
67.	POLAND	14/12/1988
68.	QATAR	16/11/1988
69.	ROMANIA	24/11/1988
70.	RWANDA	2/1/1989
71.	SAO TOME AND PRINCIPE	10/12/1988
72.	SAUDI ARABIA	16/11/1988
73.	SENEGAL	22/11/1988
74.	SEYCHELLES	18/11/1988
75.	SIERRA LEONE	3/12/1988
76.	SOMALIA	15/11/1988
77.	SRI LANKA	18/11/1988
78.	SUDAN	17/11/1988
79.	TOGO	29/11/1988
80.	TUNISIA	15/11/1988
81.	TURKEY	15/11/1988
82.	UGANDA	3/12/1988
83.	UKRAINIAN SSR	19/11/1988

84. USSR	19/11/1988
85. UNITED ARAB EMIRATES	16/11/1988
86. UNITED REPUBLIC OF TANZANIA	24/11/1988
87. VIET NAM	19/11/1988
88. YEMEN	15/11/1988
89. YUGOSLAVIA	16/11/1988
90. ZAIRE	10/12/1988
91. ZAMBIA	16/11/1988
92. ZIMBABWE	29/11/1988



United Nations Educational,  
Scientific and Cultural Organization

Executive Board

ex

Hundred and thirty-first Session

131 EX/43 Corr.  
PARIS, 17 May 1989  
Original: French and Arabic

Item 9.4 of the provisional agenda

REQUEST FOR THE ADMISSION OF THE STATE OF PALESTINE  
TO UNESCO AS A MEMBER STATE

SUMMARY

The explanatory note reproduced below is submitted  
by Algeria, Indonesia, Mauritania, Nigeria, Senegal  
and Yemen.

23 MAI 1989



United Nations Educational,  
Scientific and Cultural Organization

Executive Board

EX

Hundred and thirty-first Session

131 EX/43 Corr. 2  
Paris, 24 May 1989  
Original: French

Item 9.4 of the provisional agenda

REQUEST FOR THE ADMISSION OF THE STATE OF PALESTINE  
TO UNESCO AS A MEMBER STATE

CORRIGENDUM

Austria should be deleted from the list of countries that have  
recognized the State of Palestine, as set out in Annex II.

25 MAI 1989



United Nations Educational,  
Scientific and Cultural Organization

Executive Board

ex

Hundred and thirty-first Session

131 EX/43 Add.  
PARIS, 7 June 1989  
Original: French

Item 9.4 of the agenda

APPLICATION FOR THE ADMISSION OF THE STATE OF PALESTINE  
TO UNESCO AS A MEMBER STATE

ADDENDUM

SUMMARY

This addendum to the explanatory note (131 EX/43) is  
submitted by Algeria, Indonesia, Mauritania, Nigeria,  
Senegal and Yemen.

14 JUIN 1989



Paris, 2 June 1989

Mr Chairman,

Pursuant to our letter of 5 May 1989 concerning the following item on the agenda of the 131st session of the Executive Board:

Application for the admission of the State of Palestine to Unesco as a Member State,

please find attached an addendum to the explanatory note (131 EX/43) submitted on this subject.

We request, Mr Chairman, that you kindly distribute this as an official document under item 9.4 of the agenda of the 131st session of the Executive Board.

We thank you in advance.

Accept, Mr Chairman, the assurances of our highest consideration.

Mr José Israel Vargas  
Chairman of the Executive Board  
of Unesco

(signatures) Algeria, Mauritania, Nigeria, Senegal and Yemen

APPLICATION FOR THE ADMISSION OF THE STATE OF PALESTINE  
TO UNESCO AS A MEMBER STATE

(Addendum to the main explanatory note submitted in  
document 131 EX/43)

The legal note submitted by the delegation of Israel to Unesco (131 EX/INF.7) arguing that Palestine does not fulfil the criteria of statehood calls for many observations regarding the cogency of the interpretation of the criteria of statehood as defined in contemporary public international law, and regarding the way in which they are made to apply to the State of Palestine.

The Israeli note is drafted in the form of an exposition of general legal and doctrinal principles, some of them controversial, accompanied by a no less controversial interpretation - in sum, a textual analysis which relies much more on abstract thought than on objective reality.

There is no sign anywhere in this note of the results of the long legal process which has marked the specific case history of Palestine, especially since the First World War up to the present time.

It would seem that a deliberate attempt has been made to wipe the slate clean of the distant and the recent past so as to present the case of Palestine as though it concerned a legally non-existent entity that has come from thin air.

This falls just short of proclaiming boldly and loudly, at the dawn of the twenty-first century, that Palestine meets the criteria of the theory of terra nullius (territory that is subject to no sovereign power), which goes back to the Roman era and which has from that time and until the nineteenth century been used to justify the parcelling out of territories all over the world regarded as not belonging to a 'civilized State'.

To the remark which we are entitled to make concerning the argument which is developed in the Israeli note and which draws on works by respectable authors, i.e. that it completely disregards the distant, recent and present, legal and historical realities of the specific case of Palestine, we can add the observation that the amount of muddle and confusion in the argument betrays how much the fear of confronting the truth has pervaded both the letter and the spirit of that argument.

The very title of the Israeli note, with its use of the term 'PLO/Palestine', is where the confusion starts.

For example, one does not say 'Likud/Israel'. If ignorance is the problem, then it should be explained that the PLO and Palestine are two different entities and that the application for admission to Unesco as a Member State concerns the latter alone.

There is no doubt that the legal study submitted in document 131 EX/43 is sufficiently clear, consistent and explicit. It will become even more so with the amplification of some of its points which the Israeli note has made necessary. Amplification will be made regarding the concepts of the people and territory of Palestine, the effective exercise of power and the recognition of the State of Palestine.

## I. PALESTINIAN TERRITORY - PALESTINIAN PEOPLE

These are admittedly two distinct criteria in law, and are treated as such in the main note (reference 131 EX/43); but, because of the similarity of the events that have marked them, they are here combined so as to bring out more clearly the legal developments to which they have simultaneously been subject.

The legal analysis of these two combined criteria, which are crucial for the establishment of a State, will be governed by the same logic and will lead to the same conclusions as if they were dealt with separately.

These two elements have always constituted the Palestinian entity, whose origins reach back way beyond the recent past. This account, however, will begin with the mandate entrusted by the League of Nations to Great Britain on 24 July 1922 under Article 22 of its Covenant.

At the end of the First World War, the various countries making up the Turkish Empire were placed under mandate by the League of Nations, a mandate entrusted to the Great Powers and exercised under the League's supervision.

Article 22 of the Covenant of the League of Nations provided for three categories of mandate:

### 1. Mandate A, under which Palestine was placed

The nature of this category of mandate was defined as follows in Article 22, paragraph 4, of the Covenant:

'Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.' (Underlining added by the authors.)

Charles Rousseau writes 'Mandate A was applied to certain "communities" detached from the Turkish Empire, which had their own political existence and were destined to full independence and which were provisionally subject to the administration of the mandatory Power, whose role was essentially one of guide and adviser. This regime covered Syria and Lebanon (placed under French mandate) and Palestine, Iraq and Trans-Jordan (placed under British mandate). These were genuine States in the full sense of the term (...) whose accession to independence was temporarily deferred'. (Underlining added by the authors); Public International Law, Volume II, Sirey, 1974, p 382.

### 2. Mandate B

This category comprised certain 'other peoples' of Central Africa (former German colonies). The countries concerned were Togo, Cameroon, Tanganyika and Rwanda.

### 3. Mandate C

This category covered certain 'territories': German Southwest Africa (Namibia), Western Samoa, Nauru, New Guinea, and the Caroline, Mariana and Marshall Islands.

Such an enumeration is not without point, since it indicates the contrasting fates meted out to the countries concerned - just in the case of some and unjust in the case of others.

It was by a resolution of 24 July 1922 that the Council of the League of Nations placed Palestine under the mandate of Great Britain.

The obligations placed upon the mandatory Power by the aforementioned mandate included explicitly that of respect for the integrity of the Palestinian territory and its particular status.

As regards the population, the mandatory Power was obliged under the terms of the mandate not to modify in any way and on any grounds the legal status of the inhabitants of the territory, regarded as citizens under its administration. Legally, they were not its nationals. Case law in a number of countries has upheld this inviolable principle (Federal Court of the Eastern District of Virginia, 10 March 1949, decision concerning the inhabitants of Palestine, American Journal of International Law, 1949, pp. 809-810).

The ultimate aim of the mandate was self-determination and independence, after the example of the other peoples with similar status, as affirmed by the International Court of Justice (Reports 1971, p. 32).

This did not happen in the case of Palestine, since the mandatory Power failed to observe the provisions of Article 22 (4) of the Covenant of the League of Nations. Instead of leading the Palestinian people - the sole title holders to sovereignty - towards independence, a different course was followed, thereby initiating a tragedy that will remain for ever in the memory of history.

To conclude this section, Palestine was recognized by the League of Nations in 1922 as having a territory and a population which was destined to full independence.

The United Nations took over, so to speak, from the League of Nations, but its action was to mark a crucial turning-point in the fate of Palestine. On 29 November 1947 the United Nations General Assembly, by resolution 181, decided that Palestine should be partitioned into two States, an Arab State and a Jewish State: an annex set out the boundaries of the two territories.

Israel, whose State was proclaimed on 15 May 1948, gave all due weight to this resolution, on which it based its legitimacy.

At the same time, Israel contests its application with reference to the Palestinian State.

Here there are valid grounds for stating both that resolution 181 may not be called into question by the party deriving its legitimacy therefrom, and that Israel has implicitly recognized the partition of the territory, and therefore the creation of an Arab State, namely present-day Palestine.

Following the 1967 Israeli-Arab War, the United Nations Security Council in resolution 242 of 22 November 1967 affirmed 'the inadmissibility of the acquisition of territory by war' and called for the 'withdrawal of Israel armed forces from territories occupied in the recent conflict'.

This resolution was confirmed by the Security Council which, in resolution 338 of 22 October 1973, called for its implementation in all of its parts.

With reference to the aforementioned resolution 181, the Declaration of Independence of the State of Palestine declares: 'Despite the historical injustice done to the Palestinian Arab people when they were driven from their homeland and deprived of the right to self-determination following the adoption by the United Nations General Assembly of resolution 181 (1947) which partitioned Palestine into two States, one Arab and one Jewish, that resolution nevertheless continues to provide international legitimacy for the right of the Palestinian Arab people to sovereignty and national independence'.

The United Nations General Assembly has never ceased to proclaim and reaffirm the inalienable rights of the Palestinian people, including the right of return and the right to independence and national sovereignty in Palestine, in conformity with the Charter of the United Nations. (See, in particular, resolutions 3236 and 3237 (XXIX) of 1974, and the major resolutions renewed at each session, together with resolution 3378 (XXX) which set up a 'Committee on the Exercise of the Inalienable Rights of the Palestinian people'.)

There is surely no need to recall, yet again, the many Unesco resolutions affirming the existence of the Palestinian people and the Palestinian territory, adopted every time the problem of Palestinian education and cultural institutions is raised.

The United Nations report 'The international status of the Palestinian people' (United Nations New York, 1980) notes that:

'... the International Law Commission has agreed that ... the right of peoples to self-determination ... is one of the cases where contemporary international law can be characterized as jus cogens'.

It is now an unalterably established principle that the people, even where dependent, is the source of sovereignty, which belongs to it, which cannot be transferred from one State to another, and which can only disappear with the destruction of that people.

Such is the message contained in the Charter of the United Nations, which speaks of peoples (Articles 1 and 55), and likewise in resolution 1514 (XV) of 14 December 1960, paragraph 2 of which prescribes the right of peoples to self-determination, and paragraph 5 the need to transfer all powers to the peoples of dependent territories, in accordance with their freely expressed will and desire.

Despite the continuing controversy concerning the binding power of United Nations resolutions, there are valid grounds for affirming that resolutions embodying principles that are contained in the Charter and have been constantly upheld, in this case the right to self-determination, should be excluded from this controversy and are binding upon States that have freely acceded to the Charter, by virtue of the fact that it constitutes a multilateral treaty.

To conclude this section, it may be said that the United Nations, by these various resolutions, has confirmed the existence of a Palestinian territory and a Palestinian people. Still more important, by deciding on the partitioning of Palestine and by creating the (Palestinian) Arab State, the United Nations should acknowledge the legal consequences of its act, which has been operative since 1947; a practical expression of these consequences is the Proclamation of the Independence of the State of Palestine.

These consequences should, legally speaking, be taken into account by the United Nations and its Specialized Agencies by admitting the State of Palestine as one of their members.

To repudiate the resolutions of the United Nations, is to repudiate oneself when one is a party to those resolutions or under an obligation to comply with them, particularly when they constitute an integral part of contemporary international law - rightly invoked in the arguments put forward by Israel, which by contesting the existence of the Palestinian territory and people, contradicts the law it invokes and places itself at odds with the self-evident facts of the situation.

It would be worth while considering whether Israel meets the criteria it invokes in opposing the Palestinian application.

1. On the population question, the Israeli population does not constitute a homogeneous human community. Israel does not hesitate to recognize that its population is in a permanent state of transformation, and will remain so while Jewish immigration to Israel continues. This is the explanation it gives to justify its lack of a Constitution.

2. On the question of territory, Israel has not yet delimited its own frontiers. This is not the result of chance, but represents a well-defined policy. Israel has manifestly gone beyond the boundaries set for it by the United Nations (resolution 181) on the occasion of the 1948, 1967, 1973 and 1982 wars, since it also occupies Southern Lebanon.

When Mr Levi Eshkol, then Prime Minister of Israel and the supporter of a 'greater Israel', asked President Johnson for Israel's frontiers to be guaranteed by the United States, he received the reply: 'You want me to guarantee your frontiers, but what frontiers do you want me to guarantee?'

Very recently, the United States Secretary of State Mr James Baker, speaking to the representatives of the American Jewish community, said that the Israeli authorities should 'lay aside, once and for all, the unrealistic vision of a greater Israel' and abandon the annexation of the West Bank and Gaza (widely reported in the press of the United States and other countries).

Ironically enough, it is the Israeli party to the case which, by invoking international law to deny any existence to Palestine, violates international law, in particular United Nations and Unesco resolutions. Israel also violates the commitments it undertook when it was admitted to the United Nations, namely, respect for the frontiers of the Arab State, the international status of Jerusalem and the return of the Palestinian refugees to their homeland. Everyone knows how matters have turned out.

## II. EFFECTIVE EXERCISE OF POWER

The explanatory note issued under reference 131 EX/43 contains sufficient background material and information to make it unnecessary for us to return to this question.

As far as Palestinian foreign policy is concerned, no one can deny that this is fully and exclusively exercised by the Palestinian executive authority. This factual situation is confirmed by the number of countries that have recognized the PLO (106), and subsequently the State of Palestine (98), as well as by the number of regional and international movements of which it is a full member.

Palestine is represented in some 100 countries, with which it maintains normal diplomatic relations.

Furthermore, its representation at the United Nations and the Specialized Agencies are proof of its intense activity in the sphere of foreign relations.

We have not said that the Palestinian political authorities, the legitimate representatives of the Palestinian people, exercise complete power over their territory.

They are ready and able to do so if the United Nations agrees to fulfil its obligations to Palestine, namely the implementation of its resolutions concerning the exercise of the right to self-determination, to independence and sovereignty - rights, as we have pointed out previously, accorded to peoples and enshrined in the Charter of the United Nations and in the relevant resolutions.

It should not be forgotten that the case of Palestine is a special case, identical to that of occupied countries or territories that have gone through the stage of a struggle for their liberation.

Israel is poorly placed to make a judgement about the absence of effective government by the Palestinian authorities for the simple reason that it is itself occupying the Palestinian territory by force; yet it invokes in its own favour the consequences of this situation, which it considers as normal and legal!

In reality, Israel is setting up in opposition to the law a de facto situation which it has itself created, and which is rightly condemned by the law it invokes. It is inadmissible that this situation should indefinitely be allowed to constitute an obstacle to the establishment of a State; this would be tantamount to recognizing in, and attributing to, the negative attitude of Israel, consequences resulting in the creation of a law which defies the imagination.

In order to remain consistent with its self-proclaiming logic, the Israeli legal note states that 'only Israel is authorized under international law to exercise authority in the Administered Areas, including the issuing of legislative measures', and 'there is (...) an opposing claim of title'. The assertion is clear. Let us analyse it.

The main international instruments relevant to such cases are the Hague Conventions No. II of 1899 and No. IV 1907 concerning the Laws and Customs of War on Land, the Regulations annexed to the 1907 Hague Convention, and the 1949 Geneva Conventions.

Occupation does not entail any transfer of sovereignty. This rule derives from the Hague Regulations (Article 27), the Geneva Convention No. IV of 1949 (Articles 6 and 47) relative to the protection of civilian persons in war, and the 1977 Protocol thereto (Article 4), which stipulates: 'Neither the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question'.

This principle was reaffirmed by the Permanent Court of International Justice in the Lighthouses case between France and Greece (PICJ, decision of 17 March 1934, Series A/B, No. 62, in particular pp. 19 and 25).

It was very clearly stated by Eugène Borel in 1925 in the case of the Turkish public debt:

'Whatever the effects of the occupation of a territory by the adversary before the re-establishment of peace, it is certain that this occupation by itself cannot entail the transfer of sovereignty' (RSAI, p. 531).

We have seen above that Articles 1 and 55 of the Charter of the United Nations and resolution 1514 (XV) confirmed the rule according to which it is the people, even where dependent, which is the source of sovereignty. Sovereignty belongs to it exclusively, and cannot be transferred to another State.

All the actions taken by Israel in violation of this prescription of mandatory law are null and void. Israel has no power to legislate. This power belongs to the Palestinian people, which delegates it to its legitimate representatives.

The 1907 Hague Convention Regulations and the 1949 Geneva Conventions are daily violated by Israel in the occupied Palestinian territories:

these violations take the form of the banishment of Palestinians, collective repression and reprisals, illegal arrest and detention, destruction of private dwellings, uprooting of 500,000 fruit trees, illegal expropriation of property, and so forth.

As can be seen, the Israeli authorities not only arrogate to themselves rights over the occupied Palestinian territory, rights that have no legal basis or authority, but daily violate the law deriving from custom, practice and case law and from the very international instruments that place upon the Israelis the obligation to observe the rules stemming from the law of occupation as a result of war.

### III. RECOGNITION OF THE PALESTINIAN STATE

In the explanatory note bearing the reference 131 EX/43, this question has been sufficiently analysed on the basis of relevant arguments put forward by legal experts internationally recognized for their competence in the matter (Visser, Verhoeven, Brierly and Charpentier).

Examples have been quoted and commented upon of the recognition of States whose cases are comparable from the legal and political standpoint to that of Palestine.

Concerning the forms of recognition, the Israeli note mentions that the formulation adopted by many States 'has been deliberately ambiguous', and quotes as examples 'USSR, Czechoslovakia and Hungary'.

As regards these three countries, the declaration by which they recognized the State of Palestine contained no ambiguity.

It was followed by the elevation of the Palestinian missions in Moscow, Prague and Budapest to the rank of Embassy, headed by an ambassador.

It should be noted in this connection that recognition may be express (e.g. official declaration, message of recognition or congratulations, conclusion of a bilateral agreement, establishment of diplomatic relations) or tacit. 'Suffice to say that recognition is not subject to formal rules and may be inferred a posteriori' (Thierry, Combacau, Sur et Vallée, in Droit international public, Editions Montchretien, 2nd edition, p. 216).



As regards the effects of recognition, Thierry and his forementioned co-authors state: 'In recognizing a State, another State attests that the newly emerged community fulfils in its view the conditions laid down by international law for the granting of statehood. Whether that attestation corresponds to the observable reality is not usually relevant as regards the effects of recognition, since, as we shall see, it does not alter the objective situation of the recognized entity but only the relations which the recognizing State will establish with that entity (Droit international public, p. 213).

Professor Brierly in The Law of Nations, 1949, p. 124, states that 'the primary function of recognition is to acknowledge as a fact something which has hitherto been uncertain, namely, the independence of the body claiming to be a State, and to declare that the recognizing State's readiness to accept the normal consequences of that fact'.

In quoting Kelsen's statement that 'a State violates international law and thus infringes upon the rights of other States if it recognizes as a State a community which does not fulfil the requirements of international law' the Israeli communication, basing itself on the contestable argument concerning the non-existence of the State of Palestine from the point of view of Israel, casts a serious slur on the 98 States that have recognized the State of Palestine.

It minimizes, not to say disparages, their ability to assess the legal and political issues relating to the problem of recognition.

It follows that these insinuations have to be considered as being similarly directed at States that have recognized other States whose case was similar to that of Palestine (see the examples given in 131 EX/43).

It is difficult moreover to see how a State which recognizes another community as a State could infringe upon the rights of other States, as recognition is bilateral and produces effects only between the two States concerned.

To conclude this section, it is interesting to note what Hubert Thierry and his co-authors say in this regard (op. cit. 213):

'If it were true to its essential legal logic, recognition should be a collective legal institution subject to codified provisions of substance and procedure; in reality, by deciding in each particular case whether or not they are going to grant recognition, States are mainly governed by political motives. This results in very marked variations in practice: variations as between States, but also in the national practice of each State, depending on the specific nature of the case in question. It is therefore not surprising that no rule of custom has taken shape against the background of so heterogeneous a set of practices. In these circumstances, one has to conclude that legal freedom of recognition exists' (Underlining added by the authors).

It should be noted here, as was stressed in the explanatory note (131 EX/43), that the issue before the Executive Board is one of the admission of a State to membership of an organization of the United Nations system and not one of recognition, which only concerns States in their bilateral relations and which is decided upon by those States in the form of acts of which they are the sovereign arbiters.

The request for admission submitted by the State of Palestine should be examined with reference to the conditions laid down in the Constitution of Unesco and in Rule 92 of the Rules of Procedure of the General Conference, to the exclusion of any other criterion or condition.

It is a question of ascertaining whether this request for admission corresponds to Unesco's goals and to the rules of procedure established for such cases.

On the question of goals, Unesco's Constitution states, inter alia, in its Preamble:

'That the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern.'

'That a peace based exclusively upon the political and economic arrangements of governments would not be a peace which could secure the unanimous, lasting and sincere support of the peoples of the world, and that the peace must therefore be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind'. Concerning procedure, Article 2, paragraph 2, of the Constitution and Rule 92, paragraph 1, of the Rules of Procedure of the General Conference lay down the conditions for the admission of States not members of the United Nations.

These texts allow Member States great latitude in assessing the qualities of candidates for membership.

Indeed, although the relevant text specifies that the candidate must be a State, it does not provide any definition thereof. The General Conference cannot exercise other prerogatives in this matter without exceeding the powers expressly granted to it by the Constitution.

The same is true of the Constitutions of the other Specialized Agencies, which, are on the whole, strictly technical in nature.

The issue before us is therefore one of admission to membership of an international organization and not one of recognition.

The former is subject to conditions, fulfils a role and has effects that are not comparable to those which recognition poses for a State.

The latter is a matter for the sovereign judgement of States, acting outside the international organization. It comes within the province of their bilateral relations.

Provided the application for admission meets the conditions set out in the Constitution, there is nothing to prevent that application being received favourably, regardless of any other consideration.

Indeed, Unesco is neither competent nor authorized to assess the criteria for statehood or qualities of the applicant State, any more than it is to verify the credentials of the delegates at certain international conferences, since it confines itself to checking validity with regard to the rules governing the form of such credentials and not to ascertaining whether those credentials derive from a politically legitimate authority or otherwise.

Admission to international organizations does not have the same significance as recognition by a State. Each is subject to its own rules.

Otherwise, this would be equivalent to giving an international organization the authority to verify the qualities of the State applying for admission - which is not provided for in any of the constitutions of international organizations.

Nevertheless, with a view to refuting the argument put forward in the communication by the Israeli Delegation, we have dealt above, in ancillary fashion, with the case of the State of Palestine from the standpoint of international law and with precedents of similar character.

## CONCLUSION

### Main conclusion

1. The question of the admission of the State of Palestine to Unesco as a Member State must be examined in relation to the Constitution. It is not a problem of recognition, which only concerns States in their bilateral relations. Unesco as an international organization is not competent to verify whether the existence of a State is or is not in conformity with the generally accepted criteria.

### Subsidiary conclusion

2. The question of the admission of the State of Palestine must not be reduced to a purely academic examination. It must be situated in its real present-day legal context. To act otherwise, as may be seen from the communication by the Israeli Delegation, would mean evading debate and sowing confusion in people's minds.

3. The territory of Palestine and the Palestinian people have always existed. Much more than that, under the Covenant of the League of Nations and of the Palestine mandate entrusted to Great Britain by the League of Nations in 1922, Palestine was destined to independence; this was not achieved, for the political reasons described above and in document 131 EX/43.

In 1947, the United Nations decided on the partitioning of Palestine into two States, one Arab and one Jewish, with delimitation of the frontiers.

Successive wars have led to profound modifications, due to the occupation of the Palestinian territory by Israel.

Since 1967, the United Nations General Assembly has regularly adopted resolutions concerning the ending of the Israeli occupation and the recognition of the Palestinian people's right of return, and its right to self-determination, independence and sovereignty.

Since 1967, the General Conference and the Executive Board of Unesco have adopted important resolutions concerning the Palestinian people, its cultural identity, the preservation of its cultural heritage, and its right to education and culture. Those resolutions constitute an extension of the resolutions of the United Nations concerning the existence of the territory and people of Palestine.

In contemporary international law the right to self-determination constitutes an imperative legal norm, recognized by the United Nations Charter (Articles 1 and 55) and the important resolution 1514 of 14 December 1960 and other relevant resolutions.

The Israeli communication denies the existence of the territory and people of Palestine. This assertion constitutes a serious violation of the elementary principles of international law in this area and the systematic negation of the legal achievements of the international community.

4. The effective exercise of power by the competent Palestinian authorities within the Palestinian territory is partially obstructed by the Israeli occupation.

Israeli invokes this fact in order to prevent the application of the law. It also invokes the title to the territory and the right to impose legislation.

This assertion likewise constitutes a serious violation of international law, which does not recognize that an occupying power as a result of war has any right over the territory occupied, and which considers that sovereignty belongs exclusively to the people and is non-transferrable.

It also constitutes a violation of the relevant resolutions of the United Nations General Assembly and the Security Council.

Palestine's external relations are conducted fully and exclusively by the Palestinian political authority (diplomatic relations, membership of the the Movement of Non-Aligned Countries, of the League of Arab States, of the Organization of the Islamic Conference, and observer status at the United Nations and its Specialized Agencies).

The United Nations must assume its responsibilities by implementing the resolutions relating to the rights of the Palestinian people. This is the duty of the international community.

The Nobel Prizewinner Maeterlinck said that 'the world does not stop at the doors of houses'.

Jacques Berque wrote that at the present time 'each people is seeking to secure the sky above its head and the ground beneath its feet, while Israel is trying to place the Palestinian people in a no-man's land.

5. Recognition of the State of Palestine

Ninety-eight States (98) have so far recognized the State of Palestine, a highly significant event which strengthens its position from the legal point of view.

To deny that evidence means ignoring the wishes of a large part of the international community.

Recognition in international law is not subject to codified regulations. It is sometimes subjective, sometimes objective and sometimes a mixture of both. It is left to the discretion of States, which decide according to the circumstances, including the rightness of the cause of the peoples concerned.

In these circumstances, recognition in no way violates international law, nor does it jeopardize the rights of other States, contrary to the arguments put forward by Israel.

It is true that Israel argues as an occupying power and cannot therefore argue otherwise.

Moreover, it is accepted that the admission of a State into an international organization does not imply recognition on the part of the States which have not recognized it.

The State of Palestine, in applying for admission as a Member State of Unesco, is guided by the desire and the duty to enable its people to participate fully in that Organization's activities and to contribute to strengthening international peace.

The Palestinian people, whose voice is stifled by the Israeli occupant, seeks to express its views and its concerns, taking its stand on the noble ideals embodied in Unesco's Constitution.

This is not only a legal problem, but also a human problem, in the proper sense of the term.

To admit Palestine to the Organization means not only satisfying the above-mentioned legitimate concerns and rights but also contributing to the establishment of peace, particularly in this region of the world.

To reject this application means turning one's back on reality and dashing the hopes of a stricken people which should be spared still further injury.