Comment

The Palestine Problem: The Search for Statehood and the Benefits of International Law

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I. INTRODUCTION

Palestine has had a long and checkered past in its efforts to attain statehood. Although international law failed to facilitate Palestinian statehood more than half a century ago, the legal landscape at the international level is changing. Whereas conventional wisdom assumes that international law reduces state sovereignty, this Comment argues that international political organizations and legal institutions can actually increase Palestinian chances of achieving statehood.

By the conclusion of World War II, Palestine had been ruled by Great Britain for nearly three decades. Assuming control from the Ottomans following World War I, the British never established a coherent policy for governing the disputed territory. British rule, however, did not last: on November 29, 1947—with thirty-three votes in favor, thirteen against, ten abstentions, and one absence—the U.N. General Assembly passed Resolution 181 calling for the exit of British forces and the partition of Palestine into "[i]ndependent Arab and Jewish States."[1] The United Nations, then a nascent organization formed out of the ashes of the Second World War,[2] recognized that "the present situation in Palestine [was] one which [was] likely to impair the general welfare and friendly relations among nations" and that the only sensible solution was "the Plan of Partition."[3] Based on the recommendations of the U.N. Special Committee on Palestine,[4] Resolution 181 aimed to find a

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1. G.A. Res. 181 (II), U.N. Doc. A/519 (Nov. 29, 1947). Partition marked a turning point, if not a point of no return, in the broader Arab-Israeli conflict, which Yale Law School professor Amy Chua aptly describes as "about as loaded and complex as any the world has seen, involving religion, land, geopolitics, colonization and decolonization issues, competing claims to self-determination, and much more." AMY CHUA, WORLD ON FIRE 212 (2004).

2. *See* RALPH M. GOLDMAN, THE UNITED NATIONS IN THE BEGINNING 43-44 (2001) (describing the establishment of the United Nations from 1944 to 1945).

3. G.A. Res. 181 (II), *supra* note 1.

4. General Assembly Resolution 106 established the U.N. Special Committee on Palestine. *See* G.A. Res. 106 (S-1), U.N. Doc. A/310 (May 15, 1947). Formed at the behest of Great Britain, the Special Committee was tasked with preparing and submitting a report to the General Assembly with "such proposals as it may consider appropriate for the solution of the problem of Palestine." *Id.* ¶ 6.

peaceful solution to the problem, but instead led to regional warfare.[5] The Arab League, which included the states neighboring Palestine, refused to accept the United Nations' creation of a Jewish State.[6] As a result, Palestine failed to attain the statehood it so desperately craved. This failure is indicative of international law's shortcomings; international law can offer concrete steps toward statehood, but if applied too rapidly or too harshly, can also undermine stability.

Israel's road to internationally recognized statehood has been somewhat smoother. Battling its neighbors while awaiting the formal withdrawal of British forces, the State of Israel did not formally declare its independence until May 14, 1948.[7] Yet it was not until a year after independence that Israel gained admittance to the United Nations, on May 11, 1949.[8] As fighting continued through the first half of the year, the U.N. Security Council refrained from referring the matter to the General Assembly for a vote.[9] After signing a series of armistice agreements with its neighbors,[10] Israel gained majority support in the Security Council and subsequently in the General Assembly to become an official member of the United Nations.[11] Fast-forward sixty years, and Israel—a state born out of two General Assembly resolutions with a positive recommendation from the Security Council in between—faces the prospect of bearing witness to similar action by the United Nations on behalf of the Palestinians. This time around, the Israeli government has firmly stated its opposition to what Palestinian leaders are referring to as "Plan B."[12]

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5. YONAH LIEBERMAN & WILLEM-JAN VAN DER WOLF, ISRAEL 50 YEARS: A HISTORY IN DOCUMENTS 10 (1998).

6. *See* Paul Seabury, *The League of Arab States: Debacle of a Regional Arrangement*, 3 INT'L ORG. 633 (1949) (describing the formation of the Arab League and its evolving positions regarding the Palestine question).

7. *See* MARK TESSLER, A HISTORY OF THE ISRAELI-PALESTINIAN CONFLICT 269 (1994).

8. *See* G.A. Res. 273 (III), U.N. Doc. A/900 (May 11, 1949). Resolution 181 did not provide for automatic membership in the United Nations, but it laid the groundwork:

> When the independence of either the Arab or the Jewish State as envisaged in this plan has become effective and the declaration and undertaking, as envisaged in this plan, have been signed by either of them, sympathetic consideration should be given to its application for admission to membership in the United Nations in accordance with Article 4 of the Charter of the United Nations.

G.A. Res. 181 (II), *supra* note 1, pt. I, § F.

9. The United States was pushing for a plan to delay partition through the middle of 1948. The Americans did not have sufficient support, but the United Nations appointed Count Folke Bernadotte of Sweden to mediate. Members of the Stern Gang, a Jewish paramilitary group, assassinated him on September 17, 1948. *See* DEBORAH J. GERNER, ONE LAND, TWO PEOPLES 45 (1991).

10. Israel signed armistice agreements with Egypt, Lebanon, Jordan, and Syria. *See The 1949 Armistice Agreements*, *in* LIEBERMAN & VAN DER WOLF, *supra* note 5, at 54-68.

11. G.A. Res. 273 (III), *supra* note 8 (admitting Israel with thirty-seven votes in favor, twelve against, and nine abstentions). In addition to the substantive advantages of full membership, Israel now had a symbolic advantage as the only internationally recognized state in Palestine. *See generally* COURTNEY B. SMITH, POLITICS AND PROCESS AT THE UNITED NATIONS 279 (2006) (describing the benefits of joining the United Nations).

12. The Israeli Foreign Ministry released a statement in December 2010 condemning any attempt by the Palestinians to "bypass negotiations." *See* Herb Keinon, *Israel "Disappointed" with S. American Countries*, JERUSALEM POST (Dec. 6, 2010), http://www.jpost.com/Headlines/Article.aspx?id=198289 ("'All attempts to bypass negotiations and to unilaterally determine issues in dispute will only harm the trust of the sides and their commitment to agreed upon frameworks for negotiations,' the statement read."). *But see* Isabel Kershner, *Israelis Float an Interim Peace Plan*, N.Y. TIMES, Mar. 2,

"Plan B" represents a multifaceted approach to achieving recognition of a Palestinian State from four major international bodies[13]: the U.N. Security Council, the U.N. General Assembly, the International Court of Justice (ICJ), and the International Criminal Court (ICC). The Palestinian Authority (PA), which declared unilateral statehood more than two decades ago,[14] is thus not restricting its push for recognition to individual nations.[15] Following another round of collapsed peace talks brokered by the United States, Palestinian Foreign Minister Riad Malki publicly declared his intention to seek U.N. recognition of a Palestinian state in September 2011.[16] The U.N. route, however, is not an easy process. To obtain U.N. membership, Malki would first need to gain support from the Security Council, as the General Assembly can only vote on membership based on a positive recommendation from the Security Council.[17] But the foreign minister has made clear that in the face of an expected Security Council veto by the United States,[18] the Palestinians will still push for a vote in the General Assembly, where they are more likely to garner majority support.[19] Such action would not result in membership but

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2011, at A13 ("Instead of a final accord on Palestinian statehood by fall, Israel is now floating the idea of an interim agreement as a step toward a two-state solution, *even without Palestinian agreement*." (emphasis added)).

13. I use the term "international bodies" broadly to include not only international political organizations, such as the U.N. Security Council and the U.N. General Assembly, but also international courts, such as the International Court of Justice and the International Criminal Court.

14. *See* Palestine National Council: Political Communiqué and Declaration of Independence, Nov. 15, 1988, U.N. Doc. A/43/827-S/20278, Annex III (Nov. 18, 1988), *reprinted in* 27 I.L.M. 1668 (1988). As a point of clarification, the Palestinian Authority refers to the administrative body established during the Oslo Accords to govern sections of the West Bank and Gaza Strip. *See Palestinian Authority*, ENCYCLOPEDIA BRITANNICA ONLINE, http://www.britannica.com/EBchecked/topic/439781/Palestinian-Authority-PA (last visited Apr. 24, 2011). The Palestine Liberation Organization (PLO), which preceded the PA, "was formed in 1964 to centralize the leadership of various Palestinian groups that previously had operated as clandestine resistance movements." The preeminent political party within the PLO is Fatah, once led by Yasser Arafat and now by Mahmoud Abbas. *See Palestine Liberation Organization*, ENCYCLOPEDIA BRITANNICA ONLINE, http://www.britannica.com/EBchecked/topic/439725/Palestine-Liberation-Organization-PLO (last visited Mar. 1, 2011).

15. Up to this point, the Palestinian Authority has focused its independence declaration efforts primarily on individual nations in Latin America. On February 1, 2011, Suriname joined Brazil, Uruguay, Argentina, Bolivia, Ecuador, Chile, and Guyana to become the latest Latin American nation to recognize a Palestinian state. *Suriname Latest S. American State To Recognize "Palestine,"* JERUSALEM POST (Feb. 2, 2011), http://www.jpost.com/Headlines/Article.aspx?id=206289; Pierre Klochendler, *Latin America Deepens Israeli Isolation*, INTER PRESS SERV., Jan. 16, 2011, http://ipsnews.net/news.asp?idnews=54146.

16. *See* Mohammed Daraghmeh, *Palestinians Say They'll Go to UN for Recognition*, ASSOCIATED PRESS, Jan. 10, 2011, *available at* http://www.salon.com/news/feature/2011/01/10/ml_palestinians_recognition.

17. U.N. Charter, art. 4, para. 2 ("The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.").

18. While Palestine's statehood question has not been brought to the Security Council to date, the United States blocked Palestinian efforts to become "credentialed as a state" at the United Nations in 1989. The United States also thwarted the Palestinian attempt that year to join the World Health Organization. *See* John Quigley, *Palestine Statehood: A Rejoinder to Professor Robert Weston Ash*, 36 RUTGERS L. REC. 257, 259 (2010).

19. *See* Ethan Bronner, *In Israel, Time for Peace Offer May Run Out*, N.Y. TIMES, Apr. 2, 2011, at A1 ("Efforts are still under way to restart peace talks but if, as expected, negotiations do not resume, come September the Palestinian Authority seems set to go ahead with plans to ask the General Assembly to accept it as a member. Diplomats involved in the issue say most countries—more than one hundred—are expected to vote yes, meaning it will pass."). The General Assembly vote, in and of itself,

function as a purely symbolic measure on the part of the General Assembly.

In addition to focusing on the United Nations, the PA is also likely to appeal to the ICJ and ICC.[20] The emergence of a nascent but rapidly expanding international judicial system over the past three decades[21] has contributed to the perceived legitimacy and actual authority of international courts.[22] In addition to the long tenure of the ICJ and the approaching ten-year anniversary of the ICC, the international legal system now includes a number of specialized tribunals, as well as hybrid and regional courts, charged with meting out justice outside of and across traditional national boundaries.[23] The ICJ and ICC thus offer additional forums for focusing international attention on the issue of Palestinian statehood and influencing Israeli policy in the process—powerful tools that are part of a greater judicial system that was unavailable to the Palestinians in the mid-twentieth century.

The PA's Plan B, therefore, would invert the standard relationship between international bodies and state sovereignty, as it seeks to use the former to advance the latter. In other words, the PA intends to use international bodies that generally take a state's sovereignty as an axiom to establish that sovereignty in the first place.[24] Palestine has been an aspiring state for sixty

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cannot grant U.N. membership, but it can help pave the way to official recognition, as it did for the Israel.

20. *See* Ethan Bronner, *Palestinians Shift Focus in Strategy for Statehood*, N.Y. TIMES, Oct. 21, 2010, at A6.

21. *See* Roger P. Alford, *The Proliferation of International Courts and Tribunals: Adjudication in Ascendance*, 94 AM. SOC'Y INT'L L. PROC. 160, 160 (2000) ("Depending on one's count, more than fifty international courts and tribunals are now in existence, with more than thirty established in the past twenty years.").

22. Stanford Law School professor Jenny S. Martinez writes: "International courts are acting more and more like, well, courts: They are convicting people of international crimes and sending them to prison; they are exercising compulsory jurisdiction over trade disputes; they are enforcing the rights of individuals against governments." Jenny S. Martinez, *Towards an International Judicial System*, 56 STAN. L. REV. 429, 432 (2003) (footnotes omitted). Martinez adds: "Compliance with the decisions of international courts is not perfect, to be sure, but the reputational and other consequences of noncompliance are factors that political actors cannot simply ignore." *Id.*

23. *See, e.g.*, *About ECCC*, EXTRAORDINARY CHAMBERS IN THE CTS. OF CAMBODIA, http://www.eccc.gov.kh/en/about_eccc (last visited Mar. 12, 2011) (describing the Extraordinary Chambers in the Courts of Cambodia as a hybrid international court created by the Cambodian government and the United Nations to try former Khmer Rouge leaders); PROJECT ON INT'L CTS. AND TRIBUNALS, http://www.pict-pcti.org/ (last visited Mar. 12, 2011) (describing the Project on International Courts and Tribunals as "a centralized source for scholars, practitioners and laypersons" interested in the work resulting from the "recent exponential growth of international courts and tribunals" in Africa, noting that "[t]he African continent leads the way in innovations in international courts and tribunals, with the first hybrid court and the first referrals to the International Criminal Court."); *UN Council Backs New Courts and Prisons for Pirates*, YAHOO NEWS (Apr. 11, 2011), http://news.yahoo.com/s/afp/20110411/wl_afp/somaliapiracyun_20110411211802 (reporting on the U.N. Security Council's call "for the establishment of specialized international courts . . . to combat Somali pirates").

24. As a frame of reference, the Preamble to the Rome Statute establishing the International Criminal Court "[e]mphasiz[es] in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict *or in the internal affairs of any State.*" Rome Statute of the International Criminal Court pmbl., July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002) (emphasis added) [hereinafter Rome Statute]. Over the span of the past two decades, the vast majority of the world's newest states came into existence following the collapse of the U.S.S.R. and the dissolution of the former Yugoslavia. During that period, the ICC had not yet come into existence, the ICJ was focusing its attention on other parts of the world, *see Cases*, INT'L CT. OF JUST., http://www.icj-cij.org/docket/index.php?p1=3&p2=2&PHPSESSID=8aa6a37ca9a626fb1b8ca73567f7

years, and international bodies can and should play a more direct role in helping Palestinians achieve their decades-long goal. This Comment thus aims to move beyond the already wide body of literature addressing prior U.N.[25] and ICJ[26] action on Palestine (and potential future action by the ICC[27]) by examining the issue in the aggregate through the lens of international organizational multilateralism.

This Comment proceeds in three Parts following this Introduction. Part II offers a normative argument for reconceptualizing international law as a tool for advancing, rather than limiting, sovereignty for aspiring states. International law emanates, at least partially, from international organizations and courts, which restrict the sovereignty of their member states and signatories.[28] States do not completely surrender their sovereignty, since they retain the ultimate right to withdraw, and they directly or indirectly participate in the functioning of these bodies. Yet during the tenure of their membership, they delegate some degree of sovereign powers in the relevant issue areas governed by the

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db37 (last visited Mar. 30, 2011) (providing a list of all ICJ cases in the 1980s and 1990s), and the United Nations was in a functional deadlock as a result of the Cold War, DAVID MALONE, DECISION-MAKING IN THE UN SECURITY COUNCIL: THE CASE OF HAITI, 1990-1997, at 2 (1998) (noting that "[*a*]*fter* the end of the Cold War, the UNSC came to play a more active and important role in international relations than at any time since its inception" (emphasis added)). For a more recent example, Southern Sudan used a popular referendum to decide whether to become a separate state. *See* Sarah Childress, *Sudan Vote Sets President on Path*, WSJ.COM (Jan. 22, 2011), http://online.wsj.com/article/SB10001424052748704115404576095490346655166.html.

25. *See, e.g.*, JAMES ROSS-NAZZAL, THE U.S. VETO AND THE POLEMICS OF THE QUESTION OF PALESTINE IN THE UNITED NATIONS SECURITY COUNCIL, 1972-2007, at 167 (2008) (noting that the "United Nations has dealt with the Question of Palestine and the Arab-Israeli conflict rather inconsistently over time."); UNITED NATIONS, THE QUESTION OF PALESTINE AND THE UNITED NATIONS (2008) (providing a broad overview of the United Nations' role in Palestine since its founding).

26. *See, e.g.*, Rebecca Kahan, Note, *Building a Protective Wall Around Terrorists—How the International Court of Justice's Ruling in* The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory *Made the World Safer for Terrorists and More Dangerous for Member States of the United Nations*, 28 FORDHAM INT'L L.J. 827, 877 (2005) (castigating the ICJ for issuing "more [of] a political manifesto than a judicial ruling"). *Compare* Kyle K. Bradley, Note, *A Mending Wall: A Critical Look at the International Court of Justice's Analysis in its Advisory Opinion on* The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 19 TEMP. INT'L & COMP. L.J. 419, 448 (2005) (criticizing the ICJ's advisory opinion for "suffer[ing] from a lack of vigorous analysis"), *with* Pieter H.F. Bekker, *The World Court's Ruling Regarding Israel's West Bank Barrier and the Primacy of International Law: An Insider's Perspective*, 38 CORNELL INT'L L.J. 553, 567 (2005) ("The ICJ's findings in the Wall Opinion are rooted in international law and have the strength of that law.").

27. The ICC heard oral presentations in October 2010 on whether Palestine can bring charges against Israel for its conduct during the Gaza War given that only "states" are allowed to bring suit. *See* Dan Izenberg, *ICC: Can PA Complain of Crimes on "Palestinian Territory"?*, JERUSALEM POST (Oct. 21, 2010), http://www.jpost.com/International/Article.aspx?id=192194; *see also* Rome Statute, *supra* note 24, art. 14 ("*A State Party* may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes." (emphasis added)). *Compare* Alain Pellet, *The Palestinian Declaration and the Jurisdiction of the International Criminal Court*, 8 J. INT'L CRIM. JUST. 981, 997 (2010) (arguing that the conditions are met for the ICC to exercise its jurisdiction), *with* Daniel Benoliel & Ronen Perry, *Israel, Palestine, and the ICC*, 32 MICH. J. INT'L L. 73, 126 (2010) (arguing that the ICC lacks jurisdiction to continue with the proceedings).

28. *See* SHIRLEY V. SCOTT, INTERNATIONAL LAW IN WORLD POLITICS 32 (2d ed. 2010) (describing the role of intergovernmental organizations in the development and enforcement of international law).

organization.[29] This Comment turns the conventional view on its head by applying it to aspiring states seeking to establish their sovereignty in the first place.

Focusing on Palestine, Part III provides an overview of the role the Security Council, the General Assembly, the ICJ, and the ICC have played in the Israeli-Palestinian conflict and outlines a framework for advancing "Plan B."[30] Section III.A focuses on the more conventional avenue of advancing sovereignty through the United Nations, while Section III.B addresses the more unconventional path of harnessing the power of the ICC and ICJ to promote sovereignty. Part IV concludes.

II. INTERNATIONAL LAW AS A STEP LADDER, NOT A STUMBLING BLOCK, TO STATE SOVEREIGNTY FOR ASPIRING STATES

International law, enforced through international legal institutions and political organizations, is generally considered to infringe upon state sovereignty.[31] By signing on to any form of international agreement, states necessarily surrender some form of control over their internal affairs.[32] Palestine, for example, joined the Arab League in 1974,[33] and in the event of a war with Israel, a majority vote within the League would subject the signatory to the League's mediation and arbitration decisions.[34] Yet such external, extra-state influence is in keeping with the writing of political science professor Eric Leonard, who describes a modern shift beyond the "Westphalian Order"[35] to a

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29. For a general discussion of the tensions between state sovereignty and international law, see MARK WESTON JANIS, INTERNATIONAL LAW 165 (5th ed. 2008) ("The notion behind state sovereignty is that a state ought to be able to govern itself, free from outside interference; underpinning international law is the idea that external rules ought to be able to limit state behavior.").

30. This descriptive account aims to contribute to the conversation while the Palestinian leadership begins to devise its strategy. The "new Palestinian strategy . . . is still being refined." Richard Boudreaux, *Palestinians Seek New Path to State*, WSJ.COM (Feb. 26, 2011), http://online.wsj.com/article/SB10001424052748704150604576166602108769590.html.

31. *See* Douglas E. Edlin, *The Anxiety of Sovereignty: Britain, The United States and the International Criminal Court*, 29 B.C. INT'L & COMP. L. REV. 1, 6 (2006) (describing the ICC as being perceived "by certain influential government officials as a threat to American sovereignty" (internal quotation marks omitted)); Jerry Fowler, *Not Fade Away: The International Criminal Court and the State of Sovereignty*, 2 SAN DIEGO INT'L L.J. 125, 126 (2001) (book review) (describing American and Chinese opposition to the ICC due to concerns over "infringements on sovereignty"); Juan Carlos Ochoa S., *The Settlement of Disputes Concerning States Arising from the Application of the Statute of the International Criminal Court: Balancing Sovereignty and the Need for an Effective and Independent ICC*, 7 INT'L CRIM. L. REV. 1, 41 (2007) ("As the practice of the *ad hoc* international criminal tribunals has shown, there is a constant tension between State sovereignty and the need of international criminal tribunals to have sufficient powers for functioning effectively and independently."). *See generally* Jyotika Saksena, International Organizations and Erosion of State Sovereignty (Mar. 2005) (unpublished manuscript) (on file with author) (noting the rise of international organizations following World War II and general concerns over their impact on state sovereignty).

32. At a broad level, "[i]nternational agreements often serve as a sort of international legislation where states explicitly agree to make rules to govern their own conduct, as well as the activities of their individual and corporate nationals." JANIS, *supra* note 29, at 13-14.

33. *See Timeline: Arab League*, BBC NEWS, http://news.bbc.co.uk/2/hi/middle_east/country_profiles/1550977.stm (last modified Mar. 9, 2011).

34. Pact of the League of Arab States art. 5, Mar. 22, 1945, 70 U.N.T.S. 237.

35. Erik K. Leonard, *The International Criminal Court and Global Governance: Justice Beyond State Sovereignty*, 1 EYES ON ICC 117, 123 (2004) (describing the "Westphalian Order" as an

new form of "global civil society" in which a wide range of nonstate actors are able to intervene in intrastate matters.[36] Citing the creation of the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), Leonard writes: "These Courts were given the ability, by the U.N. Security Council, to intervene in the affairs of two sovereign states, and prosecute their citizenry at an international tribunal that is held outside of their territorial boundaries."[37] Leonard correctly states that such a mandate violates the theoretical underpinnings of Westphalian sovereignty. But he takes a far too narrow view of the world—and of the concept of sovereignty—by failing to recognize the sovereignty-enhancing potential of such international bodies, particularly for aspiring states.

According to Stanford political scientist Stephen D. Krasner, the ever-elusive concept of "sovereignty" can be broken down into four different forms: international legal sovereignty, Westphalian sovereignty, domestic sovereignty, and interdependence sovereignty.[38] The former two "involve issues of authority and legitimacy, but not control," whereas the latter two revolve around "control."[39] Within the Israeli/Palestinian context, international bodies have the most potential to enhance international legal sovereignty, which Krasner defines as "practices associated with mutual recognition, usually between territorial entities that have formal juridical independence."[40] Note that Krasner's definition speaks of "territorial entities," as opposed to states, and revolves around that entity's standing in a judicial setting. Thus, international bodies tasked with carrying out international law may infringe upon the Westphalian sovereignty of current states[41] but actually advance the international legal sovereignty of aspiring states.[42] International legal

international system that "centers on the importance of the nation-state and the primacy of the concept of state sovereignty"). For a contrary view on the true nature of the "Westphalian Order," see STEPHEN D. KRASNER, SOVEREIGNTY: ORGANIZED HYPOCRISY 24 (1999) (arguing that "[d]espite these claims about unparalleled change," the "principles" underlying Westphalian sovereignty "have always been violated").

36. *See* Leonard, *supra* note 35, at 125. One aspect of the current debate over international intervention in Libya revolves around the United Nations' role in violating Libyan sovereignty. *See, e.g.*, *China Calls for Immediate Cease-fire, End to Airstrikes over Libya; India Expresses Concern*, ABCNEWS.COM (Mar. 22, 2011), http://abcnews.go.com/International/wireStory?id=13190651 (explaining China and India's abstention from the U.N. Security Council resolution authorizing force in Libya as based on their "long-standing policies of staying out of other countries' internal affairs").

37. Leonard, *supra* note 35, at 127

38. KRASNER, *supra* note 35, at 4.

39. *Id.*

40. The future of Palestinian domestic sovereignty, which deals with the "formal organization of political authority within the state," largely depends upon the leaders within Hamas, which controls the Gaza Strip, and the PA, which controls the West Bank. *See* Bronner, *supra* note 19. Interdependence sovereignty, which focuses on the "ability of public authorities to regulate the flow of [animate and inanimate objects] across [a country's] borders," hinges on the stability of governing authorities in Egypt and Jordan and, most importantly, on the decisions of the Israeli government. Westphalian sovereignty, which is "based on the exclusion of external actors from authority structures within a given territory" depends almost exclusively on Israel. *See* KRASNER, *supra* note 35, at 3.

41. *See* Guy Roberts, *Assault on Sovereignty: The Clear and Present Danger of the New International Criminal Court*, 17 AM. U. INT'L L. REV. 35, 37 (2001) (arguing that states that accept the ICC are "agreeing to cede their sovereignty over their own court systems and notions of justice to a supra-national tribunal.").

42. Krasner's impressively broad analysis details the emergence of new states in the

sovereignty is key to the Palestine problem, and Part III examines the way in which particular international bodies can be used to further it.

III. THE ROLE OF INTERNATIONAL BODIES IN SECURING STATEHOOD: GARNERING INTERNATIONAL SUPPORT UNDER "PLAN B"

A. *The Conventional Path—the United Nations*

The conventional path to statehood runs through the United Nations, and the Security Council and General Assembly have wrestled with the complicated questions of Israeli and Palestinian statehood since those bodies' founding.[43] In an indication of the inevitable role the United Nations will play in any future agreement, former Israeli Prime Minister Ehud Olmert envisioned Palestinian statehood arising out of resolutions in the Security Council and General Assembly. Olmert, describing the two-state agreement that was nearly reached with his Palestinian counterpart Mahmoud Abbas, stated: "'My idea was that, before presenting it to our own peoples, we first would go to the U.N. Security Council and get a unanimous vote for support . . . . Then we would ask the General Assembly to support us . . . .'"[44]

The PA is strictly seeking recognition from the international community that Palestine is a state. The PA is not, at least for now, seeking membership in the United Nations. Membership requires the assent of the Security Council, with nine of the fifteen members recommending admission and none of the five permanent members exercising its veto.[45] The near automatic U.S. veto on behalf of Israel virtually guarantees that the matter will not make it out of the Security Council.[46] Thus building on the example of the State of Israel, which did not become a member until eighteen months after partition,[47] the PA is likely to focus its efforts on the General Assembly.[48]

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nineteenth and twentieth centuries, but largely within the broader historical context of rulers compromising Westphalian sovereignty in the process. *See generally* KRASNER, *supra* note 35.

43. For a comprehensive listing of U.N. resolutions regarding the Arab-Israeli conflict from 1947 to 1970, see DOCUMENTS ON THE ARAB ISRAELI CONFLICT: THE RESOLUTIONS OF THE UNITED NATIONS ORGANIZATION (Wilhelm Wengler & Josef Tittel eds., 1971). For less comprehensive but more up-to-date listings, see *Subsequent UN Resolutions Relating to Israel-Palestine*, ECONOMIST (Oct. 10, 2002), http://www.economist.com/node/1378588; and Christopher W. Tatlock, *UN Resolutions and the Middle East*, COUNCIL ON FOREIGN REL. (Aug. 24, 2010), http://www.cfr.org/un/un-resolutions-middle-east/p11233.

44. Bernard Avishai, *A Plan for Peace That Still Could Be*, N.Y. TIMES, Feb. 7, 2011, § 6 (Magazine), at 50 (quoting Israeli Prime Minister Ehud Olmert).

45. *See* U.N. Charter art. 4, para. 2 ("The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council."); *see also* Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, 1950 I.C.J. (Mar. 3) (declaring that in the absence of an affirmative recommendation by the Security Council, the General Assembly cannot grant membership status to an applicant).

46. The Obama administration, which condemns Israeli settlement building, even vetoed a Security Council resolution in February declaring such settlement building in occupied territory to be illegal. *See* Neil MacFarquhar, *U.S. Blocks Security Council Censure of Israeli Settlements*, N.Y. TIMES, Feb. 19, 2011, at A4. China and Russia, two of the other five permanent members of the Security Council, may also exercise their veto based on their own problems with "internal" separatist movements.

47. *See* G.A. Res. 273 (III), *supra* note 8.

48. Following the failed February resolution regarding the illegality of Israeli settlement

Yet some leading commentators in Israel have not made the distinction between General Assembly recognition and membership, thus demonstrating the potential impact a General Assembly vote could have on Israeli policy. Writing in *Haaretz*, senior correspondent Ari Shavit calls on Israel to "launch a preemptive diplomatic strike" in advance of the General Assembly vote on a Palestinian state.[49] Shavit warns that following such a vote, Israel will be "contravening the sovereignty of an independent UN *member* state."[50] *Haaretz* is a notoriously left-leaning daily that is often derided as elitist.[51] The journalist's near hysterics, however, are indicative of the seriousness with which Israelis are viewing the potential upcoming General Assembly action.[52] Shavit advocates immediately handing over a significant portion (approximately seventy percent) of the West Bank to the Palestinians and evacuating twenty settlements.[53] The Israelis will need to abandon a far greater number of settlements and hand over much more land before the Palestinians can establish a viable state in the West Bank. But the proposal is indicative of the extent to which a vote in the General Assembly could tangibly advance Palestinian sovereignty. The "conventional path," therefore, provides a plausible scenario for advancing Palestinian sovereignty, but the PA is ultimately unwilling to rely solely on an international body that has failed to deliver over the past sixty years. Therefore, the Palestinians are adopting a broader view of international law that is not restricted to the United Nations.

B. *The Unconventional Path—International Courts*

International courts provide an unconventional path to statehood that was largely unavailable during the twentieth century. Less mired in politics, international courts are not beholden to nearly two hundred member states[54]

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building, Riyad H. Mansour, the Permanent Observer of Palestine to the United Nations, said that the Palestinians were not giving up on the Security Council but that they would "also go to other parts of the UN including the General Assembly." *Work Towards Two-State Solution To Continue Despite Failed Draft Resolution: Palestine*, ENGLISH.NEWS.CN (Feb. 29, 2011), http://news.xinhuanet.com/english2010/world/2011-02/19/c_13739722.htm.

49. *See* Ari Shavit, *Israel Needs To Launch a Preemptive Diplomatic Strike*, HAARETZ (Mar. 31, 2011), http://www.haaretz.com/print-edition/opinion/israel-needs-to-launch-a-preemptive-diplomatic-strike-1.353214.

50. *Id.* (emphasis added).

51. *See, e.g.*, David Remnick, *The Dissenters*, NEW YORKER, Feb. 28, 2011, at 46, 46, *available at* http://www.newyorker.com/reporting/2011/02/28/110228fa_fact_remnick (describing Haaretz as "a paper that is authoritative in its news columns, left wing in its ideology, and insistently oppositional in its temper").

52. Shavit, *supra* note 49 (comparing current Prime Minister Binyamin Netanyahu and Defense Minister Ehud Barak to former Prime Minister Golda Meir and Defense Minister Moshe Dayan, who oversaw the disastrous 1973 Yom Kippur War).

53. *Id.*

54. Courts, domestic and international, cannot completely escape politics. ICJ judges, for example, are "elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration." Statute of the International Court of Justice art. 4, ¶ 1, June 26, 1945, 59 Stat. 1031, 33 U.N.T.S. 993 [hereinafter ICJ Statute]. Thus, states with identifiable political goals play a major role in the selection of judges. Yet the underlying statute calls for "a body of independent judges" who are barred from "exercis[ing] any political or administrative function." *Id.* arts. 2, 16. There is an expectation that the judges will carry out justice irrespective of their national ties.

and thus have the capacity to "intervene" in seemingly intractable disputes.[55] They also have the judicial independence and nonpolitical disposition to be wary of making a decision that could reignite conflict in the region. The following two Subsections explain how the two most visible international courts—the ICJ and ICC—should help advance Palestinian statehood.

1. *The International Court of Justice*

The International Court of Justice is not a newcomer to the "Palestine Problem"; the United Nations pulled the Court into the fray seven years ago. In a highly scrutinized advisory opinion—issued at the request of the General Assembly—the ICJ held that Israel's security wall in the Occupied Palestinian Territories violated international law.[56] Addressing American and Israeli objections to the Court's jurisdiction, the ICJ even noted its "permanent responsibility" to Palestine due to the U.N. system that has granted Palestine the "special status of observer."[57] Building upon such earlier involvement, the PA is not restricted to asking the General Assembly to recognize a Palestinian state within the 1967 borders.[58] The PA could also ask the General Assembly to submit a request for an advisory opinion to the ICJ.[59] The language could be similar to that presented following Kosovo's declaration of independence[60]: are

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55. Although referring to the U.S. Supreme Court, Richard Posner makes the compelling argument that it is during the most extreme political crises (such as the 2000 presidential election stalemate) when courts should use their position as apolitical bodies to intervene. Turning the traditional political question doctrine on its head, Posner supports the Court's highly criticized decision in *Bush v. Gore*, 531 U.S. 98 (2000), based on this "'crisis prevention' rationale." Richard L. Hasen, *A "Tincture of Justice": Judge Posner's Failed Rehabilitation of* Bush v. Gore, 80 TEX. L. REV. 137, 146 (2001) (reviewing RICHARD A. POSNER, BREAKING THE DEADLOCK: THE 2000 ELECTION, THE CONSTITUTION, AND THE COURTS (2001)). The Israeli-Palestinian conflict similarly represents a historical conflict of epic proportions ripe for judicial intervention.

56. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 163 (July 9) (ruling against Israel fourteen to one and holding that "[t]he construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law"). The only other ICJ matter involving Israel is a 1959 opinion addressing Bulgarian destruction of an aircraft belonging to El Al Israel Airlines. *See* Aerial Incident of 27 July 1955 (Isr. v. Bulg.), 1959 I.C.J. 127 (May 26) (agreeing with Bulgaria's First Preliminary Objection regarding the Court's lack of jurisdiction).

57. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2004 I.C.J. 136, ¶ 49.

58. The 1967 borders refer to the borders that divided Israel and its neighbors prior to the 1967 Six Day War, in which Israeli forces captured the Egyptian Sinai, Gaza Strip, West Bank, and the Syrian Golan Heights. *See* MICHAEL OREN, SIX DAYS OF WAR: JUNE 1967 AND THE MAKING OF THE MODERN MIDDLE EAST 308 (2002). Following the Palestinian Liberation Organization's 1988 declaration of independence, the General Assembly adopted a resolution "acknowledging the proclamation of the State of Palestine by the Palestine National Council on 15 November 1988" and determined that "the designation of 'Palestine' should be used in place of the designation 'Palestine Liberation Organization' in the United Nations system." G.A. Res. 43/177, U.N. GAOR, 43d Sess., U.N. Doc. A/RES/43/177 (Dec. 15, 1988).

59. Palestine's lack of full membership in the United Nations prevents it from appearing as a party in a contentious dispute before the ICJ, thus necessitating an advisory opinion. *See* ICJ Statute, *supra* note 54, art. 34(1) ("Only *states* may be parties in *cases* before the Court." (emphasis added)).

60. *See* Dan Bilefsky, *In a Showdown, Kosovo Declares Its Independence*, N.Y. TIMES, Feb. 18, 2008, at A1 (describing Kosovo's declaration of independence from Serbia). On October 8, 2008, the General Assembly adopted Resolution 63/3 requesting an advisory opinion from the International Court of Justice on the following question: "Is the unilateral declaration of independence by the

efforts by the Palestinian people to declare a state within the internationally recognized 1967 borders in accordance with international law?[61] An ICJ advisory opinion would serve as another crucial, falling domino in the greater push toward statehood.

Absent such a request, the ICJ could also advance Palestinian sovereignty by applying what Catholic University Law professor Antonio F. Perez refers to as "prudential abstention."[62] Perez provides a series of case studies[63] in which the Court employed "prudential abstention," consisting of a variety of legal maneuvers to avoid issuing a ruling or advisory opinion on the merits—all in the name of "fulfill[ing] its 'grand' responsibility to articulate principle and discharg[ing] its Socratic obligation to stimulate reasoned dialogue."[64] Although not as significant as an opinion on the merits, such legal maneuvering would provide a hesitant Court with an alternative option for advancing Palestine's international legal sovereignty. Perez's paradigmatic example of prudential abstention is the case of South-West Africa in which the ICJ used multiple "requests for advisory opinions and contentious cases" spanning two decades to "articulat[e] principle and pos[e] questions for response by the international political community."[65] Perez credits the ICJ's 1966 decision[66] *not* to address South Africa's alleged breach of its obligations to the people of Namibia as spurring the General Assembly (in 1966)[67] and Security Council (in 1970)[68] to finally declare South Africa's occupation of neighboring Namibia illegal.[69] The Court's "earlier abstention" also led the Security Council to ask the Court for an advisory opinion "on the legal consequences for States of South Africa's defiance" of the 1970 Security Council Resolution.[70]

Provisional Institutions of Self-Government in Kosovo in accordance with international law?" G.A. Res. 63/3, U.N. Doc. A/RES/63/3 (Oct. 8, 2008).

61. *See* ICJ Statute, *supra* note 54, art. 65(2) ("Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required . . . .").

62. Antonio F. Perez, *The Passive Virtues and the World Court: Pro-Dialogic Abstention by the International Court of Justice*, 18 MICH. J. INT'L L. 399, 399 (1997) (applying to the ICJ Alexander Bickel's view that the U.S. Supreme Court has the power not only to "validate or invalidate statutes" but also to "definitively refuse to do either" (citing ALEXANDER M. BICKEL, THE LEAST DANGEROUS BRANCH 69 (1962))).

63. Perez addresses the ICJ's involvement in the South-West Africa/Nambia, East Timor, and nuclear weapons cases. *See id.* at 409.

64. *Id.*

65. *Id.* at 410.

66. *See* South-West Africa (Eth. v. S. Afr.; Liber. v. S. Afr.), 1966 I.C.J. 6, 22-26 (July 18) (determining that Ethiopia and Liberia lacked standing to assert their legal claims against South Africa).

67. *See* G.A. Res. 2145 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, at 2 (1966).

68. *See* S.C. Res. 276, U.N. SCOR, 25th Year, U.N. Doc. S/RES/276 (1970).

69. *See* Perez, *supra* note 62, at 413 (noting that "[b]oth political organs of the international community had now engaged in the debate compelled by the ICJ's earlier abstention").

70. *Id.* at 413-14 (citing S.C. Res. 284, U.N. SCOR, 25th Year, U.N. Doc. S/RES/284 (July 29, 1970)). Perez's theory is ultimately linked to the political science scholarship on public policy agenda setting, in which a wide range of external and internal political dynamics shape the conversation. *See, e.g.*, B. Dan Wood & Jeffrey S. Peake, *The Dynamics of Foreign Policy Agenda Setting*, 92 AM. POL. SCI. REV. 173, 173 (1998) (theorizing "an economy of attention to foreign policy issues driven by issue inertia, events external to U.S. domestic institutions, as well as systemic attention to particular issues"). Under the proposed scenario, the Court would not only be setting the international political

South Africa's illegal occupation of Namibia resembles Israel's situation in the West Bank. Both countries occupied neighboring territories by force and imposed discriminatory policies on the local populations.[71] The Court could easily engage in a similar form of "pro-dialogic abstention" in which it would mix advisory opinions with narrowly tailored refusals to adjudicate in order to advance the international legal sovereignty of Palestine. This would strike the appropriate balance by incrementally advancing the international legal sovereignty of Palestine without elevating the risk of igniting a conflagration. The controversial issue of Israeli settlements offers countless opportunities for the General Assembly to submit questions to the ICJ. In the aforementioned 2004 advisory opinion regarding Israel's security wall, the Court used the opportunity to highlight earlier U.N. resolutions condemning the illegality of Israeli settlement building in the West Bank and East Jerusalem.[72] The ICJ also allowed Palestine to submit a written statement and participate in oral arguments in spite of the Court's statute restricting such participation to states parties or intergovernmental organizations.[73] The Court justified the decision by "taking into account the fact that the General Assembly had granted Palestine a special status of observer and that [Palestine] was co-sponsor of the draft resolution requesting the advisory opinion."[74] Participating in advisory opinions is a significant step toward full recognition as a state party with the power to bring a contentious dispute. Unlike blanket U.N. resolutions, such participation offers a more measured approach to the advancement of Palestinian sovereignty without the same risk of a backlash or full-scale conflict.

2. *The International Criminal Court*

Despite the relative youth of the ICC, which began operating in 2002,[75] it is already considering engaging the Palestinian issue. The ICC has a limited jurisdiction that is still developing.[76] Less than a decade old, the court had been

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agenda but also influencing it through its own opinions and decisions.

71. South Africa invaded Namibia during World War I and extended its apartheid regime to the country, which had previously been controlled by the Germans. *See Nambia-History*, ENCYCLOPEDIA OF THE NATIONS, http://www.nationsencyclopedia.com/Africa/Namibia-HISTORY .html (last visited Mar. 12, 2011). Israel similarly occupied the West Bank during the Six Day War and extended a heavy military presence to the territory, which had previously been controlled by the Jordanians. *See* OREN, *supra* note 58, at 307.

72. *See* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2004 I.C.J. 136, ¶ 99 (July 9) (noting that "[i]n resolution 446 (1979) of 22 March 1979, the Security Council considered that those settlements [in occupied territoritories] had 'no legal validity'"); *see also id.* ¶ 120 ("In this respect, the information provided to the Court shows that, since 1977, Israel has conducted a policy and developed practices involving the establishment of settlements in the Occupied Palestinian Territory, contrary to the terms of [the Fourth Geneva Convention]. The Security Council has thus taken the view that such policy and practices 'have no legal validity'.")

73. *See* Quigley, *supra* note 18, at 261 (citing ICJ Statute, *supra* note 54, art. 66).

74. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2004 I.C.J. at 141 n.4.

75. *See About the Court*, INT'L CRIM. CT., http://www.icc-cpi.int/Menus/ICC/About +the+Court (last visited Feb. 14, 2011) ("The Rome Statute entered into force on 1 July 2002 after ratification by 60 countries.").

76. The original ICC Statute did not define what constitutes a "crime of aggression." The court

criticized for undermining peace efforts in Uganda and Sudan.[77] Yet that did not stop the ICC from considering whether it had jurisdiction to prosecute Israel for the alleged crimes it perpetrated in the Gaza Strip during its 2009 offensive.[78] The PA has already argued its case and is awaiting chief prosecutor Luis Moreno-Ocampo's jurisdictional decision.[79] If the ICC allows the suit to proceed, it will implicitly be recognizing Palestinian statehood. The Rome Statute states: "The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State."[80] Israel is not a State Party; thus Palestine would have to be a state for the court to exercise its jurisdiction. Article 12, "Preconditions to the exercise of jurisdiction," explicitly refers to "State" parties in all three paragraphs.[81]

If the court dismisses the case, the Palestinians could petition for an investigation of ongoing Israeli "war crimes" committed in the Occupied Territories of the West Bank.[82] By maintaining a continual presence on the court's agenda, the Palestinians would then invite the Israeli Supreme Court to respond. Less than two weeks before the ICJ handed down its decision regarding the legality of Israel's separation barrier, the Israeli Supreme Court issued its own opinion on the subject.[83] The Court held that the separation

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adopted an amendment last year defining the crime, but it does not "ent[er] into force until ICC member states grant formal approval after January 2017." Aaron Gray-Bloc, *ICC States Reach Compromise on Crime of Aggression*, REUTERS, June 11, 2010, http://www.reuters.com/article/2010/06/11/us-warcrimes-icc-conference-idUSTRE65A6SE20100611.

77. *See* H. Abigail Moy, Recent Development, *The International Criminal Court's Arrest Warrants and Uganda's Lord's Resistance Army: Renewing the Debate over Amnesty and Complementarity*, 19 HARV. HUM. RTS. J. 267, 270 (2006) ("Some mediators also disapproved of the arrest warrants, arguing that they undermined peace efforts by alienating rebel forces and precluding the protection offered by the Ugandan government's Amnesty Act of 2000."); Missy Ryan, *African Union: Sudan Leader Case Undermines Peace*, REUTERS, Sept. 23, 2010, http://af.reuters.com/article/topNews/idAFJOE68N04D20100924 (arguing that the ICC indictment of Sudanese President Omar Hassan al-Bashir could further destabilize the country).

78. *See* Izenberg, *supra* note 27. On January 3, 2009, "Israel sent its ground forces across the border into Gaza as it escalated its brutal assault on Hamas." Chris McGreal, *Why Israel Went to War in Gaza*, OBSERVER (London), Jan. 4, 2009, at 19.

79. Although the Israeli government did not formally acknowledge the validity of the oral arguments before the ICC, former Israeli ambassador to the United Nations Dore Gold argued against granting jurisdiction. *See* Izenberg, *supra* note 27. Ocampo's term ends in 2012, and he may choose to defer the decision, but the significance of the petition's mere existence cannot be lost on any of the involved parties. *See* Press Release, International Criminal Court, Search Committee for the Position of ICC Prosecutor Takes up Work (July 2, 2011), *available at* http://www.icc-cpi.int/NR/exeres/09944531-548B-467F-882D-06EF5937899B.htm.

80. Rome Statute, *supra* note 24, art. 4(2).

81. *See id.* art. 12(1)-(3).

82. The Rome Statute's broad definition of "[w]ar crimes" includes "[w]illfully causing great suffering, or serious injury to body or health," as well as "[e]xtensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly." Rome Statute, *supra* note 24, art. 8(2)(a)(iii)-(iv). For information about the latter, see THE ISRAELI COMMITTEE AGAINST HOUSE DEMOLITIONS, http://www.icahd.org (last visited Feb. 24, 2011).

83. *See* HCJ 2056/04 Beit Sourik Village Council v. Government of Israel 58(5) PD 807 [2004]. Israel's actions (showing outward defiance, but internal action) represent one aspect of Professor Bruce Broomhall's work on the inherent tensions in contemporary international law, in which "states tend to avoid the censuring of their policies and conduct, and those of their nationals, by extra- or super-territorial law enforcement agencies on the one hand, and uphold the rule of law on the other." Johan D. van der Vyver, *International Justice and the International Criminal Court: Between Sovereignty and the*

fence's route in several areas caused disproportionate harm to Palestinian inhabitants, and ordered the government to reexamine the fence's route in those areas.[84] If the Israeli Supreme Court responded to an anticipated ICJ decision, it will likely do the same in advance of any potential ruling by the ICC.[85] The mere specter of a case before the ICC could thereby advance the international legal sovereignty of Palestine through the Israeli Supreme Court's judicial recognition of Palestinian grievances.

IV. CONCLUSION—STRIKING A BALANCE

International organizations need to strike a balance between recognizing a people's grievances by openly acknowledging their statehood ambitions and contributing to interparty warfare between existing and aspiring states. Efforts by the United Nations and international courts thus need to be carefully calibrated, as the potential for sweeping declarations by the former drives the incremental steps of the latter.

The case of East Timor independence offers a cautionary tale to other aspiring states intent on advancing their international legal sovereignty[86] through international bodies operating out of sync with one another.[87] Four years after Portugal, the former colonizing power, levied a complaint against Australia on behalf of East Timor, the ICJ ultimately determined that it lacked jurisdiction due to Indonesia's refusal to grant consent to the Court to adjudicate the dispute.[88] By a vote of fourteen to two, the Court decided not to rule on Portugal's claim that Australia had violated its duty to respect the former's role as the Administering Power and the Timorese people's right to self-determination,[89] despite recognizing that such a right existed.[90] The drawn-out legal dispute and muddled result likely contributed to the geopolitical instability that paved the way for increasing violence in East Timor during the

Rule of Law, 18 EMORY INT'L L. REV. 133, 133 (2004) (book review).

84. *Beit Sourik Village Council*, 58(5) PD at 860-61.

85. The ICC's more limited jurisdiction would mean that the court was responding to a far more serious allegation, such as genocide, crimes against humanity, and/or war crimes. *See* Rome Statute, *supra* note 24.

86. *See* Joel S. Tashjian, Comment, *Contentious Matters and the Advisory Power: The ICJ and Israel's World*, 6 CHI. J. INT'L L. 427, 436 (2005) (arguing for a limited use of the advisory opinion by the ICJ in order to prevent it from "transform[ing] itself into a quasi-political entity, lobbying for a particular course of action in matters the ICJ itself can not enforce"). Although grounded in judicial recognition, international legal sovereignty does not necessarily require the active involvement of multinational tribunals.

87. *But see* Perez, *supra* note 62, at 420, 423 (arguing that the ICJ's refusal to adjudicate the case due to "[a]n absent third party's legal interest . . . implicitly invited the political organs to revisit the issue of East Timor in a more authoritative way" and therefore hastened the resolution of the overall dispute).

88. *See* East Timor (Port. v. Austl.), 1995 I.C.J. 90, ¶ 35 (June 30). For a brief overview of East Timor's complicated political history involving Portugal, Indonesia, and Australia, see *id.* ¶¶ 11-16.

89. *Id.* ¶ 10.

90. *Id.* ¶ 29. From a purely theoretical standpoint, it would be interesting to imagine a historical scenario in which Great Britain brought a similar suit in the ICJ on behalf of the Palestinians against Jordan and Egypt during the post-Mandate transition without the consent of the newly formed State of Israel.

final years of the twentieth century.[91] The aspiring state ultimately needed a 1999 U.N.-sponsored referendum and three years under the U.N. Transitional Authority to achieve statehood.[92]

Further research on the advancement of international legal sovereignty is therefore necessary to examine what conditions render an aspiring state most receptive to the involvement of international political organizations and courts[93]—and the extent to which international bodies need to coordinate their efforts under alternative scenarios. What is already clear, however, is that international law holds tremendous power to help facilitate statehood ambitions. With regard to Palestine, the cumulative impact is already evident at the international level. On April 6, 2011, the International Monetary Fund declared that the Palestinian Authority has the capability to direct the economy of an independent state.[94]

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91. *But see* GEOFFREY C. GUNN, EAST TIMOR AND THE UNITED NATIONS: THE CASE FOR INTERVENTION 63 (1997) (arguing before the decision came down that regardless of the outcome, Portugal "is bound to succeed politically in refocusing attention on East Timor's claims to self-determination" (internal quotation marks omitted)).

92. *See East Timor Country Profile*, BBC NEWS, http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/1508119.stm (last visited Feb. 26, 2011).

93. Palestine may be particularly receptive to the involvement of international courts due to two factors. First, Palestinians lack a regional governance organization similar to the European or African Unions. Southern Sudan, for example, invited the African Union to send an observer mission to monitor the independence referendum it held earlier this year, in which its people voted overwhelmingly to secede from Sudan and form a new state. *See* Press Release, African Union, Preliminary Statement of the African Union Observer Mission on the Southern Sudan Referendum (Jan. 16, 2011), *available at* http://www.sudantribune.com/PRELIMINARY-STATEMENT-OF-THE,37677; Josh Kron, *Sudan Leader To Accept Secession of South*, N.Y. TIMES, Feb. 8, 2011, at A7. Second, the United Nations' perceived anti-Israel bias, particularly within the Human Rights Council, may prevent it from playing an instrumental role in the absence of judicial involvement. *See* Richard Goldstone, Op-Ed, *Revisiting Gaza*, WASH. POST, Apr. 3, 2011, at A21 (describing the U.N. Human Rights Council as a body "whose history of bias against Israel cannot be doubted"); Tovah Lazaroff, *Clinton: UNHRC Bias Against Israel Undermines Its Work*, JERUSALEM POST (Feb. 28, 2011), http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=210208.

94. *See* Ethan Bronner, *Bid for State of Palestine Gets Support from I.M.F.*, N.Y. TIMES, Apr. 6, 2011, at A6 (quoting the IMF as saying "for the first time that it viewed the authority as 'now able to conduct the sound economic policies expected of a future well-functioning Palestinian state'").