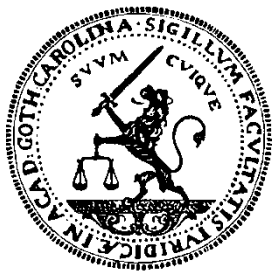

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Palestine's Ratification of International Treaties - *A Back Door to Independence?*

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Summary

The State of Palestine is drafting a new constitution to replace a patchwork of foreign and outdated legislation, and to harmonise national law with dozens of ratified international treaties. Since its 2012 ascension from non-member observer 'entity' to non-member observer 'state' in the UN, Palestine has signed fifty-five multilateral treaties covering a wide range of areas. All treaties have been signed without any reservations, which is claimed to be a deliberate expression of Palestine's commitment to becoming a respected member of the international community, adhering to international law, and setting an example as a progressive state promoting human rights and equality in the Middle East.

Palestine is trying to define how to implement international treaties, and how they should relate to national legislation. This thesis aims to learn the strategy behind the ratification of treaties, and which procedure of implementation would best accommodate Palestine's goals of independence, international reputation and legal sovereignty. The thesis examines the legal and political history of Palestine, the definitions of statehood, the relation between international and national law and the hierarchy of norms. A brief comparison is made with six other states to see how they regulate the implementation and the application of international treaty law.

The author reaches the conclusion that ratifying international treaties strengthens Palestine's claim for statehood through recognition, which in turn increases pressure for independence on its occupier, Israel. But due to the current suspension of the parliament, Palestine must choose either to postpone the implementation process or implement the treaties by presidential decree. Postponing the implementation would raise doubts on Palestine's commitment to follow its new international obligations. Implementing international law by presidential decree on the other hand is an undemocratic legislative procedure. None of these options are optimal, but one must be chosen.

Sammanfattning

Palestina utarbetar en ny konstitution för att ersätta ett lapptäcke av utländsk och utdaterad lagstiftning, och för att harmonisera nationell lag med ett dussintal ratificerade internationella traktater. Sedan Palestina 2012 blev upphöjt från observatörssubjekt till observatörsstat i FN, har det skrivit under femtiofem multilaterala traktater på en rad olika områden. Alla traktater har skrivits under utan reservationer, vilket påstås vara ett uttryck för Palestinas beslutsamhet att bli en respekterad medlem i världssamfundet, att efterfölja internationell rätt, och att bli en förebild för mänskliga rättigheter och jämställdhet i Mellanöstern.

Palestina försöker nu att formulera bestämmelser för implementering av traktater, och dessas relation till nationell lagstiftning. Uppsatsen syftar till att undersöka strategin bakom ratificeringen av traktater, och vilket tillvägagångsätt för harmonisering som bäst främjar Palestinas mål om självständighet, förbättrat internationellt anseende och juridisk suveränitet. Uppsatsen kommer att undersöka Palestinas juridiska och politiska historia, definitionen av stat, relationen mellan internationell rätt och nationell rätt samt normhierarki. En kortfattad jämförelse görs med sex andra stater för att se hur de reglerar implementeringen och tillämpningen av internationella traktater.

Författaren drar slutsatsen att ratificering av internationella traktater stärker Palestinas anspråk på statsbegreppet, vilket i sin tur ökar trycket för självständighet mot den ockuperande makten Israel. På grund av att parlamentet för nuvarande är ur funktion, måste emellertid Palestina välja mellan att antingen skjuta upp implementeringsprocessen eller implementera genom dekret. Att skjuta upp implementeringen skulle ge upphov till tvivel över Palestinas avsikt att följa sina internationella åtaganden, medan lagstiftning genom dekret är odemokratiskt. Inga av dessa alternativ är optimala, men ett måste väljas.

Preface

“If the front door to one’s legitimate rights is locked,
you must go through the window.”

Abbreviations

EC	PLO's Executive Committee
EU	European Union
EJIL	European Journal of International Law
ICC	International Criminal Court
ICJ	International Court of Justice
LNTS	League of Nations Treaty Series
PA (PNA)	Palestinian (National) Authority
PCC	Palestinian Central Council
PLC	Palestinian Legislative Council
PLO	Palestine Liberation Organization
PNC	Palestinian National Council
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

1 Introduction

The State of Palestine is drafting a new national constitution to replace a patchwork of foreign and outdated legislation, while harmonising national law with dozens of ratified international treaties. Since its 2012 ascension from non-member observer 'entity' to non-member observer 'state' in the UN[1], Palestine has signed fifty-five multilateral treaties covering a wide range of areas, including diplomatic relations, human rights, international humanitarian law, international criminal law, crime and corruption, disarmament, laws of the sea and the environment.[2] All treaties have been signed without any reservations, which is claimed to be a deliberate expression of Palestine's commitment to becoming a respected member of the international community, adhering to international law, and setting an example as a progressive state promoting human rights and equality in the Middle East.

In December 2015, the Folke Bernadotte Academy[3], where I worked at the time, facilitated a meeting to discuss the harmonisation of law in Palestine. Mr. Ammar Hijazi[4] and Mr. Majed Bamya[5], two senior representatives from the Multilateral Affairs Department of the Ministry of Foreign Affairs of the State of Palestine, explained the purpose of ratifying the treaties, the challenges it brings, and their idea on how to move forward.

As a result of the meeting I wrote a report which inspired me to further investigate this subject. Writing a policy oriented report is very different from writing an academic thesis, and this is an attempt to approach the subject from a new angle, critically and methodically.

[1] The PLO was recognised as an 'observer entity' in the UN in 1974, and in 1988 the UN decided that the designation "Palestine" should be used in place of the designation "Palestine Liberation Organization" in the UN system. For the resolution on the ascension to observer state, see UN Doc. A/RES/67/19.
[2] See Annex I for an exhaustive list.
[3] Swedish agency for peace, security and development, "www.fba.se".
[4] Deputy Assistant Minister for Multilateral Affairs of the Ministry of Foreign Affairs.
[5] Head of International Law and International Treaties Department of the Ministry of Foreign Affairs.

1.1 Problem formulation

"The Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights."

- Article 10.2, Amended Basic Law of 2003.

Palestine is in a very particular situation politically, and has a very particular legal structure. What makes this case unusual when ratifying multilateral treaties is two-fold; firstly, Palestine is not an independent state, something that may be considered a necessity for signing multilateral treaties; secondly, Palestine has no formally established hierarchy of norms, causing uncertainty in the national application of international law.

Normally, a state gains sovereignty before entering treaties with other states. One of the four widely acknowledged Montevideo Convention criteria indicating statehood is the capacity to enter into relations with other states[6], something that Palestine evidently has done without being a sovereign state. Palestine is instead using international treaties as leverage against its occupier, and the international community, as part of a strategy to achieve its ultimate goal: independence. "If the front door to one's legitimate rights is locked, you must go through the window", Mr. Hijazi explained it when we met again at the Ministry of Foreign Affairs in Ramallah.[7]

For a court to apply international law, or any law, a defined hierarchy of norms is necessary in order for the judge to determine which law is applicable when contradictions arise between different sources of legislation. Palestine has yet to formally establish such a hierarchy, leaving its national courts unable to properly apply international law whenever it contradicts its national legislation.

Out of more than five hundred multilateral treaties deposited with the Secretary-General of the UN[8], along with seventy-nine treaties deposited in Switzerland[9] and around one hundred in the Netherlands[10], fifty-five treaties have so far been selected for ratification based on the following criteria:

[6] Art. 1, Montevideo Convention on Rights and Duties of States.
[7] Interview at the Palestinian Ministry of Foreign Affairs, Ramallah, 24 March 2016.
[8] UN website on international law.
[9] Swiss Federal Department of Foreign Affairs website.
[10] Overheid.nl website.

- Treaties that are highly recognised throughout the international community;
- Treaties that can be used to protect the rights of the Palestinian people;
- Treaties with many signatory states;
- Treaties that are monitored and enforced; and
- Treaties that can otherwise support the Palestinian cause.[11]

By signing core international treaties, Palestine aims to enhance its legal sovereignty and international standing, both of which are seen as essential elements to advance independence.

1.2 Purpose and research questions

In the drafting of the new Constitution, Palestine is trying to define how to implement international treaties, and how they should relate to national legislation. This thesis aims to learn which procedure would best accommodate the goals of independence, international reputation and legal sovereignty.

Two subjects will be studied. First, the purpose of signing international treaties. How and why can it help advance independence? Second, the implications on an unprepared national legislation when ratifying dozens of treaties without reservations. How can Palestine implement these treaties without creating a judicial chaos?

1.3 Delimitations

Impossible as it may seem, this is an attempt to write a thesis on Palestine without making it a political statement. The Palestinian-Israeli conflict is one of the most infected, complex and insoluble conflicts of our time. Any arguments in favour of Palestinian statehood and independence will be from a legal standpoint, based on international law and doctrine on international law, for the purpose of discussing the particular challenges that Palestine is facing concerning its ratified treaties.

[11] See Annex I for a full list of signed treaties as of 10 May 2016.

In any legal system, customary international law and treaty law are generally applied differently. Although customary international law will be touched upon, focus will be on treaty law.

Defining Palestinian statehood is a topic that has already been dealt with in great length, and only a concise summary of the conclusions most generally accepted among scholars of international law will be presented. There are of course widely different opinions, but there is a consensus to be found. Opposing views are, more often than not, of a political nature and based on weak legal argumentation, making them less relevant from a legal view.

1.4 Method and material

Utilising only one prominent method or the other will not suffice in order to achieve the purpose of this thesis. To lay the foundation for subsequent argumentation, a general examination of legal principles and practice is necessary. Legal dogmatic method will be used to pursue this goal, using relevant sources of law. Since this is a thesis in public international law, the starting point for selecting sources is Article 38 of the Statute of the International Court of Justice;

> a. "international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
> b. international custom, as evidence of a general practice accepted as law;
> c. the general principles of law recognized by civilized nations;
> d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."[12]

To provide an accurate presentation of international custom, the works of several authoritative authors in the field, such as James Crawford, Malcolm Evans, Malcolm Shaw and Martin Dixon, have been used. This ensures a comprehensive account of applicable international law and conclusions drawn from relevant judicial decisions.

[12] Article 59 of the ICJ Statute provides that: "The decision of the Court has no binding force except between the parties and in respect of that particular case." Hence, "… of the various nations" is of particular significance.

Another important aspect of the thesis is to examine historical legislation that has governed the Palestinian territories, and to look at the current legislation. The status of Palestinian statehood will be studied, to see how far it has advanced and why Palestine has decided to ratify international treaties at this stage. The examination of current and comparative legislation serves to provide a context in which the central argumentation will unfold – namely the way forward for Palestine's implementation of international treaties.

Concerning international law, the only applicable law in Palestine is that there is no applicable law. So, for the analytical elements of the thesis, the legal dogmatic method will be put aside in favour of a discussion on how the law should be, rather than what it is.[13]

Independence for the State of Palestine will be the overarching perspective, since that is the main reason for Palestine to accede to international treaties. The final analysis will therefore be rooted in this cause, with the best solution to the research questions being the one that is most favourable to this goal, probably at the expense of something else.

Finally, a very important source of information and insight comes from working at the Folke Bernadotte Academy in close contact with different departments of the Ministry of Foreign Affairs in Palestine. Business trips to Palestine in December 2015 and March 2016 gave the opportunity to spend time at the Ministry of Foreign Affairs, and to visit the Institute of Law at the Birzeit University in Ramallah. It would have been difficult to know about this process, and the challenges that come with it, without first-hand communication with key persons at the ministry who are presently working on it.

1.5 Frame of reference

Over the past decades, plenty has been written on Palestine, its history, its statehood, the occupation, the peace process and much more. On 1 April 2014, the Palestinian President Mahmoud Abbas signed the applications to join fifteen of the most well-known international treaties[14], starting a new chapter on international law in Palestine – and this has not yet been sufficiently covered by legal research. It is a highly relevant and contemporary subject

[13] Sandgren, *Är rättsdogmatiken dogmatisk?*, p. 656.
[14] The New York Times, 1 April 2014.

presenting a unique combination of factors: a state that was born under occupation and in its struggle to achieve independence strategically utilises international law against its occupier.

1.6 Structure

This structure serves to give a clear picture of the historical background and relevant legal theories, tying it all together in the finishing chapter. Some discussions and analyses will occur throughout the text, to serve as a reminder for the reader and to summarise the relevant conclusions of each chapter and sub-chapter.

Chapter 2 presents the legal and political history of Palestine from the mid-nineteenth century until today. This is mainly a descriptive chapter attempting to explain how the current situation came to be.

Chapter 3 examines the criteria for defining statehood in international law, mainly by studying the Montevideo Convention criteria and the complimentary aspect of recognition. Each presentation of a criterion is followed by a brief discussion and analysis on its application on Palestine. The chapter ends with concluding remarks on the subject, and why the ratification of international treaties can be beneficial to strengthen the claim for independence.

Chapter 4 examines the different ways of implementing international law into national legislation. This is to answer the questions of how to implement international law (harmonisation), and where in the hierarchy of norms it ends up. A comparison on how six other states do it provides useful suggestions for Palestine. The chapter ends with concluding remarks on harmonisation and the hierarchy of norms.

Finally, chapter 5 gives a deeper analysis on the research questions, then zooming out to a broader discussion on the big picture, followed by the final conclusion.

2 Legal and political history of Palestine

There is a legal fragmentation in Palestine with different laws from many historical periods governing different geographical areas. Not only does this make it difficult to codify existing law into a future constitution, it also complicates the implementation of international treaties. The sources of legislation applicable in Palestinian courts date back to the 19th century Ottoman Empire, and have since been supplemented by laws from every other power governing its territory until today. In order to get a clearer picture of the law in Palestine today, a summary of the main changes during these different historical phases will be explained. It will be followed by an account of the formation of the political and legislative bodies of modern Palestine, where the Oslo Accords of 1993 marked the turning point.

2.1 Pre-Oslo, 1858 – 1993

At the end of 19th century, Palestine was an undivided part of the Ottoman Empire without any separate status.[15] From the Ottoman Empire period, there are laws applicable in the areas of civil law, land ownership and personal status. There is the Ottoman Land Code of 1858[16] of which the main structure of land law remains applicable, though it has been supplemented by later legislation.[17] Although not always successfully, the Land Code has been used by Israelis to claim land in Palestinian territories.[18] Originally, the Land Code served to accommodate increased tax revenue and greater state control over property.[19] There is also the Ottoman Civil Code of 1869 which continues to serve as a basis for various areas of law in the Palestinian territories, such as contract, property and sales law.

[15] Crawford, *Israel and Palestine*, p. 97.
[16] See bibliography for link to English translation of the Ottoman Land Code of 1858.
[17] Mattar, p. 299 – 300.
[18] See e.g. Jerusalem Post, 22 March 2012.
[19] Tute, *The Registration of Land in Palestine*, p. 43.

Following World War I and the fall of the Ottoman Empire, the League of Nations placed the Palestinian territory under a British Mandate that lasted until 1948.[20] During this period, all legislation was issued by the Mandatory government. However, most parts of the previous Ottoman civil law were still in force. Article 46 of the Palestine Order in Council from 1922 stated that "[t]he jurisdiction of the Civil Courts shall be exercised in conformity with the Ottoman Law in force in Palestine on November 1st, 1914 …".[21] The British Mandatory issued laws, governmental regulations and ordinances governing most aspects of Palestine's inhabitants, and were all published in an official gazette. These publications constitute a majority of the law still in force in the Gaza Strip and some of the law in force in the West Bank. In Gaza, for example, the laws relating to companies, banking, criminal justice and procedures (including evidence), town planning, local government and taxation are those issued during the British Mandate. Such laws included the Defence (Emergency) Regulations, issued in 1945, giving the British High Commissioner for Palestine administrative powers to deport Palestinians, demolish their homes and restrict their political activity.[22]

After World War II, the UN voted to terminate the Mandate and drafted a partition plan to separate Palestine into an Arab state and Jewish state, and the partition was realised through a resolution in 1947.[23] According to the partition plan, the Jewish state would comprise approximately half of Palestine.[24] The declaration of Israel's independence on 14 May 1948 ignited the Arab-Israeli war, in which Jordan annexed the West Bank (named so by Jordan to indicate its geographical relation to the Jordan River[25]) and Egypt gained control over the Gaza Strip.[26] The rest fell into the control of Israel, expanding its original territory.[27]

In 1949, the Jordanian military law was declared to seize in place of a civil authority by virtue of the Law Amending Public Administration Law in Palestine. This law gave the Jordanian King all the powers previously held by the British, and the laws of Palestine was declared to

[20] Crawford, *Israel and Palestine*, p. 98.
[21] The Palestine Order in Council, 1922.
[22] See e.g. Articles 96, 112 and 119, Defence (Emergency) Regulations, 1945. These regulations were repealed by Article 105 of the Palestinian Basic Law of 2002, and even more explicitly by the Amended Basic Law of 2003.
[23] UN Doc. A/RES/181 (II).
[24] See Annex III for a map over the territorial changes.
[25] Quigley, *Statehood*, p. 118.
[26] Pappé, p. 126.
[27] The territory according to the League of Nations partition plan. It has been argued that the territory of 1949, following the armistice after the Arab-Israeli war, should be considered the original territory rather than what is indicated in the partition plan, see Crawford, *Israel and Palestine*, p. 110.

remain applicable in addition to Jordanian law.[28] By the time of the Israeli occupation of the West Bank in 1967, the Jordanian legislative body had passed laws applicable in a wide variety of matters, including commerce, labour, criminal law and procedures, taxation, banking, public land, education and much more.[29]

Egypt controlled the Gaza Strip between 1948 and 1967. While the British Mandatory laws were declared applicable during this period, the Egyptian Prime Minister also passed the Basic Law of Gaza in 1955, establishing a Legislative Council that passed laws relating to labour, the professions, matters of personal status and the Muslim religious courts.[30] In 1962 a new constitution for the Gaza Strip was issued by the president of the United Arab Republic (a brief union of Egypt and Syria), which proclaimed that "[t]he Gaza Strip is an indivisible part of the land of Palestine…"[31] and that "[t]his constitution shall continue to be observed in the Gaza Strip until a permanent constitution for the state of Palestine is issued."[32] A majority of the pre-1948 law remained intact.[33]

In May 1964, a convention of representatives of Palestinian communities and groups was held in Jerusalem, with the backing of the Arab League. The Palestine National Council (PNC) was formed to represent all Palestinians, living either in the territory of Palestine or abroad.[34] One of the earliest actions of the PNC was to establish the Palestine Liberation Organization (PLO) as the government for the Palestine 'entity', and the PNC would be the parliament of the PLO.[35]

On 5 June 1967, Israel invaded and occupied Gaza.[36] Jordan came to Egypt's defence, at which Israel invaded and occupied the West Bank (including Jerusalem), thus taking over the last two remaining parts of the Palestinian territory.[37] Consequently, adding yet another layer of foreign legislation are the Israeli military orders that have been issued from the beginning of the occupation and are still valid today. These orders are applicable in varying degrees in the West

[28] Quigley, *Statehood*, p. 118.
[29] Mattar, p. 300 – 301.
[30] Mattar, p. 301.
[31] Art. 1, Republican Decree Announcing Constitutional System of Gaza Sector.
[32] Art. 73, Republican Decree Announcing Constitutional System of Gaza Sector.
[33] Mattar, p. 301.
[34] Quigley, *Statehood*, p. 133.
[35] Quigley, *Statehood*, p. 133.
[36] Quigley, *Statehood*, p. 134.
[37] Quigley, *Statehood*, p. 134.

Bank, the Gaza Strip and East Jerusalem. On 7 June 1967, Major General Herzog of the Israeli Defence Forces proclaimed that:

> "The law that existed in the region [West Bank] on June 7, 1967 will remain in effect, to the extent that it contains no contradiction to this proclamation or to any proclamation or order issued by me, and with the revisions ensuing from the establishment of the Israel Defence Force's regime in the region."[38]

The same proclamation also stated that the area commander (Major General Herzog himself at the time) assumed all executive, legislative and judicial powers.[39] A similar proclamation was issued on the Gaza Strip on the same date.[40] Between 1967 and 1994, Israel issued over 1400 military orders in the West Bank and 1100 on the Gaza Strip.[41] Pre-1967 laws were retained in areas not covered by the military orders, though in many cases the previous laws were amended by them. The British Defence (Emergency) Regulation of 1945 was reinstated only days after Israel announced its independence, giving Israeli authorities the same powers as the British Mandate previously possessed.[42]

In 1988, the Palestinian Declaration of Independence was proclaimed by Yasser Arafat. Supplementing the declaration was a document to the UN Secretary-General announcing the provisional government of the PLO: The Executive Committee (EC).[43] The PLO had no control over any territory at this time, and hence the government was one in exile.

2.2 Post-Oslo, 1993 – today

In 1991 the USA and the Soviet Union initiated a dialogue between Israel and the PLO which focussed on setting up a Palestinian self-government administration in Gaza and the West Bank.[44] The negotiations, which were conducted secretly in Oslo, resulted in the 'Declaration

[38] Art. 2, Proclamation Regarding Regulation of Administration and Law (No 2).
[39] Art. 3, Proclamation Regarding Regulation of Administration and Law (No 2).
[40] Mattar, p. 301.
[41] Mattar, p. 301.
[42] Law and Administration Ordinance, 1948.
[43] Letter from the Permanent Observer of the Palestine Liberation Organization to the United Nations addressed to the Secretary-General: Annex: Declaration of the formation of the provisional Government of the State of Palestine.
[44] Quigley, *Statehood*, p. 172.

of Principles on Interim Self-Government Arrangements', signed on September 1993. Article I of the agreement stated that:

> "The aim of the Israeli-Palestinian negotiations … is … to establish a Palestinian Interim Self-Government Authority, … for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council resolutions 242 (1967) and 338 (1973)."[45]

As a result of the Oslo negotiations, Palestine got its first regional government when the Palestinian National Authority (PA, or PNA) was created in 1994 as the interim government of the Occupied Palestinian Territories (excluding the Palestinian diaspora). Israel was to transfer its authority from the Israeli military government and civil administration to the PA.[46] The Palestinian Legislative Council (PLC) was established in 1996 under the PA as the generally elected parliament of the Occupied Palestinian Territories, the first regional legislature.[47] The jurisdiction of the PLC is limited to issues other than "Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis" and "powers and responsibilities not transferred to the Council."[48]

Further limiting the actual jurisdiction of the PA in the Occupied Palestinian Territories is the division of the West Bank into three zones, with decreasing rights.[49] In Area A, comprising 17.2% of the West Bank, the PA has exclusive jurisdiction over all civil and security matters, but Israel maintains full control over entry and exit into the area.[50] In Area B, 23.8% of the West Bank, the PA has civil jurisdiction and responsibility for public order, while Israel maintains a security presence and an "overriding security responsibility".[51] Area C, comprising the remaining 59%, is where the PA has the weakest jurisdiction, allowing it only to control certain public services such as education and medical care, while Israel controls all infrastructure, land allocation, planning and construction.[52]

[45] Article I, Declaration of Principles on Interim Self-Government Arrangements.
[46] Article VI, Declaration of Principles on Interim Self-Government Arrangements.
[47] Article III, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip.
[48] Article XVII, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip.
[49] Article 11, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip.
[50] Article XIII.1., Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip.
[51] Article XIII.2.a., Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip.
[52] Article XI.2.c., Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip. General land information found at PASSIA Desk Diary 2015, chapter 13, p. 1.; B'tselem website.

In 1995, the PA enacted a law stipulating that existing laws, regulations and military orders shall remain in force.[53] Thus, the laws remained outdated, of Israeli origin, or were variously based on common law (in Gaza) and civil law depending on in what area a conflict occurred.[54] In order to harmonize the laws of the Gaza Strip and the West Bank and modernize the Palestinian legislation, the PLC adopted more than 80 new laws between 1996 and 2002 including legal areas such as commercial, civil and criminal law.[55] This process peaked with the ratification of the Basic Law of 2002, and the succeeding Amended Basic Law of 2003, focussing on the political process of independence and state-building. The Amended Basic Law expresses the idea of the separation of powers, political pluralism and the rule of law.[56] Article 115 provides that the Amended Basic Law "shall apply during the interim period and may be extended until the entry into force of the new Constitution of the State of Palestine." The Amended Basic Law has been proposed as the basis for the future Constitution of an independent Palestinian state. However, the status of the Amended Basic Law is disputed within the Palestinian authorities, and highly questioned.[57] This is for several reasons; mainly 1) it is drafted by the PLC and adopted by the PA, meaning that it lacks jurisdiction outside the Occupied Palestinian Territories; and 2) the provisions need extensive improvement.[58]

The last PLC election was in 2006, where a Hamas-sponsored party won a landslide victory over the usual majority party, Fatah.[59] As a result of the situation that followed, the Gaza Strip and the West Bank were divided into two administrations with Hamas ruling Gaza and the PA continuing to rule the West Bank.[60] Strong international opposition led to the detention of dozens of PLC members, most of which were belonged to Hamas.[61] Consequently, the split after the elections, along with the detention of PLC members, has obstructed the work of the PLC which has not convened since 2007.[62]

Until the PLC convenes again, the PLO has delegated its duties to the Palestinian Central Council – another political body nominated by the Executive Committee (PLO government)

[53] Law no. 5 Concerning the Transfer of Powers and Authorities, 1995.
[54] Mattar, p. 303.
[55] Mattar, p. 303.
[56] Articles 2, 5 and 6 of the Amended Basic Law of 2003.
[57] Meetings at the Folke Bernadotte Academy, Stockholm, 17 – 18 December 2015.
[58] Meetings at the Folke Bernadotte Academy, Stockholm, 17 – 18 December 2015.
[59] Washington Post, 27 January 2006.
[60] The New York Times, 17 June 2007.
[61] Addameer, *ARREST OF LEGISLATIVE COUNCIL MEMBERS*, February 2016.
[62] The Washington Institute, *Palestinian Reconciliation: Devil in the Details?*, 28 May 2014.

and elected by the PNC (PLO parliament). The PCC has legislative power but has never used it.[63] Through Article 43 of the Amended Basic Law, the President has "the right, in cases of necessity that cannot be delayed, and when the Legislative Council is not in session, to issue decrees that have the power of law." All laws since 2008 have been passed as decrees or bylaws.[64]

Legislation in Palestine is a patchwork of laws spanning at least 150 years and six different nationalities – Ottoman, British, Egyptian, Jordanian, Israeli and Palestinian. Understandably, consolidating the legislation into a national constitution is of high priority.

[63] Interview with Mr. Ammar Hijazi, Ramallah, 24 March 2016.
[64] Meetings at the Folke Bernadotte Academy, Stockholm, 17 – 18 December 2015; cf. Birzeit University legislation database.

3 Statehood of Palestine

Statehood is central in the path to independence. This chapter will bring some clarity unto the current status of Palestinian statehood, whether it can properly be called a state and whether it is being treated as a state by the international community. An in-depth analysis of the legal status of Palestine is outside the scope of this thesis, but some substance on the definition of statehood in general, and certain aspects of it regarding Palestine in particular, is necessary in order to provide the context for Palestine's unusual position in international relations, hence also concerning international treaties. Internationally recognised custom defining statehood will be discussed, along with the weak points in the case of Palestine.

3.1 Montevideo Convention

When trying to define a state, the starting point is typically Art. 1 of the Montevideo Convention on Rights and Duties of States, 1933.[65] It stipulates that "[t]he State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other States."[66] Although this convention is only legally binding to a dozen American signatory states, it is commonly invoked as an expression of customary international law when it comes to the definition of states.[67]

3.1.1 Permanent population

What seems to be meant by permanent population is "that there must be some population linked to a specific piece of territory on a more or less permanent basis and who can be regarded in general parlance as its inhabitants."[68] Looking at e.g. the Vatican City or various small island states, "no minimum limit [of inhabitants] is apparently prescribed."[69] Additionally, the

[65] See e.g. Linderfalk, p. 14; Dixon, p. 119; Crawford, p. 45.
[66] Montevideo Convention on Rights and Duties of States.
[67] Linderfalk, p. 14.
[68] Dixon, p. 119.
[69] Crawford, p. 52.

nationality of inhabitants cannot be given any significance considering that "[n]ationality is dependent upon statehood, not vice versa."[70]

Palestinians undoubtedly exist as a permanent population in Gaza and the West Bank, as they are the original Arab inhabitants of Palestine and identify themselves as such. The population is largely homogenous, has inhabited the area for centuries and reaches almost 4.7 million – larger than many other states.[71] Although these are not necessary factors to satisfy the population criteria, they fortify it.

3.1.2 Defined territory

Using the same examples as in the previous criterion, there seems to be no prescribed minimum area, nor any requirement for the territory to be contiguous for it to fulfil the criterion of a 'defined territory'.[72] The boundaries of the claimed territory do not literally have to be defined and settled, as long as there is a "consistent band of territory which is undeniably controlled by the government of the alleged state."[73] This makes perfect sense considering the large number of current border disputes between states.[74] The contrary would result in the statehood of Ukraine and Russia being dissolved due the border dispute in Crimea, the statehood of India and Pakistan over the Kashmir-dispute, or the statehood of Israel over the border disputes with both Jordan and Palestine.[75] The undefined borders of Palestine consequently mean that the same borders are undefined for Israel – but Israel does not question its own statehood on this basis. What matters is that there is a territory at all, over which the putative state possesses control.[76]

Under the British Mandate, the territory of Palestine was clearly defined, equal to today's Israel, not counting the occupied Golan Heights.[77] Palestine's current claim over the territories of the Gaza Strip, West Bank and East Jerusalem has been recognised in several UN resolutions and by the majority of the world's countries as legitimate.[78] At the time of the Declaration of

[70] Crawford, p. 52.
[71] Quigley, *Statehood*, p. 209.
[72] Crawford, p. 46 – 47.
[73] Shaw, p. 145.
[74] Dixon, p. 119.
[75] The occupied Golan Heights on the Jordanian border, and the occupied Palestinian territories.
[76] Linderfalk, p. 14.
[77] Quigley, *Statehood*, p. 210.
[78] See 3.2 for more on recognition.

Independence in 1988, Palestine exercised no effective control over any of the claimed territory, which is why it can be argued that it was not a valid state at that moment.[79] Nevertheless, today there is – formally recognized or not – a clear Palestinian territory over which the PA governs, albeit with limitations.

3.1.3 Government

The requirement of a government is closely connected to the other criteria. The putative state must have a somewhat functioning government, capable of controlling the (permanent) population and (defined) territory while maintaining a certain degree of law and order.[80] In addition, the government is responsible for international relations, as the face towards the international community.[81] The government does not have to be entirely dominant within its territory, as long as it is capable of controlling the affairs of the putative state internationally.[82] The significance of this particular criterion has been appropriately expressed as:

> "Moreover, international law defines 'territory' not by adopting private law analogies of real property but by reference to the extent of governmental power exercised, or capable of being exercised, with respect to some territory and population. Territorial sovereignty is not ownership of but governing power with respect to territory. There is thus a good case for regarding government as the most important single criterion of statehood, since all the others depend upon it."[83]

For Palestine, this is where it gets tricky. As explained, following the Oslo Accords, only limited powers have been transferred from Israeli authorities to the PA, and Israel maintains jurisdiction over many areas such as external security, border control, territory and land matters, and internal security in both areas B and C.[84] It could therefore be argued that the Palestinian government does not, and is unable to, exercise sufficient control over its claimed territory for it to be considered 'effective'.[85] Palestine is *de facto* under belligerent occupation, with Israel as an occupying power in the legal sense, and this has been reaffirmed on several occasion from the UN Security Council and General Assembly as well as the International Court of Justice.[86]

[79] Shaw, p. 145.
[80] Linderfalk, p. 15.
[81] Dixon, p. 120.
[82] Dixon, p. 120.
[83] Crawford, p. 56.
[84] Article XVII, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip. See also chapter 2.2.
[85] Mendes, p. 16.
[86] See e.g. UN Doc. S/RES/1322; UN Doc. A/RES/61/184; ICJ Reports, 9 July 2004, p. 136.

Strictly applying the Montevideo Convention criteria in a situation of belligerent occupation would lead to absurd consequences. It would mean that statehood is lost under occupation, and that e.g. Iraq would cease to be a state under American occupation since its government is not in effective control.[87] Would the occupying state withdraw, the occupied government would be able to satisfy this criteria perfectly well. International law has established that sovereignty remains with the occupied people, and so it never belonged to Israel.[88] Conclusively, Israeli control as occupying power has no consequence for defining Palestinian statehood.[89]

3.1.4 Capacity to enter into relations with other states

Although states are the primary entities to possess the capacity to enter into relations with other states at an international level, it is not an exclusive state prerogative, and the capacity is a consequence of statehood rather than a criterion for it.[90] International organisations (e.g. UN, EU), non-independent states and other bodies can enter into legal relations with other entities under the rules of international law, but for a sovereign state it is essential to be able to create such legal relations with other units as it sees fit, otherwise the state cannot be considered independent.[91] In this respect, it is the legal capacity of a state to enter relations that is relevant, not its political autonomy.[92] Thus, 'independence' is closely linked to this criterion. A state can still be pressured by a stronger neighbour, crippling its capacity to enter into relations 'as it sees fit', and it would therefore be unrealistic to demand complete independence in order for an entity to qualify as a state.[93] Consequently, the putative state will exist if the territory is not under the lawful sovereign authority of another state.[94]

This particular criterion appears to be somewhat inconsistent in the case of Palestine. Palestine does have the capacity to enter into relations with other states, to which more than 50 multilateral treaties can testify. Simultaneously, it is difficult to suggest that Palestine is an independent state, pointing to the obvious implications of trying to exercise authority under

[87] Mendes, p. 17.
[88] Cotran, p. 73.
[89] Quigley, *Statehood*, p. 220.
[90] Crawford, p. 61.
[91] Shaw, p. 147.
[92] Shaw, p. 147.
[93] Dixon, p. 120.
[94] Dixon, p. 120.

occupation. The number of Palestinian diplomatic missions abroad, and foreign diplomatic missions in Palestine, especially from states that have not formally recognised the State of Palestine, further proves that Palestine is indeed capable of entering and maintaining relations with other states and is being treated as a state.[95]

3.2 Recognition

"The attitude of other states is a key ingredient in regard to statehood. If an entity is accepted as a state, then it is a state."[96]

The Montevideo Convention expresses the traditional criteria used to define statehood and is a satisfactory starting point, but it is insufficient in many situations.[97] It leaves much room to ambiguous interpretations, which can declassify an otherwise legitimate state or acknowledge statehood that has been achieved through unlawful means.[98] Recognition from the international community can fill this gap by recognising or not recognising a putative state, e.g. in situations where a people within a territory have not fully satisfied the criteria of the Montevideo Convention (but still 'deserve' to be a state), or where the criteria have been satisfied through violation of international law (illegal use of force).[99] Recognition thus serves more as a subjective political weapon than an objective legal instrument, and it can be used strategically to pressure an entity to undertake certain actions.[100]

The Montevideo Convention emphasises effectiveness at the expense of legality. In other words, it focusses on effective sovereignty rather than legal sovereignty, taking its toll on weaker candidates for statehood. Nevertheless, while recognition can mend flawed claims of statehood (in the Montevideo sense), it also calls for caution not to apply it too generously. Certain aspects, such as a population, territory and decently functioning governance is still fundamental for a state, recognition aside.[101] A manifestation of this mechanism can be seen in the relationship between the traditional criteria and recognition: the more international

[95] See e.g. the UK Consulate-General in Jerusalem website.
[96] Quigley, *ICC Declaration*, p. 7.
[97] Linderfalk, p. 15.
[98] Dixon, p. 123.
[99] Dixon, p. 123.
[100] Quigley, *Statehood*, p. 227.
[101] Dixon, p. 127.

recognition, the less may be demanded in terms of adherence to the criteria, while scarce recognition will put higher demands on the objective satisfaction of the criteria.[102] However, it is important to emphasise that there must be a balance between the two, as it can be argued that "[a]n entity is not a State because it is recognized; it is recognized because it is a State."[103] Ironically it can also be said that "[i]f an entity is widely recognized as a state, it becomes difficult to argue that it is not a state by reference to the Montevideo criteria."[104]

Palestine has been formally recognised by 137 states[105], out of 195 in the world.[106] The 137 states constitute 71% of the 193 UN Member States[107], and 80% of the world's population.[108] For a frame of reference, 32 states have not recognised the State of Israel.[109] Furthermore, it is interesting to note that the majority of states that have not recognised the State of Palestine are Western European and North American, while the states that have not recognised the State of Israel are mainly North African and Middle Eastern.

Recognition does not have to be formally expressed, but can be informal or implied through the actions of the international community. Even if a state does not politically recognise an entity, it can still treat it as such, and this has been the case with Palestine.[110]

In 1991, the USA and the Soviet Union initiated a dialogue process between Israel and Palestine with the purpose of settling the conflict, which resulted in the set of agreements in 1993 commonly known as the Oslo Accords.[111] Neither the USA nor Israel has recognised the State of Palestine, yet they have both treated it as a state in their negotiations. One example is the Israeli demand to the PLO to recognise the State of Israel, an act done by states.[112] If Israel did not, although implicitly, consider Palestine a state it would not care to asking for recognition.[113]

[102] Shaw, p. 151.
[103] Crawford, p. 93.
[104] Quigley, *Statehood*, p. 226.
[105] Permanent Observer Mission of The State of Palestine to the United Nations.
[106] US Department of State website.
[107] UN website on member states.
[108] The Guardian, 20 September 2011.
[109] House of Representatives Resolution. The resolution counted 33 states, but the Maldives have since 2008 recognised the State of Israel.
[110] Quigley, *ICC Declaration*, p. 7.
[111] See chapter 2.2.
[112] In an exchange of letters between Israeli Prime Minister Yitzhak Rabin and PLO Chairman Yasser Arafat, 9 September 1993.
[113] Quigley, *ICC Declaration*, p. 7.

3.3 Concluding remarks

The prevailing consensus among public international law scholars, referred to here, appears to be that Palestine does satisfy the Montevideo criteria, and its statehood is confirmed by formal recognition from the majority of states in the international community. Its status as a UN observer state further strengthens its claim to statehood, not to mention the dozens of multilateral treaties that Palestine has acceded to.

It is also clear that a distinction is made between legal recognition (or rather legal ascertainment) of a state and diplomatic recognition of a state. Palestine is treated as a state even by the countries not politically recognising it as such, leading to the dilemma whether it is fact or law that determines statehood. This distinction is referred to as the 'declaratory' and the 'constitutive' theories of recognition, where the former is the theory that "statehood is a legal status independent of recognition" and the latter is the theory that "the rights and duties pertaining to statehood derive from recognition by other States."[114] It could also be explained as "status-confirming" and "status-creating", where recognition is either a consequence of statehood or the essential prerequisite for it.[115]

The neat thing about signing multilateral treaties is that it reaffirms the statehood of Palestine both as a matter of fact since Palestine gains recognition and conducts 'state-like' business, and as a matter of law by demonstrating a functioning government and capacity of entering into relations with other states.

[114] Crawford, p. 4.
[115] Talmon, p. 101.

4 International law meets national law

To join the international community by signing treaties might seem like a beneficial strategy to advance independence, but the rights that they provide are only one side of the coin. With each signed treaty comes international obligations for the signatory state to uphold. Whether or not a state adheres to international law usually depends on the extent to which national courts apply that law. For national courts to apply it, they must know the interrelation between international and national law. It is therefore essential that a signed treaty is implemented into national legislation without delay. Different treaties may have varying demands on implementation, but the usual procedure is that a state party must make necessary modifications to national law in order to harmonise it with the treaty obligations.[116] A state will typically have its own specific legislative provisions regulating how to utilise international law in the national courts.[117]

Ratifying international treaties may to strengthen Palestine's claim to independence, but what implications will it have for the national legislation? Two initial questions arise when a state signs a treaty:

1. How will the treaty provisions be implemented into national legislation?
2. Once implemented, what position in the hierarchy of norms will the treaty provisions hold?

This chapter will answer the two questions by first examining different approaches to implementing international treaty law in the national legal system, then examining the legal superiority, or inferiority, of international treaty law in national legislation.

4.1 Different approaches to implementation

Harmonisation can be done in different ways, most notably depending on whether a state applies a monist or a dualist legal system. As of now, Palestine lacks constitutional principles defining the relations between international law and national law, and it is unclear whether a monist or a dualist system will be adopted.

[116] Linderfalk, p. 175.
[117] Dixon, p. 91.

A consequence of this uncertainty is that there is no clarity on the legal value of the treaties in the national legal system, leading to two major problems. Firstly, legal insecurity due to the ambiguity surrounding the applicability of norms when there is a contradiction between the provisions of the treaties and of national legislation. Secondly, doubts concerning the actual commitment of Palestine to respect the international obligations emanating from accession to the international treaties. These issues will remain until an implementation mechanism has been defined.

4.1.1 Monism

In a monist system, the ratification of or accession to an international treaty automatically makes it part of national law, allowing courts and authorities to invoke international treaties the same as national law. They are both seen as a single entity, simply that of 'law'.[118] Because of this, the situation may arise where international law requires one outcome and national law another. In case of contradiction between international and national law, the former prevails.[119] Although all who adhere to the monist theory agree that international law should prevail over national law, the arguments as for why that is so range between ethical and purely logical ones.[120] What they do have in common is the idea that international law and national law are part of the same hierarchical legal order, which necessitates an established rank of priority between them – one where international law is above national law.[121] This means that in case of conflict, a national court should recognise and apply international law instead of national law, and courts and legislature should ensure that domestic rights and obligations conform to international law.[122]

Generally, adopting a monist system could entail complicated implications and contradictions with current national law, and for Palestine in particular considering the disorderly state of its legislation. If the national legal system were consolidated alongside a recognised constitution, the direct implementation of international treaties would be far less dramatic. Since this is not the case, it would be inadvisable to adopt a monist system in the current situation.

[118] Dixon, p. 91.
[119] Linderfalk, p. 175.
[120] See e.g. Shaw, p. 94 or Dixon, p. 92 for elaboration on these arguments.
[121] Dixon, p. 92.
[122] Dixon, p. 92.

4.1.2 Dualism

In a dualist system, international law and national law are seen as two separate legal sources where international law is only considered binding in a national court once it has been explicitly incorporated or transformed into national law.[123] Incorporation means that a state enacts a law stipulating that a specific treaty shall carry the same weight as national law, while transformation means that national laws are modified, supplemented or annulled to correspond completely to the state's international obligations.[124] According to the dualist theory, international law governs only the relations between states, while national law governs the relations between individuals and between the individual and the state.[125] If there were a contradiction between national and international law in a dualist system, national law would prevail.[126] However, the treaties do generate international obligations as soon as a State accedes to them.[127] What this means in practice is that an action by a state might be perfectly lawful according to its national law, and would be protected in a national court, even though it may violate the state's international obligations. In this case, it would be a matter for an international court to resolve such a violation, with which a national court need not concern itself.[128]

This creates a legal gap in time, between ratification and harmonisation, where the signatory state is obligated to adhere to the treaty, but the national courts of the state are not. A state cannot justify a violation of international law by referring to its domestic legal situation.[129] A continuous effort of harmonisation is thus required to avoid violation of international obligations.

4.1.3 "Gradualism"

The significance of the dualist and monist theories have been questioned by some scholars, claiming they can only provide "shorthand indications of the general approach" of a specific state to international law, and that they are not "useful in clarifying the relationship between

[123] Linderfalk, p. 175.
[124] Linderfalk, p. 175.
[125] Shaw, p. 21.
[126] Linderfalk, p. 175.
[127] Art. 2.1.b., Vienna Convention 1969.
[128] Dixon, p. 92.
[129] Shaw, p. 95.

international law and national laws."[130] Furthermore, that the theories give the idea that these are the only two methods of approaching the subject, and that one or the other is correct, or at least superior.[131] On the contrary, there are probably as many ways to deal with the issue as there are legal systems.[132]

Palestine must find an appropriate balance that makes sense in its historical, political and legal context. One suggested solution discussed within the Multilateral Affairs Department of the Palestinian Ministry of Foreign Affairs is a 'gradualist' approach. The dualist system allows for a carefully controlled implementation of the treaty provisions, helping to make the harmonisation less dramatic. This should be done under close observation to ensure a serious commitment by Palestine. The idea is to move towards a monist system 'gradually', taking the necessary time to make a smooth transition while obeying international law to the greatest possible extent.

4.2 Hierarchy of norms

Closely linked to the relationship between international law and national law is the hierarchy of norms within a state, that ranks all valid legal sources within a legal order. A hierarchy of norms aims at organising the national legal order and is essential in order to guarantee legal certainty, clarity and predictability on applicable rules at any given time. Adherence to this hierarchy must be monitored and enforced by a body with the necessary authority and mandate, such as a constitutional court.

In Palestine, there is no formally established hierarchy of norms. However, a tacit hierarchy has evolved. Currently, the informal hierarchy consists of, from top to bottom; the Amended Basic Law of 2003; laws of the PA and presidential decrees; and laws originating from foreign legislation.[133] International law does not have a designated place in the hierarchy.

An important ingredient in any functioning legal order is an independent body that monitors constitutional compliance and compatibility, such as a constitutional court. Article 103 of the

[130] Evans, p. 418.
[131] Evans, p. 418.
[132] Evans, p. 418.
[133] See Annex II.

Amended Basic Law envisions that "[a] High Constitutional Court shall be established by law", implying that such a court did not exist at the time of enactment in 2003 but will be established by a future law. Article 104 provides that until a constitutional court is established, "[t]he High Court shall temporarily assume all duties assigned to … the High Constitutional Court." In 2006, the law establishing the Supreme Constitutional Court was promulgated.[134] By the end of March 2016 the court had still not been established. However, news from mid-April report that a constitutional court has been established by a presidential decree 3 April 2016.[135]

The provisions on legislative procedure is scarce, with only few articles providing that members of the parliament may propose new laws, or to amend or repeal existing ones.[136] Ministers of the government may also submit draft laws to the PLC.[137] There is no mention of international relations in the Amended Basic Law, nor of international law.

4.3 How other States do it: six brief examples

Diverse approaches can be found in the legal systems of other states, and six examples will be presented briefly. The examples are chosen to illustrate the variety from monism on one end to dualism on the other, and to what extent international law supersedes national law.[138]

4.3.1 The Netherlands

Article 90 of the Netherlands Constitution instructs the Government to "promote the development of the international legal order".[139] However, before a treaty becomes binding in the Netherlands, it must be approved by its parliament, the States General. Article 94 of the Netherlands Constitution stipulates that national law shall not be applicable if it is in conflict

[134] The Law of the Supreme Constitutional Court, No. (3) of 2006. The English translation changed from 'High' to 'Supreme' by the time the law was promulgated, but they both refer to the same putative court.
[135] Al-Monitor, 26 April 2016; ABC, 11 April 2016; Reuters, 11 April 2016.
[136] Article 56.2, Amended Basic Law of 2003; Article 67, Standing Orders for the Palestinian Legislative Council, 1997.
[137] Article 70, Amended Basic Law of 2003; Article 65, Standing Orders for the Palestinian Legislative Council, 1997.
[138] The choice of states is based on Ms. Eileen Denza's text on this topic, in Evans, p. 418.
[139] For the official English translation of the Netherlands Constitution see the Bibliography.

with treaties or resolutions that are binding on all persons.[140] This does not change the fact that the States General need to approve them first. Article 91 stipulates that "the Kingdom shall not be bound by treaties … without the prior approval of the States General". In case of conflict between an international treaty and national law, Article 91 provides that "[a]ny provisions of a treaty that conflict with the Constitution or which lead to conflicts with it may be approved by the Houses of the States General only if at least two-thirds of the votes cast are in favour". Article 93 provides that treaties and resolutions of international organisations become binding after they are published.[141] Before approval, treaties go through rigorous scrutiny "to an extent unparalleled elsewhere in Europe".[142] The Netherlands illustrate a monist approach, with the approval of the parliament serving to prevent the executive body to bind the state and its citizens unilaterally to international obligations. International treaty law reaches second place in the hierarchy, and even has the possibility – with enough parliament votes – to reach the top. Simply put:

> "Thus a fair balance in achieved between the primary duty of the Government to promote the international legal order and Parliament's control over the way this duty is exercised."[143]

4.3.2 Germany

Article 25 of the German Basic Law of 1949[144] provides that "[t]he general rules of public international law shall be an integral part of federal law. They shall take precedence over the laws and shall directly create rights and duties for the inhabitants of the federal territory." Such a strong submission to international law is a reflection of the experiences from the Second World War.[145] Article 24 even stipulates that the state's sovereign powers may be transferred to international organisations[146], and consent to "such limitations upon its sovereign powers as will bring about a secure and lasting peace in Europe and among the nations of the world". The Federal Constitutional Court has the ultimate control of new treaties, and its decision binds all State bodies.[147] However, Article 59 provides an exception:

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[140] 'Binding on all persons' could be understood as 'self-executing' rights that may be invoked and enforced in national courts without prior legislation, e.g. the freedom of expression. For a thorough analysis of the phrase please refer to Wernaart, p. 153. For a study on self-executing rights, please see Vázquez.
[141] For example, a UN treaty would become binding after being published in the UN Treaty Series.
[142] Evans, p. 419.
[143] Van Dijk & Tahzib, 1974, in Riesenfeld & Abbot (eds), p. 109, as quoted in Evans, p. 419.
[144] For the official English translation see the bibliography.
[145] Vereshchetin, p. 30.
[146] In particular to the EU.
[147] Evans, p. 420.

> "Treaties that regulate the political relations of the Federation or relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law."

If treaty provisions are implemented through legislation, as federal law, they consequently gain the same status, and no higher, than federal law.[148] In other words, they are implemented but they lose their superior legal status. National courts are bound to apply international treaties as superior to national legislation, but they may not do so in conflict with the Constitution.[149]

Like the Netherlands, Germany also shows an example of a monist approach to international law, one which is clearly influenced by its modern history. It differs from the Netherlands in its being the judiciary controlling the ratification of treaties, not the legislature.

4.3.3 France

According to the French Constitution of 1958, like the Netherlands, treaties may be ratified or approved only by virtue of law. Article 52 stipulates that "[t]he President of the Republic shall negotiate and ratify treaties." However, Article 53 provides the condition that important treaties, such as peace treaties, trade agreements with financial consequences, or treaties modifying legislation "… may be ratified or approved only by an Act of Parliament. They shall not take effect until such ratification or approval has been secured." This provision adds a significant dualist addition.[150] According to Article 54, in case there is a conflict between a treaty provision and the Constitution, authorization to ratify the treaty may only be done after amending the Constitution accordingly. In other words, the Constitution can occasionally be modified in favour of international treaties, but this mechanism reduces the risk of conflict in the first place. Article 55 provides that once a treaty has been lawfully ratified, its provisions prevail over national law. This applies both to earlier and later national legislation.[151] Finally, the Constitution remains superior to international treaties when concerning national law.[152]

[148] Shaw, p. 124.
[149] Shaw, p. 123.
[150] Shaw, p. 125.
[151] Evans, p. 421.
[152] Shaw, p. 125.

4.3.4 Russia

Similar to the French Constitution, Article 86 of the Constitution of the Russian Federation provides that the President negotiates and signs treaties and ratification instruments. For international treaties to be implemented, they must first pass the consent of the Parliament, according to Article 106. The Russian Federation has a two-chamber parliament, the upper Federal Council, and the lower State Duma.[153] The State Duma adopts laws concerning the ratification of international agreements, and the Federal Council must consider those laws before approving ratification.[154] Article 15.4 provides that customary international law and international treaties shall "constitute part of the legal system", and that "[i]f an international treaty … establishes other rules than those stipulated by the law, the rules of the international treaty shall apply." One scholar makes the doubtful interpretation that this means clearly giving priority to both customary and treaty law, in case international law establishes something contrary to national law.[155] Another scholar, more convincingly, identifies the distinction made between international customary rules and treaty rules; that while both of them are incorporated into the national legal system, only treaty rules are being mentioned as superior to national law.[156] Either way, international law is not given superiority over the Constitution.[157]

4.3.5 The USA

Article II, section 2, of the Constitution of the USA of 1787 gives the President the power to make treaties, though only with the "Advice and Consent of the Senate" and "provided two thirds of the Senators present concur". The Senate has considerable power to reject or delay the approval of treaties submitted by the executive.[158] Article VI, section 2, establishes that the Constitution, national law and treaties "shall be the Supreme Law of the Land", and that "the judges in every state shall be bound thereby". International law was thus originally given the same status as national law, or 'federal law', without the need for further incorporation.[159] It is accepted today that "[a]n act of Congress supersedes an earlier rule of international law … or

[153] Shaw, p. 127.
[154] Shaw, p. 127.
[155] Eilen Denza in Evans, p. 422.
[156] Vereshchetin, p. 37.
[157] Evans, p. 422.
[158] Evans, p. 422.
[159] Evans, p. 423.

agreement" but only if that is the clear purpose of the act, or if the two are incompatible.[160] Conversely, the same applies if an international treaty is ratified as law posterior to earlier inconsistent national or international law.[161] Thus, international law is subject to the Constitution[162], but the provisions in the Constitution will be interpreted in favour of international law or treaty obligations whenever possible.[163] If such an interpretation is impossible, the difference in national law does not relieve the USA of its international obligations, or the consequences of violating such obligations.[164] A difference is made between self-executing and non-self-executing treaties, where the former is automatically enforceable in national courts while the latter requires legislation, no matter what the Constitution stipulates.[165]

A mixed monist-dualist system seems to rule in the USA, where international law applies directly in some cases but not in others.

4.3.6 The UK

In the UK, conclusion treaties falls under the 'royal prerogative', which today means the government.[166] As the UK has no written constitution, customary law regulates these matters. While the government is responsible for the conduct of foreign affairs, it is also accountable to the Parliament.[167] All treaties must be presented to, and consented by, the Parliament before ratification.[168] Customary international law is generally considered part of the law without requiring incorporation, but there are some restrictions. Incorporation of a customary rule can only occur automatically if the encompassed rights and obligations are intended to operate within the national legal system and is compatible with the rules of that system.[169] Treaties, however, are treated differently in relation to rights and obligations in national law.[170] Treaties

[160] The American Law Institute, Third Restatement of the Foreign Relations Law in the US, §115 (1)(a). Please note: "The formulation of legal rules in a Restatement is the considered opinion of The American Law Institute. As was said of the prior Restatement, it is "in no sense an official document of the United States." The American Law Institute is a private organization, not affiliated with the United States Government or any of its agencies."
[161] The American Law Institute, Third Restatement of the Foreign Relations Law in the US, §115 (2).
[162] Shaw, p. 113.
[163] Evans, p. 423.
[164] The American Law Institute, Third Restatement of the Foreign Relations Law in the US, §115 (1)(b).
[165] Shaw, p. 117.
[166] Evans, p. 424.
[167] Evans, p. 424.
[168] Evans, p. 424.
[169] Dixon, p. 108.
[170] Evans, p. 424.

cannot be used as a source of rights and obligations without the provisions being legislated through Parliament.[171] This is to prevent the executive body from modifying national legislation by enacting international treaties, bypassing Parliament.[172] International treaties are regarded solely as contracts between governments, regulating the relation between sovereign States.[173] If the UK wishes to make treaty provisions regulating the rights and obligations of individuals enforceable in national courts, the provisions must be legislated through Parliament.[174]

The UK thus holds a predominant dualistic view on international law, with no rights and obligations being enforceable in a national court without being explicitly transformed into national legislation.

4.4 Concluding remarks

Each state has developed its own system to deal with the harmonisation, and democratic application, of international treaties, as well as different ways to ensure the independence of the judiciary. In the end, the implementation of international law in domestic courts comes down to the relationship between the executive, legislative and judicial bodies of a State. The constitutional articles specifying to what extent international law is superior to international law are basically created by factors of contemporary real life, such as modern history and political culture, not by an ideological argument between monism and dualism.[175] Strictly applying only one or the other is insufficient. Most countries commonly accept the application of customary international law within their jurisdiction, as long as it does not conflict with existing law.[176] Some countries even allow customary international law to prevail in case of such conflict, while others – like Russia – hold the opposite view.

Concerning treaties, the implementation is often more complicated. Some countries allow direct enforcement of international treaties in national law directly after ratification, while other countries require legislation of any ratified treaty prior to application in domestic courts. It can

[171] Evans, p. 424.
[172] Evans, p. 424.
[173] Lord Templeman, para 158, JH Rayner Ltd v Department of Trade and Industry, 1989.
[174] Lord Templeman, para 158, JH Rayner Ltd v Department of Trade and Industry, 1989.
[175] Vereshchetin, p. 41.
[176] Shaw, p. 128.

either depend on the nature of the treaty, whether or not it is self-executing, or on the legal regulations. States with constitutions seem to have a common view on constitutional supremacy over international law, which may also be a proper approach for Palestine with its envisioned Constitution.

Discussions on defining a hierarchy are ongoing, where international law is taken into consideration. A proposed hierarchy, as presented by the two representatives from the Palestinian Ministry of Foreign Affairs, is:

1. The Declaration of Independence of 1988 as a supra-constitutional legal text, today lacking any legal authority.[177]
2. The (future) Constitution.
3. International treaties. (No mention of customary international law.)
4. Laws of the State of Palestine, yet to be legislated.
5. The Amended Basic Law of 2003.
6. Laws of the PA, presidential decrees and bylaws.
7. Laws originating from foreign sources. State of Palestine should act to remove this layer by enacting its own laws.[178]

A conventional order is seen in the first four steps, but none of them exist today apart from the international treaties. There is no premade solution for Palestine, nor can it simply apply another state's procedures without considering the limitations of its own legal system. However, looking at the way other states approach this issue, it can provide guidance on what might work in Palestine.

[177] See bibliography for the English translation of the Declaration of Independence.
[178] Annex II.

5 Analysis and conclusion

5.1 The research questions

5.1.1 Benefit of signing international treaties

A state's disposition towards international law is often influenced by historical events, especially traumatic ones. Former ICJ Judge Vladlen S. Vereshchetin wrote in his paper *New Constitutions and the Old Problem of the Relationship between International Law and National Law*, the following:

> "What are the main factors that induce national law-making bodies, especially after each World War, be it 'hot' or 'cold', to pay more tribute to international law, as manifested in the corresponding constitutional changes? The general answer seems to be obvious. Every devastating war gave rise to hopes, that due compliance with international law, both domestically and internationally, could serve as a guarantee against the repetition of the scourge of war."[179]

What Palestine achieves in tangible terms by acceding to these treaties is recognition. Joining the core body of prevalent treaties and conventions undoubtedly helps to manifest Palestine as a full-fledged state in both a legal and factual sense. It is possible to deny formal statehood, or argue against the existence of a specific people, territory or government, but only up to a certain point. When more than two-thirds of the states in the world recognise Palestine, denying its existence becomes difficult to justify. Arguments can still be made based on other decisive factors, such as the Montevideo Convention criteria are not fulfilled. Many distinguished public international law scholars agree that Palestine already satisfies the criteria; either way, ratification can do nothing but strengthen its presence and appearance as a state capable of entering into international relations. It is important to keep in mind however, that the treaties bring as many obligations as it brings rights. The beneficial effects in terms of international standing depends on the loyal and committed application of the treaty provisions.

[179] Vereshchetin, p. 30.

5.1.2 Harmonisation of the national legislation

Every state deals with the subject of harmonisation in different ways, having developed constitutional mechanisms to implement customary international law and international treaties into the national legislation. Nevertheless, the differences of means all lead to the same end. Commonly, the constitutional regulations serve to ensure four fundamental principles; that international obligations are observed; that international treaties are followed; that clarity exists when contradictions between international law and national law occur; and that international law goes through the proper legislature before being binding on the citizens, avoiding the situation where a Chief of State can bypass the legislature by unilaterally ratifying international law.

Looking back at the quote from Vereshchetin, it is natural that Palestine should develop a legal order that reflects its historical, cultural and political background. A glimpse at the constitutions of other states can provide inspiration and ideas how to formulate the constitutional regulations on international relations and law, and also learn in what context they were created, but in the end Palestine must shape its own legal body.

What should be adopted is a system that emphasizes the importance of upholding international obligations, while accommodating a gradual implementation of international law, and doing so in a way that gives the Palestinians a legitimate sense of ownership of the laws. This means setting the basis for a national legal order that reflects both the existence of a state exerting its legal sovereignty, and at the same time confirms its commitment to abide by the values expressed in the treaties.

The smoothest process of harmonisation is one that is made gradually. In order to facilitate this, considering the short time span in which Palestine has signed a large number of treaties without any reservations, a dualist system could be adopted initially. However, this dualist system must not serve as an excuse to escape the international obligations deriving from accession to international treaties by delaying the implementation with protracted legislative processes. This risk is very real considering the current political state with a suspended parliament and indefinitely postponed elections.

Former laws containing provisions that contradict the treaties will be valid as long as the treaties have not been incorporated into the national legal system. Nevertheless, Palestine must strive to accelerate the harmonisation process and its adherence to the treaties. Until harmonisation of the treaties is complete, Palestine must not adopt any national legislation in contradiction with their provisions, neither in their literal nor intended meaning. The adoption of contradictory laws at this stage would constitute a clear intention to violate the international obligations already undertaken, even if they have not yet been incorporated. In effect, this would mean that any provisions of a law posterior to a treaty already acceded to, and that contradicts the provisions of that treaty, must be repealed.

The harmonisation must proceed surely enough to convince the international community that Palestine is committed to its international obligations and to keep momentum, but slow enough not to lose footing. Rash political and legislative action may lead to disastrous consequences (such as in Libya), while allowing institutions to grow more organically can accommodate a more stable transition (such as in Tunisia).

5.1.3 Hierarchy of norms in the future Constitution

Constitutional supremacy over international law, albeit with occasional restrictions, seem to be the standard. Reasonably so, considering the principles of equal sovereignty of states and right to self-determination. Universal values and customary international law must be held in the highest regard, but every state should be given the option to decide how to best adhere to them.

In the envisioned hierarchy of norms in Palestine, the top four layers are not yet in force or even in the legislation process, with the exception of treaties.[180] Obviously, the road to reach this legal order is long, demanding an almost complete overhaul of Palestine's legislation. To complicate things further, Hamas in the Gaza Strip is issuing its own laws, not recognised by the State of Palestine (as in *the West Bank*).

Looking at the proposed hierarchy, some reflections can be made. Beginning from the top of the 'pyramid':

[180] Annex II.

A document with superior significance to the Palestinian people is the Declaration of Independence of 1988, which enshrines the fundamental principles upon which the State of Palestine shall be built. A supra-constitutional Declaration of Independence can serve as a basis of values to govern the drafting of the new Constitution, and remain a source of interpretation in the future application of it. In this legal sense, parallels can be drawn to e.g. the US Declaration of Independence of 1776 or the French Declaration of the Rights of Man and of the Citizen of 1789. Abraham Lincoln argued that the US Constitution should be interpreted through the principles expressed in the US Declaration of Independence.[181] In the French Constitution of 1958, the Declaration is written in the first sentence of the preamble, manifesting its fundamental and pervasive importance. As of today, the Palestinian Declaration of Independence has no legal value. This could be mended by granting the Declaration of Independence status as the supreme legal document of Palestine, defining its status in the preamble of the future Constitution. Raising the Declaration above the Constitution would emphasise the values within, and enhance the sense of national ownership over the laws.

Making the Constitution superior to all other laws, both international and national, is nothing controversial. Still, great care must be taken when defining the relationship between those laws, and this is closely linked with the harmonisation process. One chapter in a constitution can regulate both subjects of implementing and ranking international law. Defining the chapter on international relations is only one small part of a constitution, but a very significant one for a state such as Palestine that does not only ratify treaties for the sake of the law, but as a political campaign in the international arena. Palestine must deliver on its pledge to be in the forefront of human rights and equality in the Middle East, or lose its fragile credibility. Therefore, the rules defining international relations must accommodate the national legal interests of Palestine, but also please the states whose favour Palestine attempts to gain or maintain. That would most likely be the remaining European states along with the USA, that still withhold formal recognition, whose approval is beneficial for the Palestinian cause.

Putting international treaty law above national legislation is a conventional solution found in many states. Once implemented, one way or another, treaty provisions would prevail over any contradicting prior national legislation. As argued above, it is important at this stage that

[181] McPherson, p. 126.

Palestine stays loyal to the treaties until they have been properly incorporated or transformed into national law.

Laws of the State of Palestine are yet to be legislated by the parliament of the PLO, the PNC. As has been explained, the PNC represents all Palestinians while the representation of the PLC, through the PA, is limited to the Occupied Palestinian Territories – only the West Bank if considering the current split with Hamas and Gaza. National legal sovereignty entails having democratically legislated laws, created on a national level giving the people a sense of ownership over the laws under which they are governed. It is imperative for the advancement of Palestine's legal sovereignty that a unified national legislative process is initiated.

Writing a new constitution is an enormous undertaking, but of fundamental importance. A constitution has the power to consolidate the laws of a state. These four layers are meant to replace old and foreign legislation, creating a coherent and comprehensive Palestinian legislation. The question is how long it will take to be realised.

Regarding the Constitutional Court, it remains to be seen when it will become operational. At this stage, logistical issues are being dealt with and the building for the court has not yet been chosen. The court has been formally established once already with the 2006 Law of the Supreme Constitutional Court, but the process was suspended due to the Gaza/West Bank split that year. Previous experience demonstrates that the establishment of the court should not be taken for granted until it is operating. Until then, perhaps it could be an alternative to grant the other courts competence and responsibility to perform judicial review of legislation (like the Swedish 'lagprövningsrätt'[182]), and to establish a Council on Legislation (like the Swedish 'Lagrådet'[183]) for advisory judicial preview. Legal review does not require a new institution, only an expanded competence for the incumbent judges. Establishing a Council on Legislation requires more institutional work than just legal review, but since the Council would advise rather than decide, not as much effort is needed in terms of regulating its mandate as it would be for a court.

[182] Chapter 11 § 14 RF.
[183] Chapter 8 §§ 20 – 22 RF.

5.2 Zooming out

Under occupation and divided in two, Palestine is fighting an uphill battle. It is difficult to tell when a political reconciliation between Hamas and the PLO will take place. Reviving the legislation process depends on a unified state with a functioning parliament. As of now, only the President has a working legislative power, namely by issuing decrees. National legislation aside, Palestine now has a big international responsibility to shoulder. Delaying the implementation of these international obligations until parliament is active again could be regarded as ducking this responsibility, while enjoying the rights, and more importantly the status, of joining international treaties without having to deliver.

This leads to the conclusion that, for the foreseeable future, the treaties can only be implemented by presidential decree. One of the main principles of regulating the process in the first place is then defeated, allowing the President to bypass parliament, binding the state on behalf of the people. Evidently, the government finds itself in a very awkward position. On the one hand, neglecting international obligations is detrimental to Palestine's goal of improving recognition. On the other hand, bypassing democratic procedure would also be harmful to its reputation. So, do international obligations outweigh democratic procedure?

As a reader of this thesis, one might wonder why no comparison has been made to other putative states in similar situations, such as Kosovo. At the meeting in Stockholm in December, this question was asked, but Mr. Hijazi and Mr. Bamya insisted that the similarities are overshadowed by the differences. This motivated a case study of Palestine, rather than a comparative one. But the question still lingers. Is this case really that unique, or has it happened before? Even if this is a unique situation, some lessons are sure to be learnt by looking at other struggles for independence. In post-colonial Africa, many armed non-state actors, e.g. liberation movements like the African National Congress of South Africa (ANC), regarded themselves as bound by international humanitarian law against the colonial powers, and even applied to join the Geneva Conventions through various declarations.[184] They were not representing a sovereign state, but utilised international treaty law for their cause. In the decolonisation of Africa, authority was in some cases transferred progressively. Palestine resembles in many ways a colonised country more than an occupied one. There was indeed a majority Arab

[184] Ewumbue-Monono, *Respect for international humanitarian law by armed non-state actors in Africa*, p. 907.

population living on the land of Palestine, but it was not a self-governing state by the time of occupation. The Middle East was divided and distributed between the Allied victors of World War I. Palestine fell into the hands of a European imperialist state, and its fate was decided by the UN. A comparative analysis between the decolonisation of Africa and Palestine could be a subject for future research, possibly providing more clues, and lessons learnt, to finding a peaceful path to successful state-building and independence.

5.3 Conclusion

Ratifying international treaties strengthens Palestine's claim for statehood, which in turn increases pressure for independence on its occupier. Recognition is a very important part in this, and joining the international community wherever possible is a step to that end.

Due to the political split between Hamas and the PA, and the suspension of the parliament, Palestine must choose to either postpone the implementation process or implement the treaties by presidential decree. Postponing sends negative signals to the international community, raising doubts on Palestine's commitment to follow the provisions. Implementing international law by presidential decree is an undemocratic legislative procedure. None of these options are optimal, but one must be chosen.

Either way, a dualist approach should be taken initially. This allows for easier 'damage control' in the potential collision between international and national law. Monism demands a legal order that is better prepared for international law, and is better suited for small scale implementation – not for over fifty treaties at once.

The envisioned hierarchy of norms is a standard order, giving little reason to question it. However, it is dependent on the completion of massive effort in terms of legislation, with a new Constitution complemented by national laws. For this to happen, or even begin, the parliament must reactivate. There is no telling when this will be. In theory, Palestine has a good strategy that, if successfully executed, may help to increase recognition, human rights, decreasing violence and ultimately independence. Sadly, the political reality is not so generous, and many difficult obstacles must be cleared before this process can take off for real.

Annex I

List of multilateral treaties signed by Palestine, as provided by the Multilateral Affairs Department of the Ministry of Foreign Affairs of the State of Palestine, 10 May 2016.

	Field	Name of treaty and date of adoption	Entry into force in Palestine
1.	Human Rights	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 10 December 1984.	2 May 2014
2.		Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 18 December 1979.	2 May 2014
3.		Convention on the Political Rights of Women, 31 March 1953.	2 April 2015
4.		Convention on the Rights of the Child, 20 November 1989.	2 May 2014
5.		Convention on the Rights of Persons with Disabilities, 13 December 2006.	2 May 2014
6.		International Covenant on Civil and Political Rights (ICCPR), 16 December 1966.	2 July 2014
7.		International Convention on the Elimination of all Forms of Racial Discrimination, 7 March 1966.	2 May 2014
8.		International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966.	2 July 2014
9.		Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict, 25 May 2000.	7 May 2014
10	International Humanitarian Law	Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.	-
11.		Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949.	2 April 2014
12.		Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949.	2 April 2014
13.		Geneva Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949.	2 April 2014
14.		Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949.	2 April 2014

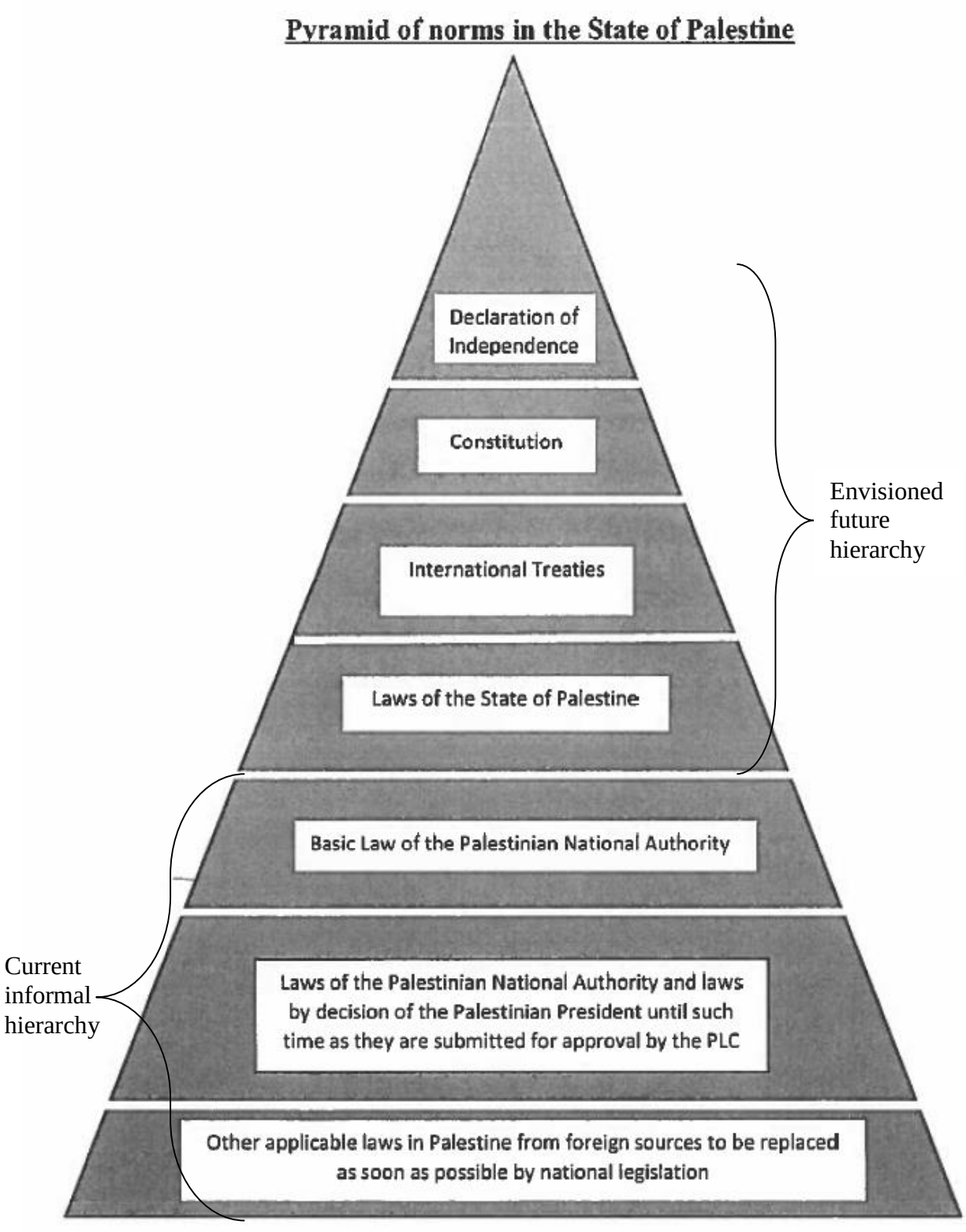
15.		Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.	2 April 2014
16.		Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.	
17.		Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005.	
18.	Disarmament	Convention on Cluster Munitions, 30 May 2008.	1 July 2015
19.		Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. Geneva, 10 October 1980.	5 July 2015
20.		Protocol on Non-Detectable Fragments (Protocol I), 10 October 1980.	5 July 2015
21.		Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), 10 October 1980.	5 July 2015
22.		Treaty on the Non-Proliferation of Nuclear Weapons, 1 July 1968.	
23.	Penal Matters	Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 26 November 1968.	2 April 2015
24.		Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 14 December 1973.	1 February 2015
25.		Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948.	1 July 2014
26.		Convention on the Safety of United Nations and Associated Personnel, 9 December 1994.	1 February 2015
27.		International Convention of the Suppression and Punishment of the Crime of Apartheid, 30 November 1973.	2 May 2014
28.		Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, 8 December 2005.	1 February 2015
29.		Rome Statute of the International Criminal Court, 17 July 1998	1 April 2015
30.		Agreement on Privileges and Immunities of the International Criminal Court, 9 September 2002.	
31.		United Nations Convention against Corruption, 31 October 2003.	2 May 2014
32.		United Nations Convention against Transnational Organized Crime, 15 November 2000.	1 February 2015

33.	Environment	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 22 March 1989.	2 April 2015
34.		Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 29 January 2000.	2 April 2015
35.		Convention on Biological Diversity, 5 June 1992.	2 April 2015
36.		Convention on the Law of the Non-Navigational Uses of International Watercourses, 21 May 1997.	2 April 2015
37.		United Nations Framework Convention on Climate Change, 9 May 1992.	18 December 2015
38.		Paris Agreement under UN Framework Convention on Climate Change, 12 December 2015.	22 April 2016
39.	Law of the Sea	Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea, 10 December 1982.	1 February 2015
40.		United Nations Convention on the Law of the Sea, 10 December 1982.	1 February 2015
41.	Diplomatic and Consular Relations	Vienna Convention on Consular Relations, 24 April 1963.	2 May 2014
42.		Vienna Convention on Diplomatic Relations, 18 April 1961.	2 May 2014
43.	Commercial Arbitration	Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958.	2 April 2015
44.	Law of Treaties	Vienna Convention on the Law of Treaties, 23 May 1969.	2 May 2014
45.	Pacific Settlement of International Disputes	Hague Convention (I) for the Pacific Settlement of International Disputes, 29 July 1899.	29 December 2015
46.	UNESCO	UNESCO Constitution, 16 November 1945.	
47.		Convention Concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972.	
48.		Convention on the Protection of the Underwater Cultural Heritage, 2 November 2001.	
49.		Convention for the Safeguarding of the Intangible Cultural Heritage, 17 October 2003.	
50.		Convention on the Protection and Promotion of the Diversity of Cultural Expression, 20 October 2005.	
51.		Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, 14 May 1954.	
52.		Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954.	

53.		Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970.	
54.		Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 26 March 1999.	
55.		International Convention against Doping in Sport, 19 October 2005.	

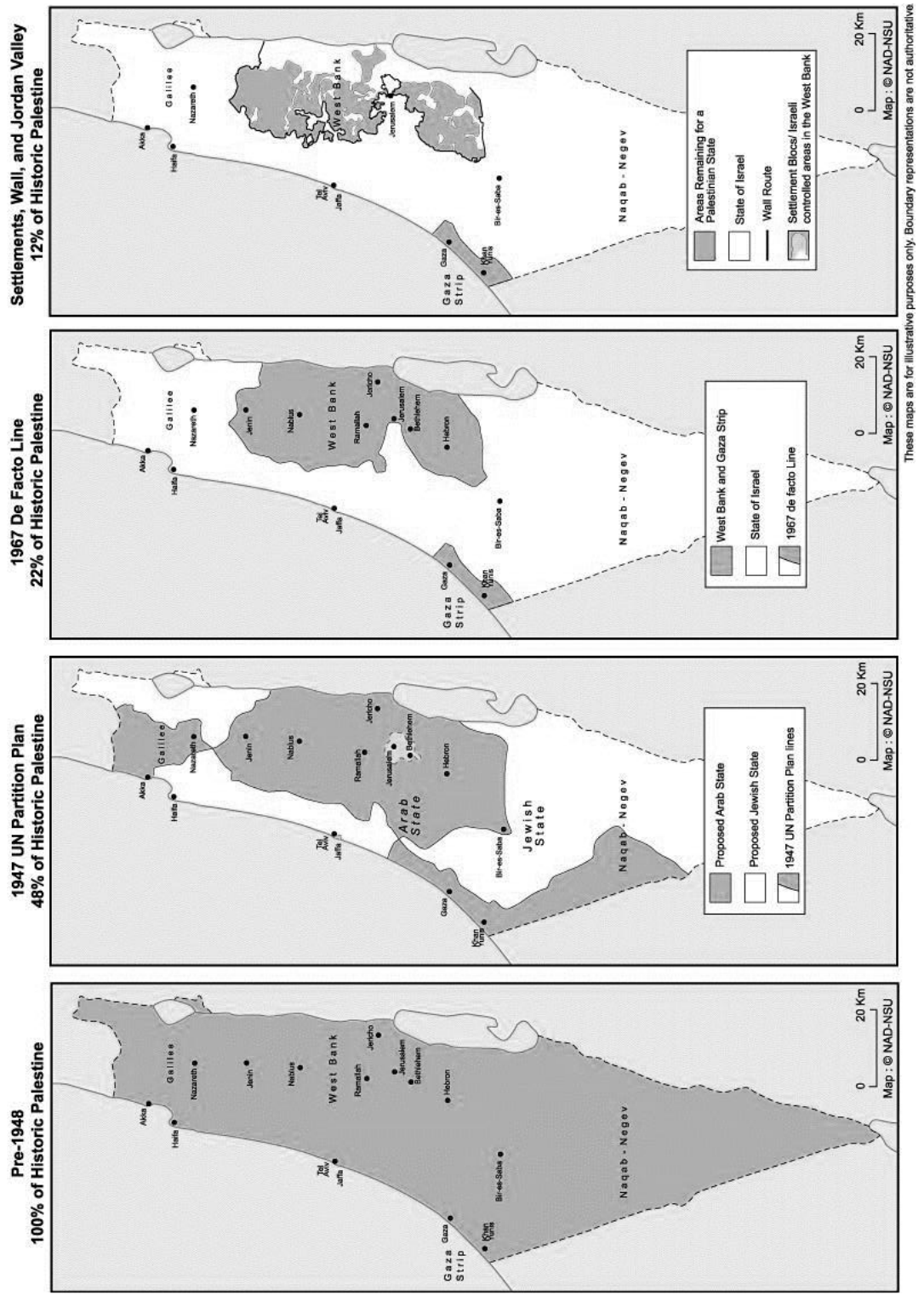
Annex II

Hierarchy of norms in Palestine, current and envisioned. Distributed at a meeting on 17 December 2015 in Stockholm.



Annex III

Map over the Palestinian territories and changes over time.
Copyright by NAD-NSU, Negotiations Affairs Department and Negotiations Support Unit (now merged).



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