

A diplomatic strategy for national liberation

The Palestine Strategy Group

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Executive Summary

- The right of the Palestinian people to self-determination is a right enshrined in international law. By correlation so is the right of the Palestinian people to independence in the State of Palestine. However, it is clear that ending Israel's military occupation of Palestine can only be achieved through a political deal with Israel. No amount of bilateral recognitions, Security Council resolutions, or ICJ/ICC decisions will make Palestine independent unless Israel ends the occupation. Therefore, the objective of any strategy must be to change the existing power dynamics that have made a negotiated settlement that results in an independent Palestinian state impossible. This involves exerting pressure on Israel by using a number of tools described in this paper. The purpose of exercising this leverage is to make a final status deal the least bad option for Israel.
- The leadership should assume that Netanyahu's rift with the Obama administration is temporary. Therefore, it should immediately seize on this rift to get the US to allow a draft resolution to be passed by the Security Council and to work closely with the US and its allies in the remaining year and a half of the Obama administration. The leadership should work closely with the US, France, Germany, the United Kingdom, the EU High Representative, and Russia to get the US to support the resolution. The leadership should seek clarification from Obama on whether the US will continue to oppose Palestine's statehood strategy since the US has been opposing Palestine's accession to treaties and its attempt to join UN agencies.
- Given Netanyahu's statement that there will be no Palestinian state so long as he is Prime Minister, the Palestinian leadership should ask European states under what conditions they would recognise a Palestinian state and whether they will adopt the recommendations of the European Parliament which called for 'recognition hand-in-hand with negotiations' in order to help unlock a more meaningful peace process. The aim of Palestinian diplomacy should be to continue to encourage those states in the EU that support Palestine to follow Sweden's and the Vatican's example. Swedish and Holy See arguments justifying their recognition of Palestine should be employed to encourage other states to recognise Palestine. The leadership should apply to join the Commonwealth and use it as a forum to seek additional recognitions.
- The leadership needs a back-up plan. A Security Council resolution setting out the need for a two-state solution to Palestinian-Israeli conflict and calling for further recognition from states in Western Europe is not enough. The time has come to advocate a more confrontational (but still peaceful) approach and to give serious consideration to some of the ideas outlined in this paper. The two-state solution is on its death bed. Employing either a confrontational or cautious approach may not save it; but only a confrontational approach stands some chance of shaking things up sufficiently to turn the dynamics around and inject one last breath into the two-state option. The leadership should frame all action that it takes from now on in terms of the pressure that it can apply against Israel to end the occupation and achieve independence.
- The leadership needs to make greater use of the UN General Assembly by requesting it to ask the Security Council to reconsider Palestine's 2011 application for membership in the United Nations, granting Palestine additional rights in the UN General Assembly and creating a UN "blacklist" of individuals and companies that support the occupation and illegal settlement enterprise. The UN General Assembly should also be requested to pass a resolution insisting that Israel's ends its occupation and take steps to involve the International Court of Justice by seeking an advisory opinion on the consequences of an illegal occupation and sanctions.
- In order to make greater use of international courts and tribunals the leadership needs to have a plan for the day after the advisory opinion which must include a coherent and effective media strategy to overcome the failure to take advantage of the advisory opinion issued by the

International Court of Justice on 9 July 2004. The leadership needs to forge closer working relations with Palestinians in the diaspora especially to assist with media outreach. Whether they are in the English-speaking world or the Arabic, Spanish, and Francophonie countries, diaspora Palestinians can engage more effectively with local communities than the leadership in Ramallah where audiences are more receptive to accents and faces they are familiar with. In addition, the leadership should engage with diaspora Palestinians and the BDS movement as they can assist the leadership with organising public speaking tours, media outreach, and speaking in churches, mosques, synagogues, parliaments, and other public venues.

- The leadership should work closely with Hamas to explain to them and to Islamic Jihad, the popular resistance committees, and other such groups, the importance of the diplomatic strategy and why violence will only play into Netanyahu's hands. The leadership should also reiterate this position in meetings with its American and European counterparts. The alternative to the two-state solution and the failure of the legal strategy outlined in this paper to achieve a two state solution could lead to greater destabilization in an already turbulent region. If the Palestinians cannot use peaceful, non-violent strategies to end the occupation then the failure of diplomatic, legal and popular action could have very serious consequences.

I. Introduction

1. This paper was commissioned by the Palestine Strategy Group (PSG) as part of the strategic thinking that has informed the post-Oslo strategy paper. The paper expands on the issues addressed in that paper and sets out a diplomatic strategy for the Palestinian leadership to consider in its effort to attain Palestinian independence in the remaining years of the Obama administration. The paper begins by considering various options to end Israel's occupation and attain independence by 2017 from a confrontational approach to a cautious approach; and cautiously expresses preference for the former.
2. The paper examines Palestine's statehood claim, and explains that although Palestine has been recognised by 135 states, has acceded to treaties, and has been admitted to international organisations, Palestine's statehood status is still being challenged because it is not independent. To overcome the contradiction in which Palestine claims that it is a state whilst it is occupied by Israel a number of practical suggestions are made to alter Palestine's status and put pressure on Israel to end the occupation so that Israel comes to the realisation that a negotiated solution is the least worst option.
3. To strengthen Palestine's claim to be a state and to put further pressure on Israel to come to the negotiating table, the Palestinian leadership would be wise to do all it can to achieve additional recognitions from other states – particularly in Western Europe and indirectly from other states elsewhere by launching a new statehood drive. In particular, the leadership should seize upon Netanyahu's comments opposing a Palestinian state to put pressure on France and the UK to recognise Palestine now. Palestine should also consider applying to join INTERPOL, the Commonwealth Foundation and the Commonwealth's Associations before submitting a joint application to join the Commonwealth Secretariat. The differences between the Secretariat, the Foundation, and the Commonwealth's Associations are addressed in the paper, as well as the process for seeking membership.
4. The paper then offers advice on drafting UN resolutions. This is important given recent indications from Washington that it may be willing to allow a watered down resolution on the parameters of a two-state solution to pass in the Security Council.
5. As a precaution, the leadership should take steps to draft two General Assembly resolutions in an expert working group to follow up on the Security Council resolution. The purpose of the first General Assembly resolution is to terminate the occupation in the event that Israel refuses to enter into meaningful negotiations for achieving the two-state solution on the basis of its longstanding parameters – i.e. withdrawal to pre-1967 borders, with East Jerusalem as the capital of Palestine, a just and agreed solution to the Palestine refugee question, and a just and comprehensive solution to all final status issues – as outlined in the Security Council resolution. The purpose of a second General Assembly resolution is to seek an advisory opinion from the International Court of Justice (ICJ) on the legal consequences for states and international organisations of Israel's continued occupation and settlement activity in Palestine notwithstanding the adoption of the General Assembly resolution calling on Israel to end the occupation.

6. Palestine's accession to the International Criminal Court is briefly addressed in the paper. If the leadership has not already done so, it should also consider appointing experienced counsel to advise and to represent Palestine at the International Criminal Court and establish a National Committee of Inquiry comprised of expert local and international counsel to examine war crimes allegations in Palestine since June 2014. The leadership should insist that amongst the counsel it appoints there is a good mix of international and Palestinian lawyers, including a mix of practitioners and academics.
7. A tentative list of recommendations is suggested at the end of the paper.

II. The problem with Palestine's statehood claim

8. Palestine claims it is a state, and is widely recognised as such in the international community, yet it is not independent. Independence requires the effective control of territory to the exclusion of any other state, which Palestine cannot demonstrate because its territory remains occupied by Israel. Palestine is not a member of the UN and its statehood remains in dispute by Israel and some other Western states, despite Palestine's membership in UNESCO, despite the adoption of a UN General Assembly resolution conferring non-member observer state status on Palestine, and despite its accession to treaties.
9. To overcome the inherent contradiction in which Palestine claims that it is a state whilst it remains under occupation, the leadership is going to have to craft a legal argument to the effect that Palestine has emerged as a state *under occupation* and that it has acquired statehood despite not being independent. The example of Kuwait, which is often cited by Palestinian leaders, is very different to Palestine's situation. Kuwait was occupied and annexed by Iraq in 1990 when Kuwait had already been in existence as an *independent* state for several decades *before* it was invaded and annexed by Iraq. Kuwait was admitted as a full member of the United Nations on 14 May 1963.
10. Making the argument that Palestine has emerged as a state *under occupation* might sound like a contradiction in terms—and it is. However, this is what is happening. Palestine is being established as a state on paper to assert its independence on the ground.
11. It is important to stress that the UN General Assembly cannot create a state by passing a single resolution although it can play a role in collective recognition and non-recognition. All that the UN General Assembly has accomplished by passing its resolution on the 29 November 2012 was to indicate to the international community that Palestine has been granted non-member observer state status in the UN system. The resolution thus enables Palestine to accede to treaties that apply the 'all-states formula', whilst Palestine's membership in UNESCO allows it to accede to treaties that apply the 'Vienna formula'. But the function of a depositary in registering a treaty is only a procedural requirement that is without prejudice to the status of an entity claiming to be a state. Thus although the Swiss Federal Council has accepted Palestine's accession to the Geneva Conventions in its capacity as a depositary, Switzerland has not recognised Palestine.
12. Furthermore, it is not clear to what extent the Government of the State of Palestine is a different legal entity to the PLO or the PA. It would help if Palestine's legislature were to draft a Constitution or submit a revised Basic Law that clarifies the extent to which the State of Palestine is a different legal entity to the PLO and the PA. Making this distinction is important because the PA controls less than half of the territory the PLO claims in the West Bank and none of the territory it claims in East Jerusalem. The PLO presently has little control in the Gaza Strip. What is more, the PLO agreed to restrict the authority of the PA in the territories the PA administers in a number of areas including taxation, law, foreign affairs, and defence, as a result of agreements the PLO concluded with Israel. It would help if there could be greater reunification between the

West Bank and Gaza and greater reunification in existing governing structures. Even if the leadership argues that the PLO has been designated the provisional government of the State of Palestine since 1988 the problem is that Hamas is not a part of the PLO and the PLO does not control Gaza or Jerusalem or Areas A and B in the West Bank.

13. The argument that Palestine is not an independent state and that the function of a depositary is a procedural requirement that does not confer sovereignty on a state-seeking entity is an argument that has been made by Canada, Israel, and the US. (The leadership may want to seek clarification from President Obama or Secretary of State Kerry as to whether this is still the US position.) Then there is the occupation, now in its forty-eighth year. This places the Palestinian leadership in a conundrum. It is too weak to eject Israel's armed forces from the West Bank that would be necessary to support a claim to independence, and Israel is unwilling to withdraw from the occupied territories because the present government is opposed to the creation of an independent Palestinian state.
14. In order to coax Israel into meaningful negotiations on a two state solution that results in the establishment of an independent Palestinian state with an agreement on all outstanding issues, the Palestinian leadership is going to have to exert pressure on Israel and call on its friends and allies to do the same. One way to exert this pressure is to increase support for Palestinian statehood within the international community. In order to do this, the leadership should embark on a new recognition drive to be implemented in conjunction with the other recommendations listed at the end of this report.

III. Why a new recognition strategy is needed

15. In addition to articulating a new strategic vision and considering the recommendations listed at the end of this report, the leadership would be wise to do all it can to achieve additional recognitions, whether these recognitions are from other states or indirectly by seeking membership in additional international organisations. Palestine will have to explain to the diplomatic community that Prime Minister Benjamin Netanyahu has been negotiating in bad faith by prolonging negotiations to achieve Likud's greater Israel project through expanding settlements and absorbing territory. This argument has been given greater credence by Netanyahu's re-election comments. At the same time, the leadership must continue to assure the diplomatic community that Palestine remains open to negotiations—but only if Netanyahu agrees to the parameters of negotiating a two state solution with Palestine as outlined in a new UN Security Council resolution and according to the timetable that President Abbas should publicly announce.
16. A new recognition strategy is of the utmost importance because Palestine's statehood claim is being challenged in several jurisdictions. First, Israel, Canada, and the US have sent communications to the depositaries of the treaties that Palestine acceded to in April and December 2014 declaring that in their opinion Palestine is not a sovereign state. Second, these states have challenged Palestine's statehood claim in the UN Security Council where Palestine's membership is blocked. In addition, in numerous cases in the United States the Federal Courts have rejected the sovereign immunity arguments raised by the PA and the PLO to the effect that Palestine is a state and is immune from suit under the 1991 Antiterrorism Act. What has weighed heavily on the US courts is the fact of non-recognition from the US Government.
17. Although it appears from information on the internet that 135 states presently recognise Palestine, the individual recognition texts have not been published by Palestine. Accordingly, it is not clear how significant these recognitions are or even what these states have recognised. Furthermore, the difficulty is that the states that currently recognise Palestine are not that different from the states that recognised Palestine at Algiers in 1988. Whilst some lawyers argue that Palestine has been a state since 1988, the majority of international lawyers have never accepted this argument because Palestine lacked a government that was in control of territory at that point. Back in 1988 the PLO was still in Tunis; it had yet to make the move to Gaza and Jericho. Moreover, despite the raised expectations produced at Oslo, Israel remains the Occupying Power in East Jerusalem, the West Bank, and the Gaza Strip.
18. Moreover, the vast majority of states that recognise Palestine still come from the Arab bloc, the Third World, and the non-aligned movement. Only two permanent members of the UN Security Council -- China and Russia (formerly the USSR) -- recognise Palestine. But where are the recognition texts from China and the USSR? What did China and the USSR recognise in 1988? Did they recognise Palestine and if so what did they mean by this? After the collapse of the Soviet Union did the Soviet Socialist Republics that seceded from the USSR in 1991 e.g. Armenia, Moldova, Estonia, Latvia, and Lithuania maintain the Soviet Union's recognition of Palestine? From information available on the internet it appears that none of these countries recognise Palestine.

19. Ideally, the leadership should have original copies of all recognition documents from other states. Palestine's Foreign Ministry may want to consider scanning these documents and uploading them online. UNISPAL only lists a dozen recognitions. In this connection, it would be useful for the leadership to have a website, perhaps modelled on Kosovo's website (<http://www.kosovothanksyou.com/>) that not only lists all the states that have recognised Kosovo but also has links to the recognition texts. Wikipedia is not authoritative and the links on Palestine's Ministry of Foreign Affairs website are broken. It might be useful for Kosovo and Palestine to exchange notes, as there is a common interest in achieving independence through recognition.
20. Once the recognition texts for Palestine have been gathered these should be analysed. What are the states recognizing? How do those states that recognise Palestine and Israel distinguish their recognition of Palestine from Israel? Do the recognition texts mention the 1949 ceasefire lines or UN Security Council Resolution 242, for example? How do the recognition texts from 1988 differ to more recent recognition texts? How many states have active diplomatic relations with Palestine? Why have some states not opened embassies in Palestine? If Israel is preventing states from opening embassies in Ramallah or Jerusalem this should be noted.
21. In the meantime, the Palestinian leadership should embark on a new statehood drive to persuade those countries in Western Europe that have not yet recognised Palestine to do so. Following Sweden's recognition of Palestine and the Vatican recognition, the aim of Palestinian diplomacy should be to continue to encourage those states in the EU that support Palestine to follow Sweden's example. Whilst the votes in EU parliaments on recognising Palestine are encouraging, they are only symbolic and will not count in a court of law. Moreover, many of the parliamentary resolutions made reference to negotiations with Israel. The leadership should take inspiration from Sweden's recognition of Palestine and use Swedish arguments to encourage other states to recognise Palestine and to ask these states whether they will adopt the recommendations of the European Parliament which called for 'recognition hand-in-hand with negotiations' in order to help unlock a more meaningful peace process.
22. France has said that it will recognise Palestine in the event negotiations fail, and the UK has said it will recognise Palestine when the conditions are right. The Palestinian leadership should remind its supporters in the UK and France of the positions of those political parties that support Palestinian statehood. Recognition of Palestine from either the UK or France would embolden other countries to recognise Palestine, and could influence Commonwealth and Francophonie countries that have not yet recognised Palestine to recognise it. If the UK and France prove resistant, then the leadership should nibble at edges by seeking recognition from smaller states like the Republic of Ireland, Portugal, Greece, Finland, Luxembourg and Liechtenstein etc.
23. For historical reasons it may be possible to persuade the Republic of Ireland to recognise Palestine even if the UK does not. A visit to Ireland by a high-level Palestinian delegation would be in order, perhaps on the way to the UK. The Palestinian leadership may also want to explore whether the recently elected Greek Government will recognise Palestine (Cyprus does). Norway, Switzerland, Liechtenstein, and Macedonia are not EU members and are therefore not encumbered by the EU's common foreign and security policy. This was the case with Iceland, which independently decided to recognise Palestine in 2011. Norway played a crucial role in

the Oslo process. Following Sweden's recognition and Netanyahu's comments, President Abbas should formally ask Norway to recognise Palestine.

24. Outside Western Europe the countries that could be persuaded to recognise Palestine include Jamaica, Myanmar, and Singapore. Myanmar has been cut off from the world for many years, and Jamaica, Myanmar, and Singapore are members of the non-aligned movement. A visit to Jamaica, Myanmar, and Singapore (perhaps on the way to Myanmar) by a high-level delegation appears to be in order. China could help with Myanmar and Indonesia could help with Singapore. There is an influential Palestinian diaspora in Jamaica. Jamaica also has a judge on the ICJ. South Africa could perhaps help in opening doors to the Caribbean community. It would therefore be wise to forge closer relations with Jamaica and other Caribbean countries if Palestine considers the ICJ option.* The effort to persuade states to recognise Palestine should involve visits by high-level delegations where possible. Such visits need not necessarily be official and the leadership should make use of Palestine's diaspora community as it has, for example, in the Dominican Republic, Chile, and Costa Rica. Greater use should be made of Palestine's diplomatic service and appointing honorary consuls in those countries where Palestine does not have representatives as in the Caribbean and South Pacific and as non-resident Ambassadors in states that extend recognition to Palestine.
25. In making these requests for recognition, the leadership will need to explain to states why it is worth their while recognizing Palestine *now*, (to salvage the two state solution, reverse the apathy and deteriorating political environment in the region, and promote actualization of a peaceful two state solution), and why they should take this risk when they are going to get an earful from the Israelis. With respect to Europe, the leadership is going to have to frame the political argument for recognition by referencing the peace process and explain how recognition will move the parties closer to a final status agreement based on longstanding parameters of the two-state solution on which there is already a clear international consensus. While legal arguments are important, they are *not* the main reasons why states recognise states. States may use legal arguments to justify their political decisions but the driver is politics. When Palestine is seeking recognition from a state it should arrange a high profile visit to that state and back this visit up with public pressure that is assisted by a media strategy to raise visibility.
26. In addition, and beyond membership in the UN's specialised agencies, Palestine should consider applying for membership in additional international organizations. This could include submitting an indication of interest to the Commonwealth and applying to join the Commonwealth's Associations. Membership in the Commonwealth Foundation or in the Commonwealth Associations as a prelude to joining the Commonwealth Secretariat could assist the Palestinian leadership with securing additional recognitions, particularly from those Commonwealth member states located in the Caribbean and the Pacific, many of which are small, isolated countries, which are not usually involved in big diplomatic events.

* Palestine's membership in the Commonwealth could also help Palestine achieve additional recognitions from states in the Caribbean (as well as the Pacific). How Palestine can join the Commonwealth is addressed below.

IV. The UN specialised agencies dilemma

27. The UN, as an organization of independent states, does not recognize states; rather, states recognize states. However, membership in an international organisation like the UN is an acknowledgement by its members that an entity is a state. Because Palestine's 2011 application for membership in the UN is being held up in the Security Council, Palestine applied for membership in UNESCO followed by enhancement of status in the UN General Assembly – the most democratic, representative body of the UN – to a non-member observer state, as opposed to just an observer entity. After Palestine's application for membership was accepted by UNESCO in November 2011 the US and Israel withdrew funding to UNESCO and they have threatened to withdraw funding from any other specialised agency that admits Palestine as a member.

28. The fifteen UN specialised agencies are the following:

- Food and Agriculture Organization (FAO)
- International Civil Aviation Organization (ICAO)
- International Fund for Agricultural Development (IFAD)
- International Labour Organization (ILO)
- International Maritime Organization (IMO)
- International Monetary Fund (IMF)
- International Telecommunication Union (ITU)
- United Nations Educational, Scientific, and Cultural Organization (UNESCO)
- United Nations Industrial Development Organization (UNIDO)
- Universal Postal Union (UPU)
- World Bank Group (WBG)
- International Bank for Reconstruction and Development (IBRD)
- International Finance Corporation (IFC)
- International Development Association (IDA)
- World Health Organization (WHO)
- World Intellectual Property Organization (WIPO)
- World Meteorological Organization (WMO)
- World Tourism Organization (UNWTO)

29. Each specialised agency has different rules for admitting members. Some agencies are easier to join than others. As mentioned, Palestine is presently a member of UNESCO. The US is not a member of UNIDO although Israel is. Nor is the US a member of the UNWTO, although Israel is. Therefore, because the US is not a member of these agencies they would not automatically be subject to funding cuts from Congress in the event Palestine is admitted as a member.

30. Because Palestine has already been admitted in UNESCO it is eligible to apply to join UNIDO With respect to the UNWTO Palestine is eligible to become an Associate Member. However, full membership is reserved to “sovereign states”. Palestine could, however, force the issue by insisting on a vote in which case its membership must be approved by the General Assembly by a majority of two-thirds of the Full Members present and voting and provided that said majority is a majority of the Full Members of the Organization.

31. However, due to Congressional legislation, Palestine has to be careful when applying to join the specialised agencies because of the possibility of cuts to PA funding from the United States as well as cuts to agencies that would unduly harm Palestine's friends, especially but not limited to countries in Africa, some of whom are dependent on the assistance provided by these agencies. In 2015, Congress enacted new legislation – the Consolidated and Further Continuing Appropriations Act – that provides for withholding aid to the PA in the event that “the Palestinians obtain the same standing as member states or full membership as a state in the UN or any specialized agency thereof outside an agreement negotiated between Israel and the Palestinians”. The Secretary of State may, however, waive this restriction “if the Secretary certifies to the Committees on Appropriations that to do so is in the national security interest of the United States, and submits a report to such Committees detailing how the waiver and the continuation of assistance would assist in furthering Middle East peace”.
32. Prior to 2015, Palestine could have applied to join UNIDO or UNWTO since Palestine's membership in these agencies would not have resulted in automatic funding cuts to these agencies because the US is not a member. However, from 2015, the Palestinian leadership faces the prospect of cuts to PA funding by the US if they apply to join UNIDO or UNWTO because of that Act. Therefore, in the event the leadership contemplates joining UNIDO or UNWTO they must seek to persuade the Secretary of State beforehand to agree to waive the restriction in the national security interests of the US.
33. Of course the leadership could take the view that Congressional legislation is not its concern and that they are not responsible for the damage that Congress inflicts. In this respect, the leadership might consider the following strategy:
 - (a) publicly articulate a plan for joining agencies, but take a graduated approach, in which Palestine joins the agencies that matter most to the US further down the line;
 - (b) select agencies that would have a high nuisance impact for the US if they had to lose their vote because they withdraw funding; but
 - (c) select agencies where withdrawal of US funding would not have a negative humanitarian impact anywhere in the world; and
 - (d) agree a fall-back strategy for funding support with key allies in the region and beyond in the event that US funding to the PA is withdrawn.

After Palestine publicly articulates its plan for joining the specialised agencies, it can gauge the reaction of the US and its allies, to see if they are willing to bring Israel to the negotiating table. In the event that Israel rebuffs this pressure, the leadership should then try to apply to join those agencies that are of less importance to the US such as UNIDO and UNWTO, before threatening to apply to join those agencies that would have a high nuisance impact for the US. But before contemplating this approach, the leadership should ensure that it has emergency funds that it can access including mobilizing the repeatedly-appealed-for “Arab Financial Safety-Net”.

34. Beyond the UN specialised agencies, Palestine may want to consider applying to join the International Criminal Police Organization or INTERPOL in Lyon, France. As INTERPOL is not a UN specialised agency, Congressional funding cuts do not apply. Any country may delegate as a Member to INTERPOL any official police body whose functions come within the framework of activities of the Organization. The request for membership must be submitted to the Secretary General by the appropriate governmental authority. Membership is subject to approval by a two-thirds majority of the General Assembly of INTERPOL (not to be confused with the UN General Assembly). The current Secretary-General is Jürgen Stock, a German national. Membership in INTERPOL may be useful now that Palestine has joined the ICC.

V. The advantages of applying to join the Commonwealth

35. In addition to formulating a plan to join the UN's specialised agencies and INTERPOL, another inter-governmental association that Palestine may wish to join is the Commonwealth. One of the advantages for Palestine in seeking membership in the Commonwealth is that neither the United States nor Israel is a member. This means that their influence is limited. Moreover, the Congressional aid cuts that apply to UN Agencies and to the PA do not presently apply to the Commonwealth.
36. The Commonwealth is the oldest political association in the world, and after the UN it is the largest multilateral framework for cooperation and consensus building in the world. Unlike the UN, however, the Commonwealth was not established by a treaty, which enables it to function more flexibly than the UN.
37. The Commonwealth played an instrumental role in combatting apartheid in South Africa even when the United Kingdom continued to maintain links with Pretoria.
38. The Commonwealth's membership comprises 53 independent and equal sovereign states many of which retain constitutional links with the United Kingdom (like Australia, Canada, and New Zealand) or have had a historic constitutional association with the United Kingdom (like India, Pakistan, and Malaysia). In recent years other countries have joined the Commonwealth that have not had a historic constitutional link with the United Kingdom but were allowed to join because they had constitutional links with existing Commonwealth members (like Rwanda, Senegal, and Cameroon).
39. There are many non-aligned states and small developing states that are members of the Commonwealth who might look favourably on an application submitted by Palestine. The current members of the Commonwealth comprise:
 - Africa:* Botswana, Cameroon, Ghana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Seychelles, Sierra Leone, South Africa, Swaziland, Uganda, United Republic of Tanzania, Zambia.
 - Asia:* Bangladesh, Brunei Darussalam, India, Malaysia, Maldives, Pakistan, Singapore, Sri Lanka.
 - Caribbean and Americas:* Antigua and Barbuda, The Bahamas, Barbados, Belize, Canada, Dominica, Grenada, Guyana, Jamaica, Saint Lucia, St Kitts and Nevis, St Vincent and The Grenadines, Trinidad and Tobago.
 - Europe:* Cyprus, Malta, United Kingdom
 - Pacific:* Australia, Fiji, Kiribati, Nauru, New Zealand, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu.
40. The Middle East is the only region in the world where the Commonwealth does not have representation. Indications of interest, in the past, were made by Algeria and Yemen but not pursued. South Sudan's application was being considered favourably

until the civil war broke out. Yasser Arafat expressed interest in joining in 1997.

41. The 33 members of the Commonwealth that have already recognised Palestine are Antigua and Barbuda, Bangladesh, Belize, Botswana, Brunei Darussalam, Cyprus, Ghana, Grenada, Guyana, India, Kenya, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nigeria, Pakistan, Papua New Guinea, Rwanda, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, South Africa, Sri Lanka, Swaziland, Uganda, Tanzania, Vanuatu, and Zambia.
42. The 20 members of the Commonwealth that have not recognised Palestine are Australia, the Bahamas, Barbados, Cameroon, Canada, Dominica, Fiji, Jamaica, Kiribati, Nauru, New Zealand, Saint Lucia, Saint Kitts and Nevis, Samoa, Singapore, Solomon Islands, Tonga, Trinidad and Tobago, Tuvalu, and the United Kingdom.
43. To begin with, Palestine will find it easier to join the Commonwealth Foundation and the Commonwealth's Associations. The Commonwealth Foundation is an intergovernmental organization located in the same building in London as the Secretariat but it works with members states to strengthen the role of civil society on a number of issues from gender equality to culture. The Commonwealth Associations include the Commonwealth Games Federation, the Commonwealth Parliamentary Association, the Commonwealth Local Government Forum, and the Commonwealth Telecommunications Organisation. These associations are all powerful players in the Commonwealth. They meet at the Ministerial level and exert influence on the Commonwealth Heads of Government Meeting processes. Palestine has been eligible to join the Associations for some time, as statehood is not a condition of membership in the Associations. This is why a number of the United Kingdom's Overseas Territories like the Turks and Caicos Islands and Bermuda are members. The costs for joining the Associations are negligible and the Heads of Government have no say in the individual membership decisions of the Commonwealth's Associations.
44. It would make sense for Palestine to apply to join the Commonwealth Foundation and the Commonwealth Games Federation, the Commonwealth Parliamentary Association, the Commonwealth Local Government Forum, and the Commonwealth Telecommunications Organisation before it applies to join the Secretariat. Palestine can then use its position in the Associations like the Parliamentary Association to gauge the level of interest from those members of the Commonwealth that already recognise Palestine. To make Palestine's application more attractive to the Secretariat, Palestine might want to consult with the Royal Court in Amman about submitting a joint Jordanian-Palestinian application to join the Commonwealth Secretariat as member states. Palestine and Jordan can make it clear in their application to join the Commonwealth that neither will accept to be admitted as a member unless both Palestine and Jordan are allowed to join as separate and equal states.
45. The conditions for membership in the Commonwealth are set out in paragraph 87 of the Kampala Communiqué (23-25 November 2007).

87. Heads of Government reviewed the recommendations of the Committee on Commonwealth Membership and agreed on the following core criteria for Membership:

- a) an applicant country should, as a general rule, have had a historic constitutional association with an existing Commonwealth member, save in exceptional circumstances;
- b) in exceptional circumstances, applications should be considered on a case-by-case basis;
- c) an applicant country should accept and comply with Commonwealth fundamental values, principles, and priorities as set out in the 1971 Declaration of Commonwealth Principles and contained in other subsequent Declarations;
- d) an applicant country must demonstrate commitment to: democracy and democratic processes, including free and fair elections and representative legislatures; the rule of law and independence of the judiciary; good governance, including a well-trained public service and transparent public accounts; and protection of human rights, freedom of expression, and equality of opportunity;
- e) an applicant country should accept Commonwealth norms and conventions, such as the use of the English language as the medium of inter-Commonwealth relations, and acknowledge Queen Elizabeth II as the Head of the Commonwealth; and
- f) new members should be encouraged to join the Commonwealth Foundation, and to promote vigorous civil society and business organisations within their countries, and to foster participatory democracy through regular civil society consultations.

46. Palestine should not have any difficulty demonstrating that it has had a historical constitutional association with an existing Commonwealth member; namely the United Kingdom when it was the League of Nations mandatory power in Palestine from 1922-1948. Similarly, Palestine should not have any problems accepting and complying with the 1971 Declaration of Commonwealth Principles. In this regard, of particular note is Article 8:

We oppose all forms of colonial domination and racial oppression and are committed to the principles of human dignity and equality. We will therefore use all our efforts to foster human equality and dignity everywhere, and to further the principles of self-determination and non-racialism.

47. The 1971 declaration has since been superseded by the Charter of the Commonwealth (2013), a non-binding document that sets out the core values and principles of the Commonwealth.

48. Palestine might have more difficulty satisfying the requirements set out in Article 87 (d). However, it could be argued that Palestine is committed to these principles but that it cannot practice them until Israel ends the occupation that began in June 1967. Moreover, it could be pointed out that the Commonwealth's current members include

countries that cannot demonstrate a commitment to democracy or democratic processes. Palestine should not have problems satisfying the remaining conditions in Article 87.

49. Palestine would need to ensure that it can pay its annual dues to the Secretariat. For a state with Palestine' GDP the approximate amount would be £100,000 per annum.
50. The greatest difficulty that Palestine will face in becoming a member of the Secretariat (as opposed to the Commonwealth Foundation and Associations) is that decisions on membership in the Secretariat are reached by consensus at the annual retreat of the Heads of Government each year. This means that an application for membership could be held up by a single state. There are some states in the Commonwealth whose current governments would likely oppose Palestine's membership (especially if it is not submitted jointly with Jordan) such as Australia (next elections in early 2017) and Canada (next elections on 19 October 2015). To overcome any likely opposition, the Palestinian leadership should work closely with Jordan and the United Kingdom, which is the biggest contributor to the Commonwealth. If submitting a joint application to join the Commonwealth with Jordan as separate and equal states is not considered practical by the Palestinian leadership, then Palestine may want to propose a package deal with Israel. Bangladesh, Brunei Darussalam, Malaysia, the Maldives, and Pakistan do not have diplomatic relations with Israel. Israel is not a member of the Commonwealth.
51. Because the application process to the Secretariat takes time the present governments of Australia, Canada, and the United Kingdom may not be in power when the decision on membership is made. This is because before an application is put before the Heads of Government at the annual retreat, the Commonwealth Secretary-General (Mr. Kamallesh Sharma, an Indian national) establishes a committee that would visit Ramallah to assess Palestine's membership credentials. Following this visit, a report is drafted by the committee and presented to Foreign Ministers. Only after the Foreign Ministers have seen this report would the Heads of Government at the retreat discuss it where final decisions are made.
52. As the application process takes time it would be advisable for the President of Palestine to submit an 'indication of interest' to the Secretary-General as soon as possible, preferably along with Jordan. Advice should be sought before the letter expressing an indication of interest is drafted explaining why Palestine and Jordan are seeking to join the Commonwealth and why the Commonwealth is important to Palestine and Jordan. Mr. Sharma's term as Secretary-General of the Commonwealth will end in 2016, and it is not yet clear who will replace him. (The current contenders include Baroness Amos from the United Kingdom and Mmasekgoa Masire-Mwamba of Botswana).
53. In addition to the status that would come with being a member of the Commonwealth or of being a member in any of the Commonwealth Associations, the other advantages of joining the Secretariat include the provision of technical assistance to the Palestinian Government. Among other areas, this includes the field of law. (In this connection, Palestine might want to consider joining the Commonwealth's Judges and Magistrates Association or the Commonwealth Lawyer's Association). The Commonwealth's legal advisers have assisted states with ratifying and implementing the Rome Statute of the International Criminal Court and have offered assistance to states when it comes to international co-operation in international criminal law matters. The Commonwealth

also dispenses developmental assistance through the Commonwealth Fund for Technical Co-operation, and promotes trade, investment, and debt relief. In addition the Commonwealth has assisted its member states with safeguarding human rights and with monitoring elections.

54. Membership in the Commonwealth or Commonwealth Associations would provide Palestine with additional fora for meetings and consultations with officials from a group of states from disparate parts of the world that could lead to further recognitions of Palestine. If we exclude Australia, Canada, and the United Kingdom from the list of countries that have not recognised Palestine, there are 17 other Commonwealth members that could be asked to recognise Palestine.

VI. Drafting Security Council and General Assembly resolutions

55. President Abbas has indicated that he will present another draft resolution to the Security Council sometime in 2015. With a view to encouraging Israel to end the occupation, it would make sense to return to the Security Council. But the Palestine Mission at the UN should not be drafting its own resolutions. It should leave this work to others e.g. the French. This way, the leadership can welcome the overall thrust of whatever resolution is eventually adopted while distancing themselves from any unwelcome compromises (and there will always be compromises if a text is to be adopted). If Palestine submits its own draft resolutions, it carries all the political risk, and domestic pressure often leads them to include language that can never be accepted by some on the Council. And once the resolution has been tabled and circulated the Palestinians will find it almost impossible to make the necessary compromises because of political pressure.
56. It is therefore important for Palestine to establish a close working relationship with the permanent members of the Security Council. And speed is the key to success. The window to exploit any US movement is already closing. Palestine should be working closely with the French to support the text of their resolution if they agree with it. Getting the US to support the passage of a resolution outlining the parameters of a two state solution is important. Should Israel oppose the resolution or put further stumbling blocks in the path of negotiations, the Palestinians can always return to the Security Council or failing that the General Assembly. The leadership should always strive hard for consensus by attempting to get all EU states and the US on board.
57. The leadership should also have a strategy in place in the event that the French resolution calling for the immediate resumption of negotiations and the conclusion of a peace treaty within 18 months is either vetoed by the United States or ignored by Israel. In the event the resolution is passed and Israel and the Palestinians enter into negotiations on the basis of the parameters outlined in the resolution, the Palestinians will also need to have a strategy in place in the event those negotiations fail.
58. Should Israel refuse to abide by the Security Council resolution outlining the parameters of a two-state solution or in the event that it does enter into negotiations but those negotiations fail, Palestine should be taking steps to draft two resolutions to present to the General Assembly in the interim. The first draft resolution should seek to terminate Israel's "illegal" occupation and call for a temporary international presence in Palestine. This draft resolution could be modelled along the lines of the UN General Assembly resolution that terminated South Africa's administration of South West Africa in 1966 in UN General Assembly Resolution 2145 of 27 October 1966. Should Israel ignore the General Assembly as well as the Security Council, then following the UN General Assembly resolution terminating the occupation, Palestine should present another General Assembly resolution appealing to the ICJ for an advisory opinion on the legal consequences for states and international organisations of Israel's continued occupation and settlement activity in Palestine notwithstanding the adoption of the Security Council parameters resolution and the General Assembly resolution terminating the occupation. (This would be a reversal of the procedure adopted by the

UN General Assembly with regard to South West Africa, where the UN Resolution followed the ICJ's controversial decision in 1966 as opposed to preceding it).

59. As Palestine has claimed to be a state following its application for UN membership in September 2011, all future draft resolutions should try to state this as a fact. If there is resistance to this language, then Palestine should safeguard against any language that could be interpreted as indicating that Palestine is not a state e.g. by referring to territory or geographical indicators e.g. resolutions should say that the Gaza Strip constitutes an integral part of "the State of Palestine" or failing that "Palestine".
60. The Palestinian leadership also needs to be careful when referring to "previous agreements and obligations". This is a clear reference to the Oslo agreements and these agreements do not mention anything about a Palestinian state. Therefore, all references to previous agreements and obligations should be omitted where possible.
61. In addition, it would be preferable for future references to the State of Palestine in UN resolutions to be categorical. The definite article "*the*" should always precede "State of Palestine". Therefore the language used in the draft resolution presented by Jordan to the Security Council on 30 December 2014 that referred to "*a* State of Palestine" should be avoided. This is because it signifies that Palestine is a hypothetical state; one that has yet to come into being. Instead it would be better to reference "the State of Palestine" or simply "Palestine", the latter having the advantage of ambiguity.
62. The Palestinian leadership should also attempt to include language that could be interpreted by the ICJ as being binding rather than exhortatory in future Security Council resolutions. Thus, to the extent that it is possible, Palestine should insist on inserting language referencing Article 25 of the UN Charter. A Security Council resolution that mentions Article 25 of the UN Charter will be taken more seriously by Council and by the ICJ. In its jurisprudence, the ICJ has indicated that resolutions that reference Article 25 can be considered legally binding on the Council.
63. In this connection it is important that all future Security Council and General Assembly resolutions make it clear that Palestine or State of Palestine *already exists* but that it is not independent because its territory continues to be *illegally* occupied by Israel. The reference to illegality is important in the event that Palestine seeks an advisory opinion from the ICJ on ending the occupation. This is because belligerent occupation is not normally an illegal phenomenon. However, belligerent occupation is supposed to be temporary – it is not supposed to last half a century. It is also not supposed to result in the annexation of territory or the forced settlement of land that denies a people who have a recognised right to a state of their own, from exercising that right. Describing Israel's occupation as illegal is also important because it shifts the focus from individual Israeli actions that can be described as illegal (such as settlements, the wall, house demolitions with no security justification, the forced transfer of Bedouin from E1, the blockade of Gaza to legitimate travel and trade etc.) to the occupation as a whole. It is not individual Israeli actions that are preventing the emergence of an independent Palestinian state but creeping annexation under the guise of occupation. Israel's settlement enterprise, the by-pass roads, the location of the wall, and the closed military zones are collectively preventing Palestine from becoming independent.
64. In addition to improving the language in future resolutions, the Palestinian leadership

needs to shift the debate. Instead of focusing on negotiations the leadership needs to focus on countermeasures and on ending the occupation – especially in the event negotiations fail. Negotiations are not an end in themselves. However, the Palestinian leadership needs to demonstrate that Israel has been using the negotiations as a smokescreen to prolong the occupation and expand the settlement enterprise. It may be worth including wording in future draft resolutions suggesting that Israel has not entered into negotiations with the Palestinians to end the occupation in good faith.

VII. Making better use of the UN General Assembly

65. The Palestinian leadership should be making better use of the UN General Assembly. Instead of focussing most of its efforts on the Security Council which is subject to great power vetoes, the leadership should take a leaf out of the ANC's handbook which made great use of the Assembly in the struggle against apartheid South Africa even when France and the United Kingdom repeatedly used their vetoes to shield South Africa in the 1980s when the US stopped vetoing resolutions on South Africa.
66. There are several ways in which the Palestinian leadership could make greater use of the UN General Assembly. First, it could ask the UN General Assembly to pass a resolution asking the UN Security Council to reconsider Palestine's 2011 application for membership in the UN. Second, in the event that the Security Council refuses to reconsider Palestine's application, the Palestinian Observer Mission in the UN could make inquiries as to the feasibility of asking the UN General Assembly whether it would be possible to pass a resolution upgrading the rights accorded to Palestine in UN General Assembly resolution 52/250 (13 July 1998). Third, the Palestinian Observer Mission in the UN could make inquiries about giving the committee on the exercise of the inalienable rights of the Palestinian people (CEIRPP) a new mandate by the General Assembly mandating it to undertake studies and compile lists of individuals and organisations involved in the illegal settlement enterprise in East Jerusalem and the West Bank and circulate these studies among member states. Fourth, the UN General Assembly could be instructed to pass a resolution characterizing Israel's continued presence in Palestine as being contrary to the UN Charter, and requiring it to immediately terminate that "illegal" occupation because it is contrary to the temporality inherent in the notion of belligerent occupation under international humanitarian law, and because the occupation and settlement enterprise is frustrating the right of the Palestinian people to self-determination in their State of Palestine. Should Israel ignore the UN General Assembly, another resolution could be tabled seeking an advisory opinion from the ICJ on the legal consequences of a prolonged occupation that has been described as "illegal" by the UN General Assembly (see chapter IX below).

VIII. The US Congress and the International Criminal Court

67. Palestine's accession to the Rome Statute of the International Criminal Court (ICC) and its membership in the Assembly of States Parties are important stepping stones on the road to statehood. However, because of the restrictions placed on Palestine's law enforcement agencies and its judicial system in the legal protocol to the 1995 Israel-PLO Interim Agreement it is not clear whether the ICC process will go beyond the preliminary investigation stage. It is important to be aware that the opening of a preliminary investigation does not indicate that an investigation is likely to follow; many of the Prosecutor's preliminary examinations have been closed without opening investigations. In the event that the Prosecutor declines to open an investigation, and depending on the grounds for refusal, Palestine can either ask the Prosecutor to reconsider its decision or petition the Pre-Trial chamber to review the decision. But this will take time. Therefore, ending the occupation should remain the principal goal.
68. Due to Congressional legislation, it would not be necessary or wise for Palestine to make a self-referral. The ball is in the Prosecutor's hands. It remains to be seen what the UN Fact-Finding Mission that was established by the UN Human Rights Council will recommend in its report on last year's hostilities in the Gaza Strip or how Israel will react. It also remains to be seen whether the ICC will look into the settlement issue.
69. In this connection, the leadership may want to consider establishing a National Committee of Inquiry to examine the settlements and war crimes allegations committed by Israelis and Palestinians that occurred in Palestine during last year's conflict in the Gaza Strip. To give this committee an international face, let alone credibility, foreign legal counsel i.e. prominent lawyers from the US, the UK, France and Germany, for example, should be appointed to the committee, along with Palestinian jurists.
70. In addition, Palestinian lawyers should be encouraged to bring cases before the courts of Palestine to give effect to the Rome Statute under domestic Palestinian laws, including by bringing cases against Palestinians for crimes under the Statute.
71. In this connection, Palestine's Ministry of Justice should be preparing the implementing legislation for the treaties that Palestine has already acceded to, including the Rome Statute. Palestine's courts should be given jurisdiction over Israel nationals over all the territories occupied since June 1967, even if their implementation violates Oslo.
72. Palestine should inquire with friendly states that are members of the ICC whether Israel has approached them to conclude bilateral non-extradition agreements to prevent Israeli citizens accused of war crimes from facing the prospect of being transferred to The Hague, with a view to discouraging states from this practice. Palestine should also complain to states that grant special immunities to individuals accused of international crimes.
73. It would be a good idea to undertake a study of states' domestic war crimes legislation and liaise with practising criminal lawyers and barristers in third states with a view to bringing cases against Israeli citizens in domestic courts.

IX. Is there a role for the International Court of Justice?

74. Palestine's membership in the UN is being held up in the Security Council. Unfortunately, there is no way around this. The ICJ's jurisprudence is clear. Primacy is accorded to the Security Council in matters of UN membership. However, non-membership in the UN does not necessarily mean that Palestine is not a state as membership and statehood are conceptually different. Not all states have joined the UN in the past—like Switzerland; and some states—like Indonesia—have joined, left, and re-joined. The UN is like a gentleman's club – membership is not open to every state but if a state is admitted its statehood tends not to be questioned.
75. Because there is no internationally recognised agency tasked with prescribing the specific conditions of statehood or determining when an entity has become a state, the ICJ can play a useful role in this regard. A considered advisory opinion from the ICJ that addresses Palestine's claim to be a state, even if only incidentally and indirectly, in response to a question challenging the length of Israel's occupation, would have more authority than a single resolution of the UN General Assembly such as the resolution that was passed by the UN General Assembly on 29 November 2012. Although an ICJ opinion may not influence the Security Council it might influence other states to recognize Palestine or to contemplate countermeasures (depending on the questions asked). One would hope that an ICJ opinion that challenges the legality of Israel's occupation might also lead to some soul searching in Israel or a change of policy.
76. In the event the Palestinian leadership seeks another advisory opinion from the ICJ, the organ that should request this opinion is the UN General Assembly. It would be preferable for a question to be drafted in the General Assembly as opposed to another UN organ as the Palestine Mission in the UN can have greater control over shaping the question that will be sent to the ICJ in the form of a General Assembly resolution.
77. The question for the ICJ should be drafted in consultation with expert legal counsel *long before it is tabled at the UN*. Palestine must ensure that whatever question (or questions) is eventually tabled they must be clear and capable of being answered. It must not make the mistake that Serbia's counsel made in the Kosovo case in which the ICJ essentially redrafted the question. This is why consultation with expert legal counsel is essential to ensure that the question is framed in such a way that the ICJ will not only be able to answer it correctly but will be able to give a useful advisory opinion that can help the Palestinian leadership establish an independent state. Consultation with experience and expert legal counsel is also necessary to avoid the appearance that the question concerns a dispute between two states.
78. In this connection, Palestine needs to locate expert legal counsel that are user friendly and are team players. They also need to appoint a legal team that works well together and that contains a mix of experienced and less experienced counsel. Preferably the team should be set up well in advance of actual litigation. And the team needs to be able to coordinate with the various departments and agencies in Palestine. Ideally, Palestine should appoint two agents with plenipotentiary powers so that they can make important decisions on a moment's notice: an agent in The Hague and an agent in New York who can liaise directly with the institutions before reporting to Ramallah.

79. When appointing the legal team, the leadership should strive to have a mix of academics and more experienced practitioners who have experience in diverse legal systems. It is always a good idea to have at least one counsel who speaks French when appearing before the ICJ.
80. Counsel costs money, and may not be willing to act pro bono especially if the case is long and complicated. Palestine should ascertain whether it can pay counsel with assistance from the Arab League, the Organization of Islamic Cooperation, or friendly states. The UN Secretary-General has a Trust Fund to assist developing states with the settlement of disputes and the Commonwealth has a similar fund for its members.
81. In the event the UN General Assembly seeks an advisory opinion from the ICJ on the illegality of Israel's prolonged occupation, the Palestinian leadership must craft an argument that Palestine has become a state under occupation. The leadership must explain why they have been unable to achieve this statehood through direct negotiations with Israel. In order to support the argument that a Palestinian state has emerged from under occupation, Palestine must rely on what international lawyers call the constitutive theory of recognition, namely, that Palestine is a state because 135 states say it is, because it is a member of UNESCO, because the UN Secretary-General and the Swiss Federal Council have accepted treaties that have been deposited by Palestine, because Palestine has concluded treaties with the Vatican and the Hashemite Kingdom of Jordan and because the international community has recognised that the Palestinian people are entitled to a state of their own since at least the 29 November 1947.
82. The constitutive recognition theory has never been tested before a judicial tribunal and has only been debated amongst jurists. According to the constitutive theory a state is only a state when it is recognized. The declaratory theory, in contrast, looks to the purported state's assertion of its sovereignty within the territory it controls to determine if it can access the international plane. The declaratory theory is the opposite of the constitutive theory in that it holds that recognition is almost irrelevant and that statehood is based on fact and not on individual state discretion.
83. Palestine, however, cannot claim to be independent under the declaratory theory because Israel is maintaining an occupation that is preventing Palestine from becoming independent. Palestine presents a challenge to the many international lawyers who favour the declaratory theory; namely, that statehood is a question of fact independent of its recognition by other states. However, given developments in Kosovo, some jurists are now arguing that international recognition may be just as important as controlling territory. One of the advantages that Palestine has over Kosovo's case for statehood is that Palestine has a colonial history which places it in a different legal category – one in which external self-determination applies.
84. In order to support the argument that a Palestinian state is emerging from under occupation, Palestine must be able to demonstrate to the ICJ that 135 states recognise it, that the Palestinian people have a right to self-determination, which has been reaffirmed annually in UN General Assembly resolutions with overwhelming support by Member States; that Israel has been prolonging negotiations with the Palestinians so that it can expand the settlements and entrench the occupation in the West Bank, including East Jerusalem; and that Israel's occupation, including in Gaza, is illegal, and must be terminated forthwith. As the ICJ has already acknowledged that the Palestinian people

have a right to self-determination in its 2004 wall advisory opinion, the only hurdles that remain for Palestine is to demonstrate to the ICJ that 135 states recognise Palestine, that these recognitions are sufficient to establish a state, and that Israel has been prolonging negotiations and expanding settlements in the West Bank to maintain its illegal occupation and prevent the independence of the State of Palestine.

85. It would be helpful if the leadership can show the ICJ the recognition texts from 135 states. Some states may make reference to recognition in their written statements and oral pleadings should they decide to appear before the ICJ. In addition to the recognition texts, Palestine will also need to demonstrate that Israel has not entered into serious and meaningful negotiations with the leadership but has been using the negotiations as a smokescreen to expand settlements. The PLO's Negotiations Affairs Department and the Palestinian Negotiation Support Unit should have documentation to support this claim.
86. It will be recalled that when the US vetoed a draft Security Council resolution that condemned Israel's decision to construct the wall in the West Bank in 2003, the UN General Assembly requested an advisory opinion from the ICJ on the legal consequences of the wall's construction. In July 2004, this led to 14 out of 15 judges to declare in their advisory opinion that the settlements, the wall, and their associated regime are contrary to international law. The ICJ also called on states not to aid or assist Israel in the wall's construction. Unfortunately the ICJ did not expand on what it meant when it said that states should not aid or assist Israel in the wall's construction. Should the Palestinians seek a new advisory opinion from the ICJ they could press the court for clarification on this issue.
87. Because the question addressed to the court in 2003 specifically concerned the wall, the court could not address the larger issue of ending the occupation. In 2003 it was not clear whether a Palestinian state had emerged, and moreover the Second Intifada was still underway. In light of the developments that have taken place since 2003, the UN General Assembly could request a new advisory opinion from the ICJ in the event that Israel refuses to comply with the Security Council and General Assembly resolutions. This time, however, consideration should be given to drafting several questions for the UN General Assembly that would raise the following issues:
 - To inquire into the legal consequences for states and international organisations of Israel's continued occupation and settlement activity in Palestine following the adoption of the UN General Assembly resolution terminating Israel's occupation and other relevant Security Council and General Assembly resolutions.
 - Provide guidance to the UN General Assembly on the measures that should be taken to bring to an end illegal and wrongful acts resulting from the occupation and Israel's settlement activity. In this connection, to inquire whether sanctions instituted by individual states outside the UN system would be in accordance with international law.

88. Of course these questions are only suggestions -- the topic and exact questions to be formulated would depend on a number of factors, not least the wording of prior Security Council and General Assembly resolutions. It must be emphasised that the framing of the questions for the ICJ to answer in an advisory opinion would have to be discussed with expert legal counsel beforehand – preferably with counsel that have had experience appearing before the ICJ along with individuals who have more general expertise. It would make sense to form an expert working group to draft the specific questions.
89. In this connection, the Palestinian leadership would be wise to consult with friendly states at the UN, the Arab League, and the Organization of the Islamic Conference prior to going to the ICJ to ensure a good turn out during the oral pleadings before the ICJ in the event that it decides to seek another advisory opinion. The sooner the leadership informs friendly states of its decision to return to the court the sooner these states can begin preparing their written and oral statements outlining their arguments on the legal consequences of Israel’s prolonged occupation and settlement activity.
90. The UN General Assembly resolution seeking an advisory opinion from the ICJ should make reference to relevant UN resolutions calling on Israel to end the 1967 occupation, and applicable treaties, including the treaties Palestine acceded to in April and December 2014. Unlike in 2004, this time the court can take into account its earlier advisory opinion, Palestine’s application for membership in the UN, and its membership in UNESCO, and in other organisations. The court would also have on hand a plethora of UN reports, including the report of the UN Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory. The ICJ would also likely take into account Palestine’s accession to the Rome Statute.
91. In seeking an answer to a question about the legal consequences for states and international organisations of Israel’s continued occupation and settlement activity in Palestine following the adoption of the UN General Assembly resolution that accorded Palestine observer state status in 2012, the ICJ would be expected to address the statehood of Palestine directly given recent developments and inquire into the extent to which a Palestinian state has emerged from under occupation.
92. One of the advantages of seeking an advisory opinion from the ICJ is that the opinion can be produced in a matter of months. The 9 July 2004 advisory opinion on the wall only took the court five months to deliver after it heard the oral pleadings in February 2004. Admittedly, a question on the legal consequences of Israel’s occupation of Palestine, in light of the General Assembly’s termination of the occupation, would raise more intricate legal issues and might take more time. Another advantage that the ICJ has over the ICC is that there is no Congressional legislation that would require the US to withhold funds from the PA in the event that the UN General Assembly requests an advisory opinion from the ICJ, because it is not Palestine that would request the opinion but the UN General Assembly.
93. Palestine may want to consider lodging an ad hoc declaration accepting the jurisdiction of the ICJ under Article 35(2) of the Statute as it may enable Palestine to choose a Judge ad hoc as well as bring a contentious case against Israel. An Article 35(2) declaration by Palestine should be made by President Abbas, Prime Minister Rami

Hamdallah or Foreign Minister Riad Al-Maliki and be deposited with the Court's Registrar.

94. Legal advice should be sought before lodging an Article 35(2) declaration.

X. A strategy for the day before and the day after

95. In order to make greater use of international courts and tribunals the leadership needs to devise a coherent and effective strategy before it contemplates taking action at the ICJ as well as following the opinion whether it is favourable or unfavourable.
96. The leadership is going to have to structure a narrative that is credible to persuade the international community that the time is right to go to the ICJ again in addition to the ICC. In seeking the support of friendly states for this endeavour, Palestine is going to have to explain that the peace process has become a charade for Netanyahu's greater Israel project, and back this up with concrete facts and evidence. The leadership is also going to have to explain that the matter has become especially urgent because the Palestinian Government is on the brink of collapse due to a crisis of legitimacy among its citizenry due to the failure to deliver on Palestinian national aspirations after over two decades of failed negotiations; and that there is a serious possibility that in the vacuum following the failure of negotiations and the collapse of the Palestinian Government there is a high risk of violence spreading to the West Bank and East Jerusalem as well as exacerbating the already explosive situation in Gaza due to the Palestinian public's dissatisfaction with the failure to achieve Palestinian independence.
97. In light of these problems, the leadership should explain to the international community that going to the ICJ is part of a diplomatic effort to insist that the international community respect its legal obligations to bring an end to the occupation and support Palestinian self-determination including through the actualization the independence of the Palestinian state, and that these obligations are binding on states despite the inability of the UN Security Council to assume its responsibilities for the maintenance of international peace and security due to the abuse by the United States of its veto power.
98. In the event that the leadership seeks an advisory opinion from the ICJ and in the event that an opinion is issued by the ICJ that is favourable, it would be better to force a vote in the UN Security Council following the opinion before going to UN General Assembly. The fact that it is a legal opinion by the principal judicial organ should be stressed at every available opportunity to counter the claim that the ICJ's opinions are only "advisory" and therefore "non-binding". Palestine's Observer Mission must pay careful attention to the language used in the draft resolution, and consider consulting expert counsel in this connection as well. Exhortatory language should be avoided.
99. Stronger language must be used in the resolutions – especially if, failing to be adopted by the Security Council, they are introduced in the UN General Assembly. So, for example, the resolution that was adopted by the tenth emergency special session of the General Assembly in 2004 called on all states to "comply with their legal obligations as mentioned in the advisory opinion". But what does it mean to call on states to comply with their legal obligations? The Palestinians should use the UN General Assembly to spell out what is required to bring Israel into compliance with international law, e.g. withdrawing preferential trade, recalling ambassadors, providing funds for an academic study to establish a system in which targeted sanctions against the settlements can be

instituted, supporting BDS etc. This may be a good opportunity for the CEIRPP to present a study on sanctions and on the complicity of individuals and companies in Israel's settlement enterprise.

100. What is the central message to be conveyed? Does the opinion contain useful language for advocacy? What about the separate opinions? What does Palestine want the international community to do to bring Israel into compliance with its international legal obligations?

XI. An effective media strategy is essential

101. A media strategy is essential to build up momentum before going to the UN for a General Assembly resolution terminating Israel's "illegal" occupation or before seeking an advisory opinion at the ICJ. The leadership is going to have to counter Israel's argument that withdrawing from the West Bank will create a vacuum that could be filled by ISIS and other extremists. The Palestinians will have to argue that this will become more likely if the Palestinian government collapses due to Israel's refusal to stop building settlements and negotiate a withdrawal to the 1967 lines that results in the independence of the Palestinian state and that achieves the legitimate national rights and aspirations of the Palestinian people.
102. Engaging with media executives, producers, and editors in the mainstream media that are known to be sympathetic to Palestine's cause is essential long before taking these steps. Palestine should also be compiling press releases, booklets, and arrange for media interviews, and place op-eds (including in hostile papers) and personal interest stories in mainstream papers explaining why Palestine is seeking independence by going to the UN and the ICJ that should be prepared long in advance. Palestine should also seek to increase the number and experience of media professionals in government service.
103. In this connection, the leadership should work more closely with Palestinians in the diaspora. Whether they are in the English-speaking world or the Arabic, Spanish, and Francophonie countries, diaspora Palestinians can engage more effectively with local communities than the leadership in Ramallah. So Arab-Americans should be urged to speak out in support of Palestine's strategy to the US media, Anglo-Palestinians to the British media, French-Palestinians to the French media and so on. Audiences are more receptive to accents they are familiar with. The leadership in Ramallah should seek support in advance from well-known media personalities in the diaspora and consult them when writing up speaking notes, press releases, and stories. Winning the support of Palestine solidarity and BDS movement is also important.
104. In addition, the leadership should engage with the diaspora more regularly as they can assist the leadership with organising public speaking tours, media outreach, and speaking in churches, mosques, synagogues, parliaments, and other public venues. In advanced democracies it is not sufficient to engage with officials and diplomats. Ramallah should have at least 6-10 spokespersons (with a good male to female ratio) comprised of experienced media personnel with American, Canadian, British, Australian, French, and Spanish accents.
105. Each spokesperson should have a counterpart to liaise directly with in each country - someone who can speak to media on the ground in each capital city and directly liaise with Ramallah. There also needs to be a manager overseeing the line of communication between all these spokespersons in Ramallah and coordinate messaging.

XII. Palestine's options: caution or confrontation?

106. As requested, Palestine's options have been subdivided into confrontational versus cautious approaches. It is suggested that the time has come to advocate a more confrontational (but still peaceful) approach. The cautious approach has not worked. Time is running out. The two-state solution is on its death bed and employing either a confrontational or cautious approach may not save it; but only a confrontational approach stands some chance of shaking things up sufficiently to turn the dynamics around and inject one last breath into the two-state option. The leadership should frame all action that it takes from now on in terms of the pressure that it can apply against Israel that is aimed at achieving a final status deal that resolves all core issues, ends the occupation and achieves independence – if the international community brings Israel to the negotiating table and an agreement is reached, all the pressure will be removed.

A confrontational approach

- *A new strategic vision from the leadership and from all political factions*

The leadership needs to outline a clear vision for what is needed to reach a final status deal with Israel; a deadline for achieving it; and the threat of something much worse if the deadline is not met – e.g. pressure on Israel at the UN Security Council, recognition of Palestinian statehood from European states, EU settlement action that is decoupled from political considerations and based on the EU respecting its own rules, support for BDS, action at the ICC/ICJ, joining the UN's specialised agencies, taking steps to end security cooperation, further civil unrest, and the dissolution of the Palestinian Authority (PA) that will lead to a one state solution that will not be Jewish. The President should obtain support from all Palestinian factions inside and outside Palestine and outline this new strategic vision to the world as soon as possible.

- *Calling for an official boycott of settlement products*

In addition to articulating a clear vision on the parameters of a two state solution, President Abbas needs to explain to the international community – in an official statement – what specific and immediate steps they should take to put further pressure on Israel, for instance, by supporting a boycott of settlement products, instituting a Palestinian tax on settlement products, or calling on the EU to implement a total ban on settlement products, and at what point and under what conditions that pressure should end i.e. when there is a peace agreement and an end to occupation. Whatever the leadership decides to do it must state its position loudly and clearly. The leadership should ascertain from its UN Mission how it can take steps to increase pressure on Israel at the UN General Assembly.

- *Implementing a general strike in occupied Jerusalem and Israel*

In order to attract the world's attention from events elsewhere in the region the leadership should work closely with Arab MKs in Israel, political factions in Israel and Palestine, East Jerusalem Palestinians, religious groups, charities, and labour unions in Jerusalem, Israel, and the West Bank and Gaza about implementing a two-day strike. The strike should be timed to coincide with the speeches mentioned above – so that Israel, the international community, and the world's media take Abbas's statement and threats seriously. For the strike to be effective broad spectrum support is necessary from Palestinians in Israel, in Jerusalem, and in the occupied territories. In order to mobilise the support of Palestinians in Israel the strike could also include issues that are of direct interest to Palestinian Israelis such as Bedouin relocation in the Negev, municipal discrimination in service provision, and house demolitions.

- *Isolating the settler movement in international fora*

The leadership should ask the UN committee on the exercise of the inalienable rights of the Palestinian people to draw international attention to those individuals and companies supporting the settlement enterprise. The leadership can then use the special committee to call on its friends to isolate Israeli ministers and members of the Knesset who either live in settlements or are intimately associated with the settler movement by refusing to meet with them or by refusing to issue them with visas to travel overseas until there is a change in Israeli policy. The committee could draw up a list of individuals and companies to be named and shamed and circulate these lists amongst its friends and allies at the UN and elsewhere.

- *Taking steps to join the UN's specialised agencies*

Taking steps to join the UN's specialised agencies could be problematic given Congressional legislation mandating funding cuts to the agencies and to the PA. This is because the loss of US funding means the loss of US membership, which could have severe implications for the US when it comes to UN agencies important to it. But Congress is not Palestine's concern and threatening to join some of the specialised agencies if done carefully, smartly, and strategically, can be used as leverage to pressure the US to get Israel to agree to negotiate in good faith an end to occupation and the establishment of an independent Palestinian state and all outstanding issues. President Abbas or another Palestinian official should publicly articulate a plan to join the agencies in advance to avoid surprises. The leadership should identify those agencies that would have a high nuisance factor for the US were Palestine to join them; that would not have a negative humanitarian impact; and seek support from allies in case funding is withdrawn.

- *Ending security coordination*

On 5 March 2015, the Central Council of the Palestine Liberation Organization (PLO) voted to end security coordination with Israel. However, the decision is not binding and security coordination has continued. Whilst there is little doubt that Israel would be concerned if the Executive Committee were to end security coordination with Israel, there is little doubt that Israel has the ability to contain

any unrest in the West Bank. Nonetheless, ending security cooperation should not be ruled out as a matter of principle. To change the political dynamics it is important that the leadership creates an impending sense of crisis. Scaling down security cooperation with Israel and publicly rejecting EU and US aid is one way to do this as part of a package of options to put further pressure on Israel.

- *Dismantling the Palestinian Authority*

Calls have sometimes been made by members of the Executive Committee to “hand back the keys” to Israel. Israel has no interest in assuming responsibility in major Palestinian population centres in the West Bank. It would be a financial and security burden. However, dismantling the PA without establishing an alternative Palestinian government in its place would cause chaos and possibly violence that could spiral out of control. It would also undermine Palestine’s statehood claim. On the other hand, the threat to dismantle the PA needs to be taken seriously by Israel if it is to be brought to the negotiating table and persuaded that the alternative is much worse. If the threat is to be taken seriously by Israel, it must be credible. In order to make the threat credible the leadership should consider either denouncing the Oslo accords in whole or in part, revoking the Paris Economic Protocol, refusing to accept American and EU funding and other sources of aid, taking progressive steps to end security coordination with Israel by refusing to act on Israeli instructions to arrest Hamas leaders, and allowing demonstrations to take place against the leadership (no matter how counterintuitive this may sound).

- *Denouncing Oslo in whole or in part*

There are various ways in which Palestine could extricate itself from Oslo; including legal arguments that the agreements may have fallen into desuetude (the leadership would be wise to seek legal advice before taking this step). Politically, however, it would not look good for Palestine to denounce what the outside world believes is a peace agreement. Netanyahu would seize on this to show that the Palestinians are not peace partners. Conversely, the Palestinians could always use Israel’s breaches of the agreements (withholding Palestinian taxes, prejudicing final status negotiations by building settlements and treating the Gaza Strip as a separate entity) and the failure to enter meaningful negotiations as the reason to denounce them. Denouncing parts of the Oslo agreements or arguing that parts of the agreements are no longer binding is another way to do this, and may become a necessity if things are to proceed at the International Criminal Court.

- *Activating the International Criminal Court*

The Rome Statute of the International Criminal Court entered into force in Palestine on 1 April 2015. Congressional legislation subjects the PA to funding cuts “if the Palestinians initiate an International Criminal Court judicially authorized investigation, or actively support such an investigation, that subjects Israeli nationals to an investigation for alleged crimes against Palestinians”. Whilst the leadership should not be seen to be actively supporting investigations at the ICC there is no reason why Palestine cannot set up a national commission of inquiry comprised of local and international experts to examine rights violations, and give the court authority to implement the Rome Statute, or provide non-active

support to civil society groups. The commission of inquiry should also be given authority to visit Gaza and the settlements. Focusing on Israel's settlement policy would be easier to pursue, as Israel has no defence in this respect.

- *A non-violent anti-apartheid struggle confined to the West Bank*

A non-violent anti-apartheid struggle confined to the West Bank would certainly refocus international attention on the Israel-Palestine dispute. To a large extent this is already happening. However, there is always the danger that violence can erupt and be difficult to contain. Any violence – even directed against settlers will immediately be seized upon by Netanyahu to hit the Palestinians hard. However, if it were possible to take steps to ensure peaceful protests that are cleverly directed at settlements and the wall in the West Bank, and even at the wall in East Jerusalem, Israel would find it difficult to oppose them. Non-cooperation and support for BDS and a ban on settlement products must be part of the strategy.

- *A new intifada targeting settlements only*

An armed intifada – even targeted at the settlements will play into Netanyahu's hands. The leadership should be very wary of this and should work closely with Hamas to explain to them and to Islamic Jihad, the popular resistance committees, and other such groups, the importance of a diplomatic, peaceful, and non-violent strategy and why violence will only play into Netanyahu's hands.

A cautious approach

- *A new recognition strategy*

Palestine is recognised by 135 states – most EU states have not recognised Palestine. Following Sweden, recognition from more EU states would put pressure on Netanyahu, isolate his government, and support the leadership's claim to a state on all of the territories that were occupied by Israel in June 1967. The Palestinian leadership would be wise to seize on Netanyahu's re-election comments to galvanise global public opinion and call for further recognition of the State of Palestine. The leadership should explain to those states that have recognised Palestine that recognition entails responsibilities on the part of the recognising party to bring their policies towards Israel in line with international law. In other words, recognition of the State of Palestine should mean the furthering of non-recognition of Israel's settlements and the wall otherwise recognition is nothing than an empty gesture. The leadership should be saying to Sweden and Thailand and Chile and other states that have recognised Palestine that they must take more than symbolic steps to put their recognition into effect.

- *Security Council resolutions*

The Palestinian leadership should seize the moment to persuade the US to allow the French text of a parameters resolution to be passed by the Security Council

whenever it is tabled, working with experienced members of the Council with US support. Even if the leadership cannot obtain all it desires in the Security Council, it can always follow up with resolutions at the UN General Assembly or the UN Human Rights Council. It should prepare these resolutions in advance.

- *UN General Assembly resolutions*

While the leadership seeks support for a parameters resolution at the Security Council it should establish an expert working group to draft a General Assembly resolution demanding the termination of Israel's occupation forthwith. This should be prepared in advance to table at the General Assembly in the event Israel ignores the Security Council or does not enter into meaningful negotiations for realising the two-state solution. Palestine would be wise to consult with legal experts when drafting these resolutions – especially if the leadership wants to seek an advisory opinion from the ICJ in a second General Assembly resolution.

- *Resolutions at the UN Human Rights Council*

Palestine's Mission in Geneva should work with experts to introduce draft resolutions that change the language that is used to describe human rights violations by Israel. References to apartheid and the measures that are required to bring to an end such violations should be considered in these resolutions. The settler movement in Israel and companies that do business in the occupied territories should be singled out. The Mission should work closely with the special committee on the inalienable rights of the Palestinian people in New York. The resolutions should express support for civil society efforts and boycotts.

- *Involving the International Court of Justice*

Should Israel ignore the above-mentioned Security Council and General Assembly resolutions terminating Israel's occupation, the leadership should consider following up these resolutions with an additional General Assembly resolution seeking another advisory opinion from the ICJ. It is essential that Palestine seek expert legal advice before drafting the question for the ICJ to minimise the risk that the court either refuses to give the opinion or redrafts the question that results in an unhelpful opinion. Palestine should also undertake a study of the jurisprudence of the court and the opinions of the judges on issues that are germane to the question it envisages being addressed in another opinion.

- *Joining INTERPOL and the Commonwealth*

Palestine should have no problem joining INTERPOL – which would be helpful given Palestine's accession to the International Criminal Court. Joining the Commonwealth, the Commonwealth Foundation, and Commonwealth Associations would provide another indication from a well-regarded institution that Palestine is a state. The Commonwealth and its various associations and bodies can provide Palestine with a new forum to seek recognition from new states, provide it with access to technical expertise and training in a number of fields such as drafting legislation, funding development projects, and with efforts to seek justice before international courts and tribunals. The Commonwealth can

also be space for strategizing and thinking of new ideas to end Israel's occupation. The Commonwealth, for example, played an instrumental role in ending apartheid in South Africa even when the United Kingdom continued to support the apartheid regime in Pretoria. However, to make Palestine's application attractive to the Commonwealth Secretariat a joint application with Jordan should be considered or in the alternative a quid pro quo with Israel. Such membership could aid Palestine's efforts at the ICC and ICJ. In addition the financial costs of membership in the Commonwealth is modest compared to other organizations.

107. A mixed approach is to be preferred in which several of the options mentioned above are implemented in tandem and in conjunction with a new recognition drive » *see Recommendations p. 40*. But regardless of how the leadership decides to proceed, it must ensure that violence does not erupt. Global public opinion is increasingly on Palestine's side but it is fickle; any eruption of violence would undermine it. Netanyahu has made his career out of portraying the Palestinians as unreliable and violent in order to justify his greater Israel project. A resumption of violence, even if inadvertent, would undermine the diplomatic strategy. President Abbas should be praised for his stance on non-violence, and the leadership should explain to the Palestinian people why a non-violent strategy is so important at this moment in time.
108. The mixed approach outlined above and below in the recommendations can be used as leverage to warn the diplomatic community of the consequences that may follow the failure to ensure Palestinian rights and independence in the context of a just solution. But Palestine also needs to build upon the success of the diplomatic strategy, which is still a work in progress. Whilst it is arduous and slow it is bearing fruit. As a result of the last recognition effort in 2011, the whole of Latin America, with a few exceptions, recognize Palestine. Palestine is now a member of UNESCO, a non-member state in the UN, and a member of the Assembly of State Parties to the International Criminal Court. Palestine's accessions to over two-dozen treaties in April and December 2014 have been accepted by their depositaries and as such Palestine is now a State Party to those conventions. But for the recent Congressional legislation, Palestine could have applied to join the UNWTO and UNIDO. This has now come to pass. Palestine must not allow this to happen again. The Palestinian leadership needs to exploit the small cracks in the system before they are closed. The leadership must internalise the acts they have accomplished and continue to act like a state in the international community.
109. The Palestinian leadership should seize the moment to put its friends and allies on the spot. The UK has said that it will recognise a Palestinian state when the time is right. That time is now. France has said that it will recognise a Palestinian state if negotiations fail. President Abbas should remind President Hollande that Netanyahu was re-elected on a pledge to prevent a Palestinian state during his tenure.

XIII. Conclusions

110. Time is running out. The two-state solution is on its death bed. The leadership needs to outline a clear vision for what is needed from the international community to help it reach a final-status agreement with Israel. This must include a final deadline for achieving the two-state solution; and the threat of something much worse if the deadline for reaching an agreement is not met – pressure on Israel at the UN Security Council, recognition of Palestinian statehood from European states, EU settlement action, support for BDS, action at the ICC/ICJ, joining the UN’s specialised agencies, taking steps to end security cooperation, further civil unrest, and the dissolution of the PA that will lead to a one state solution that will not be Jewish. The President should obtain support from all Palestinian factions inside and outside Palestine and outline this new strategic vision to the world as soon as possible.
111. In addition to outlining a new strategic vision, the leadership should continue to seek recognition from states by making political arguments for why recognition is important now and back this up with reference to Netanyahu’s pre-election comments in which he opposed a Palestinian state. A strategy to seek membership in the UN’s specialised agencies should be considered in which those agencies that matter most to the US are joined further down the line. From now on all Palestinians action should increase in their level of intensity as time goes forward to the deadline that President Abbas would announce in his new strategic vision for saving the two-state solution. Israel and the international community must be made to realise that there is a serious risk of a doomsday scenario if they do not take action quickly. Should Palestine continue to face obstacles at the UN Security Council then it must make greater use of the UN General Assembly as the ANC did during decolonization by and taking steps to involve the ICJ in addition to the ICC.
112. In formulating its new strategic vision the Palestinian leadership may want to consider the tentative list of recommendations that appear at the end of this report.

XIV Recommendations

➤ On relations with Israel

- The leadership should outline a clear vision of what it expects from a final status deal with Israel; a deadline for achieving it; and the threat of something much worse if the deadline is not met. The leadership needs to signal clearly to Israel that time to save the two-state solution is running out.
- To change the political dynamics with Netanyahu it is important that the leadership creates an impending sense of crisis. Scaling down security cooperation with Israel and publicly rejecting offers of aid from the US and the EU is one way to do this as part of a package of options to put more pressure on Israel.
- Should Israel take steps to annex Areas C in the West Bank the leadership should seek legal advice on the ways in which to extricate themselves from the restriction in the Oslo agreements. They should also devise a public relations campaign and media strategy to explain their decision to dismantle Oslo and begin a new relationship with Israel on a state to state basis.

➤ On relations with Hamas and other groups

- The leadership should work closely with Arab MKs in Israel, political factions in Israel and Palestine, religious groups, charities, and labour unions in Jerusalem and Israel about implementing a general strike of two-days. The strike should be timed to coincide with the announcement of a new strategic plan for ending the occupation and attaining independent statehood – so that Israel and the international community take Abbas’s threats seriously. For the strike to be effective, broad-spectrum support is necessary from Palestinians in Israel, in Jerusalem, and in the Occupied Territory.
- The leadership should consider calling for general elections to coincide with the deadline in the Security Council resolution for ending the occupation, in which all Palestinians should be encouraged to participate, including diaspora Palestinians (where feasible). International monitors should be invited to monitor elections in all of the territory of the state of Palestine: East Jerusalem, the West Bank, and Gaza.
- The leadership should work closely with Hamas to explain to them and to Islamic Jihad, the popular resistance committees, and other such groups, the importance of the diplomatic strategy and why violence will only play into Netanyahu’s hands. The leadership must continue to strive to heal the divisions with Hamas and present a united front to the international community on the path forward recognising the repeated calls for reconciliation from among the international community as well as its own constituency.

➤ *On recognition and relations with the international community*

- The leadership must seize the moment and press states for diplomatic recognition of a Palestinian state now. In particular, the leadership should use the European Parliament's call for recognition "hand in hand with negotiations" and employ Swedish arguments in support of recognising Palestine to seek recognition from the UK, France, Ireland, Finland, Greece, Portugal, Spain, Italy, Luxembourg, Belgium, Denmark, and Slovenia, as well as recognition from states outside the EU that are not encumbered by the EU's common foreign and security policy like Norway and Switzerland.
- Recognition from the UK and France is crucial because it can influence the 53 members of the Commonwealth and the Francophonie countries. For historical reasons it may be possible to persuade the Republic of Ireland to recognise Palestine even if the UK does not. A high-level visit by a Palestinian dignitary to Ireland would be in order, perhaps on the way to the UK. General elections are due in Canada, Denmark, Estonia, Finland, Mexico, Portugal, Spain, and Switzerland in 2015. The Palestinian leadership should strive to reach out to its supporters in these countries ahead of their elections and ask for recognition.
- The leadership should consider calling on its friends and allies to isolate Israeli ministers and members of the Knesset who are associated with the settler movement in Israel by refusing to meet with them until there is a change in Israeli policy. The leadership should ascertain from its UN Mission how it can make greater use of the CEIRPP to draw up a list of individuals and companies to be named and shamed and circulate these lists amongst its friends and allies at the UN.
- President Abbas needs to explain to the international community – in an official statement – what steps they should take to put pressure on Netanyahu's government, for instance, by boycotting settlement products, supporting BDS, instituting a Palestinian tax on settlement products, or calling on the EU to implement a total ban on settlement products, and under what conditions and at what point that pressure should end. Whatever the leadership decides to do it must state its position clearly.

➤ *At the United Nations*

- Palestine should not assume that there will be any fundamental shift in US policy. Nonetheless they should work closely with the Obama administration in the remaining two years of his Presidency to ascertain to what extent, and under what conditions, the US is willing to assist Palestine with its statehood strategy in light of Netanyahu's stated opposition to a Palestinian state. Under what conditions is the US willing to abstain or vote in favour of UN Security Council resolutions?
- The Palestinian leadership should work closely with the other permanent members of the Security Council to ensure that a resolution setting out the parameters of a two-state solution to the Israel-Palestine conflict is passed. They should strive to get a positive vote from the US; failing this an abstention and EU support is a must.

- In the event that Israel refuses to enter into meaningful negotiations to achieve the two state solution as outlined in the envisaged Security Council resolution, the Palestinian leadership should ask the Security Council what measures it envisages taking to enforce its own Security Council resolution.
- Should the Security Council not act against Israel, Palestine should then shift its attention to the UN General Assembly. If the UN General Assembly is not in session at this point, Palestine should call for an emergency special session of the Assembly.
- In addition, Palestine should draft two further UN General Assembly resolutions. The first General Assembly resolution should terminate Israel's "illegal" occupation, and seek to establish a temporary international presence in Palestine. In the event that Israel ignores the Security Council and the UN General Assembly, a further resolution should be introduced in the UN General Assembly to involve the ICJ.
- The second UN General Assembly resolution should seek an advisory opinion from the International Court of Justice on the legal consequences for states and international organisations of Israel's continued presence in Palestine notwithstanding the adoption of the General Assembly resolution terminating the occupation.
- Palestine's Mission in Geneva should work with experts to introduce draft resolutions that change the language that is used to describe human rights violations by Israel. References to apartheid and the measures that are required to bring to an end such violations should be appropriately introduced in these resolutions with care so as not to jeopardize existing consensus support. References to "Palestine" or "State of Palestine" should be used in these resolutions. The settler movement and companies that do business in the settlements should be singled out.

➤ *At International Courts and Tribunals*

- The leadership should establish an expert working group as soon as possible to discuss the text of the draft General Assembly resolutions – especially with legal experts in case it decides to seek an advisory opinion from the ICJ.
- To assist with the advisory opinion, the Palestinian leadership should have original copies of all recognition documents from states on file. Palestine's Foreign Ministry may want to consider scanning these documents and uploading them online. In this connection, it would be useful for the leadership to have a website, perhaps modelled on Kosovo's website (<http://www.kosovothanksyou.com/>) that not only lists all the states that have recognised Kosovo but also has links to the recognition texts.
- The leadership should consider using the services of a specialist Queen's counsel in London to follow up on their access to the Rome Statute of the ICC. They may also consider using the services of another specialist Queen's Counsel for a case at the ICJ. Alternatively, there are law firms specialising in international law that could be used to coordinate efforts—although this can prove to be a very expensive option.

➤ *Membership in UN agencies and other organisations*

- Palestine should join INTERPOL to assist its efforts at the ICC.
- President Abbas should publicly articulate a graduated plan to join the UN's specialised agencies, in which Palestine applies to join those agencies that matter most to the US further down the line. All actions should become increasingly intense as time goes on towards the deadline that President Abbas should set for dismantling the PA, contributing to an impending sense of crisis. The leadership should identify those specialised agencies that would have a high nuisance factor for the US were Palestine to join them; but that would not have a negative humanitarian impact; and seek support from allies in case funding is withdrawn.
- Palestine should apply to join the Commonwealth Foundation, the Commonwealth Games Federation, the Commonwealth Parliamentary Association, the Commonwealth Local Government Forum, and the Commonwealth Telecommunications Organisation. The procedures for applying to join these organisations and the advantages in applying to join them have been explained above.
- The leadership should join these Commonwealth associations *before* it submits a joint application to join the Commonwealth Secretariat with Jordan – as Palestine may then be able to lobby for membership from within the organization. A joint Jordanian-Palestinian application to join the Commonwealth Secretariat as separate member states would be attractive to the Secretariat. Palestine and Jordan can make it clear in their application to join the Commonwealth that neither will accept to be admitted as a member unless Palestine and Jordan are allowed to join as separate and equal states.

➤ *Engaging the media*

- The leadership needs to persuade the international community that the time is right to go to the ICJ in addition to the ICC. In seeking the support of friendly states for this endeavour, Palestine should explain that the peace process has become a charade for Netanyahu's greater Israel project, and back this up with concrete facts and evidence. The leadership is also going to have to explain that the matter has become especially urgent because the Palestinian Government is on the brink of collapse due to a crisis of legitimacy; and that there is a serious possibility that in the vacuum following the failure of negotiations and the collapse of the Palestinian Government there is a high risk of violence spreading in the West Bank due to the Palestinian public's dissatisfaction with the failure to achieve independence in their State of Palestine due to the continuing aggression of the Israeli occupation and on-going violations, including increasing settler violence and daily confrontations with the army.
- The leadership is going to have to counter Israel's argument that withdrawing from the West Bank and the Gaza Strip will create a vacuum that could be filled by extremists. Palestine will have to argue that extremism in the West Bank and Gaza will become even more likely in the absence of any prospects for peace and if the Palestinian government collapses due to Israel's refusal to stop building settlements and negotiate a withdrawal to the 1967 lines that results in an independent Palestinian state. Engaging with media executives and editors in the mainstream media is

essential. Palestine should also be compiling press releases, booklets, and arrange for media interviews, and place op-eds and personal interest stories in mainstream papers (including hostile papers) explaining why Palestine is seeking independence by going to the UN and the ICJ. These should preferably be prepared long in advance.