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DATE: 21 December 2012

A:

FROM: Patricia O'Brien
DE: Under-Secretary-General for Legal Affairs
The Legal Counsel

SUBJECT: Issues related to General Assembly resolution 67/19 on the status of Palestine in the
OBJET: United Nations

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Introduction

1. Prior to the adoption of resolution 67/19, Palestine was treated as an entity for United Nations purposes. Palestine was not identified as a State or a country nor could its authorities be identified as a government. Pursuant to resolution 43/177 of 15 December 1998, the designation "Palestine" was used in place of the designation "Palestinian Liberation Organization" in the United Nations.

2. On 29 November 2012, the General Assembly passed resolution 67/19. Pursuant to operative paragraph 2 of that resolution, the General Assembly decided to:

"...accord to Palestine non-member observer State status in the United Nations, without prejudice to the acquired rights, privileges and role of the Palestine Liberation Organization in the United Nations as the representative of the Palestinian people, in accordance with the relevant resolutions and practice".

Now that Palestine has been accorded the status of a non-Member observer State by the General Assembly, this change in status will need to be reflected in the way that the United Nations deals with Palestine.

We have identified the following issues to be addressed in this regard.

(i) Terminology

3. For United Nations purposes, Palestine may now generally be referred to as a State or country; and its authorities may generally be identified as the Government of Palestine.

4. The precise name to be used when referring to Palestine and the formal titles to be used for its government officials should be determined by Palestine itself. Accordingly, it would be up to Palestine to identify the following:

- a. What is the formal ("long form") name of Palestine and its "short form" name for the purposes of the United Nations;
- b. Who is the "Government" of Palestine, and in particular, who are the Head of State, Head of Government and Minister of Foreign Affairs and what are their exact titles.

5. On 12 December 2012, Palestine informed the Secretary-General that the designation "State of Palestine" should be used in all official documents and for its nameplate in all United Nations meetings. It further informed the Secretary-General that the Head of State is His Excellency, Mr. Mahmoud Abbas, President of the State of Palestine and that other changes to the composition of the Government of the State of Palestine would be communicated in due course.

6. As noted above, in resolution 43/177 of 15 December 1988, the General Assembly decided that the designation "Palestine" should be used in place of the designation "Palestine Liberation Organization" in the United Nations system, without prejudice to the observer status and functions of the Palestine Liberation Organization within the United Nations system. Resolution 43/177 is not an impediment for Palestine to change its name to "State of Palestine" because as general rule, States are free to choose their own names in the United Nations. Moreover, in resolution 43/177 the designation by the Assembly was in relation to the representatives of Palestine as an observer entity.

7. Accordingly, per its request, Palestine should be referred to as "State of Palestine" in all official documents of the United Nations and on nameplates to be used in all United Nations meetings and Mr. Abbas should be addressed as the President of the State of Palestine. With respect to Mr. Abbas, it should be noted that in some cases, depending on the context, it may still be appropriate to refer to him as "Chairman of the Executive Committee of the Palestinian Liberation Organization and President of the Palestinian Authority". In the same vein, in some cases, depending on the context, it may be appropriate to refer to the Palestinian Liberation Organization or the Palestinian Authority. When referring to Palestine in its capacity as an observer State to the United Nations, it may also be appropriate to refer to it as the "Observer State of Palestine to the United Nations" or the "Permanent Observer Mission of the State of Palestine".

8. This does not preclude the use of the term "Occupied Palestinian Territory, including East Jerusalem" since the General Assembly, after the adoption of resolution 67/19, has continued to use the term "Occupied Palestinian Territory, including East Jerusalem" to refer as a whole to the geographical area of the Palestinian territory occupied by Israel since 1967. The Secretariat should be guided by this practice and should not create its own new terminology, such as "Occupied State of Palestine" or "Occupied Palestinian State". Should the General Assembly use other terminology to refer to the geographical area of the State of Palestine, then the Secretariat will be guided by this. However, following resolution 67/19, there is no legal impediment to using the designation "Palestine" to refer to the geographical area of the Palestinian territory.

(ii) Palestine's Status in the Security Council

9. Under Articles 32 and 50 of the Charter, Palestine as a non-Member State of the United Nations enjoys the right to participate, without vote, in discussions relating to a dispute under consideration by the Security Council to which it is a party as well as to engage in consultations with the Security Council on preventive or enforcement measures if Palestine finds itself confronted with special economic problems arising from the carrying out of those measures. As a practical matter, Palestine has already been participating in discussions on the Middle East in the Security Council based on its previous enhanced observer status.

10. With the change in status of Palestine, under Article 35, paragraph 2 of the Charter Palestine now has the right to place items on the provisional agenda of the Security Council and the General Assembly.

(iii) Palestine's Status in the General Assembly

11. Palestine continues to enjoy the rights and privileges of participation acquired by it previous to the adoption of resolution 67/19. In this regard, by General Assembly resolution 43/160 A of 9 December 1988, the General Assembly decided that the Palestinian Liberation Organization was entitled to have its communications issued and circulated as official documents of the United Nations. Thereafter, by General Assembly resolution 52/250 of 13 July 1998, Palestine was accorded additional rights and privileges of participation in the sessions and work of the General Assembly and international conferences convened under the auspices of the Assembly or other organs of the United Nations, as well as in United Nations conferences.

12. As noted above in paragraph 9, one additional right that Palestine has attained pursuant to resolution 67/19 is the right to place items on the provisional agenda of the General Assembly.

(iv) Treaty Participation

13. Each multilateral treaty deposited with the Secretary-General has its own provisions concerning the entities that are eligible to participate in that treaty. As a general matter most treaties will be open to all States Members of the United Nations or of the Specialized Agencies (the "Vienna" formula) or to "any State" or "all States" (the "all States" formula). Others may be limited to a particular membership.

14. As Palestine is a Member State of UNESCO, the Secretary-General would accept instruments of accession from Palestine for treaties that follow the Vienna formula.

15. With respect to treaties that use the "all States" formula, as outlined in the Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties (ST/LEG/7/Rev.1), "the Secretary-General, in discharging his functions as a depositary of a convention with an 'all States' clause, will follow the practice of the Assembly in implementing such a clause and, whenever advisable, will request the opinion of the Assembly before receiving a signature or an instrument of ratification or accession". The "practice of the General Assembly" is to be found

in unequivocal indications from the Assembly that it considers a particular entity to be a State. Since the General Assembly has accepted Palestine as a non-Member observer State in the United Nations, the Secretary-General will be guided by this determination in discharging his functions as depositary of treaties containing an "all States" clause. Therefore, Palestine would be able to become party to any treaties that are open to "any State" or "all States" ("all States" formula treaties) deposited with the Secretary-General.

16. Many multilateral treaties are deposited with the Governments of Member States, rather than with the Secretary-General. It would be up to those States to determine their own depositary practice with respect to Palestine.

(v) Participation in United Nations Conferences and other Meetings

17. Similar to the situation of treaties, the Secretary-General will look to the General Assembly and follow its practice on whether Palestine may participate in United Nations conferences.

18. As Palestine is a Member State of UNESCO and is now a non-Member observer State for the purposes of the United Nations, Palestine may participate fully and on an equal basis with other States in United Nations Conferences, whether they are convened under the so-called "Vienna" formula or whether they are convened under the "all States" formula. It would therefore have the right to propose draft texts, as well as to participate in voting.

(vi) Concluding Agreements with Palestine

19. Having been recognized as a State within the United Nations, the Organization and its funds and programmes may enter into agreements with Palestine as a State on the international plane, including treaties, which are necessary to carry out their respective mandates in Palestine.

20. We understand that currently many funds and programmes may be operating in Palestine without any formal agreements, but with the consent of the local Palestinian (and Israeli) authorities.

21. As a practical matter, there is no apparent immediate need to conclude formal agreements with the Palestinian authorities since the funds and programmes can continue to operate under the arrangements already in place, unless Palestine indicates otherwise or the funds and programmes are having operational difficulties on the ground without such formal arrangements.

22. Since Israel continues to occupy the territory of the State of Palestine, it remains necessary for the Organization and its offices, programmes and funds to make arrangements with Israel as the effective authority in the Occupied Palestinian Territory.

23. This Office remains available to discuss the necessity of any additional formal arrangements on a case-by-case basis with the funds and programmes.

cc: The Deputy Secretary-General
The Chef de Cabinet
Mr. Feltman
Mr. Serry

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