

Palestine's Accession to Multilateral Treaties: Effective Circumvention of the Statehood Question and its Consequences

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Abstract

In the light of the question about the Palestinian statehood that divides the international community and the academic opinions, this note argues that the accession to multilateral treaties by Palestine has proven to be a clever way of circumventing this unsettled statehood question. The key to this effective circumvention is the depositary. Both in the treaties deposited with the UN Secretary-General and with a number of national governments, the instruments of accession by Palestine have been accepted by the depositaries without requiring or producing any clarification of the statehood question. The note will also show the legal and the practical consequences of the treaty accessions by Palestine. The legal consequences are different for different groups of States Parties. As a result of the treaty accession, (1) the rights and obligations of any given treaty arise between Palestine and States that do not explicitly oppose its accession, including those who do not recognize Palestine as a State; (2) the opposing States cannot deny the accession on behalf of all the States Parties, but can at least prevent the treaty relationship from arising between Palestine and themselves. The practical consequence of the treaty accession is that within such a treaty, and strictly for the purpose of that treaty, the accession allows Palestine to act like a State.

Introduction

The question of Palestinian statehood is deeply controversial, as it can be seen in the divided academic opinions¹ and the divided attitudes of States.² The Resolution

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67/19 (2012)³ adopted by the UN General Assembly that described Palestine as a non-member observer “State” did not offer any definitive answer to the question, either. Despite this unsettled statehood question,⁴ since the beginning of 2014, Palestine has acceded to three dozens of multilateral treaties deposited with the UN Secretary-General.⁵ In addition, Palestine has also acceded to multilateral treaties deposited with national governments such as the Netherlands⁶ and Switzerland.⁷

Against this background, this note argues that these treaty accessions by Palestine prove to be a clever way to circumvent the unsettled statehood question.⁸ The note first examines how this effective circumvention of the statehood question happens in the process to accede to a treaty. It will show that the decision of the depositary to accept the instrument of accession effectively settles the statehood question for the purpose of the treaty accession. Once Palestine’s instrument of accession is accepted by the depositary, the entry into force of the treaty in question for Palestine is usually immediate.⁹ In the light of this important effect, it is also necessary to make certain that such a decision by the depositary is not flawed in any way. The actions of two types of depositaries will be examined from this perspective, namely, the UN Secretary-General (Section I(1)) and national governments (Section I(2)).

This note will then show the legal consequences of the treaty accessions by Palestine, and proceed to describe their practical consequence. The Palestinian accession to multilateral treaties means that within these treaties, there are usually three groups of States Parties: States that recognize Palestine; States that do not recognize Palestine, but do not oppose the accession; States that do not recognize Palestine and express their formal opposition to its accession. For the States in the first group, there is no legal gap or dilemma, and no analysis is needed. For the States in the second group, which will be called “the silent States” in this note, the principal question is whether or not their silence with regard to the Palestinian accession leads to the establishment of the full treaty relationship with Palestine (Section II(1)(i)). For the States in the third group, which will be called “the opposing States” in this note, despite their formal and adamant opposition to the “purported” accession by Palestine, the fact remains that Palestine is now a party to the treaty

in question. Thus, the legal effect of their opposition on the accession itself as well as the legal consequences for the rights and obligations of these opposing States are examined (Section II(1)(ii)). While the treaty accession is not a procedure to create or recognize a State, the important practical consequence of the treaty accession for Palestine is that it allows Palestine to act like a State within the treaties it has acceded to, for the purpose of these treaties (Section II(2)).

I Depositories' Acceptance of the Palestinian Instruments of Accession

Acquiring a membership in an international organisation usually requires the approval of its existing member States as a part of the admission procedure.¹⁰ This means that in international organisations, States that do not welcome Palestine can try to stop Palestine in the admission process, sometimes very effectively.¹¹ The same is not true for the accession to multilateral treaties. Many multilateral treaties adopt the depositary system to deal with administrative matters of these treaties. Receiving and circulating the instrument of accession is one of the tasks of the depositary. In this procedure, States Parties that do not welcome Palestine in a treaty do not have any formal opportunity to prevent, let alone voice their positions about, the accession before it actually happens.¹² The accession itself takes its effect when the instrument of accession is accepted by the depositary. This means that Palestine becomes a "State" Party to the treaty in question, without having undergone any additional scrutiny about its statehood.

This effective circumvention of the statehood question in the treaty accession is examined in two sub-sections: (1) the cases of treaties deposited with the UN Secretary-General; and (2) the cases of treaties with national governments as depositaries.

(1) Treaties Deposited with the UN Secretary-General

In a number of treaties deposited with the UN Secretary-General, the Secretary-General does not have to consider the statehood question at all when he receives the instrument of accession from Palestine. These are the treaties that are open to "all States Members of the United Nations or of any of the specialized

agencies.”¹³ Palestine is a member State of one of the specialized agencies, the UNESCO, and this fact alone eliminates any need to discuss the statehood question any further with regard to the accession.¹⁴

The same cannot be said for treaties that are open to “all States”¹⁵ or “any State”¹⁶ without referring to the membership in the specialized agencies. In these cases, the Secretary-General “will follow the practice of the General Assembly in implementing such a clause” according to the “Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties.”¹⁷ In this regard, the General Assembly’s Resolution 67/19 that treats Palestine as a non-member observer “State” is in fact the current practice of the General Assembly regarding this question. Therefore, the Secretary-General should, and in fact does, treat Palestine’s accession request according to that practice and accepts its instrument of accession when presented.¹⁸

A brief conclusion for this sub-section (1) is that from the Secretary-General’s perspective as depositary, to accept and process the instruments of accession by Palestine is the only evident course of action open to the Secretary-General today. In fact, in the light of the administrative guidelines he has in the aforementioned Summary of Practice, to do anything else with the Palestinian instrument of accession will require a justification. The Secretary-General as depositary does not have to deal with the statehood question regarding Palestine, because the question has already been settled for some treaties by a fact such as the Palestinian membership in a UN specialized agency, and for other treaties, by an institutional decision to call Palestine a non-member observer “State.”

(2) Treaties with National Governments as Depositaries

(i) The Geneva Conventions and the Hague Conventions

National governments as depositaries also face the statehood question when they receive Palestine’s instruments of accession. However, unlike the UN Secretary-General who has institutional guidelines to fall back on in making a decision to accept, or not to accept, the instrument of accession of Palestine, national governments as depositaries must act on their own. As of date, the Netherlands and Switzerland

have accepted Palestine's instruments of accession to a number of treaties of which they are depositaries.¹⁹ While accepting the instrument of accession by Palestine means treating Palestine as a State, the acceptance of the instrument of accession does not involve any formal decision-making procedure or an announcement about the statehood of Palestine. The positive assessment of the depositary regarding the statehood question will be known to the States Parties when they see the instrument of accession that the depositary will circulate.

It is of course possible that the depositary makes a negative assessment regarding the statehood question. If a depositary government feels that an instrument of accession is submitted by an entity whose status is uncertain, it will say so. This was in fact the attitude of the Swiss Government when it received the first Palestinian request to accede to the four Geneva Conventions and their 1977 Additional Protocols in 1988. The Swiss Government explained in its note to the States Parties:²⁰

[...] Due to the uncertainty within the international community as to the existence of the non-existence of a state of Palestine and as long as the issue has not been settled in the appropriate frame-work, the Swiss Government, in its capacity as depositary of the Geneva Conventions and their additional Protocols, is not in a position to decide whether this communication can be considered as an instrument of accession in the sense of the relevant provisions of the Conventions and their additional Protocols.

In contrast, in 2014 and 2015, the Swiss Government accepted the successive Palestinian instruments of accession for the Geneva Conventions and their three Additional Protocols. The change in the attitude of the Swiss Government could mean that its assessment about the Palestinian statehood has changed. It could also mean that the issue has been settled "in the appropriate frame-work" in the eyes of the Swiss Government. The Netherlands must hold a similar view about the Palestinian statehood presently, for the Dutch Government also accepted two instruments of accession by Palestine for the 1907 Hague Convention for the Pacific Settlement²¹ and the 1907 Hague Convention respecting the Laws and Customs of War on Land, respectively.

From the viewpoint of the present note, the important observation is that the positive assessment by the depositary about the statehood of Palestine, even when the depositary is a single government such as the Swiss Government or the Dutch Government, still makes it possible for Palestine to accede to a treaty. These assessments by the depositaries do not of course mean a final or definite settlement of the statehood question of Palestine. Nevertheless, it effectively settles the question for the purpose of the treaty accession. In addition, these depositaries are not under any obligation to disclose the reasons for, or criteria they used in, their assessment regarding the statehood question of Palestine. The positive assessment of the Palestinian statehood by these depositaries must reflect various factors, but they can only be speculated: how the UN General Assembly currently treats Palestine; the growing number of treaties deposited with the UN Secretary-General to which Palestine has already acceded; the growing number of recognition accorded to Palestine.

(ii) Non-Proliferation Treaty

Unlike the Geneva Conventions and the Hague Conventions discussed in the previous sub-section (i), a treaty can also be deposited with multiple depositaries. An example is the Treaty on Non-Proliferation of Nuclear Weapons (hereinafter NPT), deposited with the United Kingdom, the United States, and Russia.²² Accordingly, Article 9(2) of the NPT provides that instruments of accession “shall be deposited with”²³ all three depositary governments. However, the practice under the NPT reveals quite clearly that instruments of accession sent to just one of them, or just two of them, are duly received and processed just as an instrument of accession sent to all three depositaries.²⁴

Palestine’s instrument of accession for the NPT was received by the United Kingdom on 12 February 2015, but there is no record of acceptance by the United States or Russia.²⁵ As explained above, since it is not considered necessary to submit the instrument of accession to all three depositaries, Palestine may have refrained from submitting it to the United States, for obvious reasons.²⁶ It is also not clear whether the United Kingdom proceeded to circulate this instrument of accession to all

States Parties. Palestine is not shown as States Parties of the NPT in the UN Treaty Collection database, either.²⁷ Given the fact that the entry into force of the NPT for the State that accedes to it is immediate upon accession,²⁸ the current treatment of Palestine in the NPT is definitely unusual.

The case shows a limit of treaty accession as a way to circumvent the statehood question for Palestine. When the depositaries happen to be national governments that do not consider Palestine a State, obviously the treaty accession itself is difficult, and no circumvention of the statehood question is possible.

II Consequences of Treaty Accessions by Palestine

(1) Legal Consequences for Different Groups of States Parties

The Palestinian accession to multilateral treaties that effectively circumvents the statehood question means that within these treaties, there are (1) States that recognize Palestine, (2) States that do not recognize Palestine but do not oppose the accession, and (3) States that do not recognize Palestine and express their opposition to its accession. For States in the first group, there is no legal gap or dilemma. For the second group, Palestine is a treaty member that now have rights and obligations towards them under the treaty, even though it is not recognized as a State. For the third group, if these States make clear their view, there may not be any legal gap or dilemma as far as their rights and obligations are concerned. However, the fact that Palestine is now a party to the treaty remains.

In order to explore the legal consequences for each group, and Palestine, the case studies of the two Hague Conventions deposited with the Dutch Government are used. These case studies are selected because they look representative enough regarding the reactions by other States Parties. The focus of the examination of the legal consequences is two-fold: consequences for the silent States that do not recognize Palestine but do not oppose the accession either, and the consequences of the communications submitted by those who clearly oppose the accession by Palestine.

(i) Consequences for “Silent States”

As it has already been pointed out, among those States Parties that do not make any reaction to the Palestinian accession to the treaties, there are States that recognize Palestine, and those that do not recognize it. In the present examination, the “silent States” is the appellation used for convenience for the latter group, i.e., those who do not recognize Palestine. There seems to be little reason to discuss the rights and obligations of the former group. The rights and obligations of these States in relation to Palestine in the given treaty are clear, since this group is made up of States for whom Palestine is a State in any case.

For the silent States that do not recognize Palestine as a State, it is not the same. Nevertheless, their silence means acquiescence of the accession, especially in the light of express objections voiced by a few States. As a result of their acquiescence, between these silent States and Palestine, the rights and obligations under the treaty in question are fully established. The acquiescence of the Palestinian accession by other States does not imply a recognition by these States, but these States and Palestine are now bound by the same multilateral treaty.²⁹

This interpretation of acquiescence and its consequence for those who acquiesce is also in harmony with the system of reservations in the law of treaties. According to the Vienna Convention on the Law of Treaties (hereinafter VCLT), a reservation is deemed accepted by a State “if it shall have raised no objection to the reservation”³⁰ by a certain deadline. In other words, silence has the effect of confirming the treaty relationship, as modified by the reservation in this case, between the reserving State and the State that does not raise any objection. It is submitted that silence in facing an instrument of accession by Palestine has a similar effect on those who remain silent, and confirms the treaty relationship between those States and Palestine.

(ii) Consequences of “Purported” Accessions for Opposing States

As it was briefly mentioned in Section I, three States, the United States, Israel and Canada, make a habit of sending the opposing statements to the depositary whenever the depositary, whether it is the UN Secretary-General or a national

government, circulates the instrument of accession by Palestine in a treaty in which these three States are members. The United States, Israel and Canada are called “opposing States” in this sense. They form a distinct third group of States whose rights and obligations must be analysed. The principal questions regarding these opposing States are the following. (a) Do their communications have any effect on the accession by Palestine, for example, making it an invalid act? (b) Can these opposing States prevent the rights and obligations under the treaty from arising between themselves and Palestine? (c) Can they do so even if Palestine explicitly reasserts these rights and obligations in response to their original communications?

Regarding the question (a), first, opposing States sometimes try to question the validity of the action of the depositary in accepting the instrument of accession by Palestine. For example, Israel's communication regarding the “purported” accession of Palestine to the 1907 Hague Convention for the Pacific Settlement contains the following passage on the action of the depositary:

The Government of Israel notes that the role of the depositary is a technical one and that the depositary does not have authority to determine the legal validity or effect of instruments of accession. Accordingly, regardless of any action taken by the depositary regarding the purported instrument of accession in this instance, such actions do not in themselves grant any legal validity or effect to such an instrument.³¹

The role of the depositary is, as Israel states, a technical one,³² and this is not disputed. However, why a view held by a single State can alter or change the effect of an action by the depositary, even a technical one, is far from apparent. Such a rule is nowhere to be found in the VCLT's provisions related to the depositary. The suggestion is especially difficult to accept in the case examined, because of the presence of a large majority of silent States in the same Convention. While the total number of States Parties to the 1907 Hague Convention for the Pacific Settlement is 102, in treaties such as the Geneva Conventions, over 190 States acquiesce the accession by Palestine, against three opposing States.

Second, the communications by the opposing States all highlight, in one way

or other, their view that Palestine is not a State. According to these opposing States, Palestine is not a State, hence it “lacks the legal capacity to join” a treaty (Israel),³³ or hence it “is not able to accede to” a treaty (Canada)³⁴ or hence it “is not qualified to accede to” a treaty (the United States).³⁵ However, again, these are the views of these individual States. Why these views should prevail over the overwhelming majority that tacitly accept Palestine’s accession in any given multilateral treaty is not at all evident. On the contrary, it is submitted that “[I]n the decentralized international society, such a statement binds only the State uttering it and not any other State. Each treaty party must come to its own view as to the nature of a specific entity and its ability to become a party to treaty relations.”³⁶ Applied to the concrete cases of Palestine’s accession to multilateral treaties, this view means that while Israel, Canada, and the United States are free to express their opinions, these statements do not bind any other party to the treaty in question.

These considerations for the question (a) also suggest that the answer to the questions (b) and (c) must be in the positive. If each individual State is free to make its own determination about the “purported” accession, the opposing States should be, based on that determination, able to prevent the rights and obligations under the treaty from arising between themselves and Palestine by making such a wish explicitly. In fact, while the details of the opposing States’ communications vary, the main common point expressed in all these statements for all treaties to which Palestine acceded is that the opposing States refuse the treaty relationship with Palestine. They state, *mutatis mutandis*, that the treaty in question does not enter into force, or have an effect on their treaty relations, with respect to Palestine.³⁷

Palestine usually responds to the opposing States by stating that it considers the treaty to be in force with regard to these opposing States, despite their express wish to the contrary. For example, as a response to the communication by Canada circulated to the States Parties of the 1907 Hague Convention respecting the Laws and Customs of War on Land, Palestine “states its objection to the aforesaid communication made by Canada and considers the Convention respecting the laws and customs of war on land (The Hague, 18 October 1907), *as continuing in force between Canada and the State of Palestine.*”³⁸ Palestine of course also reiterates its

position that it is indeed a State “irrespective of the recognition by Canada.”³⁹ This response, however, cannot alter the essence of the Canadian opposition: Canada does not want a treaty relationship with Palestine. Given the consensual nature of the treaties, it is difficult to see how rights and obligations can arise between Palestine and Canada when the latter so unequivocally refuses to enter into treaty relationship with the former. As it has previously been argued, the freedom of Canada to determine the status of the entity that made the “purported” accession does not make its determination opposable to all other States Parties. Nevertheless, this freedom does have an effect: there is no treaty relationship between Canada and Palestine under this multilateral treaty. The same conclusion applies to all the opposing States that explicitly and unequivocally refuse the treaty relationship with Palestine.

(2) Practical Consequence of Treaty Accessions by Palestine

While the procedure of treaty accession is not immediately a procedure to constitute a State,⁴⁰ the practical consequence of Palestine's treaty accession is considerable: strictly for the purpose of that treaty, and strictly within that treaty, Palestine can, and does, act like a State. In fact, it must do so, since it has treaty obligations as a State Party to any given treaty.

For example, the United Nations Convention on Climate Change⁴¹ went into force for Palestine in March 2016.⁴² The Convention provides that “[e]ach Party shall communicate to the Conference of the Parties, through the secretariat,” various information pertaining to the implementation of this Convention.⁴³ Palestine submitted its first communication required under Article 12(1) for the so-called non-Annex-I Parties of this Convention in August 2016.⁴⁴

Like the Convention on Climate Change, many multilateral treaties require the States Parties to submit reports. They may be initial reports requiring them to declare the national situation regarding the matters regulated by the treaty. Some treaties also require State Parties to submit subsequent reports to the supervisory organs of these treaties. A quick glance at the list of treaties to which Palestine is now a party⁴⁵ reveals that in fact these human rights treaties, environmental treaties

and treaties such as the Convention on Cluster Munitions provide for both types of reports. This means Palestine is likely to continue submitting national reports in all these multilateral treaties, as any State Party is expected to. In addition, the opposing States are unlikely to raise objections to each and every written report and oral intervention that Palestine produces in these multilateral treaties, even though Palestine acts just like a State, and formally as a State Party, in these instances. Thus, these numerous scenes of participation to regular activities of multilateral treaties constitute a very important practical consequence of Palestine's accession to these treaties.

CONCLUSION

In the light of the question about the Palestinian statehood that divides the international community and the academic opinions, this note argued that the accession to multilateral treaties by Palestine has proven to be a clever way of circumventing this unsettled statehood question. The key to this effective circumvention is the depositary. Both in the treaties deposited with the UN Secretary-General and with a number of national governments, the instruments of accession by Palestine have been accepted by the depositaries without requiring or producing any clarification of the statehood question. The combined effects of the circumvention of the statehood question and the treaty accession are (1) the rights and obligations of the given treaty arise between Palestine and States Parties that do not explicitly oppose its accession, including those who do not recognize Palestine as a State; (2) the opposing States cannot deny the accession on behalf of all the States Parties, but can at least prevent the treaty relationship from arising between Palestine and themselves. The practical consequence of the treaty accession is that while the treaty accession itself cannot be taken as a sign of State creation, within such a treaty, and strictly for the purpose of that treaty, Palestine can, and indeed does, act like a State.

Notes

- 1 For those who consider that Palestine is a State, see, e.g., F Boyle, 'The Creation of the State of Palestine' (1990) 1 *European Journal of International Law* 301; J Quigley, *The Statehood of Palestine: International Law in the Middle East Conflict* (2010). For the opposite view, see, e.g., J Crawford, 'The

- Creation of the State of Palestine: Too Much Too Soon?' (1990) 1 *European Journal of International Law* 307; Y Ronen, 'Recognition of a Palestinian State: Still Too Much Too Soon?' in F Beatens & C Chinkin, *Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford* (2015) 229.
- 2 The current number of States that recognize Palestine is 137 according to a webpage of the Palestinian Permanent Mission to the UN, *available at* <http://palestineun.org/about-palestine/diplomatic-relations/> (Unless otherwise noted, all internet references in the footnotes were last accessed in February 2017).
- 3 UN Doc A/RES/67/19 (29 November 2012). The title of this Resolution is "*Status of Palestine in the United Nations*," and was adopted as a response to the application of Palestine for admission to membership in the UN. For the application, see UN Doc A/66/371- S/2011/592 (23 September 2011).
- 4 Throughout this note, "the statehood question" refers to the question whether or not Palestine today is a State.
- 5 See the table in Annex I.
- 6 Convention for the Pacific Settlement of International Disputes (hereinafter the 1907 Hague Convention for the Pacific Settlement), 18 October 1907, 205 CTS 233, and Convention (IV) Respecting the Laws and Customs of War on Land, 18 October 1907, 187 CTS 227.
- 7 Four Geneva Conventions regarding the protection of war victims (hereinafter the Geneva Conventions) and their Additional Protocols: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31; Convention (II) for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85; Convention (III) Relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135; and Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287; Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3; Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609; and Protocol Additional (III) to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005, 2404 UNTS 261.
- 8 This thesis therefore does not immediately contradict the excellent arguments of J Vidmar, 'Palestine and the Conceptual Problem of Implicit Statehood' (2013) 12 *Chinese Journal of International Law* 21, 39-41, in which he concludes that the State creation "cannot result from procedural tricks via international treaties and organizations."
- 9 The entry into force is immediate, unless a certain lapse of time between the accession and the entry into force is provided by that particular treaty. See the Vienna Convention on the Law of Treaties (hereinafter VCLT), 23 May 1969, 1155 UNTS 331, Art 16(b).
- 10 The procedure for the UN admission is a well-known example. See the UN Charter, Art 4. See also T Grant, *Admission to the United Nations* (2009) ch 1.
- 11 Again, a well-known example is the case of Palestine and the UN. See M Wählisch, 'Beyond a Seat in the United Nations: Palestine's U.N. Membership and International Law' (2012) 53 *Harvard International Law Journal* 226; P Eden, 'Palestinian Statehood: Trapped between Rhetoric and Realpolitik' (2013) 62 *International and Comparative Law Quarterly* 226-230. Regarding the successful admission of Palestine in UNESCO, see J Cerone, 'Introductory Note to the Admission of Palestine to UNESCO and Related Documents' (2012) 51 *International Legal Materials* 606.
- 12 The first formal opportunity that the States who oppose the accession have to voice their opposition is when they receive the notification regarding this accession, sent by the depositary. It is therefore not surprising that once the accession instrument is circulated, some States disagree with the depositary's decision and/or refuse their treaty relationship with Palestine. Consequences of such opposition will be discussed in full in Section II(2).

- 13 See e.g. VCLT Art 81.
- 14 This in fact is the opinion written by the Under-Secretary-General for the Legal Affairs in a memorandum distributed internally. See the *Memorandum from the UN Office for Legal Affairs regarding Palestine's New Status in the United Nations after the adoption of Resolution* (21 December 2012), made public by the Palestinian office in New York, *available at* <http://palestineun.org/wp-content/uploads/2013/08/012-UN-Memo-regarding-67-19.pdf>.
- 15 See e.g. United Nations Convention on the Law of the Sea, 10 December 1982, 1833 UNTS 3, Art 305(a).
- 16 See e.g. Convention on Cluster Munitions, 30 May 2008, 2688 UNTS 39, Art 16(2).
- 17 Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, UN Doc ST/LEG/7/Rev.1, 1999 (hereinafter the Summary of Practice), para. 82. While the aforementioned paragraph refers to the “all States” formula exclusively, it is submitted that the same guideline applies to the “any State” formula.
- 18 *Ibid.*
- 19 See Annex II. Both depositaries circulated the instrument of accession to other States parties, and proceeded to list Palestine as a treaty member of these treaties in the relevant online treaty databases.
- 20 The note regarding this request in 1988 that the Swiss Government sent to the States Parties can be found on the webpage maintained by its Department of Foreign Affairs, *available at* https://www.eda.admin.ch/content/dam/eda/fr/documents/aussenpolitik/voelkerrecht/geneve/901211-GENEVE_e.pdf. The same note is also cited in Crawford, above n 1, 311, and is briefly discussed in A Aust, *Modern Treaty Law and Practice* (3rd ed., 2013) 288.
- 21 Joining the 1907 Hague Convention for the Pacific Settlement means joining the system of the Permanent Court of Arbitration. Its consequences are discussed in G Zyberi, ‘Membership in International Treaties of Contested States: The Case of the Permanent Court of Arbitration’, *ESIL Reflection*, Vol 5(3), 10 March 2016, *available at* <http://www.esil-sedi.eu/node/1261>.
- 22 Treaty on the Non-Proliferation of Nuclear Weapons, 1 July 1968, 729 UNTS 161.
- 23 NPT Art 9(2).
- 24 For a quick and easy glance of the number of instruments sent in each accession, see the list on the webpage maintained by the UN Office for Disarmament Affairs, *available at* <http://disarmament.un.org/treaties/t/npt>.
- 25 The database “UK Treaty Online,” maintained by the British Foreign Office, has 3 different pages for the text of the NPT: the London version, the Washington version and the Moscow version. Only the London version shows the Palestinian accession, under the name “Palestinian National Authority,” without the information whether this accession has, at the same time, produced the entry into force of the NPT for Palestine. The London version is *available at* <http://treaties.fco.gov.uk/treaties/treatyrecord.htm?tid=2569>.
- 26 The United States is an unrelenting objector in all instances of treaty accession by Palestine. Detailed discussions regarding the United States and a number of other opposing States will be carried out in Section II.
- 27 See the list in the UN Treaty Collection database, *available at* <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801d56c5>.
- 28 NPT Art 9(4).
- 29 R Kolb, *The Law of Treaties: Introduction* (2016) 34.
- 30 VCLT Art 20(5).
- 31 Israel’s communication for the 1907 Hague Convention on the Pacific Settlement (4 January 2016), *available at* https://treatydatabase.overheid.nl/en/Verdrag/Details/003316_b#Israel.
- 32 VCLT Art 77(1).

- 33 Israel's communication for the Geneva Conventions (16 May 2014), *available at* https://www.eda.admin.ch/content/dam/eda/fr/documents/aussenpolitik/voelkerrecht/geneve/140521-GENEVE_e.pdf.
- 34 Canada's communication for the 1907 Hague Convention respecting the Laws and Customs of War on Land (15 May 2014), *available at* https://treatydatabase.overheid.nl/en/Verdrag/Details/003319_b#Canada.
- 35 The United States' communication for the 1907 Hague Convention respecting the Laws and Customs of War on Land (15 May 2014), *available at* https://treatydatabase.overheid.nl/en/Verdrag/Details/003319_b#United%20States%20of%20America.
- 36 Kolb, above n 29, 34.
- 37 See, e.g., the communications above n 33, 34 and 35.
- 38 Communication by Palestine against Canada (15 September 2014, emphasis added), *available at* https://treatydatabase.overheid.nl/en/Verdrag/Details/003319_b#Palestine. See also the earlier communication by Palestine against the opposing States in the Geneva Conventions (28 June 2014), *available at* https://www.eda.admin.ch/content/dam/eda/fr/documents/aussenpolitik/voelkerrecht/geneve/140627-GENEVE_e.pdf.
- 39 Communication by Palestine (15 September 2014), above n 38.
- 40 Vidmar, above n 8.
- 41 United Nations Convention on Climate Change, 9 May 1992, 1771 UNTS 107.
- 42 The entry into force is 90 days after the accession. Convention on Climate Change, Art 23.
- 43 Convention on Climate Change, Art 12.
- 44 "National Adaption Plan (NPA) to Climate Change" (15 August 2016) submitted by Palestine, *available at* https://unfccc.int/files/national_reports/non-annex_i_parties/application/pdf/national_adaptation_plan_state_of_palestine.pdf.
- 45 See Annexes I & II.

Annex I

The table shows a list of multilateral treaties deposited with the Secretary-General, which were acceded to by Palestine. The information source is the United Nations Treaty Collection database, *available at* <https://treaties.un.org/> (last accessed in February 2017).

	Name of Treaty	Date of Adoption	Initial Entry into Force	Number of Signatories	Number of States Parties	Date of Accession by Palestine[(R) for ratification]	Entry into Force for Palestine
1	Vienna Convention on Diplomatic Relations	18 April 1961	24 April 1964	60	190	2 April 2014	2 May 2014
2	Vienna Convention on Consular Relations	24 April 1963	19 March 1967	48	179	2 April 2014	2 May 2014
3	Convention on the Prevention and Punishment of the Crime of Genocide	9 December 1948	21 January 1951	41	147	2 April 2014	1 July 2014
4	International Convention on the Elimination of All Forms of Racial Discrimination	7 March 1966	4 January 1969	88	177	2 April 2014	2 May 2014
5	International Covenant on Economic, Social and Cultural Rights	16 December 1966	3 January 1976	71	164	2 April 2014	2 July 2014

6	International Covenant on Civil and Political Rights	16 December 1966	23 March 1967	74	168	2 April 2014	2 July 2014
7	Convention on the Suppression and Punishment of the Crime of Apartheid	30 November 1973	18 July 1976	31	109	2 April 2014	2 May 2014
8	Convention on the Elimination of All Forms of Discrimination against Women	18 December 1979	3 September 1981	99	189	2 April 2014	2 May 2014
9	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 December 1984	26 June 1987	83	60	2 April 2014	2 May 2014
10	Convention on the Rights of the Child	20 November 1989	2 September 1990	140	196	2 April 2014	2 May 2014
11	Convention on the Rights of Persons with Disabilities	13 December 2006	3 May 2008	160	170	2 April 2014	2 May 2014
12	United Nations Convention against Corruption	31 October 2003	14 December 2005	140	180	2 April 2014	2 May 2014
13	Vienna Convention on the Law of Treaties	23 May 1969	27 January 1980	45	114	2 April 2014	2 May 2014
14	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	25 May 2000	12 February 2002	130	166	7 April 2014	2 May 2014
15	Convention on the Political Rights of Women	31 March 1953	7 July 1954	47	123	2 January 2015	2 April 2015
16	Convention on the Recognition and Enforcement of Foreign Arbitral Awards	10 June 1958	7 June 1959	24	156	2 January 2015	2 April 2015
17	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	22 March 1989	5 May 1992	53	186	2 January 2015	2 April 2015
18	Cartagena Protocol on Biosafety to the Convention on Biological Diversity	29 January 2000	11 September 2003	103	170	2 January 2015	2 April 2015
19	Convention on Biological Diversity	5 June 1992	29 December 1993	168	196	2 January 2015	2 April 2015
20	Convention on the Law of the Non-Navigational Uses of International Watercourses	21 May 1997	17 August 2014	16	36	2 January 2015	2 April 2015
21	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents	14 December 1973	20 February 1977	25	180	2 January 2015	1 February 2015

22	United Nations Convention against Transnational Organized Crime	15 November 2000	29 September 2003	147	187	2 January 2015	1 February 2015
23	Convention on the Safety of United Nations and Associated Personnel	9 December 1994	15 January 1999	43	93	2 January 2015	1 February 2015
24	United Nations Convention on the Law of the Sea	10 December 1982	16 November 1994	157	168	2 January 2015	1 February 2015
25	Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982	28 July 1994	16 November 1994	79	150	2 January 2015	1 February 2015
26	Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity	26 November 1968	11 November 1970	9	55	2 January 2015	2 April 2015
27	Agreement on the Privileges and Immunities of the International Criminal Court	9 September 2002	22 July 2004	62	75	2 January 2015	1 February 2015
28	Rome Statute of the International Criminal Court	17 July 1998	1 July 2002	139	124	2 January 2015	1 April 2015
29	Optional Protocol to the Convention on the Safety of the United Nations and Associated Personnel	8 December 2005	19 August 2010	34	30	2 January 2015	1 February 2015
30	Convention on Cluster Munitions	30 May 2008	1 August 2010	108	100	2 January 2015	1 July 2015
31	Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (CCCW)	10 October 1980	2 December 1983	50	123	5 January 2015	5 July 2015
32	Protocol on Non-Detectable Fragments (Protocol I annexed to the CCCW)	10 October 1980	2 December 1983	N/A	116	5 January 2015*	5 July 2015
33	Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III annexed to th CCCW)	10 October 1980	2 December 1983	N/A	113	5 January 2015*	5 July 2015
34	United Nations Convention on Climate Change	9 May 1992	21 March 1994	165	197	18 December 2015	17 March 2016
35	Paris Agreement	12 December 2015	4 November 2016	193	116	22 April 2016 (R)	22 April 2016

36	Amendments on the crime of aggression to the Rome Statute of the International Criminal Court	11 June 2010	(Not yet in force as of December 2016)	N/A	32	26 June 2016 (R)	
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* This is the date for the notification of the consent to be bound by the protocol annexed to the CCCW, which is made at the same time as the deposit of the instrument of accession for the CCCW. Article 4(2) of the CCCW provides that “[E]xpressions of consent to be bound by any of the Protocols annexed to this Convention shall be optional for each State, provided that at the time of the deposit of its instrument of ratification, acceptance or approval of this Convention or of accession thereto, that State shall notify the Depositary of its consent to be bound by any two or more of these Protocols”.

Annex II

The table shows a list of multilateral treaties deposited with national governments, which were acceded to by Palestine. Unless accompanied by specific explanations, source of information for this table is 1-3 listed below (last accessed in February 2017):

1. Treaty Database maintained by the Swiss Federal Department of Foreign Affairs, *available at* <https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/internationale-vertraege/datenbank-staatsvertraege.html>
2. Treaty Database maintained by the Dutch Government, *available at* <https://treatydatabase.overheid.nl/>
3. UK Treaties Online, *available at* <http://treaties.fco.gov.uk/treaties/treaty.htm>

	Name of Treaty	Date of Adoption	Initial Entry into Force	Number of Signatories	Number of States Parties	Date of Accession by Palestine	Entry into Force for Palestine
Switzerland	Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field	12 August 1949	21 October 1950	0* (61)	196	2 April 2014	2 April 2014
	Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea						
	Geneva Convention (III) relative to the Treatment of Prisoners of War						
	Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War						

	Additional Protocol of 8 June 1977 Relating to the Protection of Victims of International Armed Conflicts	8 June 1977	7 December 1978	3*	174	2 April 2014	2 April 2014
	Additional Protocol of 8 June 1977 Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)	8 June 1977	7 December 1978	3*	168	4 January 2015	4 July 2015
	Additional Protocol of 8 December 2005 Relating to the Adoption of an Additional Distinctive Emblem (Protocol III)	8 December 2005	14 January 2007	23*	73	4 January 2015	4 January 2015
Netherlands	Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Law and customs of War on Land	18 October 1907	26 January 1910	15*	38	2 April 2014	1 June 2014
	Convention for the Pacific Settlement of International Disputes	18 October 1907	26 January 1910	-	102**	30 October 2015	29 December 2015
United Kingdom	Treaty on the Non-Proliferation of Nuclear Weapons	1 July 1968	5 March 1970	93***	191***	12 February 2015	

* The numbers shown in the ICRC database, *available at* <https://ihl-databases.icrc.org/ihl>, indicate the signatory states that have not proceeded to ratify the treaty in question, thus remaining outside that treaty. The original signatory states to the Geneva Conventions are 61 according to the 2016 ICRC Commentary to the Geneva Conventions, which is equally available in the same database.

** The information source for this figure is a webpage of the Permanent Court of Arbitration, *available at* <https://pca-cpa.org/en/about/introduction/member-states/>.

*** The information source for these figures is a database maintained by the UN Office for Disarmament Affairs, *available at* <http://disarmament.un.org/treaties/t/npt>.

