international law teaching in twenty-five other countries. After the results of the broadly based U.S./Canadian survey are evaluated, we shall undertake a "focused" survey examining in more detail twenty-five institutions that seem remarkable in their attention (or in some cases, inattention) to international law.

There are both new opportunities and some risks associated with carrying out a survey in the 1990s. Because of computers, we have access to more information about teachers, institutions and courses. We can store and manipulate vast amounts of information far more easily than at any time in the past. In other ways, surveying is more difficult today. Most of us in academia feel inundated with questionnaires of all types; it may be too tempting to ignore another questionnaire, regardless of how important it is. In the thirty years since the Edwards surveys, international law teaching has become much more specialized and varied. For example, thirty years ago most law schools offered at most a public international course and a course in international business transactions.

For the SAIL project to have the maximum positive impact, we must be careful to separate advocacy from description. We began this endeavor convinced that international law does not receive the attention it deserves. We have ample reason for this belief, not the least of which is the results of numerous earlier studies. But the primary goal of SAIL must be to provide an accurate, thorough description of international law teaching as it exists today. Only then will we be in the strongest position to make a case for more attention in the form of faculty positions, courses, grants, and so on. If we are going to assert, as Judge Vanderbilt did forty years ago, "that not one lawyer in five hundred, possibly not one lawyer in a thousand, has ever even had a course in international law,"[7] we must begin by getting our facts right.

We invite all readers of the *Journal* to help us conduct a successful study, largely by seeing that any questionnaires that come their way or to the attention of their colleagues are answered promptly and completely. This way, the results of the SAIL project can be of maximum benefit to us all.

JOHN KING GAMBLE, JR.
The Behrend College
Pennsylvania State University

KEITH HIGHET
The Fletcher School of Law and Diplomacy
Tufts University

TO THE EDITOR IN CHIEF:

March 22, 1990

I must write to disagree with the argument by my friend and colleague Frederic L. Kirgis, Jr., that the state of Palestine does not meet the standard recognized criteria for statehood under customary international law (84 AJIL 218 (1990)). At the request of the Palestine Liberation Organization (PLO), on June 22, 1987, I delivered a speech before a special session of the

[7] Vanderbilt, *Responsibilities of Our Law Schools to the Public and the Profession*, 3 J. LEGAL EDUC. 207, 209 (1950).

United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People that was convened at UN headquarters in New York City in order to commemorate the twentieth anniversary of the 1967 Middle East war. Therein I argued that under the current political conditions in both Israel and the United States, there was no realistic prospect for the convocation of an international peace conference on the Middle East for the immediate future. I therefore suggested that the Palestinian people unilaterally proclaim their own independent state; that the United Nations Organization immediately recognize the independent state of Palestine; and that the United Nations then proceed to apply the same approach to obtaining Israeli withdrawal from the occupied state of Palestine as it has applied to obtaining South African withdrawal from the occupied state of Namibia. In my opinion at the time, the creation of the independent state of Palestine would fulfill the historic right of the Palestinian people to self-determination while also creating a dramatic breakthrough in the prospects for obtaining peace with justice in the Middle East.

Several members of the Palestine Liberation Organization were present at this UN conference to hear my speech, and were seriously interested in my proposal that the Palestinian people unilaterally create the independent state of Palestine. They requested that I prepare a research paper for them on this subject that would discuss at greater length their legal authority for the unilateral creation of the independent state of Palestine; how this could be done; how the United Nations should recognize the independent state of Palestine; and how the United Nations could then act to obtain the withdrawal of Israeli occupation troops from Palestine, etc. I agreed to undertake this research project for them on a pro bono basis.

On March 11, 1988, I submitted my research paper to the PLO and to several prominent Palestinian Americans, some of whom are members of the Palestine National Council (PNC). This paper was entitled *CREATE THE STATE OF PALESTINE!* There matters stood until July 31, 1988, when King Hussein of Jordan gave his now-famous speech in which he severed all forms of legal and administrative ties between Jordan and what he called the West Bank. Immediately thereafter, I was asked to serve as a legal adviser to the Legal Committee of the Palestine National Council that was placed in charge of the project to create the independent state of Palestine. On November 15, 1988, the independent state of Palestine was proclaimed by the Palestine National Council, meeting in Algiers, by a vote of 253 to 46, as well as in front of Al-Aksa Mosque in Jerusalem, the capital of the new state, after the close of prayers.

Of course, there is no way in this brief communication that I could even begin to recapitulate the arguments found in *CREATE THE STATE OF PALESTINE!* Nevertheless, this research paper has since become a public document and has also been published in several readily available sources.[1] Here I can only refer the reader to it for a full exposition of the position that the Palestinian people have the perfect right under international law to create the state of Palestine. Generally put, however, there are four elements constituent of a state: territory, population, government, and the capacity to enter into relations with other states. As I argued in my position paper, all

[1] *See* AM.-ARAB AFF., No. 25, Summer 1988, at 86; SCANDINAVIAN J. DEV. ALTERNATIVES, Nos. 2 and 3, June–September 1988, at 25; 4 PALESTINE Y.B. INT'L L. 15 (1987–88); THE FUTURE OF INTERNATIONAL LAW AND AMERICAN FOREIGN POLICY 135 (1989).

four characteristics have been satisfied by the newly proclaimed independent state of Palestine.

Indeed, as long ago as 1919, the Palestinian people were provisionally recognized as an independent nation by the League of Nations in League Covenant Article 22(4), as well as by the 1922 Mandate for Palestine that was awarded to Great Britain. This provisional recognition continues in effect until today because of the conservatory clause found in Article 80(1) of the United Nations Charter. Pursuant to the basic right of self-determination of peoples as recognized by UN Charter Article 1(2), as well as by the International Court of Justice in the *Namibia* and *Western Sahara* advisory opinions, the Palestinian people have proceeded to proclaim their own independent state in the land that they have continuously occupied for hundreds of years.

1. *Territory.* The territory of a state does not have to be fixed and determinate. For example, Israel does not have fixed and permanent borders (except most recently with respect to Egypt) and yet it is generally considered to be a state. Thus, the state of Palestine also does not have to have declared borders either. Rather, borders will be negotiated between the Government of Israel and the Government of Palestine. This is the same way peace negotiations would occur between any other two states/governments in dispute over the existence of their respective borders. To be sure, however, it is quite clear from reading the Palestinian Declaration of Independence and the attached Political Communiqué that the PLO contemplates that the new state of Palestine will consist essentially of what has been called the West Bank and Gaza Strip, together with its capital being East Jerusalem.

2. *Population.* In occupied Palestine, there lives the population of the Palestinian people; they have lived there forever, since time immemorial. They are the original inhabitants and occupants of this territory. They are fixed and determinate, and so they definitely constitute a distinguishable population. They have always been in possession of their land and are therefore entitled to create a state therein.

3. *Government.* During the course of his various public pronouncements in Europe during December 1988, Yasir Arafat stated that currently the PLO is serving as the provisional government of the state of Palestine. Acting in conjunction with the Unified Leadership of the Intifada, this provisional government already controls substantial sections of occupied Palestine, as well as the entire populace of occupied Palestine. It is thus already exercising effective control over large amounts of territory and people, and is providing basic administrative functions and social services to the Palestinian people living in occupied Palestine and abroad.[2] This is all that is required for there to be a fulfillment of this criterion for statehood under international law.

4. *The capacity to enter into international relations.* Over 114 states have already recognized the newly proclaimed state of Palestine, which is more than the 93 that maintain some form of diplomatic relations with Israel. Furthermore, on December 15, 1988, the United Nations General Assembly adopted Resolution 43/177, essentially recognizing the new state of Palestine and according it observer-state status throughout the United Nations Organization. That resolution was adopted by a vote of 104 in favor,

[2] *See, e.g.*, G. FULLER, THE WEST BANK OF ISRAEL: POINT OF NO RETURN? (1989).

the United States and Israel opposed, and 44 states abstaining. For reasons fully explained in my position paper, such General Assembly recognition of the new state of Palestine is constitutive, definitive and universally determinative.

The Palestinian uprising or *intifada* will continue until the Israeli Government is willing to sit down and negotiate an overall peace settlement with the PLO on the basis of a two-state solution. In this regard, the Palestine National Council has taken several steps in the Palestinian Declaration of Independence and in the Political Communiqué attached thereto in order to establish the framework necessary for negotiating a comprehensive peace settlement with Israel. First and foremost, the Declaration of Independence explicitly accepted the UN General Assembly's Partition Resolution 181 (II) of 1947. The significance of this acceptance by the Palestinian Declaration of Independence cannot be overemphasized. Prior thereto, from the perspective of the Palestinian people, the Partition Resolution had been deemed to be a criminal act that was perpetrated upon them by the United Nations. Today, the acceptance of the Partition Resolution in their actual Declaration of Independence itself signals a genuine desire by the Palestinian people to transcend the past forty years of history and now reach a historic accommodation with Israel on the basis of a two-state solution: the Declaration of Independence is the foundational document for the state of Palestine. It is definitive, determinative and irreversible.

Quite obviously, a remarkable opportunity for peace with justice for all has been created by the Palestinian Declaration of Independence, its attached Political Communiqué, and subsequent public statements made by Yasir Arafat acting in his official capacity as President of the new state of Palestine. What is needed now from the Bush administration is the same type of dynamic leadership and will for peace that was demonstrated by the Carter administration at Camp David over a decade ago. Failure by the Governments of the United States and Israel to seize this moment for peace will only make another general war in the Middle East an inevitability. I doubt very seriously that history will give any of us a second chance.

FRANCIS A. BOYLE
University of Illinois
College of Law

TO THE EDITOR IN CHIEF:

June 21, 1990

It seems to me that the title of the *Agora* essay by Professor Anthony D'Amato published in the April 1990 issue of the *Journal* (at p. 516), i.e., *The Invasion of Panama Was a Lawful Response to Tyranny,* would have been more accurate had it read "The Invasion of Panama Could Have Been a Lawful Response to Tyranny." The reason is to be found in the last sentence of paragraph 5 of section II (p. 522). This sentence refers to a deplorable characteristic of the operation, namely, that it was not carried out in such a way as to minimize civilian casualties. And the sentence clearly implies that this characteristic of the operation rendered it unlawful.

The underlying general question, which Professor D'Amato should have brought within the framework of his thesis that, under international law,