

A Procedural Guide to Palestinian Succession: The How of the Who

Nathan J. Brown and Vladimir Pran, *A Procedural Guide to Palestinian Succession: The How of the Who*, Carnegie Endowment for International Peace, 27 September 2022.

Gossip about Palestinian succession—who will take over Palestinian leader Mahmoud Abbas’s assorted job titles—is a staple of speculation among journalists, diplomats, and some Palestinians. Over the last year, the conversation has seemed to take a less speculative turn as a variety of longtime national leaders have been edged aside or have publicly broken with Abbas, the 87-year-old leader who serves as president of Palestine, president of the Palestinian National Authority, chair of the Executive Committee of the ruling Fatah movement, and chair of the Executive Committee of the Palestinian Liberation Organization.

Most of the gossip indeed focuses on the “who” question, with various names bandied about as Abbas’s successor. Hussein al-Sheikh’s name has recently risen to the top of the rumor mill. In this question-and-answer guide, we do not add our own guesses to such speculation. Instead, we provide a guide on how succession will be handled in terms of procedures. We will walk readers through some fairly complicated structures in the hope of providing a useful reference when succession issues actually play out.

In case Abbas vacates his leadership positions in the Palestinian National Authority, the Palestinian Liberation Organization, Fatah, and the State of Palestine, each of these organizations has a regulatory framework that addresses vacancy. These frameworks overlap considerably (and confusingly) in practice, but each are separate and legally distinct from each other.

HOW MUCH DO FORMAL PROCEDURES MATTER?

The choice between formal procedures and naked power politics is not either/or. The naked power politics has already begun. But it will likely be channeled through established procedures. And those procedures and structures matter.

First, they determine what role a successor (or set of successors) could succeed to. Because leadership positions have been combined and lines of authority are sometimes unclear, the rules can be a bit complicated—but the rules define the political prizes to be won and how to win them. They may ratify a choice made through other means (such as backroom deals, intimidation, or negotiation), but the best way to make such a choice stick is to use written procedures.

Second, because political struggles occur generally within established structures, it means that they are not happening in a lawless environment. Laws can have unintended and unexpected effects. Ignoring the procedural frameworks that define the leadership institutions can lead one to miss the constraints and advantages placed on these players. (One need not dig too far back to recall Hamas’s victory in 2006, which surprised those who had no appetite to understand the electoral rules that translated a narrow Hamas plurality into a strong parliamentary majority.)

IS THERE PRECEDENT FOR SUCCESSION BY THE RULES?

Yes, eighteen years ago when Yasser Arafat died. Rawhi Fattouh was sworn in as interim president and issued a decree that presidential elections be held, and as a result, Abbas was duly voted into office as president of the Palestinian National Authority. Fatah had nominated Abbas for the position in the authority, but it selected Farouk Kaddoumi as its own factional leader in accordance with its internal procedures. The Palestinian Liberation Organization’s Executive Committee, for its part, accepted Fatah’s nomination and selected Abbas to head the body.

But this doesn’t mean everything will go precisely by the rules. Political systems undergoing confusing transitions often follow the maxim “When all else fails, read the instructions,” simply because the clearest way to stake claims, coordinate actions, and negotiate is through the existing

rules. So that will likely be the default option for Palestinian political actors as they argue about a path.

But following the rules will not necessarily be the only option. First, sometimes the rules will be unclear or involve procedures that are broken (as we will explain later). Second, the level of popular despair and disengagement from national structures may be higher than in 2004, when the aftermath of the second intifada left many Palestinians demoralized but there was simultaneously a strong push for reforming Palestinian institutions. At that time, there was insistence from many quarters that rules be better designed and more faithfully followed; now, there seems to be a greater disengagement from official politics. So there may be less pressure (or less expectation) that those structures' rules be honored. Third, what remains of the Palestinian national movement is badly split between Hamas and Fatah—and those actors have failed for sixteen years to find anything sustainable to agree on.

Finally, elections have lost much of their credibility. The problem here is not lack of popular interest (as a procedurally sound election would probably attract large number of voters, and last year's elections for the Palestinian Legislative Council drew large numbers of registrants). Instead, suspicion about elections is strong among Palestinian leaders and important international actors (including the United States, Israel, and some European actors) who worry about a second Hamas victory (or even the implications of having Hamas compete). The legitimacy and definitiveness provided by elections might thus be denied any potential successor.

So it is possible that politics will not be completely contained within the procedural framework and that some political conflicts and/or agreements will be extrainstitutional. Still, the nature of intra-Palestinian conflicts and the potential resolution will likely be steered by the institutional framework to a significant degree.

WILL EACH BODY MAKE ITS SUCCESSION DECISION INDEPENDENTLY?

In Palestinian politics in the past, it has generally been the pattern for one leader to hold multiple positions. Even the exceptions (the interim presidency of Fattouh and the Fatah leadership of Kaddoumi) have not obscured the concentration of authority in the hands of a single figure. And indeed, Abbas replaced Kaddoumi as the head of Fatah in 2009.

There has been debate about whether this concentration of power is advisable. Critics see it as leading to authoritarianism and undermining accountability; they won a victory of sorts when the position of prime minister was created at the Palestinian National Authority in 2003. But that experience has not always been a happy one (as Abbas himself knows well, since he was the first occupant of that post and resigned after six months). When Ismail Haniyeh of Hamas took the position in 2006 during Abbas's presidency, the ultimate result was not cohabitation but a broken home. With a weak and divided national movement, some observers fear that dividing up authority will entrench disunity rather than lead to clarity of authority or consensus politics. The generation that has produced Palestine's two past national leaders (Arafat and Abbas) remember past bouts of disunity leading to harsh national defeats. As that generation passes from the scene, there are still those who see division of authorities as premature.

The debate will likely be settled less by abstract principles and more by practical politics. The inertia toward a dominant leader is strong. But it is certainly possible that one faction will win one position but be denied others. It may be that a new Palestinian National Authority president is selected but Fatah fails to overcome its internal rivalries and divisions or papers them over with collective leadership. Indeed, the Fatah movement is probably more deeply divided now than at any time in its history. Any new leader will find colleagues with strong local power bases.

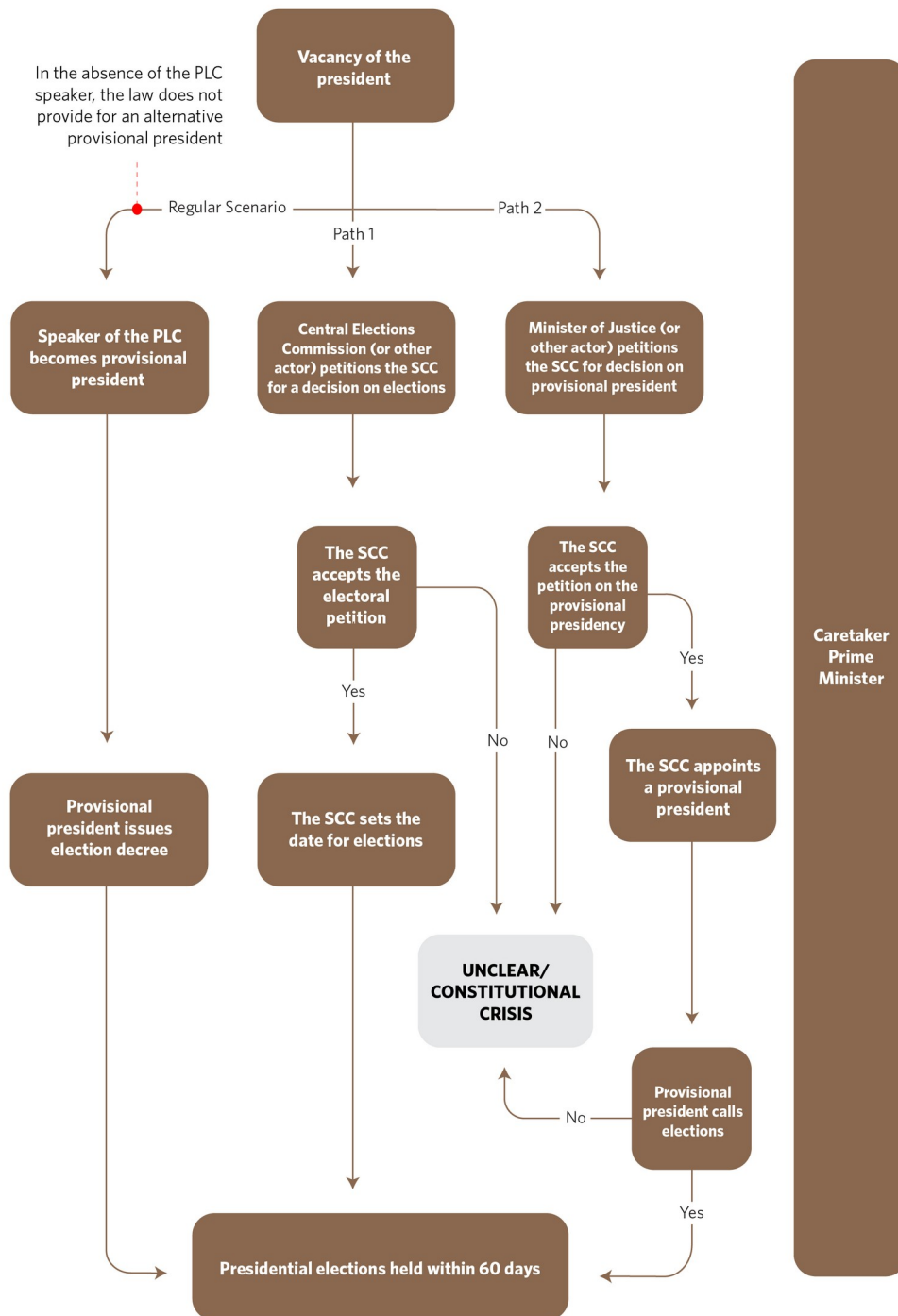
HOW WILL THE LEADERSHIP OF THE PALESTINIAN NATIONAL AUTHORITY BE DETERMINED?

This is probably the most complicated, even though the body has the most elaborate set of rules and structures (see figure 1) [next page].

FIGURE 1
Palestinian National Authority



The guiding framework for succession is the Basic Law of 2005 as well as the Electoral Law (which was last amended in 2021).



Elections could be indefinitely delayed for various reasons, such as difficulty settling polling arrangements in Gaza or East Jerusalem. This would leave the PNA without legitimate leadership. The lack of a single Fatah candidate might increase the likelihood of such a delay.

The Palestinian National Authority (PNA) is the body established pursuant to the Oslo Accords of the 1990s to administer the affairs of Palestinians living in the West Bank and Gaza, pending a final settlement between the Palestinian Liberation Organization and Israel. There is no longer any process to arrive at such a settlement, and many parts of the Oslo Accords simply no longer operate. But the PNA lives on. It split in 2006 in a brief Palestinian civil war; references to the PNA today generally refer to structures administering Palestinian affairs in West Bank cities and towns. (PNA structures in Gaza do operate but do not answer to the West Bank leadership.) In theory, the PNA has a president, a parliament, and a judiciary and operates in accordance with a constitutional framework (called the Basic Law). In practice, the parliament is suspended and the judiciary has become fairly subservient. Succession speculation focuses on the presidency for good reason.

In the case that the PNA presidency is vacant, the guiding framework for filling that vacancy is the Basic Law of 2005. And it is clear: the speaker of the PNA's parliament, the Palestinian Legislative Council (PLC), automatically assumes the position of provisional president for a maximum period of sixty days, during which elections should be held. And the Electoral Law (amended in 2021) adds an additional step: the decree calling for elections should be issued by the provisional president. This requirement is not explicitly mentioned in the Basic Law, but it is implied by assigning the power to the president to issue decrees.

But following these clear procedures confronts a severe problem: most of the implementing structures are broken. The presidency still exists, of course, but succession would take place in a presidential vacuum. The Central Elections Commission still exists and is indeed a fairly well-professionalized body—but it is hardly in a position to impose a political solution. Most fundamentally, the Basic and the Electoral Laws cannot address the most problematic reality on the ground: the PLC was dissolved by Abbas, and his decision was supported by the Supreme Constitutional Court (SCC). Hamas rejects that dissolution but is powerless to do much about it. So the potential procedural options are not set in stone. If they are to work, something will have to be jerry-rigged. And that jerry-rigging will likely be based on either a naked political power play or a negotiated agreement. If negotiations begin, then the first real question would be who to invite to the table: Will it be a deal among West Bank leaders? If so, which ones? Will there be an attempt to include Hamas? And the second significant question would be whether any elections would be possible to ratify a president.

The possibilities get quite complicated. Since Hamas rejects the dissolution of the PLC, it has claimed that the parliamentary speaker elected in 2006 (Aziz Dwaik) is still the legitimate provisional president in case of vacancy. However, it is unlikely that Hamas's claim would be supported by any other political actor, and the Central Elections Commission would not initiate the electoral process based on Dwaik's request. Hamas could request the SCC to rule on the legality of Dwaik's speakership, but Hamas rejected the legality of the SCC, which it sees (justifiably) as loyal to Abbas and Fatah. The best option for Hamas is likely to seek political agreement with Fatah, underlining its seriousness by threatening to prevent elections in Gaza. If there were Fatah leaders (or one of the contending successors) willing to bargain about bringing Hamas into the tent, this would be an occasion to do so. But all past attempts have failed. Those suggesting reconciliation within Fatah (such as Jibril Rajoub) have been sidelined, and it seems unlikely that a weak or transitional Fatah leader in the West Bank could pursue reconciliation with Hamas and bring others along.

In the case where the burden to decide on a provisional presidency is placed on the SCC, it is difficult to speculate what the court might conclude. The scenario under which the SCC could consider some degree of legitimacy for the PLC members while denying speakership to Dwaik seems unlikely. (For instance, some have claimed that if Dwaik's term as speaker has expired, the post is temporarily filled by the PLC's oldest member—with the result that Abd al-Fattah Hasan Dukhan of Hamas would be provisional president. While that may be a legally plausible argument,

it is politically unlikely—and almost unimaginable that the SCC would sanction such an outcome absent an almost equally unlikely elite consensus on such a makeshift solution.)

If the provisional presidency is not resolved, then would it be possible to move directly to elect a permanent one? There is first a legal question: who would issue the decree to call for elections if there were no provisional president? The Basic Law does not explicitly require the decree to be issued in the case of vacancy; the Electoral Law does. So the SCC might insist that the constitutional requirement to hold elections in this time frame supersedes the importance of who issues the decree. An indication on the court's potential ruling may be found in the 2018 decision to dissolve the PLC, as the SCC included a demand to have elections in six months. This could be a precedent, though it was a weak one (since parliamentary elections have been endlessly postponed). But it suggests a possible path where the SCC calls for elections without a presidential decree and potentially without a provisional president, with the prime minister (currently Mohammad Shtayyeh) acting as head of the caretaker government.

The issue of whether to proceed with elections without resolving the dispute over the provisional presidency and potentially without a decree is of crucial importance for the Central Elections Commission. The commission is unlikely to take initiative and proceed with organizing elections without a political and legal resolution. Because of that, it has two options. It can either wait for the resolution or it can demand a resolution at the SCC.

And it must be acknowledged that even if there is a provisional president, moving to elect a permanent successor will be difficult—even if most Palestinian institutional actors are on board. Hamas, dissident Fatah groups, and Israel (which controls movement and access) could all disrupt the process: the 2004 presidential and 2006 parliamentary elections were held only with strong domestic agreement and robust international support (and Israeli cooperation, however grudging in 2006).

There are some ways to navigate this legal and political thicket, but all are complicated, and most will likely be contested. The most likely outcome would be for Fatah to coalesce around a solution for the provisional president (or some substitute mechanism) and to allow that provisional figure to remain provisional—as so often happens in Palestinian politics—for a considerable time. If it did so in a way completely outside the PNA's legal framework, it would likely turn to the Palestinian Liberation Organization (PLO) for blessing—and in Palestinian constitutional terms, the PLO is often viewed as superior to the PNA. And if Fatah managed to navigate such an outcome, the SCC would likely chime in with a supportive ruling if needed.

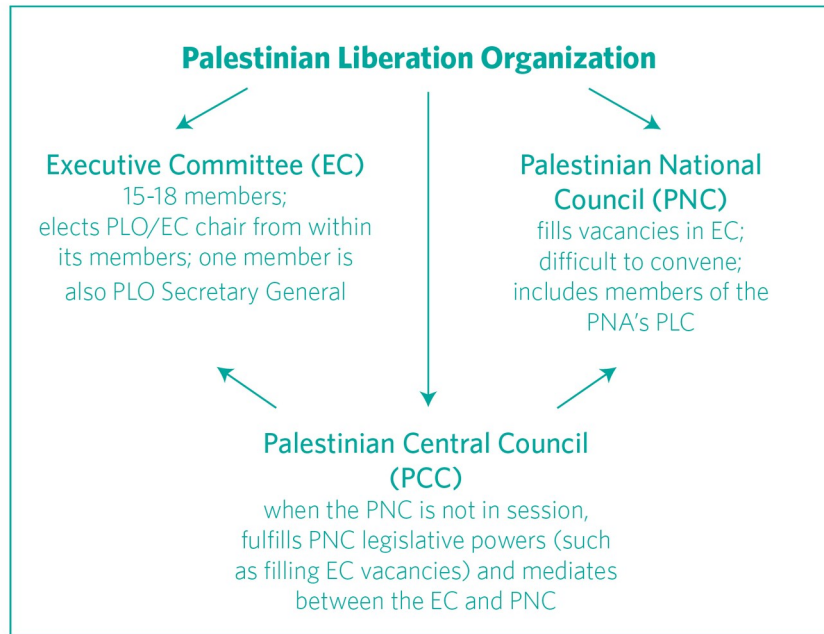
But all this suggests that Fatah must coalesce around a solution. For many years, observers of Palestinian political developments have speculated whether the president would establish a post of vice president, through a decree that would be sanctioned by the SCC. However, as of now, no steps have been taken to introduce a vice president. Another possibility is that a successor would be understood informally to be waiting in the wings. Indeed, it is precisely such a possibility that explains much of the jockeying now, as various figures present themselves as the logical or inevitable candidate.

HOW WILL THE PALESTINIAN LIBERATION ORGANIZATION DETERMINE ITS LEADERSHIP?

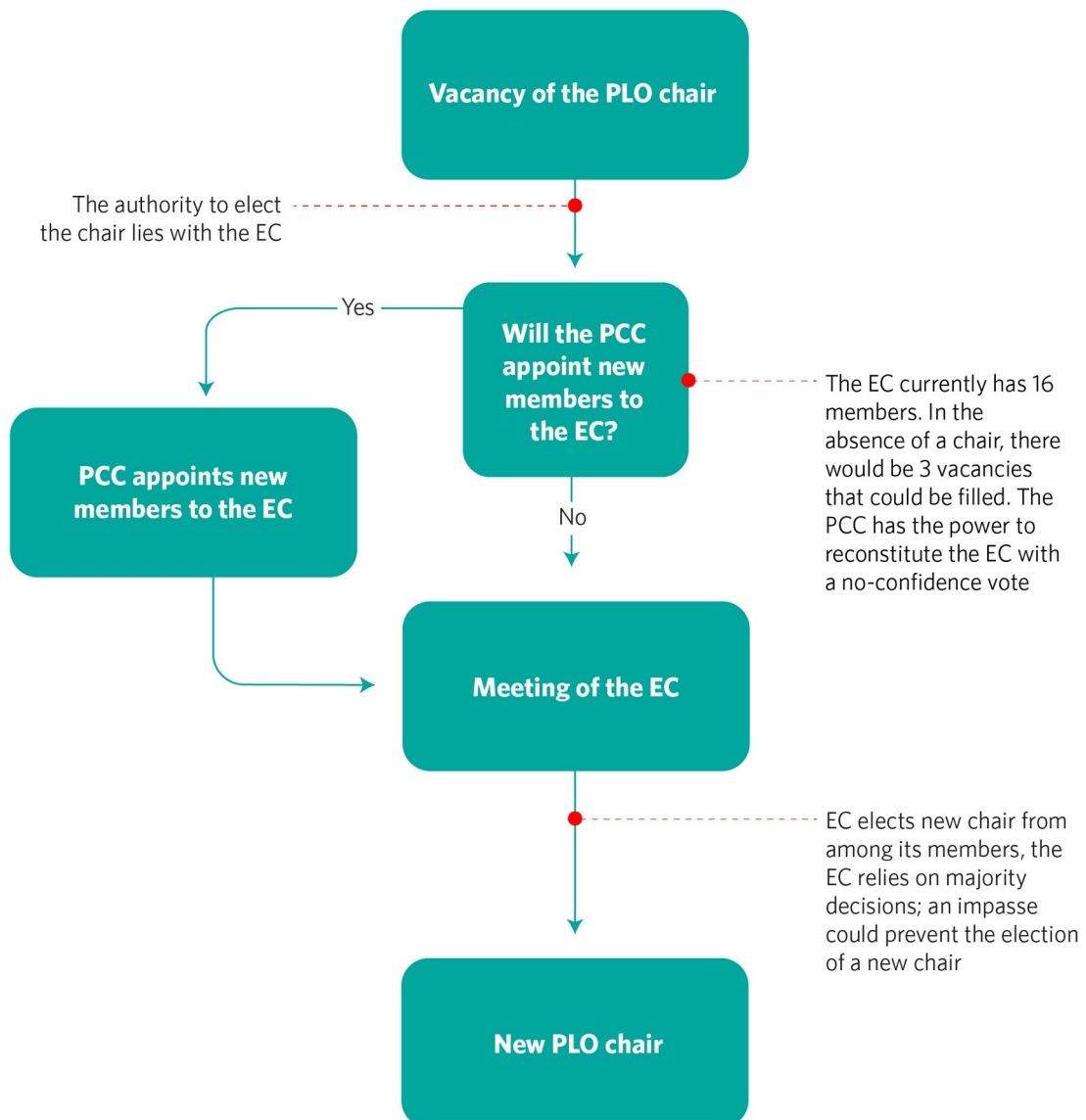
The PLO is the body that represents all Palestinians everywhere. It has done so internationally through diplomacy. And in Palestinian constitutional theory, it is the reference for all other structures, including the PNA. (Hamas insists that it belongs inside the PLO but has never been invited on terms it can accept.) But since the creation of the PNA, many PLO structures have withered. It remains an important national umbrella, especially at a symbolic level.

The PLO has its own long-standing statute, amended most recently in 1991. The Executive Committee (EC) plays the largest role, but the Palestinian Central Council (PCC) could also become involved (see figure 2) [next page].

FIGURE 2
Palestinian Liberation Organization



The guiding framework for succession is the statute of the PLO. Unfortunately, it does not explicitly address the vacancy of the chair. There is no institution of provisional chair.



EC members are selected by the Palestinian National Council (PNC); the EC elects its own chair. Implicitly it is thus charged with selecting a chair if there is a vacancy (though there is no explicit provision nor any mention of an interim), but it can only turn to its own members. If the EC has vacancies, the statute designates the PNC to fill them. Because of the difficulties in convening the full PNC, the PCC was established in 1973 to function as an intermediary body between the PNC and the EC. In 2018, the PNC formally transferred its legislative powers to the PCC, including the power to elect the EC members. The PCC meetings are chaired by the PNC speaker (Fattouh). The PCC was in the past convened in Amman, Jordan, but meetings are now held in Ramallah in the West Bank.

The statute does not regulate the sequence of events in case of vacancy, and there is nothing in the statute that would prohibit an incomplete EC to convene to elect its new chair. Further, there are no rules on the process of nomination and voting for the chair. The statute requires a quorum of two-thirds of the EC's members and stipulates that decisions are taken by a majority vote of the members present, which implies a simple not an absolute majority. In the case of several candidates, it is possible that a one-vote advantage means procedural victory, but a politically challenging one. If the winning candidate has fewer votes than all the others combined, there are no provisions for a runoff.

The current EC has sixteen members, while the statute allows for fifteen to eighteen members. It is unclear whether, in the case of a chair vacancy, the PCC would act to replace all the vacant posts in the EC before the EC elects the new chair. By filling out the vacant posts, the PCC could influence the political makeup of the EC. It actually could get even more ambitious and shake up the EC by withdrawing confidence from the EC, thus forcing a round of elections for all the seats in the EC.

The position of the PLO Secretary General (currently held by Hussein al-Sheikh) is not addressed in the statute, and the position has no special role in case of vacancy that would be different from the role of any other EC member. The only senior Fatah members of the PCC are Abbas, al-Sheikh, and Azzam al-Ahmad. According to the PNA's Basic Law, all members of the PNA's PLC are automatically members of the PLO PNC, which includes seventy-four members of Hamas. However, this is unlikely to be relevant for succession, as the PNC powers are already transferred to the PCC where Hamas is not represented. (And, with the dissolution of the PLC, Hamas parliamentarians might not be allowed to take their seats in the PNC.) In 2004, Abbas, then the EC member in the position of Secretary General, was elected as the PLO Chair by the EC. Announcement of his election was made by the PNC speaker (Salim Zanoun), but it is unclear what role, if any, the PNC played.

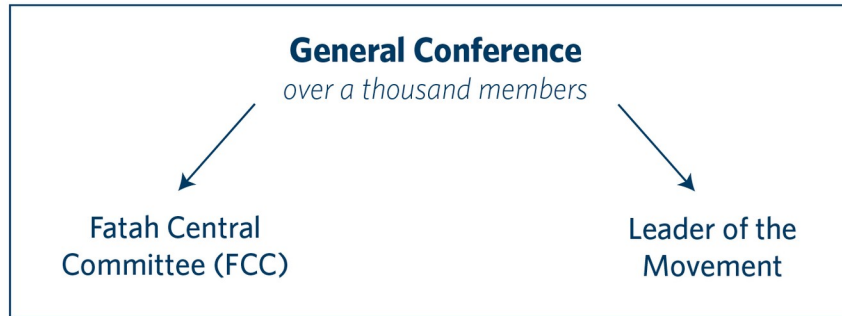
WHAT RULES SHAPE WHO WILL LEAD FATAH?

Fatah is, in one sense, the governing party of the PNA. But it does not present itself solely as an electoral party but as a movement. Its leaders describe it as the embodiment of the overall Palestinian national movement—willing to work with other factions but proud of its heritage as leader of what it calls the Palestinian revolution.

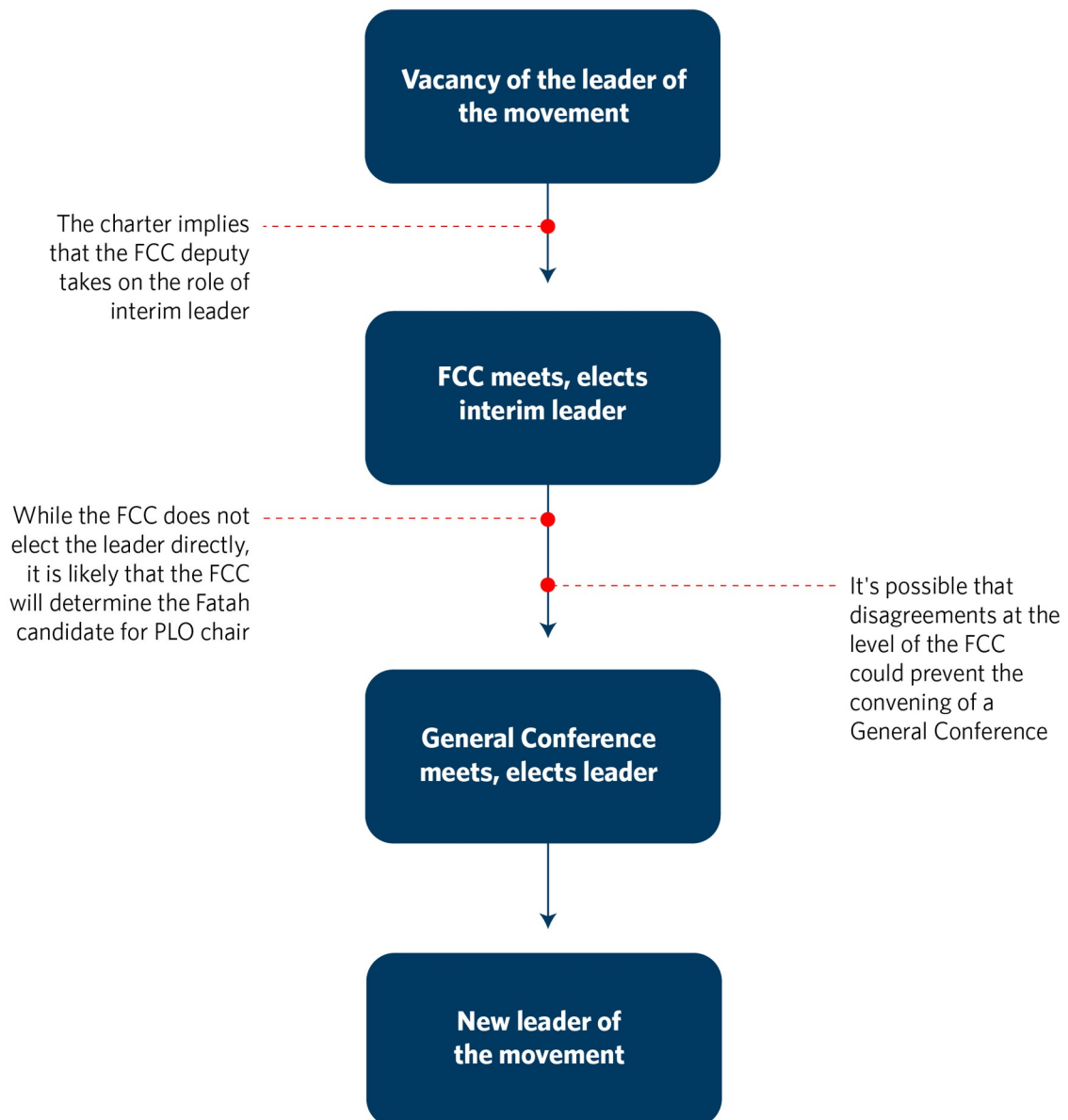
The framework in case of a vacancy for the leader of the Fatah movement is the charter, the current version of which was adopted in 2009 (see figure 3) [next page].

The twenty-one members of the Fatah Central Committee (FCC) are elected by the General Conference (a body that meets every few years with over a thousand members). The leader of the movement is also elected directly by the General Conference, not by the FCC. Despite that, in case of vacancy, the charter does not require direct elections in a certain time frame. Instead, it implies that the successor is the deputy chair (currently Mahmoud Aloul) by designating them to carry out the movement leader's tasks in case of absence. The secretary general of Fatah does not have a role in succession. Thus, the deputy chair becomes interim chair until the next General Conference. In 2004, Kaddoumi, then secretary of the FCC, acted as interim chair of the FCC until election of the new chair, Abbas, in 2009.

FIGURE 3
Fatah



**The guiding framework for succession in the Fatah movement is its charter.
The framework is relatively clear on issues of succession.**



WHO WILL HEAD THE STATE OF PALESTINE?

The State of Palestine has been declared several times. In 2012, it was recognized by the United Nations as a nonmember observer state. Since that time, Palestinian national institutions have made clear that they prefer to be considered as part of that state; the term PNA (and PNA president) has fallen into disfavor, and Abbas prefers to be addressed as—and issues documents with the title of—president of the State of Palestine.

Of course, PNA institutions still exist, and even if they regard themselves as part of a sovereign state, some important international actors (most crucially Israel and the United States) refuse to deal with the State of Palestine. All sorts of workarounds have to be devised when diplomacy becomes necessary (including for the United States, which has a series of strictures over dealings with the PLO). The position of the State of Palestine is not only complicated internationally; it is also confusing domestically. What is the legal relationship between the PLO and the State of Palestine? Is the Basic Law now the constitution of a state, or is it still a document to guide the PNA (a body rarely referred to officially anymore)? When posed these questions, Palestinian officials agree they are important—but they do not have answers yet.

But the pull of the symbolism of statehood is strong enough—and the State of Palestine has enough international recognition and diplomatic interlocutors—that the position of its president is not a trivial one. The framework for appointing the president of the State of Palestine is the decision of the PLO's Palestinian Central Committee (PCC), presumably because the State of Palestine does not yet have its own distinct constitutional structure. Yet PCC decisions in this context are not a regulatory framework in a classical sense but are instead only acts of appointment. In 2008, Abbas, then president of the PNA, was appointed by the PCC as the president of the State of Palestine.

In procedural terms, then, the State of Palestine is still appended to the PLO (though eventually it may subsume the PLO in some way); institutionally, it seems largely coterminous with the PNA. It seems likely that any successor to national leadership will need PLO blessing—in the form of PCC designation as president of the state—in order to claim authority domestically and internationally.

*Carnegie does not take institutional positions on public policy issues; the views represented herein are those of the author(s) and do not necessarily reflect the views of Carnegie, its staff, or its trustees.

From:

<https://carnegieendowment.org/2022/09/27/procedural-guide-to-palestinian-succession-how-of-who-pub-88020>