

# A PALESTINIAN STATE IN THE UNITED NATIONS?

## PREREQUISITES, POSITIONS AND EXPECTATIONS BEFORE THE MEETING OF THE UN GENERAL ASSEMBLY

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The Palestinians are planning to apply to the United Nations (UN) in September 2011 for membership and for recognition as a state. According to Palestinian Authority President Mahmoud Abbas, negotiations with Israel to try to find a solution to their final status however still are a priority. Should these negotiations continue to fail to bear fruit then acceptance by the United Nations is the only way for the Palestinians to cement their right to live in freedom in the remaining 22 per cent of what was once their historical homeland. The Palestinians feel they have waited too long on the back of empty promises and that now is the time for them to move the conflict away from the purely political international stage and into the legal arena. Abbas claims they have been negotiating with the Israelis for 20 years and are still no nearer to their goal of having their own Palestinian state.<sup>1</sup> As a result, the Palestinians no longer have a lot of faith in the peace negotiations, which ground to a halt in September 2010. There have been repeated unsuccessful attempts to get everybody back to the negotiating table. The latest breakdown in the talks was due to Israel's settlement policy and its insistence on continuing to build new settlements in the West Bank, despite renewed pressure from the Americans and Europe.

The history of the Middle East conflict has shown the Palestinians that neither negotiations nor peaceful or violent resistance have been able to bring them their own state.

1 | Mahmoud Abbas, "The Long Overdue Palestinian State", *New York Times*, Op-Ed Contributors, May 16, 2011, <http://nytimes.com/2011/05/17/opinion/17abbas.html> (accessed July 14, 2011).



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Now they are trying to go down the route of international law. It remains to be seen whether this route will bring them any nearer to their goal.

In the context of the Palestinian application to the United Nations there are three main questions which are crucial to the political debate:

1. What legal status do the Palestinian territories have at present in terms of statehood?
2. What are likely to be the legal consequences of an application to be a member of the United Nations?
3. What do the Palestinians have to gain from taking this step?

### **THE POLITICAL BACKGROUND**

The whole of the Middle East has been in turmoil since the beginning of 2011. Popular uprisings in countries like Tunisia, Egypt, Libya and Bahrain have led to political change to greater or lesser extents. These events have also had an influence on the expectations of the Palestinians and increased the pressure on both their own government and that of Israel.

Although there have so far been no major demonstrations or protests, the effects of the "Arab Spring" have been felt in the Palestinian territories. This was clear on Nakba Day (day of the catastrophe) when the Palestinians commemorate the displacement of around 700,000 Palestinians from the territory of the British Mandate before the creation of the State of Israel on May 14, 1948. Calls were made via a Facebook page for there to be a third Palestinian intifada on this day. Palestinian refugees in the neighbouring countries of Lebanon, Syria, Jordan and Egypt were urged to breach the borders with Israel and return to their "homeland". Protests did in fact take place, particularly on the border with Syria, where more than a hundred refugees managed to breach the Israeli border. There were similar scenes on June 5, 2011, the day when Palestinians commemorate the outbreak of the Six-Day War in 1967. During the protests 27 Palestinians were shot dead and hundreds injured.

In the Palestinian territories themselves relatively few Palestinians were actually motivated to take to the streets. The people have largely lost their belief that it is possible to bring about political change by means of non-violent protest. This lack of enthusiasm may be a result of the unsuccessful fight that they have for so long been waging against the occupation or of the fact that the Palestinians really don't know what they should be demonstrating against – their own government or the Israeli occupation.

**The people in the Palestinian territories have largely lost their belief that it is possible to bring about political change by means of non-violent protest.**

The level of anticipation is intensifying as September 2011 draws closer. Both Palestinians and the international community have increasingly high expectations of the Palestinian government in light of Fayyad's two-year plan<sup>2</sup> which expires in August and the announcement that the government will apply for membership of the United Nations and for recognition of the State of Palestine. As these expectations grow, so too does the pressure on the Palestinian government to make progress in setting up public institutions.

And indeed, they seem to have enjoyed a measure of success here as the United Nations and the World Bank have both attested to the fact that the National Authority is now in a position to govern a stable Palestinian state. According to a report by Robert Serry, the UN Special Coordinator for the Middle East, published on April 12, 2011, "the Palestinian National Authority is functioning like a state in all areas such as health, education, energy, justice and security".<sup>3</sup> The World Bank announced at the beginning of April that the Palestinian Leadership had improved their financial administration and that the health and education systems were now at a similar level to those

2 | Palestinian National Authority (ed.), *Palestine. Ending the Occupation, Establishing the State. Program of the Thirteenth Government* (August 2009). This document presents the programme of the thirteenth government of the Palestinian National Authority. It sets out the national goals and government plans with the aim of setting up strong public institutions and giving its citizens better access to services.

3 | Office Of The United Nations Special Coordinator for the Middle East Peace Process (ed.), *Palestinian State-Building: A Decisive Period* (Brussels: Ad Hoc Liaison Committee Meeting, April 2011).

of other countries in the region.<sup>4</sup> This has generally been seen as an important step by the Palestinian National Authority on the way to becoming an independent state.

**There seem to be more countries willing to recognise the Palestinian territories as an independent state than was the case at the time of the 1988 Declaration of Independence.**

Now it also seems that there are more countries willing to recognise the Palestinian territories as an independent state than was the case at the time of the 1988 Declaration of Independence. There are various reasons for this: firstly, the international community generally supports the idea of a two-state solution – for some time now the European Union has also been helping with the establishment of public institutions in the Palestinian areas by providing both financial and technical assistance. secondly, the political idea of founding a state has been strengthened by the establishment of state institutions; and thirdly trust in Israel’s willingness to compromise was shattered after the “Palestine leaks” revealed how the Olmert government had rejected numerous proposals by the PLO during 2008 and 2009.<sup>5</sup>

In May Fatah and Hamas signed a reconciliation agreement to form a joint caretaker government until the next elections are held. The transitional government is to be made up of independent technocrats and have the task of preparing for the elections and bringing Gaza into line with the West Bank. However, at the time of writing the two parties had still not reached agreement as to who should lead this transitional government.

As part of this reconciliation agreement, the local elections which were planned for July have been postponed to October and the parliamentary elections have been pushed back to next year in order to make it possible for the Gaza Strip to take part. Before the reconciliation with Fatah, the Hamas government had refused to participate in local, parliamentary and presidential elections in the Gaza Strip.

4 | World Bank (ed.), *Building the Palestinian State: Sustaining Growth, Institutions, and Service Delivery*, Economic Monitoring Report to the Ad Hoc Liaison Committee (Brussels: Ad Hoc Liaison Committee Meeting, April 2011).

5 | Cf. Elizabeth Sellwood, *State-building and political change: Options for Palestine 2011*, Center on International Cooperation, New York University, March 2011, 11.

## **THE STATUS QUO OF THE PALESTINIAN TERRITORIES – STATEHOOD IN ACCORDANCE WITH INTERNATIONAL LAW**

International law has various theories about the attributes of statehood, and as a result there are widely-differing opinions among experts as to whether Palestine possesses these attributes. The declarative theory recognises the statehood of a territorial unit as long as the normative conditions of the Montevideo Convention<sup>6</sup> are met. In contrast, the constitutive theory requires other countries to recognise the statehood of this territorial unit. There are also other arguments which are based on historical considerations.

The question of whether Palestine meets the requirements for statehood has once again been widely debated after the Palestinians lodged a motion with the International Criminal Court. After the 2008/2009 war in Gaza the Palestinian National Authority lodged a declaration under Article 12 (3) of the Rome Statute which allows states not party to the Statute to accept the Court's jurisdiction on international crimes committed in their territories. In this way the Palestinians were hoping to exact punishment on Israel for war crimes. The Palestinians' declaration triggered a debate between legal experts about whether Palestine is a state or whether it can at least be treated as one for the purposes of the Rome Statute.<sup>7</sup> To date there has still been no verdict by the Criminal Court on the question of Palestine's statehood.

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6 | The Montevideo Convention was signed by 19 American states on December 26, 1933. It covers the rights and duties of states.

7 | Cf. International Criminal Court, "Situation in Palestine," <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Comm+and+Ref/Palestine> (accessed July 14, 2011).

### **Attributes of Statehood as Defined by the Declarative Theory**

Article 3 paragraph 1 of the Montevideo Convention states that “the political existence of the state is independent of recognition by the other states.” This is generally understood to mean that the sovereignty of a state should be declarative, i.e. based on purely normative principles and independent of political recognition by other states. If this declarative theory of statehood is to be followed, then four basic criteria need to be present, as set out in the 1933 Convention. These are:

**Following the Montevideo Convention, the sovereignty of a state should be declarative. Therefore, a permanent population, a defined territory, a government and the capacity to enter into relations with other states are required.**

- a) A permanent population: the criterion of a permanent population presents no problems and is unchallenged in the case of the Palestinian territories.
- b) A defined territory: here expert opinions vary widely. The Palestinian territories are divided into the West Bank, the Gaza Strip and East Jerusalem and the border between the Palestinian territories and Israel is disputed.

This has raised questions about whether this fragmentation and indeterminate borders undermine the required conditions for territorial integrity.<sup>8</sup> In answer to this it has been pointed out that the territorial integrity of Palestine has been recognised and confirmed in UN Security Council resolutions and by the General Assembly and International Court of Justice.<sup>9</sup> The limited level of control over the territories does not compromise its integrity because this is due to a foreign occupation. So it is argued that the fragmentation of the territories and the lack of defined borders are not relevant criteria.<sup>10</sup>

8 | Cf. Robert Weston Ash, “Is Palestine A State? A Response to Professor John Quigleys Article ‘The Palestine Declaration to the International Criminal Court: The Statehood Issue,’” *Rutgers Law Record*, 36, 2009.

9 | Cf. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion), *ICJ Report* 136, July 9, 2004, articles 87-88.

10 | Cf. Alain Pellet, “The Palestinian Declaration and the Jurisdiction of the International Criminal Court,” *Journal of International Criminal Justice* 2010, 8 (4), 981-999; John Quigley, *Rutgers Law Record*, Vol. 35, 2009.

Exclaves and fragmented territories such as Gaza, East Jerusalem and the West Bank also exist in other regions and states such as Alaska, Gibraltar and Kaliningrad. It is difficult to use the lack of defined borders between the Palestinian territories and Israel as an argument against the criterion of a defined territory when the same undefined border also applies to Israel, where it is not considered a problem.

- c) A government: it is debatable whether, in terms of international law, the Palestinian government really exercises sufficient authority over its territories. The problem is that the Palestinians only have full control over parts of their territories. In the Oslo Accords only certain sections of the Palestinian territories were granted limited autonomy,<sup>11</sup> while 83 per cent of the West Bank is under the total or partial control of Israel.<sup>12</sup> After the evacuation of the Gaza Strip and the withdrawal of the Israeli military in 2005 the control of external security still remained with Israel. However, it is disputed whether it is absolutely necessary for the government to have effective control over its territories or whether the existence of a normative government is sufficient.

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Supporters of Palestinian statehood argue that the word "government" is not qualified by the adjective "effective" in the Montevideo Convention. Instead it points to a new state practice where territorial units can be recognised as states even if they do not exercise full authority at the time this recognition is granted. This is the case with the Democratic Republic of Congo, Bosnia and Herzegovina, East Timor, Kosovo and Guinea-Bissau. At the same time other territorial units have been refused international recognition despite exercising governmental authority because they lacked the right to self-determination (as happened in Rhodesia). Therefore it has been proposed

11 | Cf. "The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip" (Oslo Accords), <http://mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/THE+ISRAELI-PALESTINIAN+INTERIM+AGREEMENT> (accessed June 27, 2011).

12 | United Nations Office for the Coordination of Humanitarian Affairs (OCHA) (ed.), "Restrictions on Palestinian Access to the West Bank," June 2010.

that the internationally-recognised right to self-determination should be applied to balance out the lack of an effective government.<sup>13</sup>

The right to self-determination is an inalienable right which applies equally to all peoples and which is set out in Article 1 Paragraph 2 of the Charter of the United Nations. This right has been granted to the Palestinians in a series of UN resolutions.<sup>14</sup>

It is also argued that Palestine's attributes of statehood should not depend on the wishes of Israel, as an occupying force cannot affect a government's sovereignty. This is countered by the argument that even before the occupation the West Bank and Gaza Strip were not sovereign, so the assumption that an occupying force has no effect on sovereignty is not applicable in this case.

- d) A capacity to enter into relations with other states: there is disagreement about whether Palestine has this capacity. On the one hand it is argued that the Palestinians have signed and ratified a range of international agreements such as the Arab Charter on Human Rights and that the Palestinian government is holding talks with other states. On the other hand the argument is that the Oslo Accords excluded certain basic functions of statehood from the Palestinian government's area of responsibility, such as the decision on the establishment of Palestinian diplomatic missions abroad or international diplomatic missions in the West Bank and Gaza Strip.<sup>15</sup>

### **Recognition by other States**

This purely declarative theory has, however, been widely questioned. The fact that a country meets the requirements of the Montevideo Convention is meaningless if it is not internationally recognised. The "constitutive theory of sovereignty" requires recognition by other states as a prerequisite for statehood.

13 | Cf. Hans Köchler, "The Palestine Problem in the Framework of International Law," *I.P.O. Research Papers*.

14 | Cf. A/RES/58/163, December 22, 2003.

15 | Annex II, §3 (b) Oslo Accords, Article IX (5)(a), Oslo II.

Reference is often made to the fact that Palestine has already been recognised by a number of states (currently 117), is a member of many different international organisations and has diplomatic status in various different countries.<sup>16</sup> Riyad al-Malki, Foreign Minister of the Palestinian National Authority, believes that by September 2011 a total of 150 states will have recognised Palestine on the basis of the 1967 borders.<sup>17</sup> And the fact that the General Assembly recognised the Declaration of Independence by the Palestinian National Council of November 15, 1988 in Resolution 43/177 is seen as further evidence of recognition of the State.<sup>18</sup> Only the USA and Israel had voted against recognition.

The opposing argument is that there is still a significant number of states within the international community which have not granted their recognition. Supporters of this view claim that it is also important that the territorial entity in question actually feels ready to claim statehood, but that the Palestinian National Authority is not yet convinced of its own statehood. Instead it uses the concept of statehood as something it hopes to achieve in the future.<sup>19</sup>

**There is still a significant number of states which have not granted their recognition. They claim that the Palestinian National Authority is not yet convinced of its own statehood.**

These arguments have held some sway over the International Criminal Court, but may not be so persuasive in future, as the Palestinians are indeed trying to have their status changed through their application to the United Nations for acceptance and recognition.

### **Historical Considerations**

Further arguments for and against Palestinian statehood are based on historical considerations. It has been argued that

16 | Denmark, France, Ireland, Italy, Norway, Portugal, Spain and the United Kingdom have raised the status of the Palestinian General Delegation to diplomatic missions and embassies.

17 | Cf. Eliot Levy, "PA: 150 states to recognize Palestine by Sept.," *Ynet.news.com*, March 3, 2011. <http://www.ynetnews.com/articles/0,7340,L-4036984,00.html> (accessed July 14, 2011).

18 | United Nations General Assembly (ed.), *Question of Palestine*, A/RES/43/177 (December 15, 1988), background paper for the 62<sup>nd</sup> United Nations General Assembly, <http://un.org/en/ga/62/plenary/palestine/bkg.shtml> (accessed July 14, 2011).

19 | Cf. Weston Ash, "Is Palestine A State?", n. 8.

the State of Palestine has been a sovereign state since the end of the Ottoman Empire. During the subsequent British Mandate Palestine was run in accordance with Article 22 of the Versailles Treaty under a class A mandate, a category that was intended for independent nations. In Article 22 of the 1919 treaty it states: "Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory." At this time Palestinians were also given their own nationality and passports for the first time. Their sovereignty was confirmed in the 1947 resolution of the UN General Assembly that established the partitioning of the historical Palestine and which envisaged the setting up of two individual states.<sup>20</sup> The 1988 Declaration of Independence was therefore declared on behalf of the state that had already been formed in 1948. Others argue that a provisional recognition of sovereignty, as came about through Article 22 of the Versailles Treaty, does not necessarily mean that Palestine should be seen as a state today.<sup>21</sup>

### **A STATE OR NOT A STATE?**

The complexity of the discussions as to whether Palestine is a state or not a state is due to the fact that there is no relevant international regulatory framework under which

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the issue of statehood can be dealt with in its entirety. It is generally recognised that neither the fulfilment of the requirements of the Montevideo Convention nor the many common theories of recognition by other states can definitively settle the issue of the statehood of a territorial unit. Neither the fulfilment of the normative requirements nor recognition as a state can in themselves create a new state. In reality the question of statehood seems to revolve more around how other states actually

20 | John Quigley, "The Palestine Declaration to the International Criminal Court: The Statehood Issue," *Rutgers Law Record*, 35, 2009.

21 | Cf. Weston Ash, "Is Palestine A State?", n. 8.

behave towards a particular territorial unit.<sup>22</sup> This includes acceptance in international organisations (such as the United Nations), diplomatic recognition and being party to international agreements. James Crawford argues that while international recognition is important and can help to strengthen the status of a territorial unit, these days the founding of a state is more a question of law and effectiveness, such as the ability of a state to carry out the functions and take on the responsibilities which are linked to statehood.<sup>23</sup> In short, if you act like a state and are treated like a state, then you are a state.

### **THE ROAD TO THE UNITED NATIONS – POTENTIAL OUTCOMES AND THEIR CONSEQUENCES**

The President of the Palestinian National Authority, Mahmoud Abbas, wrote in the *New York Times* that “this September, at the United Nations General Assembly, we will request international recognition of the State of Palestine on the 1967 border and that our state be admitted as a full member of the United Nations.”<sup>24</sup> Prior to this statement the exact strategy of the Palestinians in their approach to the United Nations had not been publicly stated. However, President Abbas’ words lead us to assume that the Palestinians are following two parallel courses of action, namely international recognition as a state and acceptance as a member of the United Nations.

The United Nations is a political organisation and not a certification body and as such it has no authority to recognise states. New states can only apply to the United Nations for membership, but recognition must come from other states and governments.<sup>25</sup> As such, membership of the United Nations can only really be seen as a strong indicator for statehood. However the Palestinians seem to be adopting

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22 | Cf. Jean d’Asprement, “Kosovo and International Law: A Divided Legal Scholarship”.

23 | Cf. James Crawford, *The Creation of States in International Law*, Oxford University Press, Oxford, 2006, 421 et sqq.

24 | Cf. Abbas, “The Long Overdue Palestinian State,” n. 1.

25 | United Nations Public Inquiries Unit (ed.), “Can a new State or Government be recognized by the UN? How does a country become a member of the UN?”, <http://un.org/geninfo/faq/factsheets/factsheets.htm> (accessed July 14, 2011).

a strategy of using the opening plenary session of the General Assembly to achieve a "collective recognition" of the Palestinian State.

**Should membership of the UN be rejected, the Palestinian tactics seem to be to try to obtain as many recognitions as possible, which is an alternative way to achieve statehood.**

Joseph Deiss, President of the 65<sup>th</sup> General Assembly of the United Nations stressed the difference between UN membership and recognition as a state in a press conference on May 27, 2011. Should membership of the UN be rejected, the Palestinian tactics seem to be to try to obtain as many recognitions as possible, which is an alternative way to achieve statehood.<sup>26</sup> If the Palestinians do apply for membership, then the General Assembly will vote on the application during their 66<sup>th</sup> session on September 13, 2011.

The acceptance of new members of the United Nations is covered by Chapter II, Article 4 of the United Nations Charter (UN Charter). According to this, membership is open to all peace-loving states which accept the obligations contained in the Charter and which are able and willing to carry out these obligations. The acceptance procedure starts with a membership application being sent to the General Secretary. The Security Council then checks to make sure that the requirements for acceptance laid down in Article 4 have been met. In addition to the political issues, the focus will be on whether Palestine fulfils the criteria as a peace-loving state. This will be decided by a specially convened Security Council committee, which will have to deliver its report to the Security Council by August 10, 2011.

On August 20, 2011 the Security Council will then deliberate on the Palestinian application and make its recommendation to the General Assembly. If the Security Council believes that the requirements for acceptance have been met it will give a positive recommendation to the General Assembly. This requires nine votes in favour and no veto by any of the permanent members of the Council. Only then can the General Assembly put it to a vote. A two-thirds majority of the members present and voting would result

26 | Cf. Associated Press, "Top UN official: U.S. veto would block vote on Palestinian statehood," *Haaretz.com*, May 27, 2011, <http://haaretz.com/news/1.364506> (accessed June 27, 2011).

in the State of Palestine being accepted as a member. If the Security Council does make a positive recommendation then the required two-thirds majority of 128 of the 192 votes in the General Assembly is highly likely to be achieved. So far 117 UN members have recognised Palestine as a state. In Ramallah they are confident that by September this number will be well over the required 128 states.<sup>27</sup>

**If the Security Council does make a positive recommendation then the required two-thirds majority in the General Assembly is highly likely to be achieved.**

However if the Security Council does not make a positive recommendation, which at the moment seems more likely, given that the Americans will probably exercise their veto, then there will be no vote on Palestine's membership in the General Assembly.

In recent weeks there has been much discussion amongst various legal experts about whether, in the event of there being no recommendation by the Security Council, the Palestinians could take advantage of the Uniting for Peace process to ensure that the General Assembly does in fact make a decision on membership. The Uniting for Peace Resolution (No. 377) was passed by the General Assembly of the United Nations on November 3, 1950. During the Korean War the USSR boycotted the United Nations due to disagreements within the Security Council. In absence of the USSR North Korea was declared the aggressor. In order to get round a later Soviet veto the General Assembly was given the authority, against the prevailing spirit of the UN Charter, to recommend the defence of South Korea using peace-keeping measures and force. The Security Council was effectively by-passed. It is, however, highly unlikely that this kind of strategy could be successfully used by the Palestinians as part of their application for membership.

On March 3, 1950 the International Court of Justice (ICJ) gave an advisory opinion on the competencies of the General Assembly for the admission of a state to the United Nation. It stated "that to hold that the General Assembly has the power to admit a State to membership in the absence of a recommendation by the Security Council

27 | Felice Friedson, "Palestinian FM: Statehood by September," *Ynetnews.com*, February 23, 2011, <http://www.ynetnews.com/articles/0,7340,L-4032516,00.html> (accessed June 27, 2011).

would be to deprive the Security Council of an important power which has been entrusted to it by the Charter." The International Court of Justice was of the opinion that "the admission of a State to membership in the United Nations, pursuant to Paragraph 2 of Article 4 of the Charter, cannot be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission, by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend."<sup>28</sup>

President of the General Assembly Deiss also confirmed during the press conference that there would be no possibility for the Palestinians to obtain United Nations membership if America or another permanent member of the UN Security Council were to use its veto.<sup>29</sup> We can therefore assume that should the Palestinians attempt to circumvent the lack of a recommendation by the Security Council by using the Uniting for Peace process, then the principles established by the ICJ would still apply. A decision by the General Assembly on Palestine's membership to the United Nations, without a recommendation from the Security Council, would mean circumventing Article 4 Paragraph 2 of the United Nations Charter.

However this session of the General Assembly may still have a positive outcome for the Palestinians in terms of bringing their goal of recognition by the international community a step nearer.

While the General Assembly cannot admit a state into the United Nations without a recommendation from the Security Council it can decide on the status of permanent observers at the United Nations. While this is not in fact laid out in the Charter, it has since become standard practice.<sup>30</sup>

28 | Cf. International Court of Justice, "Advisory Opinion: Competences of the General Assembly for the Admission of a State to the United Nations," March 3, 1950, 4; <http://www.icj-cij.org/docket/files/9/1883.pdf> (accessed July 14, 2011). On September 7, 1949 the Soviet Union vetoed the acceptance of new candidates for membership. This affected Ceylon, Finland, Iceland, Italy, Jordan, Austria and Portugal.

29 | Cf. Associated Press, "Top UN official: U.S. veto would block vote on Palestinian statehood," n. 26.

30 | Cf. UN, <http://un.org/en/members/aboutpermobservers> (accessed July 14, 2011).

Since 1974 Palestine has been a permanent observer with the status of "other territorial unit"<sup>31</sup> whereas the Vatican has the status of a "non-member state". Before their acceptance into the United Nations Switzerland, Austria, Finland, Italy and Japan also had this status.

Fig. 1

### Palestinian steps towards UN Membership 2011



31 | In 1974 the Palestine Liberation Organization (PLO) was accepted as an observer. In 1994 the name of the observer mission was changed to Palestine. Cf. Permanent Observer Mission of Palestine to the United Nations (ed.), *Background Paper related to Palestine Status. Status of Palestine at the United Nations*, <http://www.un.int/wcm/content/site/palestine/pid/11550> (accessed July 8, 2011).

**Having the Palestinians status raised to non-member status could be seen as a precedent by other international organisations.**

The General Assembly could raise the status of the Palestinians or the PLO to non-member status. Such a change of status would not actually make any difference within the United Nations as all permanent observers, whether “other units” or “non-member states”, can speak during a session of the General Assembly, but cannot vote. However, having their status raised to non-member state could be seen as a precedent by other international organisations.

The General Assmebly could also call upon the International Court of Justice (ICJ) to issue a statement on the statehood of Palestine and/or pass a resolution on the issue. Finally, some members of the General Assembly could use the session to declare their individual recognition of Palestinian as a state.

But what will be the legal and political consequences of an admission to membership of the United Nations or of a raised status or recognition but without membership of the United Nations? Will Palestine be in a position to act as a state both at home and on the international stage?

**CONCLUSION: NO SOLUTION WITHOUT NEGOTIATIONS**

If the Palestinians’ application for membership is successful – so if the USA does not exercise its right of veto and the General Assembly does vote in favour with a two-thirds majority – then there will be both legal and practical changes. In addition to having the right to vote in the General Assembly the Palestinians will also be allowed to join the Human Rights Council and other international organisations (such as UNESCO or the WHO) and ratify treaties, such as the Rome Statute of the International Criminal Court. They would also be guaranteed all the rights, but also all the duties and responsibilities of a state, including the right under Article 51 of the UN Charter to self-defence, including collective self-defence.<sup>32</sup> At the same time it can be assumed that U.S. support for a Palestinian State would have a direct impact on Israel’s

32 | Cf. Sellwood, *State-building and political change: Options for Palestine 2011*, n. 5, 12.

occupation policy, bearing in mind the close diplomatic and military relations between the U.S. and Israel.

However, Palestine's membership in the United Nations would also throw up a whole series of questions which would be difficult to answer, such as the legal status of the PLO. Would this be changed by recognition? Who is likely to lead the country in the future? Who will be citizens of the State of Palestine and who will decide this? Will Palestinian refugees in the Diaspora be given state citizenship and how will this affect their right to return? What would the right to self-defence mean for the Palestinians bearing in mind that Israel has said that it will only accept a de-militarised Palestinian state?<sup>33</sup> These are the questions that will need to be addressed if Palestine is successful in its application for UN membership.

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And what are the likely consequences should the Palestinians fail in their application for membership and yet be recognised as a state, either by the passing of a resolution, the changing of their status to non-member state or by individual members?

Critics of the Palestinian strategy fear that recognition by the United Nations will not actually make any difference to Palestinians on the ground but will only help President Abbas himself in his attempts to gain recognition as the leader of an imaginary state.<sup>34</sup> He has been criticised because, according to his article in the *New York Times*, he is planning to continue negotiating with Israel after obtaining recognition.<sup>35</sup> This means that even once the State of Palestine has been recognised the same basic issues will be discussed with Israel, including the problem of the settlements and a possible land swap.<sup>36</sup>

33 | Ibid.

34 | Cf. Ali Abunimah, "Abbas to let Israel keep settlements even if UN recognizes 'state,'" *The Electronic Intifada*, May 17, 2011, <http://electronicintifada.net/blog/ali-abunimah/exclusive-abbas-let-israel-keep-settlements-even-if-un-recognizes-state> (accessed July 14, 2011).

35 | Cf. Abbas, "The Long Overdue Palestinian State," n. 1.

36 | Cf. Abunimah, "Abbas to let Israel keep settlements even if UN recognizes 'state,'" n. 34.

Even if the Palestinians were to achieve nominal independence, their state would still be occupied and they would still have limited access to East Jerusalem. For Palestinians within the Palestinian territories life inside an internationally-recognised Palestine would not seem so very different. However, for Palestinians in the diaspora such a recognition could be a real body blow if the refugee issue is not settled first.<sup>37</sup>

Even widespread recognition of the state would not per se lead to the exercise of effective Palestinian sovereignty. In fact any recognition of Palestine by the General Assembly or a majority of states, which does not come with measures to achieve real statehood, would make it extremely difficult for the Palestinian government to carry out its basic rights and responsibilities.<sup>38</sup>

However, there could be positive consequences as a result of international recognition. While nothing will change within the United Nations itself should their application

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for membership be rejected, there could still be consequences following a decision by the General Assembly. At the International Criminal Court (ICC), for example: Should the General Assembly recognise the Palestinian state, especially if it changed its status to that of a non-member state, then the ICC could take this to be a precedent and accept the Palestinians' application to be a state that is not a contracting state. The same could apply when it comes to their membership of other international organisations or the ratifying of international treaties.

The negotiations between Israel and Palestine would also take on the character of a relationship between two equal states and not one between a state and a non-state. The Palestinians would be able to negotiate with the Israelis as equals.

37 | Cf. Sellwood, *State-building and political change: Options for Palestine 2011*, n. 5, 15.

38 | Cf. *ibid.*, 3.

Neither membership of the United Nations nor recognition of Palestine as a state by a majority of the General Assembly or a change of status from observer to non-member state will bring about a solution to the Palestinian-Israeli conflict. Many of the key issues will still not be resolved without a negotiated settlement.

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