

Palestine Liberation Organization legal brief

in support of recognition of the State of

Palestine

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Introduction

The right of the Palestinian people to self-determination in a sovereign State of their own on the 1967 borders has been universally recognized by the international community. For two decades, the PLO, the legitimate representative of the Palestinian people, has undertaken to achieve these national aspirations peacefully through negotiation with Israel. However, Israel's refusal to halt illegal settlement activity is endangering the very viability of the two-State solution. This compels us to take the path Israel took more than 60 years ago by seeking international recognition of the State of Palestine.

Palestine meets the legal criteria for statehood. The fact that it has yet to establish effective control over all of its territory is a result of the continuation of Israel's military occupation of the West Bank, including East Jerusalem, and the Gaza Strip, in violation

of international law and the right of the Palestinian people to self-determination. This fact should not impede international recognition of Palestine. Rather, it provides the very reason why the international community must uphold international law and facilitate Palestinians' exercise of self-determination by recognizing Palestine and admitting it as a State into the United Nations and other international organizations.

The State of Palestine remains committed to negotiating a peaceful resolution to the conflict between it and Israel. It will also continue to cooperate with Israel in security and civil matters as it has done throughout the almost two decades of negotiations with Israel. It will do so on the basis of sovereign equality.

The Palestinian people have an internationally recognized right to self-determination and sovereignty - the international community first confirmed the right of the Palestinian people to self-determination and sovereignty almost nine decades ago under the Covenant of the League of Nations

As early as 1922, the Palestinian people's right to self-determination and sovereignty was confirmed by the League of Nations with respect to the entire land area encompassing present-day Israel and the 1967 occupied Palestinian territory ('OPT'). According to the League of Nations, historic Palestine, along with certain other communities comprising the Turkish Empire, was deemed developed enough to warrant provisional recognition as an independent nation. However, it was temporarily placed under the administration of a Mandatory Power (Great Britain) as a 'sacred trust' 'until such time as [it was] able to stand alone.'^[1] In this regard, it was clear that the

Mandatory Power had only temporary administrative power and a main responsibility to assist the people of Palestine to achieve full self-government and independence at the earliest possible date.

The Palestinian people's right to self-determination in an independent State of their own was also recognized by the League of Nation's successor, the United Nations, when in 1947 its Subcommittee 2 to the Ad Hoc Committee on the Palestinian Question reported, inter alia, that 'the people of Palestine are ripe for self-government and that it has been agreed on all hands that they should be made independent at the earliest possible date. It also follows, from what has been said above, that the General Assembly is not competent to recommend, still less to enforce, any solution other than recognition of the independence of Palestine.' [2]

Despite the Ad Hoc Committee's report, the General Assembly undertook on 29 November 1947, in its Resolution 181 (II) ('the Partition Resolution'), to partition the territory of Mandatory Palestine into two States. Although the Partition Resolution did not reflect the wishes of the majority of the population of Palestine, it does constitute an affirmation of the Palestinian people's right to sovereignty and self-determination. Each State was required to establish a democratic government and guarantee to 'all persons equal and non-discriminatory rights in civil, political, economic and religious matters and the enjoyment of human rights and fundamental freedoms.' [3]

The State of Israel was established only months after the General Assembly adopted the Partition Resolution. However, the State for Palestinians did not gain independence as

the 1948 war broke out and, as a result, significant portions of the territory allotted to the Palestinian State were forcibly seized by Israel, reducing the territory of that State by more than half. In 1967, the remainder of historic Palestine – the territory comprising the West Bank, including East Jerusalem, and the Gaza Strip – came under Israeli belligerent occupation.

The United Nations has repeatedly reaffirmed the Palestinian people's right to self-determination and sovereignty

Consistent with the United Nations Charter and the Universal Declaration of Human Rights, and in recognition of the historic injustice endured by the Palestinian people, the United Nations has repeatedly called for the exercise of the Palestinian people's inalienable right to self-determination and sovereignty. In 2004, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, ruled that 'the existence of a 'Palestinian people' is no longer an issue' and affirmed its right to self-determination.[4]

The ICJ ruling on the Palestinian right to self-determination found support in years of General Assembly resolutions on the matter. In 1970, the General Assembly declared that the Palestinian people entitled to self-determination in accordance with the UN Charter,[5] and in 1974 it reaffirmed 'the inalienable rights of the Palestinian people in Palestine,' including their right to 'independence without external interference' and 'national independence and sovereignty.'[6] The General Assembly condemned the government responsible for denying the people of Palestine the right to self-

determination, considering the denial of that right a gross violation of the United Nations Charter.[7]

The most recent General Assembly resolution supporting the Palestinian people's right to self-determination is Resolution 65/202 which reaffirmed 'the right of the Palestinian people to self-determination, including the right to their independent State of Palestine,' and further urged 'all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination.' [8] The resolution was adopted by an overwhelming majority of 177 States.

Israel's declarations accepting the Palestinians' right to self-determination constitute a binding international legal obligation on Israel

As a condition precedent to Israel's admission to the United Nations, Israel committed itself to comply with the terms and conditions of General Assembly Resolution 181 which called for the establishment of a Palestinian State.[9] Israel has also recognized, in Prime Minister Rabin's letter to PLO Chairman Arafat on 9 September 1993, the political rights of the Palestinian people and that the sole legitimate representative of those rights is the PLO. The Israeli letter stipulated that ' . . . the Government of Israel has decided to recognize the PLO as the representative of the Palestinian people' This unilateral declaration by Israel is an international legal obligation that is binding on Israel.[10]

Israel recognized the right of the Palestinian people to self-determination when it signed the Oslo Accords

Israel recognized the right of the Palestinian people to self-determination in the 1993 Declaration of Principles on Interim Self-Government Arrangements (DOP) and the 1995 Interim Agreement on the West Bank and Gaza Strip ('Interim Agreement'). The DOP preamble describes the PLO as 'representing the Palestinian people' and provides that Israel recognizes the 'legitimate and political rights' of the Palestinian people. Similarly, the Interim Agreement describes the PLO as the 'representative of the Palestinian people,' and its preamble provides that the parties 'reaffirm . . . the mutual legitimate and political rights' of the other and 'reaffirm . . . the mutual recognition' expressed in letters between the Government of Israel and the PLO. It also refers to the 'legitimate rights of the Palestinian people.' These references and stipulations indicate clearly that Israel has recognized the right of the Palestinian people to self-determination.

The territorial unit for the exercise of the Palestinian people's right to self-determination is recognized as the area comprising the Palestinian territory occupied since 1967

That the basis for the territorial unit of the State of Palestine is the 1967 border is in line with Security Council Resolution 242 which asserted the international law principle that any attempt by Israel to acquire Palestinian territory by force is inadmissible and demanded that Israel should withdraw from the territories it had occupied since

1967.[11] The Security Council has specifically recognized that the occupied Palestinian territory will form the basis for the Palestinian State.[12]

The Security Council pronouncements are to be seen in the context of clear resolutions of the General Assembly declaring that the 'inalienable rights' of the Palestinian people are 'an indispensable element in the establishment of a just and lasting peace in the Middle East.'[13] A just and lasting peace is understood today by the international community as necessitating the exercise of independence and sovereignty by the Palestinian people over 'their territory occupied since 1967.'[14] General Assembly Resolution 58/292 in particular affirmed both 'the need to enable the Palestinian people to exercise sovereignty and to achieve independence in their State, Palestine,' and that 'the status of the Palestinian territory occupied since 1967, including East Jerusalem, remains one of military occupation, and affirms, in accordance with the rules and principles of international law and relevant resolutions of the United Nations, including Security Council resolutions, that the Palestinian people have the right to self-determination and sovereignty over their territory.'[15]

The ICJ also recognized and affirmed that the Palestinian people are entitled to exercise their right to self-determination in the Palestinian territory occupied by Israel since 1967. In its Wall Opinion, the Court stated that Israel's action inside the OPT that prejudices Palestinian rights to a homeland there 'severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right.'[16]

These UN resolutions, confirmed by the ICJ, coupled with clear provisions in the agreements between the PLO and Israel incorporating the same and calling for preservation of the oPt as a 'single territorial unit,' support the conclusion that the self-determination unit for the Palestinian people is the Palestinian territory occupied by Israel since 1967.

The Palestinian people's right to self-determination has been recognized as an erga omnes right legally obligating all countries to see to it that any impediment to the Palestinian people's exercise of self-determination is brought to an end

According to the ICJ, international law has developed such that the principle of self-determination is a right erga omnes applicable to all non-self-governing territories.[17]

The World Court further determined that the erga omnes obligations being violated by Israel are 'the obligation to respect the right of the Palestinian people to self-determination, and certain of its obligations under international humanitarian law.' [18]

The Court also called on all States 'to see to it that any impediment' arising from Israel's construction of the Wall in the OPT, to the exercise of the Palestinian people of its right to self-determination, be brought to an end. In light of the fact that the Wall constituted an attempt by Israel to de facto annex land constituting part of the territory internationally recognized for the exercise of Palestinian self-determination, the Court's opinion can be understood as protecting the territorial integrity of the Palestinian State.

Israeli unilateral acts in continuing to expropriate Palestinian land in the OPT, including East Jerusalem, for Israeli settlement activity are illegal and constitute a serious impediment to the Palestinian people's ability to exercise self-determination.

According to Article 49(6) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 ('Fourth Geneva Convention'), the deportation or transfer by the occupying power of parts of its own civilian population into the territory it occupies is prohibited. Moreover, settlement activities are considered a war crime under Protocol 1 Additional to the Geneva Conventions and under the Rome Statute of the International Criminal Court. Israel's settlement policy and practices in the OPT, including East Jerusalem, have been determined by the UN Security Council to have 'no legal validity,' constituting 'a flagrant violation' of the Fourth Geneva Convention and 'a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East.'^[19] Likewise, Israel's measures aimed at changing the de facto and de jure status of Jerusalem are also illegal.^[20]

The Quartet's Performance-Based Roadmap to a Permanent Two-State Solution (2002) ('Quartet Roadmap'), which has been endorsed in Security Council Resolution 1515 (2003), provides that a settlement to the Israeli-Palestinian conflict will include 'an end to the occupation that began in 1967' based on 'the principle of land for peace.' In the first phase of the Quartet Roadmap, which was accepted by both the PLO and Israel, Israel is required to freeze all settlement activity.

Despite Security Council determinations declaring settlement construction illegal, and the clear prohibitions contained in the Fourth Geneva Convention and the terms of the Quartet Roadmap, Israel has refused to freeze settlement activity throughout the OPT and, particularly, in and around occupied East Jerusalem. Between 2002 and 2011, tens of thousands of housing units were tendered for settlement construction. During 2008 alone, the year of Annapolis negotiations, Israel actually tendered more housing units for settlements than it had in the year before Annapolis. Most of those units were for settlements in and around occupied East Jerusalem.

The State of Israel, the occupying power, has continued to provide incentives for Israeli citizens to move into the OPT. Those incentives include subsidized housing, tax exemptions, preferential prices and access to services, higher salaries and free education, among others. As a result, the Israeli settler population in the OPT, including East Jerusalem, has increased from under 420,000 in 2002, when the Quartet Roadmap was presented, to over 500,000 today.

Third states have the sovereign legal authority to recognize the State of Palestine on the basis of the 1967 border as one of the means of upholding their obligations under international law

Recognition of the State of Palestine on the basis of the 1967 borders is an act consistent with international law, United Nations resolutions and the international consensus on the two-State solution for a peaceful settlement of the longstanding

Israeli-Palestinian conflict. It is a legally and politically sound step in line with legal obligations and political responsibilities vis-à-vis the question of Palestine.

Each State, as sovereign, has authority to recognize other States through the exchange of diplomatic letters or through the conduct of diplomatic relations.

The recognition of a new State is the free act by which one or more States acknowledge the existence on a definite territory of a human society politically organized, independent of any other existing State, and capable of observing the obligations of international law, and by which they manifest their intention to consider it a member of the international community.[21]

As a quintessential political act, a State may only be deemed to be acting against international law in recognizing a State if such recognition would be sanctioning the illegal use of or acquisition of territory by force, or violations of preemptory norms of international law such as racial discrimination. Thus, recognitions by third States of the racist minority regime's declaration of statehood in Southern Rhodesia (known as Zimbabwe today) were seen as illegitimate. Similarly, States created through the unlawful use of inter-State force are not recognized States even if they fulfil the factual predicate for statehood.

According to the Arbitration Commission of the International Conference on Yugoslavia, which represents the dominant understanding of acts of recognition:

‘While recognition is not a prerequisite for the foundation of a State and is purely declaratory in its impact, it is nonetheless a discretionary act that other States may perform when they choose and in a manner of their own choosing, subject only to compliance with the imperatives of general international law, and particularly those prohibiting the use of force in dealings with the other States or guaranteeing the rights of ethnic, religious or linguistic minorities.’[22]

In the case of recognition of the State of Palestine, States will be upholding international law, i.e., recognition will validate Security Council resolutions declaring the inadmissibility of the acquisition of territory by force and calling for a withdrawal of Israel from the OPT, including East Jerusalem. Likewise, States will be complying with their international legal obligation to bring to an end to the impediments to the exercise of the right to self-determination by the Palestinian people and thus upholding their erga omnes obligations.

Palestine fulfils all the legal criteria for statehood and is ready to join the community of nations and Palestine qualifies as a state under the Montevideo Convention on the rights and duties of states

The Montevideo Convention on the Rights and Duties of States is understood as expressing the most accepted formulation of criteria for statehood. According to that instrument, the following conditions must be met for statehood: (1) a permanent population; (2) a defined territory; (3) government; and (4) capacity to enter into relations with other States.[23] The criteria are aimed at discerning whether or not a

given territorial unit has the requisite 'effectiveness' to function as an independent self-governing entity.[24] Despite these criteria, cases abound in which States have been recognized by the international community without meeting these requirements fully, or the effectiveness principle in particular.

From State practice, it is clear that the Montevideo Convention criteria are not the decisive or the only relevant considerations in ascertaining whether a territorial unit is a State. Additional considerations on whether to recognize a State and how to apply the Montevideo Convention criteria include whether to do so would comport with principles of legality and legitimacy.[25] One of the most important principles counselling in favor of recognition of a new State is advancing the exercise of the right to self-determination. If an entity is an internationally recognized territorial unit of a people exercising their right to external self-determination, the necessary degree of effectiveness needed for statehood is lower.[26]

The State of Palestine clearly qualifies as a State under the Convention's criteria:

- The Palestinian people have been internationally recognized as a people entitled to external self-determination in a State of their own;
- The Palestinian territory occupied since 1967, including East Jerusalem, is a defined territory, as made clear by the ICJ,[27] within which a permanent Palestinian population has the legitimate right to exercise its right to self-determination. The size of this territory, 6,258 square km, and the Palestinian population therein, over four million, is significantly higher than some UN member States such as Nauru (area 21 square km;

population 11,000), Tuvalu (area 26 square km; population 10,000) and San Marino (area 61 square km; population 32,000);[28]

- International law does not require that all of a State's boundaries be clearly agreed before the State is recognized. Parts of the boundaries of Israel, India and China, for example, remain unsettled, but that has not impeded recognition of those States;

- The State of Palestine has capacity to enter into international relations as it has been recognized by over 120 nations and has active diplomatic relations with these countries and maintains diplomatic missions;

- Palestine is a member of international organizations, including the Non-Aligned Movement,[29] the G-77,[30] the League of Arab States,[31] the Council of Arab Economic Unity, the Arab Monetary Fund, the Arab Bank for Economic Development in Africa, the Arab Fund for Social and Economic Development, the Greater Arab Free Trade Area, the Organization of Islamic Cooperation,[32] the Islamic Development Bank, and the Economic and Social Commission for Western Asia;[33]

- Palestine exercises considerable control over domestic and foreign policy, despite the constraints imposed on it by the ongoing belligerent Israeli occupation. Israel recognizes the Palestinian National Authority (PNA) as having territorial jurisdiction over at least part of the West Bank and Gaza Strip[34] and Palestine has well-developed government institutions and a strong police force with jurisdiction over significant parts of Palestinian territory,[35] effectively upholding public order and security.

Palestine's competence in governance, the readiness of its national institutions for self-government and indeed its readiness for independence have been recognized and affirmed by the World Bank, the International Monetary Fund and the United Nations in recent reports.[36] In fact, the Special Coordinator for the Middle East Peace Process found after reviewing institution-building in six different areas including governance, rule of law and human rights, labour, education and culture, health, social services, and infrastructure and water, that 'Palestinian governmental functions are now sufficient for a functioning government of State.'[37]

It is primarily the continuation of Israel's occupation that hinders further development of the institutions of State in Palestine. Precisely because the case of Palestine involves the denial of a clearly recognized right of self-determination and gross violations of internationally recognized human rights and humanitarian law, the State of Palestine presents the strongest argument in favour of statehood where not all the criteria for statehood may be fully fulfilled.[38] Israel should not be permitted to prevent the emergence of a Palestinian State and benefit from its internationally wrongful conduct.[39]

Palestine fulfils the Charter obligations for membership in the United Nations

Article 4(1) of the United Nations Charter States that 'Membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.' The State of Palestine expressed its commitment to the United

Nations Charter in the Palestinian Declaration of Independence of 15 November 1988.

The Declaration clearly states that the State of Palestine is committed 'to the purposes and principles of the United Nations, to the Universal Declaration of Human Rights and to the policy and principles of non-alignment.' It also rejected 'the threat or use of force, violence and intimidation against its territorial integrity and political independence or those of any other State,' and the use of 'terrorism in all forms, including State terrorism.' The State of Palestine also accepted all obligations contained in the four 1949 Geneva Conventions and the 1907 Hague Regulations on Land Warfare.

Recognition of the State of Palestine is consistent with the parameters accepted by the international community for resolution of the Israeli-Palestinian conflict

Recognition of the State of Palestine supports the two-State solution and the parameters accepted by the international community as the basis for peaceful resolution of the Israeli-Palestinian conflict. These parameters include the delineation of the boundaries of the State of Palestine based on the 1967 lines, with possible agreed minor modifications equal in size and value. This understanding has been expressed recently by the United States President Barack Obama:

'The United States believes that negotiations should result in two States, with permanent Palestinian borders with Israel, Jordan, and Egypt, and permanent Israeli borders with Palestine. The borders of Israel and Palestine should be based on the 1967 lines with mutually agreed swaps, so that secure and recognized borders are established

for both States. The Palestinian people must have the right to govern themselves, and reach their potential, in a sovereign and contiguous State.’[40]

The Quartet’s Roadmap, endorsed by the Security Council,[41] also supports parameters that would be based on the withdrawal of Israeli forces from occupied Palestinian land and an end to the occupation that began in 1967.[42] With respect to the European Union, it has confirmed that the borders of Israel and Palestine will be based on the 1967 lines with mutually agreed swaps.[43] The Arab Peace Initiative of 2002, endorsed by all 22 Arab States, 57 Muslim countries of the Organization of Islamic States, and the Security Council, includes a call for complete Israeli withdrawal from all territories occupied since 1967, implementation of Security Council resolutions 242, and ‘the establishment of the sovereign, independent Palestinian State on the Palestinian territories occupied since June 4, 1967 in the West Bank and Gaza Strip, with East Jerusalem as its capital.’

The Oslo Accords were meant to facilitate an end to Occupation on the basis of UN Security Council Resolution 242

The PLO signed the Oslo Accords and entered into the peace process on the understanding that a sovereign Palestinian State—including the West Bank with East Jerusalem, and the Gaza Strip—would gain independence after the conclusion of the five-year transition period. Article I of the DOP stated: ‘The aim of the Israeli-Palestinian negotiations . . . is, among other things, to establish a Palestinian Interim Self-Government Authority, the elected Council (the ‘Council’), for the Palestinian people in

the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council Resolutions 242 and 338.' However, almost 20 years have passed since the signing of the DOP and Israel continues to expand Israeli settlement-colonies upon land which was meant to form the basis for the Palestinian State. In fact, Palestinians in the OPT face land confiscations, home evictions, and demolition orders at a greater rate today than they did before the peace process began. The Palestinian national economy is severely damaged by Israeli occupation policies, and the settler population has more than tripled in the West Bank.

The effort to obtain bilateral and international recognition of the State of Palestine was initiated before any agreements between the PLO and Israel were signed and is consistent with the understanding that formed the basis for the Interim Agreement

The State of Palestine declared its independence in 1988 prior to the conclusion of any agreements between the PLO and Israel. Following that declaration, over 100 countries moved to recognize the State of Palestine, and the State sought to accede to various multilateral treaties and to gain admission to international bodies. Efforts to obtain additional bilateral recognitions and admission to the United Nations is a continuing Palestinian diplomatic initiative; it is not a new one. This diplomatic activity is consistent with agreements signed between Israel and Palestine, as those agreements envisioned an end to the Israeli occupation of Palestinian land consistent with UN Security Council resolutions 242 and 338.

Recognition of the State of Palestine is also compatible with the commitment contained in Article XXX(7) of the Interim Agreement which provides that neither party will 'initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations.' Since 1967, the legal status of the West Bank and Gaza Strip has been recognized, including by Israel's Supreme Court,[44] as that of an occupied territory. The conclusion of the interim agreements between the PLO and Israel did not change this status and neither will bilateral or multilateral recognition of the State of Palestine or admission of the State to the United Nations. The territory of the State of Palestine will remain under Israeli occupation until the Israeli government withdraws its occupation forces.

Israel has no legal claim to any part of the OPT. Irrespective of the conclusion of the agreements between Israel and the PLO, Israel's status is that of an occupier. An occupier cannot by definition occupy a territory of its own, meaning that Israel did not and could not have acquired any title over the OPT. Rather, the title over the territory lies with the people of that territory, i.e., the Palestinian people whose internationally recognized legal right to exercise self-determination in the OPT has long been established.

Any claim that efforts to gain further recognition of the State of Palestine constitutes a violation by the PLO of signed agreements with Israel has no bearing on the legality of a decision by third States to recognize the State of Palestine. While it is clear that modern international law treats breaches of peremptory or fundamental norms of international

law as legal impediments to statehood, this does extend to all of international law or bilateral treaties.[45] The Oslo Accords created only a temporary regime of administration of the OPT and did not in any way constitute a permanent settlement of the Israeli-Palestinian conflict such that it would deprive Palestinians of their right to establish their State on territory internationally recognized as theirs.

Israeli violations of agreements signed between Israel and the PLO are destroying the possibility of achieving a two-state solution through bilateral negotiations alone

Israel has violated all of the agreements that it has signed with the PLO, including the DOP and the Interim Agreement. Most significantly, all past Israeli governments have systematically transformed the physical and demographic landscape of the OPT to entrench Israeli control over Palestinian land that Israel seeks to annex, while at the same time displacing Palestinians from those same areas. Israel has done so by building its wall of separation and settlements and by instituting its closure regime, international law and its commitments under agreements notwithstanding. In 2010, Israeli Military Order 1560 legalized Israel's de facto control and jurisdiction over the West Bank, including those areas that were supposed to be under Palestinian control under the Interim Agreement, referring to the West Bank once again as 'Judea and Samaria.'

Although Israel undertook to remove obstacles to movement separating Palestinian communities in the West Bank and Gaza Strip from one another under both the Agreement on Movement and Access (AMA) of 2005 and the Interim Agreement, Israeli authorities have, over the years, significantly restricted the movement of people and

goods between Palestinian communities in the OPT, and between the OPT and the rest of the world. Today, there are over 550 obstacles to movement in the OPT. Gaza remains cut off from the rest of the world and East Jerusalem has been severed from the rest of the West Bank. Unless something is done now, Israel will forever destroy the prospects of achieving a lasting peace on the basis of the two-State solution.

Conclusion

While the Palestinians have been, and remain, unwavering in their commitment to reach a negotiated peace agreement based on two States, Israel has persisted in its prolonged occupation and settlement enterprise in the OPT. This is eroding the viability—indeed, the very possibility—of a two-State solution.

In an attempt to advance the cause of freedom, self-determination, independence and human rights and to prevent the demise of the two-State solution, the Palestinians are calling on the international community to make good on its promises and to uphold its responsibilities towards international law and the Palestinian people. This is the rational underpinning for the Palestinian call for international recognition of the State of Palestine and for its admission to the United Nations as an equal member among the community of nations. Gaining recognition and admission for the State of Palestine is not intended as a diplomatic stunt in response to Israel's intransigence. Rather, it is an existential matter for both the Palestinian and the Israeli State.

A Study by PLO Chief Negotiator, Dr. Saeb Erekat

[1] Article 22 of the Covenant of the League of Nations states that ‘the ultimate objective of the ‘sacred trust’ was the ‘self-determination and independence of the peoples concerned.’ International Court of Justice (ICJ), Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276, Advisory Opinion, para. 53 (hereinafter ‘ICJ Wall Opinion’).

[2] UN Doc. A/AC.14/32, and Add.1, 18 (1947).

[3] UN Doc. Res/181(II)[A-B] 10(d) (1947).

[4] ICJ Wall Opinion, op. cit., para. 162.

[5] UN Doc. Res/2672 (XXV) C (1970). See also General Assembly Resolution 2535 B (1969) which previously affirmed ‘the inalienable rights of the people of Palestine.’

[6] UN Doc. Res/3236 (XXIX) (1974).

[7] UN Doc. Res/2649 (XXV) (1970).

[8] UN Doc. RES/65/202 (2010).

[9] General Assembly Resolution 273 (III) of 11 May 1949, admitting Israel to membership in the UN.

[10] See *Norway v. Denmark*, Permanent Court of International Justice (PCIJ), Series A/B, No. 53, 71 (1933). In that case, the PCIJ considered as binding a declaration made by a representative of the Government.

[11] UN Security Council Resolution 242 (1967).

[12] See, for example, UN Security Council 1860 (2009) ('Stressing that the Gaza Strip constitutes an integral part of the territory in 1967 and will be part of the Palestinian State')

[13] UN Doc. Res/2672 (1970).

[14] UN Doc. Res/43/177 (1988).

[15] UN Doc. RES/58/292 (2004).

[16] ICJ Wall Opinion, *op. cit.*, para. 122.

[17] *Ibid.*, paras. 87-88.

[18] *Ibid.*, para. 155.

[19] UN Security Council Resolution 446 (1979) adopted by 12 votes to none, with 3 abstentions; UNSC/Res/452 (1979).

[20] UN Security Council resolutions 252 (1968) adopted by 13 votes to none, with 2 abstentions; 267 (1969); and 465 (1980) adopted unanimously.

[21] H. Kelsen, 'Recognition in International Law: Theoretical Observations,' 35 American Journal of International Law 605 (1941); H. Lauterpact, Recognition in International Law (Cambridge: Cambridge University Press, 1947).

[22] Badinter Commission, Opinion No. 10, Paris, 4 July 1992, para. 4. Reproduced in 4 European Journal of International Law 90 (1993). See also C. Warbick, 'States and Recognition in International Law,' in M. Evans (ed.), International Law (Oxford: Oxford University Press, 2006), p. 250.

[23] Montevideo Convention on the Rights and Duties of States, 26 December 1933, 165 LNTS 19, Article 1.

[24] J. Crawford, The Creation of the State in International Law (Oxford: Clarendon Press, 2006), p. 46.

[25] M. Shaw, International Law (Cambridge: Cambridge University Press, 2003), p. 178.

[26] Crawford, *op. cit.*, p. 387, said that 'it is difficult to accept that the normal requirement of effective government has been entirely displaced. Rather, the criterion in this type of case would appear to be one of qualified effectiveness In such a case the principle of self-determination legitimizes what might otherwise be premature recognition by other States.'

[27] ICJ Wall Opinion, *op. cit.*, para. 136.

[28] According to the US representative to the Security Council during consideration of Israel's application for admission as a State: 'Both reason and history demonstrated that

the concept of territory did not necessarily include precise delimitation of the boundaries of that territory.’ Report of the Security Council to the General Assembly, UN Doc. A/945/Add. 1 (1949), p. 87.

[29] See <http://www.nam.gov.za/background/members.htm> (visited 21 June 2010).

[30] See <http://www.g77.org/doc/members.html> (visited 21 June 2010).

[31] See http://www.arableagueonline.org/las/arabic/details_ar.jsp?art_id=3349&level_id=61 (visited 21 June).

[32] See http://www.oic-oci.org/member_States.asp (visited 21 June 2010).