

Agenda : The question of Statehood with special emphasis on Palestine.

Introduction to Agenda:

As the Palestinians seek U.N. support for **a state of their own**, Washington has advanced two arguments to dissuade them: first, that taking the issue of statehood to the United Nations is a unilateral move away from negotiations with Israel; and second, that the effort will be counterproductive because the United States will veto any such U.N. Security Council resolution. These arguments miss the point. The United Nations may in fact be just the place to invigorate stalled diplomacy. The question should not be what would happen when **the United States vetoes the U.N. resolution** but what if it doesn't.

Israelis and Palestinians have been in conflict for decades, and Israel has controlled the West Bank and Gaza for 44 years. The overwhelming majority of Palestinians in these territories were born under occupation. Although Israel has been recognized by the United Nations for its entire existence, it has yet to be recognized by most Arab states. Israelis live in insecurity. Decades of direct and indirect negotiations have not produced peace. It cannot be ignored that Israeli settlers in the occupied territories vote in Israeli elections, and Palestinians do not. Short of a strong international position, every Israeli government will hear the settlers' voices before hearing the Palestinians'. Occupation is thus prolonged and Palestinian statehood becomes less viable.

Even the argument of Israelis seeking compromise has been distracting, resting on the fear that, without a Palestinian state, Arabs would undermine Israel's Jewish majority or its democracy. That may be true, but Israel's principal obligation to withdraw from the occupied territories is the same as the Arabs' obligation to accept Israel — U.N. resolutions. When asked by pollsters in 2007, a majority of Israelis said **their government should be more willing to make decisions within the United Nations**, even when that means sometimes going along with a policy that is not Israel's first choice. As for the Palestinians, without appeal to the United Nations and to international laws and norms, what would persuade them to refrain from using provocative or militant means to rid themselves of occupation?

U.N. Security Council resolutions layout blueprints, backed by the world's great powers, for moving countries and regions from war to peace. Thanks to persistent efforts, the world's battle deaths in the past decade were about a third of those during the Cold War. The chances of any cease-fire lasting, only 50-50 in the 1990s, **have increased** to 88 percent. U.N. actions are no guarantee of peace, but overall they are working much better than many realize.

Given congressional opposition to U.N. action, the Obama administration is almost certain to exercise its veto power in the Security Council — itself the ultimate unilateral move and something President Obama opposed when he ran for office. But that is more a symptom of our broken politics than of sensible policy. What if the United States preempted a U.N. General Assembly resolution with a Security Council resolution endorsing a two-state solution? It would have legal and normative implications, providing restraint to both sides and pushing them toward the negotiating table. In the Arab world, where a public awakening is **increasingly expressing anger with Israel**, a new focus on U.N. legitimacy would not be a bad thing — for Israel and the Palestinians. **U.N. Resolution 1397**, passed in 2002, affirmed “a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders.” Obama has said that the two-state solution must be based on **the 1967 borders with land swaps**. His administration would not be pushing the envelope far with its own Security Council resolution or by abstaining on a resolution drafted by European allies.

What would such a resolution include? Two states, based on the 1967 borders, with comparable mutually agreed swaps. Israel, as a state of the Jewish people and all its citizens, and Palestine as a state of the Palestinian people and all its citizens. The capital of Israel in West Jerusalem and the capital of Palestine in East Jerusalem. Mutual security arrangements to be negotiated, including possible deployment of international peacekeeping forces. And the Palestinian refugee problem to be resolved in a manner that respects the refugees' legitimate rights, taking into account previous U.N. resolutions and the principle of the two-state solution outlined above.

Even if the United States must negotiate any such resolution, the effort would be better received than attempts to dissuade the Palestinians from taking up the issue of statehood at the United Nations — a move that will be condemned in the region regardless of its outcome. The audience is greater than the Palestinians and Israelis: **Polling suggests** that the souring Arab mood toward Obama has been principally based on his policy toward the Palestinian-Israeli conflict. As Egypt enters its electoral season and Arabs everywhere are asserting their opinions, much is at stake for the United States.

BRIEF HISTORY OF PALESTINIANS CLAIMS

There are some events which played a crucial role in determining the actual status of Palestine and its claims for statehood and recognition. The territory of Palestine from which both Israel and Palestine originated, was part of the Ottoman Empire. With the end of World War I, which implied its disintegration, its territory was placed under the League of Nations Mandate system, with Great Britain exerting as the Mandatory power. The Article 22 of the Covenant of the League of Nations, referring to the so-called “Class A Mandates”, such as Palestine, provided them with the provisional recognition of “their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone” . The intention was to set up one or more independent nations from the British Mandate. After World War II, due to its incapacity to cope with revolts from both sides, the spread of violence, and a massive Jewish migration from Europe, Great Britain decided to bring the question of Palestine before the United Nations General Assembly (hereinafter, UNGA). On 29 November 1947, it adopted Resolution 181, approving the Partition Plan, which included the creation of an Arab and a Jewish state not later than October 1948, the division of Palestine into eight parts (three conferred to the Arab state and three to the Jewish one) and an international administration regime for Jerusalem. On 14 May 1948, the same day as the British Mandate expired, Israel was unilaterally established as an independent state, and immediately recognized by the US and the Soviet Union. In the Israeli Declaration of Independence there is a reference to the UNGA Resolution 181, as recognizing the right of the Jewish people to establish a state. Therefore, it could be argued that also the Palestinian state could lie on the same resolution as a source of legitimacy of a unilateral declaration of independence³¹ .

Following the declaration, hostilities broke out between Arab and Jewish communities, and neighbouring Arab states entered the territory in assistance of the Palestinians. The 1948 Arab-Israeli war ended with Israel in control of much of the territory conferred to the Arab state by the Partition Plan, including West Jerusalem, and Egypt and Jordan respectively managing the remaining portions of Gaza and the West Bank. A victorious Israel had not only retained its status as a new state but had also increased its territory by almost 50%. Because of the war, a major humanitarian crisis had been created, with almost 750,000 Palestinians displaced from their own land³³. This is important because the right of return of the Palestinian refugees is one of the unresolved issues of the conflict. Later in 1949, the Armistice Agreement was signed between Israel, Egypt, Lebanon, Jordan and Syria, which set up the so-called “Green Lines”³⁴. Boundaries also became one of the critical unresolved issues when discussing the territorial configuration of the Palestinian state. Another past event to be considered took place in 1964, when a conference backed by the Arab League held in Jerusalem brought to the creation of the Palestine Liberation Organization (hereinafter, PLO), to act as the government of the Palestinians . It rapidly gained the support of most of the Arab League governments, which offered to the PLO a seat in the organization. On the other side, the relations between Israel and its Arab neighbours were characterized by a growing tension due to raising security concerns. This situation of stalemate came to an end in 1967, when Israel launched a series of preemptive attacks against Egyptian airfields, followed by troops’ mobilization. This would later be known as the War of 1967, or the Six-Day War, which will exert a significant effect in awakening Palestinian nationalism, as Israel gained the authority of the West Bank from Jordan and the Gaza Strip from Egypt in a short but intense war in which Israel took advantage of its clear military superiority. Finally, Israel defeated Syria controlling the Golan Heights, and also Jerusalem was occupied, including all the holy sites. All the events that took place during 1948 and 1967 wars significantly shaped the framework of peace talks because it was during those conflicts that some of the core issues emerged. Palestinian refugees, control of Jerusalem and mutual recognition of statehood still today dominate discussions and remained largely unresolved in the peace negotiations

INTERNATIONAL LAW, STATEHOOD AND RECOGNITION

THE MONTEVIDEO CRITERIA OF STATEHOOD

In the 21st century the concept of “state” remains a critical component of international law and international relations. Given its central role, there should be a clear and codified definition of state existing in international law. However, it is not the case, and even if since 1945 several attempts have been made to agree on such a definition, none of these efforts succeeded. Thus, the Montevideo Convention¹ can still be considered, as Crawford argues, “the best-known formulation of the basic criteria for statehood” Article 1 enunciates that “The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with other states³ . Starting from the territorial aspect of statehood, it is obvious that states are territorial entities.

Firstly, this element requires the exercise of governmental power over some territory, without specifying a minimum area for the purpose of fulfilling this condition. For example, Tuvalu, a state of only 26 sq km, obtained independence in 1978 and became a full member of the UN in 2000. Furthermore, the territory of the state in international law does not require continuity of the territory . About the second element, a permanent population, it is probably the least controversial of the four traditional statehood benchmarks. It is necessary for statehood, and it is connected with the territorial dimension, because “if states are territorial entities, they are also aggregates of individuals' ' . Moreover, like in the case of territory, no minimum population is required. The third requirement is the presence of a government capable of exercising independent and effective authority over the population and the territory. Fundamentally, it must be shown that the territory has a government who is independent, controls the affairs of the state and ensures social and legal order. Nonetheless, if a state ceases temporarily to have an effective government (think about scenarios of civil war) this does not mean that the state disappeared⁶ . The fourth and last requirement for statehood according to the Montevideo Convention, the capacity to enter into relations with other states, refers to the legal capacity of an entity to participate in public international relations, including the legal competence to carry out its obligations. There is a debate between those who argue that it is a defining element of statehood, and who sees it as a consequence and not a prerequisite of being a state. Currently, the second option seems to be the preferred one. The idea

is that if an entity meets the first three criteria (a territory, a population, and a government) it can be considered a state and therefore has the ability to enter into relations with other states, and not the other way around. As Crawford argued, “capacity to enter into relations with other states is not a criterion, but rather a consequence of statehood, and one which is not constant but depends on the status and situation of particular states” . Therefore, the Montevideo Convention and the prevailing law at the time, viewed states as a kind of sui generis legal entity operating and existing under its own authority and power. However, it seems that it falls short in many senses, because it did not include political criteria and considerations which are relevant in states’ discourses. It is really complex to codify a new definition of state, a concept whose meaning depends heavily on the context, which has changed since the framing of the Convention. The search for a definition gets bogged down almost immediately in a long-running debate that deeply divides the international legal scene: is recognition an essential requirement for statehood or rather a confirmation of a pre-existing factual situation?

EFFECTS OF RECOGNITION AND STATE PRACTICE

According to present-day practice, recognition has only a declaratory character. The state comes into existence as soon as it fulfils the elements of statehood identified in the Montevideo Convention . The legal existence of a state is not dependent on whether it has been recognized as such by other states and recognition is much more a question of policy than of law. However, even if it is not generally considered as a requirement for statehood, international recognition plays a crucial role in determining the actual rights of the state at the international level. In fact, only once the new state has been recognized it becomes a subject of international law with all the rights and obligations that it encompasses . In other words, recognition determines whether or not statehood can be exercised in any practical sense within the international community. States which have not obtained diffuse recognition are generally called de facto states . In the words of Scott Pegg, “a de facto state exists where there is an organized political leadership which [...] receives popular support; and has achieved sufficient capacity to provide governmental services to a given population in a defined territorial area”.

However, it is unable to achieve widespread international recognition and remain illegitimate in the eyes of international society. The problem with de facto states is that the lack of recognition hinders them from benefitting from all the advantages related with the achievement of a de iure status.

These can be summarized in four points:

- only recognized states may be part of international treaties with other states;
- only recognized states can be full members of intergovernmental organizations like the UN, the IMF or the WB;
- only recognized states have the power to bring claims against other states before the ICJ;
- finally, recognized states are the unique recipients of Foreign Direct Investments from the IMF or the WB²⁷.

Take the case of Somaliland, which is considered one of the most prominent examples of de facto state. It has been independent since the end of Siad Barrer's regime and the outbreak of the civil war in 1991, organizing independent local and national elections and writing a constitution. Moreover, it has a functioning police force and a governmental body with authority over people. Virtually Somaliland meets all the legal criteria for statehood, but it is not recognized by any other state. Therefore, its internal sovereignty without recognition means little for its external affairs, impeding it to become a full member of international society. Somaliland is not an isolated case and reflects a diffuse practice among states which seem to favour the maintenance of the status quo rather than supporting the inclusion of new states in the international community. In the eternal debate between self-determination and territorial integrity, the latter seems to predominate. Outside the context of the decolonization in the 60's and the disintegration of Soviet Union and Yugoslavia in the 90's, states have been careful in recognizing secessionist entities. Political and strategic considerations, especially the fear of a domino effect which could put in danger the territorial integrity of many states of the world, are still decisive in shaping the recognition's discourse.

The most important resolutions which have been passed by the UN are the following:

- Resolution 181 (Future government of Palestine)
- Resolution 242 (aftermath of the Six-Day War)
- Resolution 338 (the Yom Kippur War)
- Resolution 3236 (Palestinian people's right to self-determination)

Questions a Resolution Must Answer:

- To what extent should the UNSC intervene in the situation in Israel/ Palestine?
- If it should choose to intervene, what means/methods should it use to ensure that peace can be preserved between all parties?
- How does the question of Israel/Palestine affect the wider Middle East situation, e.g. Syria, ISIS?
- The Question of the Statehood of Palestine with regard to conventions in place.
- How to cease the current precipitation of hostilities in the region?
- What are the territorial lines to draw in case of independent statehood of Palestine?

Letter from Executive Board:

Greetings Delegates,

I hope you have read the background guide provided above. This letter will address what we as the executive board expect from the delegates attending the committee.

Delegates, we expect you to address the timeline given as genuine facts in the committee as we are in a present simulation, you need to have a good amount of research on your country policy and substantial research on the possible solutions to this problem. We also expect you to be active with submission of directives to impact the committee in favorable ways!

Delegates, we as the executive board will ensure the active participation of the committee in the crisis provided and will encourage everyone to co- operate cordially with the executive board in order to make this committee a success!

Looking Forward to a Great Committee, Executive Board.

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