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# **AN ANALYSIS OF STATEHOOD AND RECOGNITION OF PALESTINE**

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## **Abstract**

In the international arena, State Recognition is a process of accepting or acknowledging a sovereignty and independence of new state by the existing state in the international community. Sovereign states constitute the principal units of the international society. States are endowed with inherent rights and obligations under international law. Although they are difficult to define, a state is normally able to control its own government, enact laws that advance its objectives, offer services to its citizens, exercise jurisdiction over its borders, have equal legal status with other states, and defend itself against armed threats. Along with these rights some responsibilities to uphold human rights and fundamental freedoms, avoid meddling in the internal or external affairs of other states, resolve conflicts with other states peacefully, and fulfil treaty and other international law-related duties. The general requirements for establishing a state are outlined in the 1933 Montevideo Convention. These include having a permanent population and a defined territory, yet an entity's ability to maintain its borders may still be necessary for it to qualify as a state. An efficient government is another aspect of statehood. And lastly the state must be able to maintain mutual relation with the other existing state and international organisations. Our Earth is a creation of God with many complex and controversial geopolitical areas. One of such area contains the state of Palestine. A lot of painful effort and struggle involved in the emergence of Palestine as a state, in making itself eligible for statehood and Recognition. The path the Palestine crossed to build the statehood and its recognition as a state within the purview of international law, by other existing states has been discussed in this paper.

**Key Words:** State Recognition, Legal effects of Recognition, Montevideo Convention, Oslo Accords, Statehood of Palestine, Palestine Liberation Organization (PLO), Historical background of Palestine State, Non-Observer Status.

## INTRODUCTION

The states in the international community are not static and unchanging. One state may disintegrate and new state may form due to the insurgent or belligerent activities. States may also unite with other states to form a new state. These transformations raise a question amidst other states which formerly had relationship with the displaced governments that whether or not to engage in relations with the new states. The existing states in the international arena has to decide about the recognition of the newly formed state. Recognition is important for a state as it is fundamental to the International Legal order, particularly for maintaining diplomatic relationship with other states. As a core entity in international law Sovereign states can enjoy inherent rights and perform its correlative obligations only when it gets recognition. The recognition can be refused if it is without strict legal justification. Basically “Recognition” means “Ratification, confirmation or acknowledgment”. An act of recognition under International Law can be considered as an independent act of existing statehood community. The acknowledgement by actors of international arena, that a new state has acquired international personality is said to be Recognition. On being recognised, the states have to be ready to undergo the consequences which is happening domestically and also in the international plane. Recognition sometimes becomes purely political rather legal. In the history, Palestine as a state started claiming the recognition of their state and the United Nations membership amidst the burning crisis between Israel and Palestine on the other hand their right to self-determination. Palestine strongly started on focussing to stand as an Individual State by getting the recognition in the international ground rather focussing on conflicts and negotiations with Israel. Their right of claiming membership in United Nations was strongly objected by United States, Israel and their allied countries. Though the Palestine has got the membership of United Nations violating the concept of unilateralism and peace agreements with Israel. This paper explores about the concept of State Recognition, its legal effects, the continues struggle of Palestine for State recognition from past to position it as a state in international arena and the recent developments.

## RECOGNITION OF STATE

Under International Law, the essentials to be possessed by an entity to get recognised as a State according to Article 1 of Montevideo Convention 1933 are the state should have a permanent population, definite territory, Government, capacity to enter into relations with other states. Basically, there are two theories of Recognition is under International Law. They are

Constitutive theory and Declaratory theory. Constitutive theory states that act of recognition alone can create a new state and awards it a legal personality. Recognition by other existing states through their will and consent may alone establishes a new state in international community as subjects of International Law. Declaratory theory states that States are existing even before the recognition by other existing states, once they fulfil the elements of statehood that is by virtue of factual situation. The act of recognition is only a mere acknowledgement. Declaratory or evidentiary theory always prevail over constitutive theory. Once a question arises as to the date of the existence of new state the date when the recognising state signs a treaty with the newly recognised state will not be considered rather the material date is the date when the requirements of statehood was first fulfilled. Recognition of Government is different from recognition of state, that is acknowledging a group of people to act as a competent organ of state and to represent them in international arena.

Recognition may be implied in some situations. The inference is made from circumstances that indicates to establish formal relations with new state or government. A country may recognise another country's existence by maintaining diplomatic relations, establishing trade relations, receiving or sending officials, respecting their borders and aiding the new state. One of the instances from the history which reveals us about the implied recognition was during 1972 United States and China signed Shanghai agreement which acknowledged the one China policy without explicitly recognising Peoples democratic of China. By signing the diplomatic document United States impliedly recognised the existence of China. Sometimes a State may recognise one state based on conditions, generally the newly recognised state has to fulfil the obligation which they undertake in return of Recognition. Recognition of South Sudan by Sudan in 2011 was done only after agreeing to a wide-ranging peace agreement and border demarcation. Conditional recognition can also act as a tool for promoting peaceful resolution of conflicts. Collective recognition is a recognition by means of international decision which signifies the importance of international community. That is recognition simultaneously made by multiple states through a joint statement or collective action which demonstrates the international consensus and facilitate diplomatic relations international cooperation. During 1992, the European community collectively recognised Croatia and Slovenia's independence from Yugoslavia.

Recognition of a state can be done in two forms under international law. One of the forms is Defacto Recognition, that is an entity is actually independent but it has not acquired sufficient

stability and has not complied other requirements of recognition then the state may be recognised defacto. The recognition is true in fact but it is not legitimately authorized. Somaliland declared independence from Somalia in 1991, but its status is not recognised by the international community. Other form is Dejure Recognition, that is when a State possess all the requirement of statehood and if it is capable of becoming a member of international community then the state may be recognised Defacto. The reasonable assurance of stability has to be given by the State and they should be ready to perform their international obligations. This is true form of recognition and it is legitimately authorised. Recognition dejure once done cannot be withdrawn. If it is defacto recognition then the states can withdraw it or they can make the defacto recognition as dejure.

## **LEGAL EFFECTS OF RECOGNITION**

The states recognised dejure are eligible for entering into treaties and agreements with other existing states in the international arena. They can form alliances with other states and also, they can enter into formal commercial and diplomatic relations. The country which is recognised dejure possibly can file suits against other countries and they can enjoy the state immunity from the jurisdiction of other countries. The sovereignty and territorial integrity are acknowledged and the safety of the territory and also human rights of the individuals are very much guaranteed. Recognition also defences protection of country's property and assets in foreign countries. Recognition legitimised a government's authority and control over their territory. They can also easily take aid from other countries. Any individual who belonged to the state which is recognised dejure can easily travel all along the world as their nationality and citizenship are definite. The state which is recognised can become a member of United Nations and also to other international organisations. Once recognised countries will come under the purview of international law and its obligations. Recognition enables the state to participate in global affairs. Recognition established a country's status and rights in the international community.

## **HISTORICAL BACKGROUND AND BUILDING OF PALESTINE STATEHOOD**

Palestine and Israel were the ancestral homeland of many ancient religions and civilisations. The region plays a major role in Abrahamic religions which includes Judaism, Christianity and Islam. Apart from its cultural and religious significance abundant scriptural sites and landmarks

located in this region. Ancient civilisations such as Mesopotamia, Egypt, Greece and Roman empire shaped that area of the world. Till the end of first world war from 16<sup>th</sup> century the region was under the rule of Ottoman Empire. The governance, administration and demography of this region had a greater impact when it was under Ottoman Empire. Determining territorial limits and establishing statehood have always been difficult and contentious processes. Significant rise in nationalism was witnessed during 19<sup>th</sup> and 20<sup>th</sup> century in both Israel and Palestine. The political ideology of nationalism emerged as a powerful tool and it inspires various people around the world to fight for establishment of independent nation-states. The origins of nationalist sentiment can be traced back to historical, geopolitical and religious factors in case of Israel and Palestine. Establishment of Jewish homeland in Palestine was encouraged by the Zionist movement. This movement gained more support from the people as the movement was against discrimination and persecution. This movement stressed the importance of returning Jewish back to their ancestral homelands and about Jewish national identity. The Basal program formed during first Zionist Congress called for establishment of national home for Jewish people in Palestine, which created the tensions with existing Arab population in Palestine. After the disintegration of Ottoman Empire, the League of Nations which was an international organization, established in 1920 with the goals of preserving world peace and encouraging national cooperation played a vital role in awarding the Palestine Mandate. During the twentieth century, the history of the region was greatly influenced by the British government in Palestine. Palestine was under British supervision in terms of its political, economic, and social development from 1917 until 1948. Established in 1922, the Palestine mandate gave the United Kingdom authority over Palestine, which included the territories of the Palestinians and modern-day Israel. The mandate said that it was the duty of the United Kingdom to create the favourable circumstances required for the creation of a “Jewish National Home” which laid the groundwork for the State of Israel's eventual formation. In this declaration, Britain made it clear that it was in favour of the Jewish people having a national home in Palestine. The League of Nations gave the British mandate in 1922 with the intention of carrying out this goal and protecting the rights of the existing Arab nationals.

But there was also debate concerning the League's execution of the Palestine Mandate. The majority of Palestine's native Arab people considered the creation of a Jewish state as a threat to their own aspirations as a nation. Eventually, rival claims to the land caused significant turmoil and conflict as a result of this mindset. Because of this, even though the League aimed to promote stability and allow for self-determination, there were unforeseen due to the region's

essential complexity. On the fear of losing their land on account of Jewish migration Palestine Nationalism emerged. This nationalist feeling among the resident Arabs of Palestine emerged earlier during the Ottoman period itself when Ottoman policies favoured Jewish immigrations. The establishment of Zionist institutions and Jewish settlements threatened the native Arabs. In a determination to safeguard their land and culture Palestinians began to mobilise and proclaim their own national identity.

During World War II, the Arab and Jewish communities put pressure on the British administration. The Arabs pushed for a halt to Jewish immigration, while the Zionist organization asked Britain for additional assistance in their struggle for a Jewish homeland. Prolonged tensions between the two parties and the British peaked in 1947 when the British announced their intention to withdraw from Palestine. The British withdrawal made it possible to partition Palestine and create the State of Israel in 1948, even if the question of Palestinian independence remained unresolved. The British administration's position in Palestine is still having an impact on the Israeli-Palestinian conflict, which is still one of the most protracted and contentious in the region. Tensions have persisted in recent years in a number of manifestations, including as political disorder, internal attacks, and violent altercations between Israeli security personnel and Palestinians. One persistent point of disagreement is the question of Jewish settlements in the occupied lands, which are unlawful according to international law. Many people believe that these settlements are an infringement on Palestinian territory that will make it harder for the Palestine to establish a Sovereign State. After the British Mandate expired during 1948, an independent State of Israel was established unilaterally and immediately the Israel state was recognised by the United States and Soviet Union. The Jewish people's right to create a State is mentioned in the Israeli Declaration of Independence was stated under United Nations General Assembly Resolution 181.

Following the 1948 Arab-Israeli War, Egypt and Jordan took over the remaining parts of Gaza and the West Bank, while Israel retained sovereignty over much of the land awarded to the Arab state under the terms of the Partition Plan, including West Jerusalem. Because of the war so many Palestinians displaced from their own land. The so-called "Green Lines" was established when Israel, Egypt, Lebanon, Jordan, and Syria signed the Armistice Agreement later in 1949. As the geographical makeup of the Palestinian state was being discussed, boundaries also emerged as one of the major unsolved challenges. A further historical event that warrants consideration is the establishment of the Palestine Liberation Organization (PLO)

in 1964 as the administration of the Palestinian people, following an Arab League-sponsored summit held in Jerusalem. The majority of the Arab League states quickly endorsed it and awarded the PLO a seat in the group. During 1967, Israel launched a six-day war, a series of pre-emptive attacks against Egyptian airfields followed by mobilisation of troops. This played a significant role in awakening Palestine nationalism because of a brief but fierce conflict in which Israel used its obvious military advantage, Israel overran Jordan for control of the West Bank and Egypt for control of the Gaza Strip. Following Israel's victory over Syria, all of the holy sites in Jerusalem were taken over, and the Golan Heights were now under Israeli control. The 1948 and 1967 wars, which produced some of the fundamental issues for peace negotiations, had a profound impact on all the events that transpired through the battle. Resolved issues in the peace negotiations include Palestinian refugees, Jerusalem control, and reciprocal statehood recognition. These issues continue to be the major dialogue points.

As the UN's representative for Palestinian Arabs, the PLO was given observer status in 1974. In a resolution passed on November 22, 1974, the General Assembly invited the PLO to attend its meetings as an observer. For Palestinians, this was a significant development since it demonstrated UN support for a protracted, nonviolent resolution to the conflict. In addition, the General Assembly upheld the Palestinian people's fundamental rights, including the rights to national independence, sovereignty, and self-determination. The years that followed were marked by political unrest and fruitless diplomatic attempts. During 1987, after twenty years of occupation of Israel in Gaza strip and West Bank led to the uprising of Palestinians which has shaken the Palestine and led to the killing of thousands of Palestinians. During 1991, negotiation process started and a peace conference on the Middle-East held in Madrid. However, the discussions remained challenging, particularly when it came to the ultimate borders, Jerusalem, the future status of Palestine, Israeli settlements, and Palestinian refugees. Concurrent with the efforts of the working groups, covert Israeli-Palestinian negotiations in Oslo during the summer of 1993 produced a significant development. The DOP, or Declaration of Principles, was signed by Israel and the PLO. The PLO formally embraced United Nations Security Council (UNSC) Resolution, pledged to combat terrorism, and acknowledged Israel's right to exist. Israel at last acknowledged the PLO as a valid negotiation partner. The DOP demanded that Israel leave a region in the West Bank and Gaza Strip that was not specifically mentioned, as well as the establishment of the Palestinian Authority (PA), a five-year interim self-government entity in the areas that Israel promised to return to Palestinian sovereignty in Gaza and the West Bank. The most challenging issues, including Jerusalem, Palestinian

refugees, Jewish settlements, and defined borders, were to have been resolved in final status negotiations during the course of these five-year negotiations. In order to put the Oslo Accords into effect, the two parties also negotiated the Oslo II agreement in September 1995 and the Gaza-Jericho accord in May 1994. Oslo peace process also failed as both the sides failed to comply with the agreement. President Clinton sponsored the most recent effort to reach a consensus on a two-state solution in 2000 at Camp David. He put up a plan outlining the contours of a final agreement, but major disagreements persisted regarding all of the most crucial topics discussed, most notably the status of Jerusalem and the Palestinian refugees. In 2003, both the parties accepted the "Road map to peace" formed by United Nations, United States, Russia and European Union. Sadly, after Hamas won the Palestinian parliamentary elections in 2006, hostilities flared up again. Israel began a string of robust military operations in Gaza against Hamas, which sparked widespread criticism from the international community. Through international mediation, a ceasefire deal was reached by February 2009, although the violent activities persisted. The past few years have been marked by a deadlock in the advancement of negotiations. The past few years have been marked by a deadlock in the advancement of negotiations. As of the internal issues are concerned, status quo is being maintained in Israel and Palestine. Israel is using the existing circumstances to maintain its discriminatory policies against Palestinians and to expand Jewish settlement in the Occupied Palestinian Territories. Supported by donors and the "international community," the Palestinian Authority and its secular leadership found their legitimacy severely damaged by certain aspects of the state-building plan. Before Israel agreed to any particular demands made by the Palestinians, the Palestinian leadership had to publicly lose all of its negotiating leverage. Before Israel acknowledged any real Palestinian rights, much less a Palestinian state, it had to, among other things, ensure Israeli security, recognize Israel, and pledge itself to the two-state solution.

### **MONTIVIDEO CONVENTION ON STATEHOOD AND PALESTINE**

Palestine's path to statehood has been complex and changing. Mostly Palestine's efforts have been focussed on diplomatic and political means to achieve recognition. Palestine's statehood is based on international law, which includes the Right to self-determination and territorial integrity. The element of statehood are definite territory, defined population, able government and capacity to enter into relations with other states. There is always a debate over Palestine's fulfilment of this definite state territory concept. The vast majority of the international

community, including the United Nations and the European Union, recognizes the "Green Lines" as the legitimate division between Palestinian and Israeli territory, with the former including the West Bank, the Gaza Strip, and East Jerusalem. Palestine has established its borders, even though the majority of them are contested with Israel. Although much of Palestine's borders are in dispute with Israel, the country has nonetheless determined its boundaries. The international community has agreed since the Oslo Accords that Israel and Palestine should start negotiations over the border dispute. Furthermore, it is evident from reading the Palestinian Declaration of Independence that the PLO intended for the Gaza Strip and West Bank to form the boundaries of a Palestinian state, with East Jerusalem serving as its capital. Even though other states having similar territorial conflicts, doesn't stop them from being states. Therefore, Palestine has a defined area under the terms of the Palestinian Authority, even if Israel keeps up its military presence at the borders and continues to construct settlements that prevent the Palestinians from exercising effective authority over land.

The criteria that the population as per the requirement of statehood is also fulfilled by the Palestine people. The Palestinian people are unquestionably living in the country. Since the beginning of time, they have lived inside its borders and have shared a same culture, identity, and customs. Examples of this include speaking the same language and having comparable customs and habits, all of which point to a common identity. Furthermore, there has never been any international doubt expressed about the existence of the Palestinian people. The mandate took into account the fact that there existed a Palestinian population and was motivated by the desire to protect that population's right to self-determination. The whole international community accepted the presence of a group of people with common ancestry. As of the population of Palestine estimated up to 5.60 million and the criteria of population is evidently fulfilled.

The existence of an efficient government listed in Montevideo, and it is a more complicated matter for Palestinian authority to meet this requirement. It seems helpful to summarize the governmental framework and the many parties involved in the administration of the occupied Palestine territory before assessing the degree of fulfilment of this requirement in the instance of Palestine. The PLO was founded in 1964 with the intention of representing the Palestinian people. Ten years after its founding, the United Nations General Assembly and the Arab League acknowledged it as the only authorized representative of the Palestinian people and United Nations granted Palestine a non-member observer status. The Palestinian Declaration

of Independence was adopted in 1988 by the PLO's legislative body, the Palestinian National Council (PNC). Yasser Arafat, the PLO's chairman, announced it and also took on the role of Palestine's first president. During the 1993 Oslo Accords negotiations with Israel, Arafat and the PLO represented the Palestinians diplomatically. They contributed to the formation of the Palestine Authority; an interim five-year entity tasked with managing Palestinian issues within the occupied Palestine territory. PLO is handling negotiations; many political parties were there in PLO but Fatah dominated. Later during 1990, the primacy of Fatah was challenged by Hamas. In March 2005, following Arafat's death and the election of Mahmoud Abbas as PA President, Hamas and Fatah come to an agreement in Cairo whereby the former pledged to stop terrorism against Israel. Unexpectedly, Hamas emerged victorious in the 2006 legislative elections, securing the majority of seats in the Palestinian Legislative Council. Because of disagreements over the political platform, Fatah and other factions declined to take part in the new administration.

Following the escalation of hostilities between the two groups at the start of 2007, a deal was struck in Mecca that resulted in the establishment of a government of national unity. Sadly, it was destroyed by yet another wave of violence that allowed Hamas to assume control of Gaza strip while Fatah was having control over West Bank. Though political conflicts existed the governmental functions was performed in Palestine under Abbas and a great progress has been made with respect to democratic process.

Regarding the final requirement, it is generally agreed upon that an entity cannot be classified as a state if it is incapable of forming relationships with other states. The DOP, which states that the PA will not have any authority or responsibility in the area of foreign affairs, is cited by those who support the notion that Palestine does not meet this requirement. In practise PLO was agreed to conclude international agreements with states and international organisations. For the benefit of PA. Based on that it can be concluded that PA is having capacity to enter into relationship with state and international organisations although that is exercise through PLO. The PLO and PA are not strictly different from one another. States and international organizations occasionally refer to PA and others to PLO when dealing with the Palestinian Authority. In practice, both uphold an operational network of diplomatic ties in addition to taking part in a variety of international organizations with varying membership statuses (from observer to associate or affiliate). Currently, 137 states have granted Palestine bilateral recognition, and more lately, several European governments have started to legally recognize

Palestine. In numerous nations, it also formed general delegations, embassies, and missions as a sign of its capacity to engage in diplomatic relations with other states.

Altogether, Palestine satisfies the Montevideo criteria's basic conditions for statehood. There is sufficient evidence to support Palestinian statehood in the sense of the Montevideo criteria, even though it could be argued that some of them are only partially fulfilled due to internal political issues and a lack of total control over its borders and territory. The Palestinian authorities have worked hard to secure both bilateral and multilateral recognition from the international world.

### **COLLECTIVE RECOGNITION**

Acknowledgement by multiple states and international organisation which can be expressed through joint statements or declarations, United Nations resolutions, diplomatic recognition, multilateral treaties which legitimizes a particular state is collective recognition. As in the case of Palestine first attempt for full membership of Palestine in United Nations was first made by PLO during 1974 when PLO was granted the status of non-observer entity. And PLO was invited to represent Palestine people and it was being invited to participate in plenary meetings of General Assembly. A great deal of effort has gone into ratifying numerous international agreements and treaties as well as obtaining participation in international organizations including the International Criminal Court (ICC), United Nations Educational, Scientific and Cultural Organisation (UNESCO), and United Nations (UN). This is not entirely new, as the PLO made multiple attempts in its early years to join regional organizations, particularly those in the Arab world. It joined the Arab League in 1976, was admitted to the Organization of Islamic Cooperation in 1969, and was granted membership in the UN Economic and Social Commission for Western Asia the following year.

Palestine submitted application during 2011 for United Nations membership to the United States Secretary General. As of now, 145 of the 193 member states of United Nations admitted Palestine as a Sovereign State. Palestine's status as a non-member observer state allows it to participate in all United Nations Proceedings, except for voting on draft resolutions and decisions in the Security Council, General Assembly and its six main committees. Palestine has proved by all means that it is having the capacity of statehood

## CONCLUSION

Attempt has been made to ascertain whether Palestine is recognized by the international community as a state in this paper. It can be a challenge to determine when an entity qualifies as a state due to the interplay between legal and political factors, statehood and recognition are topics that are highly contentious and contested. Palestine is one another instance of how international law is frequently insufficient. According to the declaratory theory of Recognition, Palestine is a state since it satisfies every requirement set forth in Montevideo Convention. Those who supported the constitutive theory maintain that a state's legal existence as a component of the international system is constituted by the recognition of other members of the system, despite the widely held belief that recognition by other states does not determine whether an entity is a state under international law. Effectiveness of the Palestinian strategy for recognition from all angles is examined in order to assess whether Palestine qualifies as a state under the constitutive theory. The Palestinian authorities have made some headway in their efforts to secure the recognition of the major number of states on a bilateral basis. Since 1988, Declaration of Independence, till now the state of Palestine has been formally recognized by 145 states. While it is true that a small number of European and Western nations took this action, the issue here is more one of geopolitical interests tied to the conflict with Israel than of these states' unwillingness to acknowledge the legitimacy of Palestine. Multilaterally, Palestinian initiatives yielded even more favourable outcomes. Palestine is a part of numerous significant regional associations, including the Islamic Cooperation Organization and the Arab League.

After gaining full membership in UNESCO in October 2011, Palestine was promoted to non-member observer state status in the UN a year and a few months later. This entailed the UN formally recognizing the state of Palestine and reaffirming that the US's status as a permanent member with veto power in the Security Council is the only thing standing in the way of Palestinians' full UN membership. Lastly, the way that the Palestinians have approached international tribunals like the ICJ and, more importantly, the ICC, provides additional support for the arguments made in this study. Because it may put Israel above international justice, the Palestinians' admission to the ICC in 2015 is a significant turning point in their history. In summary, even if we use the constitutive theory as a point of reference, Palestine is a state because it has received a high degree of bilateral and multilateral recognition, particularly from the UN, and because its attempts to function as a state within the international system were largely successful. After taking into account each of these factors, it is concluded that Palestine

qualifies as a state for both declaratory and constitutive purposes. It is incorrect for those who associate the establishment of a Palestinian state with the settlement of the Israeli-Palestinian conflict, since these two are separate issues. In national and international sphere, Palestine is a state and there is no reason to deny that.

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