



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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PROMINENCE OF STATEHOOD IN PALESTINE'S PREDICAMENT

AUTHORED BY - MANJARI KARTHIK NARAYANAN

ABSTRACT

The State of Palestine is a territory located in the Levant in western Asia bordering Lebanon, Syria, Jordan, and Egypt. Presently it is being occupied by the state of Israel, a Jewish ethnostate established by Zionists in 1948. The susceptibility of Palestine to the constant stream of attacks from Zionist groups striving to occupy the territory could be amounted to the lack of recognition of the State's sovereignty. What is sovereignty? Is sovereignty an outcome or a byproduct of recognizing a state's autonomy in the form of its statehood? Or is statehood an outcome of a territory's recognized sovereignty? It is vehemently believed that the recognition of Palestine's statehood would be the conduit that seals and establishes Palestine's autonomy and curtails the colonisers from encroaching upon Palestine's territory and threatening its political independence. However, there is always the question of whether that is plausible in the most astute sense. Nonetheless, if recognition of Palestine's statehood can prevail as a stepping stone to attainment of decolonization, then such a feat seems to be of utmost significance. This article will analyze the Legal status of Palestine, or its lack thereof; in order to substantiate the consequences that the lack of recognition would entail in the International legal spectrum. The major points of discussion here is whether Palestine qualifies the requirements for statehood and the present legal status of Palestine.

INTRODUCTION:

For a state to be constituted, there are certain prescribed stipulations that must be met. A state requires a definitive territory, subjects or the population and a governing body. Additionally, a state also requires sovereignty that entails a sense of autonomy and finally, recognition. The requirement of recognition in order for a State to be constituted is debatable. However, in the International legal perspective, garnering recognition from International Bodies and other States would prove beneficial in terms of international relations and aid. The practice of conferring recognition of a country's

Statehood by other State is a form of acceptance of such State into the international community. When it comes to international trade and matters of granting aid to other nations, only those States that are recognized to have their own Statehood are involved and included. Recognition bestowed by other States is one of the foundational requirements to build trade and/or diplomatic relations which will not only prove beneficial but is also a basic requisite in the present state of affairs.

In the current era of globalized economies that freely practice inter-country trade, it is close to impossible for most economies to be self-sufficient without opening up its door for international trade and relations. In order to sustain in the present manner of economic affairs, globally speaking, every country has to contribute to and participate in international trade. Without recognition from other States, it is highly inconceivable for a State to participate in international trade.

The recognition of States is a rudimentary form of international legal order. The acknowledgement of the said State's sovereignty and international acceptance is deemed as recognition. The recognition of a State is integral in determining the international rights and obligations vested upon the State that has gleaned such recognition.

Until 1948, Palestine used to denote the geographic region between the Mediterranean Sea and the Jordan River. The Assyrian, Babylonian, Roman, Byzantine, and Ottoman empires have ruled Palestine in its history. Following the World War I, Palestine was under the administration of the United Kingdom as per a Mandate, which was received in 1922 from the League of Nations. The recent history of Palestine began when the British Mandate was terminated, followed by the Partition of Palestine and the creation of Israel, and the ensuing Israeli-Palestinian conflict.¹

In 1947, the United Nations recommended a Partition Plan for Palestine and the resolution contained Britain's planned termination of the British Mandate for Palestine. The resolution also contained a recommendation of the partition of Palestine into two states; one being a Jewish state and one being an Arab state, along with the Jerusalem-Bethlehem area that was deemed to be protected and administered by the United Nations.

¹ Kirk Bailey (2021) World History For Dummies et al. (2021) A brief history of Palestine, dummies. Available at: <https://www.dummies.com/article/academics-the-arts/history/world/a-brief-history-of-palestine-186279/> (Accessed: 04 September 2023).

The plan included a well prescribed description of the recommended boundaries of the two separate states. It also provided plans for an economic union between the two proposed states and for the protection of religious and minority rights. The resolution also contained the withdrawal of British forces and termination of the Mandate by August 1948 followed by the incorporation of the new independent states by October 1948.

However, a look into the history of Palestine would show that the territory that was prescribed and recommended, was never entirely bequeathed and administered under the sovereignty of Palestine. Ever since the beginning, there have only ever been conflicts with respect to the ownership of the aforementioned territories.

The proximity of discussions on Statehood and Palestine's liberation might precipitate the question of what one has to do with the other, especially when one seemingly fails to understand the level of significance Statehood and recognition can have on the autonomy of the state as a whole and its citizens. A State, in its essence, is a formal mode of organizing a group of people or territory categorized based on their juxtaposition or similar anthropological behaviour or characteristics or any other criteria that would allow a sense of uniformity or relativity. Such a methodic manner of organization would then facilitate the formation of a governing body that can bring a semblance of order into the such a set-up. When factors that are required to constitute a particular society into a state align, such a formation allows the creation of an organization that is not only acknowledged, but also protected from being disbursed and disturbed. The cardinal notion behind wanting Statehood is the derivative semblance of protection that a particular organized society or group of people get. There is sense of belongingness that comes along with prescribed rights and duties that these individuals are bound to on a personal and a collective level.

With all the dialogue surrounding Palestine's predicament mostly pertaining to the recognition of its Statehood being a stepping stone to decolonization, it is quite elementary for one to presume that the attainment of this so-called recognition of Palestine's Statehood will absolve Palestine of its quandary. Theoretically, Statehood bestows autonomy and sovereignty, therefore the recognition of Palestine's Statehood is that one final requisite that will eventually grant Palestine its autonomy and sovereignty and by withholding such recognition, Palestine is being deprived of the same. But the most pragmatic of perceptions to this whole conundrum would lead one to the conclusion that,

irrespective of such a recognition being bestowed upon Palestine by other States, autonomy and sovereignty are not things that are easily attainable and are implementable.

Having said that, the question of whether acknowledging that Palestine is a state with sovereignty and autonomy would be the first step towards its liberation since such an acknowledgement entails the conclusion that Palestine's sovereignty cannot be threatened by another state and if another state happens to threaten the same, Palestine can retaliate and have other states rush to its aid, still lingers.

REQUIREMENTS FOR STATEHOOD

Before we dwell into the effectiveness of autonomy and sovereignty as theoretically being the major contributors to the impending decolonization, it is imperative to understand the criteria that must first be fulfilled to attain Statehood and whether Palestine even has a semblance of such characteristics. As per the Montevideo Convention, "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 states. It is a well-established principle that, in the international legal perspective, recognition of a State can be defined as, the acknowledgment or acceptance of a State as an international personality by the existing States of the international community. For a State to be constituted and recognized, it must have a defined territory and a population, it must be politically organized and must exert a semblance of autonomy or independence.

DOES PALESTINE FULFILL THE CRITERIA FOR STATEHOOD?

Palestine has been in a constant state of despair, even since the war in 1967 after which Israeli forces occupied the Gaza Strip and the Sinai Peninsula from Egypt, the West Bank and East Jerusalem from Jordan, and the Golan Heights from Syria. The U.N. Security Council proposed a resolution which warranted the withdrawal of Israel "from territories occupied" in 1967. The resolution prescribed the right of "every state in the area to live in peace within secure and recognized boundaries free from threats or acts of force."²

² HISTORY.COM EDITORS (ed.) (2018) Six-Day War, History.com. Available at: <https://www.history.com/topics/middle-east/six-day-war> (Accessed: 01 September 2023).

In 1974, the Palestine Liberation Organization was granted observer status in the UN, as the representative of the Palestinian Arabs. A resolution was adopted on 22 November 1974, wherein, the PLO was invited to participate in its sessions in the capacity of observer. UN had also backed a longstanding peaceful resolution to the conflict and reaffirmed the inalienable rights of the Palestinian people, including the right of self-determination, sovereignty and national independence.

Since 1987 when a Palestinian uprising or intifada rose in West Bank, Gaza and Israel leading to protests and conflicts, there has been constant unrest for years. The Oslo accords were signed Israel and the Palestine Liberation Organization to set out a peace process. In spite of all such efforts undertaken, to this date, there has been a constant state of unrest.³

This constant reign of terror and violence has vehemently affected the status of Palestine in the International legal sphere and also its capacity to fulfill the requirements of statehood. An important consideration here is whether Palestine has met the criteria for statehood as per the Montevideo convention. Existence of a motivation to be constituted into a state is an imperative requirement. Palestine had time and time again displayed this determination through various means including the 1988 Declaration of Independence made by the PLO which stated that “The Palestinian National Council proclaims the establishment of the state of Palestine on our Palestinian territory with its capital Jerusalem.”⁴

DEFINED TERRITORY:

The first criterion for requirement is the existence of a defined territory. Although most of Palestine’s territory are either contested with Israel or under its occupation, it is undebatable that Palestine has established borders, and a majority of the international community, including the UN and the EU, recognize the “Green Lines” as the legitimate partition between Palestinian and Israeli territory, with Palestine containing the West Bank, the Gaza Strip and East Jerusalem.

The International community had called for the negotiations between Israel and Palestine regarding

³ Murphy, B., Taylor, A. and Westfall, S. (2023) The Israeli-palestinian conflict: A Chronology, The Washington Post. Available at: <https://www.washingtonpost.com/world/2021/05/13/israel-palestinians-timeline-conflict/> (Accessed: 02 September 2023).

⁴ Palestinian declaration of independence - 15 November 1988 (historical text) (1988) palquest. Available at: <https://www.palquest.org/en/historictext/9673/palestinian-declaration-independence> (Accessed: 01 September 2023).

border issues to be with regard to pre-1967 borders and the resolution passed by the Security council called for the withdrawal of Israeli forces from the territory occupied by it during the 6-day war.

A State does not have an obligation to have declared borders which is substantiated by Israel not having fixed and determined borders yet still being considered a State. There are other states with this kind of territorial disputes without such a factor affecting its existence as states and even if Israel continues to maintain forces at the borders and to build settlements and encroach into Palestinian territory, Palestine has a defined territory within the meaning of the Montevideo Convention.

PERMANENT POPULATION:

Second criterion is the presence of a population or subjects. It cannot be denied that Palestinians are a nation since they have since times immemorial have resided within its territory sharing culture, identity and norms. In the international spectrum, the mandate recognized the existence of a population of Palestinians, and their purpose to secure the right to self-determination. The presence of a Palestinian community has been recognized even after the pronouncement of Israel as a separate state.

Even after Israel had claimed that the Palestinians were not a people for the purpose of the population requirement of statehood, since it was lacking continuity of Palestinian national identity through the decades. Israel propounded the notion that Palestinians were just Arabs.

Although most Palestinians are mostly concentrated as refugees in Jordan, Syria and Lebanon, there are still a considerable amount of people that live in the Gaza strip and the West Bank whether under Israeli occupation or not. To conclude, Palestinian authorities exert control over a permanent population even if most of the Palestinians are displaced due to the ongoing fight for control from Zionists.

GOVERNMENT:

The third criterion required for statehood is an existence of an effective government. In spite of the internal political conflicts that rose within the Palestinian National Authority, under Abbas it has established governmental functions close to those of a state government and that there has been an

improvement in the democratic process.

The question of whether the Palestinian government exercises sufficient authority over its territories is still persistent. The PA only controls parts of Palestine and in the West Bank, it is only partial as Israel possesses almost the 60%. Certain areas of governmental authority such as external and border security are not under the PA's control, and remain under Israel. International law, however, does not state that an entity must be competent and must exert control over every aspect in order to satisfy the government criterion, therefore, the limitation on its responsibilities does not defeat the requirement of effective government.

The PA exerts control over most important governmental services, such as a judiciary and a police force, legislative and executive authority including education, tourism, culture, social welfare, taxation and so on.

CAPACITY TO ENTER INTO RELATION WITH OTHER STATES:

States and international organizations when interacting with the Palestinian government, sometimes refer to PA and others to PLO. However, both PA and PLO maintain a functioning network of diplomatic relations and also take part various international organizations with status of an observer to associate or affiliate.

Palestine has been bilateral recognized by 137 states and recently some European governments have begun to formally recognize it. Palestine also houses established embassies, missions and general delegations in many countries, which could be deemed as an indication of its ability to enter into relations with other states.

Thus, Palestine more or less meets the basic requirements to be constituted as a State even if certain criteria are ambiguous and require reformation. Palestine's claim for statehood is justified since Palestine had made efforts to maintain its independence and initially it was Israel that tampered with its physical territory.

LEGAL STATUS OF PALESTINE:

The legal status of Palestine is as ambiguous as its control over the physical territory. Israel asserts that Palestine's legal status is sui generis, since it claimed that the occupation had duly ended and that the population was not ready for self-governance and situation in Palestine must be maintained until Palestine had amassed enough population to attain a status through self-determination.

The projection of the legal status of Palestinian territories as sui generis could be deemed to be political. Since the acceptance by Israel that it was an "occupant," would constrict them from permanent seizure or settlement by force. The Israeli Government had conspired a legal reasoning to legitimize territorially expansive policies.

The concept of sui generis territory could be deemed to a place like Antarctica but not in the case of territory that was militarily occupied due to armed conflict, like the Gaza strip and the West Bank. The claim that the occupation of Gaza ended in 2005, and that its status is now sui generis is not withstanding. The actual end of an occupation requires the end of a conflict and the establishment of sovereignty through self-determination. For Palestine to attain the status of sui generis territory, the occupation must end following the culmination of the ongoing conflict and the affording of right of self-determination which would then allow the recognition of sovereignty.

WHY IS STATEHOOD SIGNIFICANT?

In the International community, sovereign states are the main entities, among whom interactions occur. Therefore, through the operation of international law, states have inherent rights and obligations which are not easily defined, but a state typically can choose its form of government, make laws that promote its interests, provide services to its population, exercise jurisdiction over its territory, have equal legal standing with other states, and use self-defence against armed attacks. The obligations that are conferred upon the states along with these rights include, refraining from interfering with the sovereignty of another state, respecting human rights and fundamental freedoms, settling disputes with other states by peaceful means, and performing obligations imposed by treaties and other sources of international law.⁵

⁵ Use of force under International Law (2023) Justia. Available at: <https://www.justia.com/international-law/use-of-force-under-international-law/> (Accessed: 02 September 2023).

Colonisation is defined as the act of taking control of a country or a territory that is not one's own, especially using force.⁶ An ample amount of countries have been colonised throughout history by countries and were tormented for years under the colonisers' regime. It is secret that the process of decolonisation, albeit backed by several years of protests and retaliations from the colonies, ended with the coloniser countries, restoring the colony's sovereignty by vacating the territory and handing over the political administration back to the colony. India is a major example of a country that had endured such a situation. However, the question of whether the justification offered to the constant outbursts of protests by Palestinians in order to restore their autonomy is that, decolonisation can only occur when such a colony defies the encroachment of the coloniser to the point where such an extermination is the only available option, still lingers. Nonetheless, if Palestine's statehood is unequivocally recognised, then the people of Palestine need not toil to the point of destruction, in order to uphold their right of self-determination.

CONCLUSION:

On June 19 2023, hundreds of Israeli settlers rampaged through Palestinian villages. On July 3 2023, Israel launched its biggest operation in the West Bank in over two decades, by staging an air and ground attack with 1,000 soldiers backed by drone strikes against a refugee camp inside Jenin. It was reported that, the forces were targeting a militant "command center". It was reported that that the Israel Defense Forces said they would continue indefinitely. It was also reported that at least eight people have been killed and 80 injured, according to the Palestinian Health Ministry.⁷

To this date, Palestine has been in constant peril from the stream of attacks from Israeli forces and settlers have encroached and occupies the territories belonging to Palestine, leaving them nowhere to go. For a population such as the Palestinians who have been under occupation and constant state of danger to their livelihoods, international law is exceptionally important due to the absence national law-based alternative to assert their autonomy and the right of self-determination. International law provides the rights that are available to them as human beings.

⁶ <https://www.oxfordlearnersdictionaries.com/definition/english/colonization>

⁷ Murphy, B., Taylor, A. and Westfall, S. (2023) The Israeli-palestinian conflict: A Chronology, The Washington Post. Available at: <https://www.washingtonpost.com/world/2021/05/13/israel-palestinians-timeline-conflict/> (Accessed: 02 September 2023).

Palestinians may or may not attain statehood and recognition, however, until the occupation continues, and until there is peace and sovereignty and self-determination, the events that occur in Gaza and in the West Bank are matters of international law, and are of international concern. The understanding of international law is a way of demonstrating respect for the humanitarian norms and human rights. Understanding and applying international law is an initiation to make the law matter to the lives of those who need it most, and to the lives of those who disregard and violate it.

