

## **Palestinian Statehood and collective recognition by the United Nations: Summary**

This briefing paper discusses the main legal issues relevant to the recognition of Palestine as a State. While several States have recently formally recognised Palestine as a State (bringing the current total to just over 120), this paper has been prompted principally by reports that in September this year, Palestine will request the General Assembly (UNGA) to adopt a resolution recognising that Palestine is now a State. There has also been speculation that Palestine may submit an application to be admitted as a member of the United Nations.

Examination of commentaries on the issue of Palestinian recognition reveals confusion. This is perhaps understandable given the degree of overlap and inter-play between the issues of the recognition of Statehood; that of “collective recognition” in a UNGA resolution; and that of admission as a member State of the United Nations. This paper seeks to elucidate the principal legal issues relevant to each of these three distinct, yet related, questions, and then apply them to the situation of Palestine.

This paper discusses both the doctrine of recognition and the requirements of Statehood under international law.<sup>1</sup> It does not, however, consider the consequences should Palestine be recognised as a State, such as its accession to treaties, such as the 1949 Geneva Conventions and their Additional Protocols of 1977 and 2005, and membership in intergovernmental organisations.

Recognition is a generic term which simply refers to the unilateral decision of a State to acknowledge the existence of a particular situation or claim. As such it is a political and discretionary act with legal consequences. The consequences of recognising the emergence or existence of a State include, internationally, that relations with the recognised entity must be conducted on a State-to-State basis and, domestically, that the recognised entity is entitled to State immunity, and its accredited representatives to diplomatic immunity, before domestic courts.

Statehood is essentially a matter of fact under international law. If the constituent elements are present; namely a defined territory (although the boundaries need not be precisely delimited),<sup>2</sup> a permanent population,<sup>3</sup> a government,<sup>4</sup> and some degree of independence in its relations with other States,<sup>5</sup> then it is a State. As this paper demonstrates, all these elements appear to be present in the case of Palestine. It must be stressed that a State does not exist by virtue of its recognition by other States. A clear example is Israel itself, whose existence as a State is not called into question by the fact that a significant number of States, particularly in the Middle East and north Africa, have not

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<sup>1</sup> On recognition see Section II (paras. 3-9) and on the requirements of Statehood in international law see Section IV (paras. 25-34).

<sup>2</sup> See paras. 35-42.

<sup>3</sup> See paras 43-44.

<sup>4</sup> See paras 45-56.

<sup>5</sup> See paras 57-62.

recognised it. On the other hand, in cases where individual States disagree whether an entity fulfils the requirements for Statehood, collective recognition provides confirmation of Statehood. These cases are generally politically charged as recognition is a matter as much of international relations as it is of international law.

The international status of Palestine has been a thorny topic since “the question of Palestine” was first placed on the agenda of the United Nations, and is rooted in the international community’s decision that both the Jewish and the Arab populations of “historic Palestine” have the right to self-determination. Whilst the initial plan the UNGA adopted to give effect to this was ultimately abandoned (the “Partition Plan”), the vision of a two-State solution in historic Palestine has endured and has been endorsed by both Parties and also by the international community. Israel’s declaration of independence after the termination of the British Mandate, its recognition by third States, and its subsequent admission into the United Nations was acknowledged to fulfil the Jewish population of historic Palestine’s right to self-determination. The parallel right of the indigenous Arab population to self-determination in the remaining part of historic Palestine is yet to be attained.<sup>6</sup>

The principal objection to any request Palestine may make to the UNGA to adopt a resolution recognising it as a State, is that this would breach its commitment under the Oslo Accords to refrain from unilateral acts which might change the status of the West Bank, including East Jerusalem, and the Gaza Strip. This objection misses the fundamental point that in any act of recognition, the unilateral act lies with the State or States according recognition and not the entity thus recognised. Indeed, as over 120 States have shown, recognition of Palestine as a State is a unilateral act that may be done at their own initiative and is not dependent on any request that they do so. Further, only Israel and Palestine/the PLO are bound by this commitment not to undertake unilateral acts that might change the status of the territories, but Israel does not have clean hands in this matter given its continuous settlement activity, which is itself a unilateral act in violation of bilateral agreements.<sup>7</sup>

Recognising the existence of Palestine as a State within the 1967 borders cannot legally prejudice the outcome of the Peace Process, as some have suggested. The 1967 borders are the 1949 Armistice lines which were intended to serve as *de facto* borders until definitive ones could be agreed in peace treaties. These were established without prejudice to the legal rights, claims, or positions of the Parties. International law prohibits the acquisition of territory through the use of military force. Whilst the international community has consistently maintained that the territories occupied by Israel in 1967 do not form any part of its sovereign territory, the Israeli government has been somewhat ambiguous and tried to argue on occasion that the territories are not occupied but rather “disputed”.

Both the fundamental principles of international law mentioned above---the

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<sup>6</sup> See Section II (paras. 10-24).

<sup>7</sup> See Section V (paras. 63-68).

right of self-determination of peoples and the non-acquisition of territory by the use of force---are considered peremptory norms upon which rests the stability of international order, as they express fundamental principles of international public policy. All States have the duty to promote and protect these norms.<sup>8</sup>

The main conclusions of this paper are

a) the Palestinian people has a right to self-determination that is to be fulfilled in the form of a sovereign and independent State in part of historic Palestine. The right of the Palestinian People to self-determination and the vision of a two-State solution to the Israeli-Palestinian conflict is recognised and shared by the international community, including by Israel;

b) Palestine already fulfills the legal criteria for Statehood. According to international law, Palestine's defined territory is the territory occupied by Israel in 1967, namely the West Bank, including East Jerusalem, and the Gaza Strip. The Palestinian Authority exercises stable and substantial governmental control in Areas A and B of the West Bank and in some aspects also in Gaza. It maintains, usually under the aegis of the Palestine Liberation Organisation, bilateral diplomatic relations with an overwhelming majority of States;

c) the recognition of Palestine as a State would not be a unilateral Palestinian act which aims to change the status of the occupied territories. The unilateral act which entails legal consequences is the decision by other States to recognise Palestine as a State. In any event, because of Israel's continuing and expanding settlement activity—in itself a unilateral act which aims to change the status of territory and a breach of agreements between the Parties— Israel cannot complain of unilateral Palestinian acts as this would seek to rely on the instruments which Israel has itself disregarded;

d) a collective recognition of Palestine as a State would contribute to the implementation of the UNSC resolutions 242 and 338, which have been agreed by the Parties to constitute the basis for the permanent status settlement, and also of UNSC resolution 1515;

e) all States have the duty to promote and protect peremptory norms of international law. A collective recognition of Palestine as a State would affirm the inadmissibility of the acquisition of territory by the use of force, and the legal invalidity of the Israeli annexation and settlement activity in occupied territory. Further, it would contribute to the realisation of the right to self-determination by both peoples. While the Jewish population of historic Palestine has fulfilled its own right to self-determination with the declaration of Israel's independence, the Palestinian people has yet to do so; and

f) as the application of Palestine to be admitted to the UN may be blocked in the UNSC, a collective recognition of Palestine as a State by the UNGA is an

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<sup>8</sup> See Section VI (paras. 69-75).

alternative course available for the Palestinians, although not sufficient in itself to guarantee its admission to the UN as this cannot be done without a prior UNSC recommendation.<sup>9</sup>

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<sup>9</sup> See Section VII (paras. 76-85).