

Is Palestine a State Under International Law?

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ABSTRACT

Statehood law lacks a unanimous understanding, but the concept of a state is very important because of all the rights and duties attached to a state. There is a need to determine whether Palestine is a state under international law. Not only because of the complexity of the law and the facts in the case of Palestine but also the immediate need to end the Israeli occupation. Thus, determining whether Palestine qualifies to be a state under international law help determine Palestine's rights and duties.

Palestine qualifies as a state under statehood theories. It satisfies the criteria for the declaratory theory because it has a permanent population that resides on its territory while also having a government that exercises some powers including international relations. Palestine does not fully meet the criteria, but because it is under belligerent occupation, the powers that Palestine can exercise are enough for a statehood status. As for the constitutive theory, Palestine has been recognized by two-thirds of the states, meeting the primary requirement for the constitutive theory. Recent international practice, however, shows that the classic criteria is not the only considerations for such a determination. New criteria have been considered when examining a statehood claim. The new criteria mitigate the level of fulfillment an entity needs to obtain a statehood status, such as a recognized right to self-determination for the populace. Because Palestine meets the new criteria, this would mitigate any lack of fulfillment of the classic criteria by Palestine.

KEYWORDS: International Law, Statehood Law, Statehood Theories, Current International Practice, Palestine-Israel Conflict, State of Palestine

INTRODUCTION

A state is a legal entity that is given a statehood status to which rights and duties are connected.¹ Despite the importance of this legal status under international law, there is a lack of a unanimous understanding of what a state is. Entities occasionally appear claiming statehood, such as Palestine, and because this status is important not only for themselves but also for existing states, a judgment on whether they qualify for such a claim has to be made.

The Palestinian-Israeli conflict is probably one of the most pressing conflicts in the Middle East. The factual and legal issues related to the conflict are very complex and controversial, especially regarding Palestine's statehood. While there is a lack of a unanimous understanding of statehood theories and their application in practice, there is a need for a final determination on the question of Palestine's statehood. Grave human rights violations have been claimed to be committed by means of the conflict. In fact, Amnesty International has called on Israel to end its apartheid system against Palestinians and on the International Criminal Court to investigate the crime of apartheid in its current investigations in the Occupied Territories.² In addition, the United Nations Special Coordinator for the Middle East Peace Process has reported to the United Nations Security Council the immediate need for ending the Israeli occupation before facing “an irreversible, dangerous collapse and widespread instability.”³ Thus, determining Palestine's statehood status would help define its legal obligations and entitlements.

There are two common statehood theories that try to answer the question of what makes a state a “state”, the declaratory and constitutive theories. Recognition, under the declaratory theory, does not create a state but only acknowledges the fact of its existence that happens after its fulfillment of four criteria set in the Montevideo Convention. The constitutive theory, however, deals with recognition as the essence of statehood and what brings it to existence.

This paper will show that Palestine sufficiently meets the statehood criteria under the declaratory theory. Palestine has a permanent population that lives on its territory as well as a government that exercises governmental powers, including international relations. Moreover, Palestine is recognized by two-thirds of the states, meeting the primary criterion for statehood under the constitutive theory. Recent international practice shows that, while the classic criteria remain valid in determining whether an entity meets the criteria needed for a functioning state, new criteria have been considered when examining a statehood claim. The new criteria mitigate the level of fulfillment an entity needs to obtain a statehood status, such as a recognized right to self-determination for the populace. Because Palestine meets the new criteria, this would mitigate any lack of fulfillment of the classic criteria by Palestine. Thus, despite the complexity of the factual and legal issues, Palestine meets the criteria for statehood under both, the declaratory and constitutive theories. In addition, Palestine meets the new criteria for statehood, strengthening its statehood claim.

This paper considers statehood theories and their application to Palestine while also observing the current international practice in this regard. Part I of it will examine the declaratory theory and how Palestine satisfies this theory. Part II will investigate the constitutive theory and how Palestine satisfies this theory as well. Part III will shed light on the current international practice regarding statehood claims.

Brief History of the Palestinian Case

¹ François Finck, *The State Between Fact and Law: The Role of Recognition and the Conditions Under Which It Is Granted in the Creation of New States*, 36 Polish Y.B. Int'l L. 51 (2016)

² Amnesty Int'l, *Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity*, AI Index MDE 15/5141/2022 (Feb. 1, 2022)

³ U.N.SCOR, 8950th Mtg., U.N. Doc. S/PV.8950 (Jan. 19, 2022)

Palestine was part of the Ottoman Empire before the British Mandate, imposed by the League of Nations, took place on its territories in 1922.⁴ During the Mandate period, a significant number of Jewish people immigrated to Palestine.⁵ In 1917, the British government made a public statement, the Balfour declaration, to support the establishment of a national home for the Jewish people in Palestine.⁶ After the 1948 war, Israel was created on 77% of the territories of Mandate Palestine after the British withdrew from it in 1947.⁷ The 1948 conflict, which established Israel, resulted in displacing about 750,000 Palestinians.⁸ Nonetheless, a country for Palestinians had not been established despite the U.N. Resolution 181 passed by the General Assembly in 1947, which called for the partition of Mandate Palestine into Arab and Jewish States.⁹ While Jordan annexed the West Bank after the 1948 war, the Gaza Strip was under the military rule of Egypt.¹⁰ The 1967 war resulted in Israel occupying the rest of the lands: the West Bank, the Gaza Strip, and East Jerusalem.¹¹

In a conference held by the Arab League in 1964, the Palestinian Liberation Organization was established to represent Palestinians inside Palestine and in the Diaspora with the intention of building an Arab state.¹² In 1970s, the U.N. General Assembly recognized the Palestinian Liberation Organization (PLO) to be the representative of Palestinians. 1974, the PLO was given the status of observer in the General Assembly of the United Nations.¹³ In the meantime, the U.N. recognized a right to self-determination for Palestinians in many resolutions passed by the General Assembly such as 181 and 194, the Security Council in 242 and 338, and the Commission on Human Rights.¹⁴ Later in 1988, the Palestinian National Council¹⁵ declared Palestine as a state, and shortly after that, 88 states recognized Palestine as a state.¹⁶ The president of the PLO, Yasser Arafat, was invited by the U.N. General assembly to address it.¹⁷ Upon Arafat's address, a resolution was adopted by the U.N. General Assembly to acknowledge the claim for statehood by the Palestinian National Council and decided to use "Palestine" instead of "PLO" in the U.N. system.¹⁸ However, when a draft resolution, that clarified that "Palestine" means "State of Palestine" was made, the U.S. threatened that it would stop paying its dues to the U.N. if this resolution was adopted, and thus, the resolution was not put to a vote.¹⁹

In 1993, the Oslo Accords were signed between the PLO and Israel, aimed at mutual recognition.²⁰ The Palestinian Authority (PA) was established based on the Oslo accords to be the governing body in the Occupied Palestinian Territories after the withdrawal of Israel.²¹ The PA was

⁴ U.N., The Question of Palestine, <https://www.un.org/unispal/history/> (Last visited Aug. 2, 2022)

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Until June 2022, 5.8 million Palestinian refugees are eligible for the services of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA)

⁹ U.N., The Question of Palestine, <https://www.un.org/unispal/history/> (Last visited Aug. 2, 2022)

¹⁰ Hasan Ismaik, *Unite Jordan and Palestine Again*, FP, Oct. 15, 2021

¹¹ U.N., The Question of Palestine, <https://www.un.org/unispal/history/> (Last visited Aug. 2, 2022)

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The Palestinian National Council (PNC) was established in Gaza in 1948 to be the first Palestinian legislative authority. The PNC represents Palestinians inside Palestine and in the Diaspora and sets the policies and plans for the PLO as it is considered the supreme legislative representative body. Palestine National Council, <https://www.palestinepnc.org/en/> (last visited Oct. 27, 2022)

¹⁶ John Quigley, *The Israel-PLO Interim Agreements: Are They Treaties?* 30 Cornell Int'l L.J. 717 (1997)

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ ADL, Palestinian Authority (May 3, 2022), <https://www.adl.org/resources/glossary-term/palestinian-authority>

intended to be a five-year interim governing body until the issues pending a final solution²², Palestinian state, separation walls, Jerusalem, Israeli settlements, borders, Palestinian refugees, security, and water were settled.²³ In addition, these Accords divided the West Bank into three areas; A, B, and C.²⁴ In area A, the PLO was responsible for civil affairs and maintaining order.²⁵ In area B, the PLO was responsible for civil matters while Israel was responsible for security and order. Area C, however, are under the control of Israel. Nevertheless, the peace process collapsed in 2000 with the outbreak of the second Palestinian Intifada, resulting in the PA continuing to govern the Occupied Territories.²⁶ Negotiation attempts were held again to find a final settlement to the five issues in 2000-2001, 2007-2008, and 2013-2014, but they were inconclusive.²⁷

In 2006, Hamas won the second legislative elections, resulting in Fatah refusing to participate in the government because of the difference in political programs. Clashes started between Fatah and Hamas in 2007, by which Hamas took over Gaza and established a de facto government while Fatah controlled the West Bank.²⁸ As a result, the PA is no longer governing the Gaza Strip. Since 2007 and until today, there are two governments in Palestine: a recognized Palestinian government in the West Bank and a de facto government in the Gaza Strip.

Despite the importance of the concept “state” in international law, there is no clear or unanimous definition for the concept.²⁹ States, however, apply one of three common theories under international law to determine whether an entity is a state or not. First is the declaratory theory, which relies on the satisfaction of four elements set in the Montevideo Convention³⁰. Recognition is not an element under this theory. Second is the constitutive theory, which relies on the recognition of other states after meeting the classic criteria in Montevideo.

I.A. The Declaratory Theory

This theory relies on the satisfaction of four elements set up in the Montevideo Convention, the Convention on the Rights and Duties of States. This Convention was adopted in 1933 by the Seventh International Conference of American States and is ratified by 17 states in the Americas.³¹ Despite the limited number of the parties to the Convention, Montevideo is the only agreement that gives criteria for statehood, resulting in establishing a source for a statehood claim.³² The criteria were already common and practiced in western political and legal cultures, making it favored

²² Those five issues are the most important issues for both parties and are left to be finally determined through negotiations between the parties. However, the international community has given guidelines for such negotiations. For example, settlements are illegal, borders of both states are based on pre-1967, Palestinian refugees have the right to return to their homeland... etc. The Questions of Palestine, Key Issues at Stake, <https://www.un.org/unispal/permanent-status-issues/> (Last visited Oct. 27, 2022)

²³ ADL, Palestinian Authority (May 3, 2022), <https://www.adl.org/resources/glossary-term/palestinian-authority>

²⁴ See appendix A

²⁵ Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018), <https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbca97>

²⁶ *Id.*

²⁷ U.N., The Questions of Palestine, available at: <https://www.un.org/unispal/permanent-status-issues/>

²⁸ Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018), <https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbca97>

²⁹ Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018), <https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbca97>

³⁰ Montevideo Convention on the Rights and Duties of States, 1933, 165 I.N.T.S. 19. The treaty was ratified by 19 Latin American states and the U.S.

³¹ *Id.*

³² Samantha Beson, *International Courts and the Jurisprudence of Statehood*, 10 Transactional Legal Theory, no. 1, 2019, at 30

there.³³ In fact, many western jurists argue that the criteria in Montevideo constitute to customary international law, relying on two decisions made by the International Court of Justice (ICJ) in 1969³⁴ and 1975³⁵.³⁶ Nonetheless, the Montevideo criteria have rarely been considered as customary international law by the ICJ even in Latin-America.³⁷ The ICJ expressly states in the case of *Colombia v Peru* that the fact that there is a limited number of states that ratified Montevideo weakens the argument of the customary nature of the Montevideo criteria.³⁸

The requirements for statehood under the convention are a permanent population, a defined territory, government, and the capacity to enter into relations with other states. Recognition of a new state by other existing states, under this theory, does not create its statehood but only acknowledges the fact of its existence.³⁹

Advocates for this theory believe that recognition is a political act and can be used against new states for political interests. Thus, by making recognition declaratory and not constitutive, this theory protects new states from decisions that are based on political interests while affecting their rights and duties, making this theory dominant.⁴⁰

The first element, a permanent population, requires a state to have a “permanent” or settled population rather than transitory.⁴¹ The convention does not lay out a number for the population that is required for the satisfaction of the first element. For example, the Republic of Nauru became a U.N. member state in 1999⁴² with a population of approximately 10,450.⁴³

The second element, a defined territory, requires a state to have its own territory where its permanent population resides. This, however, does not mean that the state has to have its boundaries settled.⁴⁴ Having a dispute with a neighboring state over boundaries does not affect a statehood claim nor the size of the territory matter.⁴⁵ The land area of the Republic of Nauru is twenty square kilometers.⁴⁶

Having a government is the third requirement for statehood. Although the Convention does not reference the form of the government or a measurement for its effectiveness, a state must be able to exercise powers over the population and the territory.⁴⁷ This element, however, cannot

³³ *Id.*

³⁴ Western Sahara, Advisory Opinion, 1974 I.C.J.(Dec.13)

³⁵ North Sea Continental Shelf Case (Germany v. Denmark),1969 I.C.J. (Apr. 26)

³⁶ Errol Mendes, *Statehood and Palestine for the Purpose of Article 12(3) of the ICC Statute*, <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/D3C77FA6-9DEE-45B1-ACC0-B41706BB41E5/281876/OTPErrolMendesNewSTATEHOODANDPALESTINEFORTHEPURPOS.pdf>

³⁷ Samantha Beson, *International Courts and the Jurisprudence of Statehood*, 10 Transactional Legal Theory, no. 1, 2019, at 30

³⁸ Asylum Case (Colombia v. Peru), 1950 I.C.J. (Nov. 20)

³⁹ Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018), <https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbca97>

⁴⁰ *Id.*

⁴¹ Errol Mendes, *Statehood and Palestine for the Purpose of Article 12(3) of the ICC Statute*, <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/D3C77FA6-9DEE-45B1-ACC0-B41706BB41E5/281876/OTPErrolMendesNewSTATEHOODANDPALESTINEFORTHEPURPOS.pdf>

⁴² U.N., Permanent of the Republic of Nauru to the United Nations, <https://www.un.int/nauru/>

⁴³ The World Bank. Available at:

<https://data.worldbank.org/indicator/SP.POP.TOTL?end=1999&locations=NR&start=1997>

⁴⁴ Barrie Strain, *Palestinian statehood: A Political Pipedream but a Legal Reality*, Cov. L.J. 2002, 7(1), 1-11

⁴⁵ Errol Mendes, *Statehood and Palestine for the Purpose of Article 12(3) of the ICC Statute*, <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/D3C77FA6-9DEE-45B1-ACC0-B41706BB41E5/281876/OTPErrolMendesNewSTATEHOODANDPALESTINEFORTHEPURPOS.pdf>

⁴⁶ The World Bank, available at: See <https://data.worldbank.org/indicator/AG.LND.TOTL.K2?locations=NR>

⁴⁷ Errol Mendes, *Statehood and Palestine for the Purpose of Article 12(3) of the ICC Statute*, <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/D3C77FA6-9DEE-45B1-ACC0-B41706BB41E5/281876/OTPErrolMendesNewSTATEHOODANDPALESTINEFORTHEPURPOS.pdf>

mechanically be applied to states under belligerent occupation.⁴⁸ An occupied state normally has limitations on its powers since occupation makes the state lack the capacity to function independently.⁴⁹ For example, the military occupation of Kuwait by Iraq did not affect Kuwait's statehood.

The last requirement for statehood is the ability to conduct international relations with other states. This ability means that an entity is capable of entering into relations with other existing states on the international level.⁵⁰ Even though de facto authorities (not states) can conduct some sort of relations with neighboring states on limited matters, fulfillment of this criterion requires a legal capacity on the international level.⁵¹ This capacity is earned through recognition by other states as recognition creates mutual relations between the recognizing and recognized states.⁵² This indicates the degree of independence a state enjoys through entering into international relations with other states. For a statehood claim, no state should be subject to another state, and thus sovereign states are able to conduct international relations with other states on equal basis.⁵³ The ability to engage in international relations does not mean that the state has to conduct international relations but is only able to.⁵⁴ However, delegating the power to a supranational entity like in the European communities or to another state like in protectorates does not stop a statehood status of a country if it was done voluntarily.⁵⁵ Similarly, delegating foreign affairs to another state does not affect a statehood claim.⁵⁶ For example, Liechtenstein delegated Switzerland the power to administer its foreign affairs. Liechtenstein, nevertheless, was admitted to the Rome Statute as a member state, which is an entitlement for only states.⁵⁷

Opponents of the declaratory theory argue that this theory is not viable because of the absence of a mechanism under international law that would have the authority to determine whether an entity meets the requirements set in the Convention.⁵⁸ Besides leaving an unanswered question, the rights and duties of states means almost nothing without the recognition of other states.⁵⁹ In addition, the declaratory theory does not care for the way a country was established even if its establishment was based on serious violations of international law.⁶⁰ States respond to this by not recognizing such a state, but since recognition is considered a political act, this response becomes senseless.⁶¹

I.B. Palestine Satisfies the Declaratory Theory

Under the declaratory theory, Palestine must meet the criteria of statehood set in the Montevideo Convention, which are a permanent population, a defined territory, government, and the ability to conduct international relations.

1. A Defined Territory

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ François Finck, *The State Between Fact and Law: The Role of Recognition and the Conditions Under Which It Is Granted in the Creation of New States*, 36 Polish Y.B. Int'l L. 51 (2016)

⁵¹ *Id.*

⁵² *Id.*

⁵³ Barrie Strain, *Palestinian statehood: A Political Pipedream but a Legal Reality*, Cov. L.J. 2002, 7(1), 1-11

⁵⁴ Restatement (Third) of Foreign Relations Law § 201 (1987)

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ J. D. van der Vyver, *Statehood in International Law*, 5 Emory Int'l L. Rev. 9 (1991)

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018),
<https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbc97>

⁶¹ *Id.*

Palestine meets the criterion of a “defined territory”. Upon the Israeli occupation of the Palestinian territory, the U.N. Security Council adopted 242 Resolution, which called on Israel to withdraw from the territories occupied in 1967.⁶² Later in 2016, the U.N. Security Council 2334 Resolution was passed, by 14-0 votes, to address the Israeli settlements in the West Bank, declaring them “flagrant violation” of international law.⁶³ In addition, the Palestinian Declaration of Independence in 1988 declared the establishment of the State of Palestine on the occupied territories, the west Bank including East Jerusalem and the Gaza Strip.⁶⁴ When the Oslo Accords were signed, Israel agreed on the PA governing the West Bank and the Gaza Strip. Negotiations between the parties were based on, *inter alia*, the U.N. 242 Resolution, which recognized the Palestinian territory.⁶⁵ Binding U.N. Security Council Resolutions, Palestine, and Israel have agreed on the pre-1967 borders to be the territory for Palestinians.

Even though the issue of borders is one of the issues awaiting a final solution, states do not have to have defined frontiers to meet the criterion of a defined territory.⁶⁶ Thus, Palestine has its own territories which include the West Bank, Gaza Strip and East Jerusalem. The expansion of the Israeli settlements in the West Bank does not change Palestine’s ownership of the West Bank.

2. A Permanent Population

Palestine meets the criterion of a permanent population. There are some 14.3 million Palestinians living in Palestine and the Diaspora.⁶⁷ The Palestinian identity is shared between Palestinians whether they live in or out of the country through sharing the same culture, history, and nationality.⁶⁸ The 1948 war resulted in displacing millions of Palestinians, who fled to neighboring countries such as Jordan, Syria, and Lebanon⁶⁹, but there are 5.3 million Palestinians living in Palestine.⁷⁰ In fact, the international community has never questioned whether or not there is a permanent population of Palestine.⁷¹

3. Effective Government

The third requirement for statehood is the government, which has to be effective and controlling over its territories.⁷² The Declaration of Principles on Interim Self-Government Arrangements (the DOP) was signed between the PLO and Israel to transfer some of the powers exercised by Israel to the PA to the interim governing body in the West Bank and Gaza Strip.⁷³ The powers that were not transferred to the Palestinian Authority, such as controlling borders, are to be exercised by Israel. Thus, some powers are exercised in the Palestinian territories by the PA and the

⁶² S.C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967)

⁶³ S.C. Res. 2334, U.N. Doc. S/RES/2334 (Dec. 23, 2016)

⁶⁴ Palestinian Declaration of Independence, available at: <https://justvision.org/glossary/palestinian-declaration-independence#:~:text=On%20November%202015%2C%201988%2C%20the,Bank%20and%20the%20Gaza%20Strip>.

⁶⁵ Ardi Imseis, *On membership of the United Nations and the State of Palestine: A Critical Account*, L.J.I.L. 2021, 34(4), 855-878

⁶⁶ *Id.*

⁶⁷ Palestine News & Info Agency, *PCBS: Some 14.3 million Palestinians in the world in mid-2022* (July 7, 2022) <https://english.wafa.ps/Pages/Details/129983>

⁶⁸ Suzanne Panganiban, *Palestinian Statehood: A Study of Statehood through the Lens of the Montevideo Convention* (2016), <https://vttechworks.lib.vt.edu/handle/10919/64512>

⁶⁹ *Id.*

⁷⁰ World Population Review, Palestine Population 2022(Live), <https://worldpopulationreview.com/countries/palestine-population> (Last visited Aug. 5, 2022)

⁷¹ Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018), <https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbc97>

⁷² Ardi Imseis, *On membership of the United Nations and the State of Palestine: A Critical Account*, L.J.I.L. 2021, 34(4), 855-878

⁷³ U.N. Docs. A/48/486-S/26560 (Oct. 11, 1993)

rest of the powers are exercised by Israel. However, in cases of belligerent occupation, this criterion cannot mechanically be strictly applied. Occupation makes the occupied state lack the capacity to function independently.⁷⁴ The DOP makes the Palestinian government restricted in what powers it can exercise. However, it does prove that the Palestinian government has the competence to exercise many governmental powers such as finance, foreign affairs, health, judiciary, etc. Having an effective government does not necessarily mean that the government has to have all competences.⁷⁵ Israel has been identified as an occupying power by the U.N. and the ICJ.⁷⁶ Thus, the powers that the Palestinian government can exercise should be seen in the context of belligerent occupation.

In addition, Palestine enjoys a parliamentary democracy that relies on separation of powers; executive branch, legislative branch, and judicial branch.⁷⁷ The president is the head of the executive branch and appoints the prime minister, who then chooses ministers. Palestinians can directly elect the president every four years, according to Palestine's Basic Law. While the president is the chief and has the authority to appoint ambassadors, and conduct diplomatic relations, the prime minister is responsible for daily governmental actions. The legislative branch, however, consists of 132 representatives and is responsible for passing laws and revising existing laws.⁷⁸ The judiciary branch consists of courts that are actively working on cases throughout the Palestinian territories. A survey found that while the average time from filing a lawsuit until payment is 700 days in Palestine, it is 890 in Israel and 872 in Syria.⁷⁹ Therefore, the Palestinian government applies the theory of separation of powers, which is strongly affirmed by states like the United States of America.

In 2011, the PLO launched a statehood strategy that aimed to build institutions for the PA equivalent to institutions of the “State of Palestine”.⁸⁰ These institutions have to provide citizens, including marginalized people, with at least services, security and care. This plan aimed to create a de facto independent State of Palestine.⁸¹ In 2011, a U.N. report stated that the institution-building process brought benefits to the Palestinian Authority, and that the Palestinian institutions are sufficient for a functioning state.⁸² In addition, state practice with regard to the Montevideo Convention shows that, in some cases, the application of the classic criteria must be applied broadly.⁸³ For example, while the former Belgian Congo was in an anarchy status after its independence, its application of the U.N. was unanimously approved in 1960, and no one questioned whether it was a state.⁸⁴ Thus, Palestine has a government that is effective enough to

⁷⁴ Errol Mendes, *Statehood and Palestine for the Purpose of Article 12(3) of the ICC Statute*, <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/D3C77FA6-9DDE-45B1-ACC0-B41706BB41E5/281876/OTPErrolMendesNewSTATEHOODANDPALESTINEFORTHEPURPOS.pdf>

⁷⁵ Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018), <https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbca97>

⁷⁶ U.N., *The Question of Palestine, Advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (July 9, 2004), <https://www.un.org/unispal/document/auto-insert-178825/>

⁷⁷ Suzanne Panganiban, *Palestinian Statehood: A Study of Statehood Through the Lens of the Montevideo Convention* (2016), <https://vttechworks.lib.vt.edu/handle/10919/64512>

⁷⁸ Investment Promotion & Industrial Estates Agencies, Legal and Political Structure, <http://www.pipa.ps/page.php?id=1ba110y1810704Y1ba110>

⁷⁹ Partners for Change, Palestine Investment Conference (2008), http://www.palst-jp.com/eg/pdf/inv/02/The_Palestinian_Judicial_System.pdf

⁸⁰ Mapping Palestinian Politics, Palestinian Authority, https://ecfr.eu/special/mapping_palestinian_politics/palestinian_authority/

⁸¹ *Id.*

⁸² U.N., *The Question of Palestine, Palestinian State-Building: An Achievement at Increased Risk – UNSCO Report to the AHLC* (March, 2012), <https://www.un.org/unispal/document/auto-insert-203115/>

⁸³ J. D. van der Vyver, *Statehood in International Law*, 5 Emory Int'l L. Rev. 9 (1991)

⁸⁴ *Id.*

meet the criterion needed for a statehood claim.

4. The Capacity to Enter Into International Relations With Other States

The ability to engage in foreign relations is the last requirement for statehood. Although the power to conduct foreign relations was not transferred to the PA in the DOP, the PA, in practice, conducts international relations with states and international organizations.⁸⁵ The PLO and PA, under the Oslo Accords, were two distinct entities.⁸⁶ In practice, there is no strict distinction between the PLO and PA and are sometimes reached interchangeably⁸⁷, and thus, both engage in foreign relations. In addition, the Israeli occupation over the Palestinian territory does not make Palestine unable to engage in foreign relations. When Ukraine and Belarus were part of the Soviet Union, the Soviet Union was responsible for foreign trade and external defense, and neither of them was allowed to ratify international treaties.⁸⁸ However, their applications for U.N. membership, for which a statehood status has to be approved, were admitted.⁸⁹

The fact that Palestine has embassies, missions, and general delegation around the world is a proof of Palestine's ability to conduct foreign relations.⁹⁰ In addition, Palestine is a member state in many international organizations such as the Arab League, Permanent Court of Arbitration, and U.N organizations like United Nations Economic and Social Commission for Western Asia.⁹¹ Additionally, Palestine has signed many multilateral treaties in different fields like human rights, international humanitarian law, penal matters, environment, and the law of the sea.⁹²

One of the international treaties that Palestine acceded to is the Rome Statute, the treaty establishing the International Criminal Court. After becoming a member state in 2015, Palestine alleged that international crimes have been committed on its territories and made a declaration under article 12(3) of the Rome Statute, accepting the jurisdiction of the court over its territories since 2002 as a non-member state.⁹³ The question on whether Palestine is a state was raised because of those allegations.

The prosecutor started a preliminary examination to determine whether an investigation could be opened pursuant to the statute after examining issues of admissibility, jurisdiction, and the interest of justice in making such a decision.⁹⁴ In 2019, the prosecutor declared that the criteria in the Rome Statute for opening an investigation has been met. The prosecutor, nevertheless, made a request to the Pre-Trial Chamber I to rule on whether the court has a territorial jurisdiction due to the complexity of the factual and legal issues.⁹⁵ In 2021, the Pre-Trial Chamber I ruled on the issue

⁸⁵ Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018), <https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbca97>

⁸⁶ ADL, Palestinian Authority (2022), <https://www.adl.org/resources/glossary-term/palestinian-authority>

⁸⁷ Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018), <https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbca97>

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018), <https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbca97>

⁹¹ ADL, Palestinian Authority (2022), <https://www.adl.org/resources/glossary-term/palestinian-authority>

⁹² Victor Persson, Palestine's Ratification of International Treaties - A Back Door to Independence? (Spring 2016) (LL.M. Thesis, Lund University) (on file with the Lund University Libraries)

⁹³ ICC, *State of Palestine, Situation in the State of Palestine*, <https://www.icc-cpi.int/palestine#:~:text=On%2020%20January%202015%2C%20Palestine,Palestine%20on%201%20April%202015> (Last visited Oct. 27, 2022)

⁹⁴ *Id.*

⁹⁵ *Id.*

of jurisdiction, stating that the court has jurisdiction over the territories occupied by Israel since 1967, the West Bank including East Jerusalem and the Gaza Strip, because Palestine acceded the Rome statute correctly in 2015.⁹⁶

The International Court of Justice (ICJ), which submitted amicus curiae advising the ICC to exercise its jurisdiction, welcomed the ICC's decision.⁹⁷ The ICJ argued in its amicus curiae the following:

1. Palestine acceded to the Rome Statute and is a member state. Thus, the ICC should exercise its jurisdiction over the Palestinian territory the same way it would with any other member state.⁹⁸
2. The Palestinian territory consists of the West Bank including East Jerusalem and the Gaza Strip.⁹⁹
3. Palestine is a state since it satisfies the criteria for statehood under international law. The occupation of its territory doesn't change its legal status as a state under international law.¹⁰⁰

The ICC's decision confirmed that Palestine is a state member to the Rome Statute and that the court has jurisdiction over the Palestinian territory, the West Bank, and the Gaza Strip.¹⁰¹ However, the ICC did not rule on the third argument that the ICJ made. The ICC, in fact, is not competent to rule on whether an entity meets the statehood criteria.¹⁰²

International courts such as the ICC and the ICJ have dealt with Palestine as a state. Even if the ICC is not competent to decide on whether an entity meets the criteria for statehood, the Rome Statute requires that a crime occurs on the territory of a "state" for the court to have jurisdiction.

As a matter of fact, international courts have contributed to state creation through their dispute-settlement decisions and advisory opinions.¹⁰³ International courts look into state practice and identify what constitutes customary international law or general principles.¹⁰⁴ In addition, they develop statehood law by interpreting and applying general rules of international law such as international responsibility.¹⁰⁵ Thus, the amicus brief of the ICJ and the ICC Chamber's decision, while not binding or conclusive, can influence future discussions on Palestine's statehood in other international bodies.¹⁰⁶

Nonetheless, the U.S. is one of the objector states for Palestine's statehood. The U.S. argues that Palestine does not meet the classic criteria for statehood. U.S. courts have ruled in many cases that "PLO and PA are not entitled to sovereign immunity because there does not exist a state of Palestine which meets the legal criteria for statehood applicable to the Court's adjudication of the

⁹⁶ International Commission of Jurists, *Palestine/Israel: ICC decision an important step towards accountability for crimes under international law* (Aug. 2, 2021), <https://www.icj.org/palestine-israel-icc-decision-an-important-step-towards-accountability-for-crimes-under-international-law/>

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Situation in the Case of Palestine, Case No. ICC-01/18, Decision on the Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court's Territorial Jurisdiction in Palestine (Feb. 5, 2021), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01165.PDF

¹⁰² Tanvi Bhargava & Rebecca Cardoso, *An Examination of Palestine's Statehood Status Through the Lens of the ICC Pre-Trial Chamber's Decision and Beyond*, 54 N.Y.U.J. Int'l. L. & Pol. Online F. 14 (2021)

¹⁰³ Samantha Beson, *International Courts and the Jurisprudence of Statehood*, 10 Transactional Legal Theory, no. 1, 2019, at 30

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Tanvi Bhargava & Rebecca Cardoso, *An Examination of Palestine's Statehood Status Through the Lens of the ICC Pre-Trial Chamber's Decision and Beyond*, 54 N.Y.U.J. Int'l. L. & Pol. Online F. 14 (2021)

issue.”¹⁰⁷ In *Knox*, the court ruled that the Oslo Accords did not establish a State of Palestine but rather “aimed towards eventual statehood for Palestine”. The court added that neither the PLO nor PA satisfies the requirements of effective government nor the capacity to engage in foreign relations, and thus, neither one can meet the four requirements of statehood.¹⁰⁸ The following reasons were given:

1. Neither the PLO nor PA satisfies the requirement of “control over territories and population”.¹⁰⁹ To meet such a requirement, an entity needs to be able to act independently of foreign governments. In the case of Palestine:
 - a. The PA can only exercise the powers that are transferred to it in the interim agreement, which does not include control over airspace, external security, borders, or Israeli settlements.¹¹⁰
 - b. The PA does not have jurisdiction over Israelis even when they are in the Palestinian territory.¹¹¹
 - c. It is well-established that illegal occupation does not terminate statehood. However, this principle relies on the existence of the state before the illegal occupation. Palestine was not a state before it was occupied.¹¹²
2. Neither the PLO nor PA satisfies the requirement of “the capacity of the government to conduct foreign relations”.¹¹³ To meet the requirement, an entity needs to be politically, financially, and technically able to conduct international relations.¹¹⁴ In the case of Palestine:
 - a. The interim agreement prevents the PA from engaging in international relations, including establishing embassies or consulates.¹¹⁵
 - b. The agreement allows the PLO to engage in foreign relations and ratify international agreements on specific matters like economic development plans, cultural, scientific, and educational agreements for the benefit of the PA. However, those acts can't be considered foreign relations.¹¹⁶
 - c. Neither the PLO nor PA could implement any international obligation on matters that are under the control of Israel such as borders and external threats.¹¹⁷

However, the stand of the U.S. seems to be based on political reasons rather than legal. Palestine is under military occupation, and thus, the ability to function independently is theoretically and practically impossible. In addition, while the Oslo Accords imposed limitations on the PA, some of its important provisions, regarding Jerusalem and settlements, might be void as no agreement concluded between parties can deprive people of their protected rights.¹¹⁸ For example, the U.N. Security Council 2334 Resolution stated that the Israeli settlements on the Palestinian territories are “flagrant violation” of international law and that any changes on the territory, based

¹⁰⁷ *Knox v. Palestine Liberation Organization*, 306 F.Supp.2d 424 (S.D.N.Y.,2004)

¹⁰⁸ Restatement (Third) of Foreign Relations Law § 201 (1987)

¹⁰⁹ *Knox v. Palestine Liberation Organization*, 306 F.Supp.2d 424 (S.D.N.Y.,2004)

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Ardi Imseis, Watson: *The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements*, J. Palestinian Stud. 110 (2002)

on the pre-1967 borders, will not be recognized.¹¹⁹ The powers that Israel exercises in regard to settlements are illegal, and thus, no limitations can legally be imposed on Palestine in regard to settlements. In addition, U.S. courts seem to ignore the upgrade that Palestine obtained in the U.N. and its impact on Palestine acceding international treaties and joining international organizations, which proves Palestine's capability of conducting international relations.

Applying a strict and narrow interpretation of the classic criteria to the case of Palestine seem to contradict with the current international practice by states,¹²⁰ including the United States. Nonetheless, the *Institut de Droit International*'s 1936 Resolution states that "the existence of a new State with all the juridical effects is not affected by the refusal of recognition by one or more States."¹²¹ The U.S. refusal to recognize Palestine because of its failure to meet the classic criteria, as seen by the U.S., should not affect Palestine's statehood claim.

II.A. The Constitutive Theory

Under this theory, recognizing an entity as a state by other existing states constitutes its statehood, and therefore, recognition brings states to existence.¹²² This theory relies on the declaratory theory by acknowledging that a state has to meet the classic criteria and be recognized by other states.¹²³ Thus, new states cannot come to existence without recognition of other existing states even if they meet the classic criteria. Recognition, under this theory, the essence of statehood and what makes it subject of international law.¹²⁴

The constitutive theory addresses the question of whether an entity is a state or not in a more nuanced approach.¹²⁵ Proponents of this theory believe that the absence of a mechanism that determines whether an entity is a state requires making recognition constitutive.¹²⁶ Having a state that is not recognized by any country does not have any legal consequences on the international plane, and therefore, is meaningless. It is especially helpful when an entity is under occupation and examining the classic criteria becomes very difficult.¹²⁷ Since the base of international law is consent, recognizing a state is an act by existing states that is used to give its consent to the birth of a new state.¹²⁸ In addition, recognition fills the gap between the rules under international law and the application of those rules.¹²⁹ Because there is no international entity that would answer the question on statehood, each state applies the rules under international law and answers the question by choosing to recognize or not recognize an entity as a state.¹³⁰ Moreover, recognizing a new state

¹¹⁹ S.C. Res. 2334, U.N. Doc. S/RES/2334 (Dec.23, 2016)

¹²⁰ See Recent International Practice

¹²¹ Institut De Droit International, Resolutions Concerning the Recognition of New States and New Governments, 30 Am. J. of Int'l L. 185 (1936)

¹²² Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018),
<https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbc97>

¹²³ *Id.*

¹²⁴ Errol Mendes, *Statehood and Palestine for the Purpose of Article 12(3) of the ICC Statute*, <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/D3C77FA6-9DEE-45B1-ACC0-B41706BB41E5/281876/OTPErrolMendesNewSTATEHOODANDPALESTINEFORTHEPURPOS.pdf>

¹²⁵ *Id.*

¹²⁶ Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018),
<https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbc97>

¹²⁷ *Id*

¹²⁸ *Id*

¹²⁹ *Id*

¹³⁰ *Id*

helps its formation.¹³¹ When existing states treat the new state as a “state”, they give the new state powers to be exercised by it, helping it meet the third requirement of statehood in Montevideo.¹³² For example, when states recognize the passport of a new state, they help the new state exercise a power that it did not previously have.¹³³

On the other hand, admission of new states to international organizations, like the U.N., has been seen as a step leading to the acquisition of a statehood status or evidence for its legal existence. Scholars, like Dugard, have argued that a U.N. membership is an act of collective recognition, in which all U.N. member states recognize the existence of each other as legal persons regardless of whether they recognize each other politically.¹³⁴ Dugard adds that statehood is conditional upon collective recognition, and that states have delegated the power of recognition of a new state to the United Nations.¹³⁵ Nonetheless, Kato strongly opposed these arguments, explaining that recognition is a highly political act, and “the U.N. lacks the political ideology to provide the guidelines for recognition.”¹³⁶ Others have perceived U.N. recognition differently. Arguments like U.N. membership “provide adequate evidence of general recognition”, “is a strong evidence of statehood”, and “is *prima facie* evidence of statehood” have been made.¹³⁷

Regardless of this debate, U.N. membership does help a new state fulfill the fourth criterion in Montevideo since the new state will be able to conduct international relations with the states that recognized it.

The constitutive theory has been criticized for not specifying the number of states that an entity needs to be recognized by to claim its statehood, nor does it identify the base on which states rely to make their decision.¹³⁸ Do existing states have to evaluate the facts before making their decision? Would other considerations like geopolitical factors or norms be enough for making such a decision?¹³⁹ Is the recognition of a new state by powerful states the same as recognition by developing states? The constitutive theory does not answer these questions, but it does assert that an unrecognized entity cannot be a state. The question becomes what are the rights and duties for those entities? Can they invade other states or be invaded since they are not states?¹⁴⁰ What happens if this entity practices statehood on its citizens without regard to its status as a “non-recognized state”? All of this makes recognition highly dependent on the discretion of other states rather than evaluation of the factual situation in a legal-based process.¹⁴¹

II.B. Palestine Satisfies the Constitutive Theory

Under the constitutive theory, recognition of Palestine by other existing states constitutes Palestine’s statehood. This theory recognizes the classic criteria but relies on recognition to be the essence of statehood. Palestine has been recognized by 139 states¹⁴², the majority of the states.

¹³¹ Errol Mendes, *Statehood and Palestine for the Purpose of Article 12(3) of the ICC Statute*, <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/D3C77FA6-9DEE-45B1-ACC0-B41706BB41E5/281876/OTPErrolMendesNewSTATEHOODANDPALESTINEFORTHEPURPOS.pdf>

¹³² *Id.*

¹³³ *Id.*

¹³⁴ François Finck, *The State Between Fact and Law: The Role of Recognition and the Conditions Under Which It Is Granted in the Creation of New States*, 36 Polish Y.B. Int'l L. 51 (2016)

¹³⁵ *Id.*

¹³⁶ J. D. van der Vyver, *Statehood in International Law*, 5 Emory Int'l L. Rev. 9 (1991)

¹³⁷ *Id.*

¹³⁸ Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018), <https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbca97>

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Diplomatic Relations*, <https://palestineun.org/about-palestine/diplomatic-relations/> (Last visited Oct. 27, 2022)

Some states recognized Palestine as a state upon the Declaration of Independence in 1988, while others recognized it recently through bilateral and multilateral diplomatic efforts.¹⁴³

Palestine has also been recognized by the U.N. as an observer non-member state.¹⁴⁴ On November 29, 2012, 138 states voted in favor of upgrading Palestine's status at the U.N with nine states voting against and forty-one abstaining.¹⁴⁵ This resolution, A/67/L.28, upgraded the status of Palestine without prejudice to the rights and privileges of the PLO which were acquired through U.N. resolutions.¹⁴⁶

The criteria for U.N. membership are stated in the U.N. Charter. The U.N. Charter in article four welcomes all states to become members to the United Nations if they meet four conditions; be a state, be peace-loving, accept the obligations in the U.N. charter and the judgments of the organization, and be able or willing to execute those obligations.

The process in which a state becomes a U.N. member state starts by obtaining a recommendation from the U.N. Security Council. The U.N. Security Council makes a recommendation by having affirmative nine votes without any veto by one of the permanent five state members. After obtaining a recommendation, a resolution passed by the U.N. General Assembly is needed. The U.N. General Assembly passes a resolution by having a two-thirds majority of the members present and voting.

Palestine submitted an application for U.N. membership in September 2011, relying on the U.N. General Assembly 181 Resolution and the Declaration of Independence of Palestine in 1988.¹⁴⁷ In addition, the application recalled the recognized right of self-determination for Palestinians, the bilateral recognition of Palestine by the vast majority of the international community based on the pre-1967 borders, and the commitment of Palestine to negotiate with Israel on the final status issues to reach a just and final resolution of the conflict.¹⁴⁸ However, the U.N. Security Council was unable to make such a recommendation as the report of the committee stated that some members chose to apply a strict and narrow application of the Montevideo Convention.¹⁴⁹ According to the verbatim record of the Security Council debate of 24 October 2011, a U.S. veto was certain while six other members such as Russia, China and India were willing to positively vote. Three states, Bosnia and Herzegovina, Gabon, and Nigeria indicated that they might take the United States' lead or were uncertain about how they would vote. While a flexible and broad interpretation of the criteria in the Montevideo Convention has been normally applied in the U.N. practice, a narrow and strict approach was used in Palestine's application.¹⁵⁰

A vote for full membership was impossible due to the certain U.S. veto for such a resolution.¹⁵¹ Therefore, some member states, especially France, pushed towards an intermediate solution by upgrading Palestine's status at the U.N. from an observer organization to an observer non-member state after voting for such a resolution in the U.N. Security Council.¹⁵²

The upgrade enabled Palestine to participate in making international law by signing and ratifying treaties that are open to all states and members of specialized agencies.¹⁵³ Moreover, the

¹⁴³ *Id.*

¹⁴⁴ Michele Pitta, Statehood and Recognition: The Case of Palestine (2018),
<https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbc97>

¹⁴⁵ Press Release, General Assembly, General Assembly Votes Overwhelmingly to Accord Palestine 'Non-Member Observer State' Status in United Nations, U.N. Press Release GA/11317 (Nov. 29, 2012)

¹⁴⁶ *Id.*

¹⁴⁷ Ardi Imseis, *On membership of the United Nations and the State of Palestine: A Critical Account*, L.J.I.L. 2021, 34(4), 855-878

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

U.N. confirmed that Palestine can participate, on equal basis as other existing states, in the conferences that all states or members of specialized agencies are invited to. However, Palestine doesn't have a full membership of the U.N., and thus, doesn't have the same rights and duties members have. For example, Palestine can only engage in matters related to Palestine and the Middle East in the U.N. General Assembly. Palestine, generally, cannot vote within the U.N., including in elections, nor it can be a candidate for any elections or appointments at the U.N.¹⁵⁴

This U.N. Resolution, however, does not conclude the debate on whether Palestine is a state for two reasons. First, it was passed by the General Assembly and not the Security Council, making it symbolic rather than binding.¹⁵⁵ Second, a U.N. membership and a statehood status are two different things. States can legally exist without being U.N. members. Switzerland, for example, is a state that did not become a U.N. member until 2002.¹⁵⁶ Thus, a statehood status is not dependent on U.N. membership.

Nonetheless, this upgrade brings benefits to Palestine. The upgrade enables Palestine to obtain memberships in international organizations, gain recognition from more states, ratify multilateral treaties, and ratify bilateral treaties with states that recognize Palestine's statehood. All of which help Palestine to better fulfill the classic criteria in Montevideo and the main criterion in the constitutive theory by gaining more recognition.

III. RECENT INTERNATIONAL PRACTICE

The two statehood theories rely on the classic criteria in Montevideo and then deal with recognition to be either declaratory or constitutive. Nevertheless, the classic criteria fail to explain the current international practice regarding state creation.¹⁵⁷ International practice shows that new criteria have been added to the classic criteria in contemporary international law.¹⁵⁸ While the classic criteria remain valid in examining whether an entity has the elements needed to function as a state, fully meeting the classic criteria is no longer the only consideration.¹⁵⁹

Many states have investigated the legality and legitimacy of a new state before they recognize it.¹⁶⁰ The way the new entity obtains the classic criteria must be pursuant to the principles of international law. For example, the island of Cyprus, which was a British colony, received its independence in 1960.¹⁶¹ Turkey used illegal force to control Cyprus and established the Republic of Northern Cyprus, which has only been recognized by Turkey.¹⁶² Other states refuse to recognize it because it was established by violating international law.¹⁶³ However, the illegality of state creation does not necessarily mean the failure of its creation.¹⁶⁴ Similarly, the entitlement to state creation does not create a state by itself.¹⁶⁵

¹⁵⁴ *Id.*

¹⁵⁵ John Balouziyah, *Palestinian Statehood under International Law* (2015)

¹⁵⁶ U.N. Member States, available at: <https://www.un.org/en/about-us/member-states#gotoS>

¹⁵⁷ François Finck, *The State Between Fact and Law: The Role of Recognition and the Conditions Under Which It Is Granted in the Creation of New States*, 36 Polish Y.B. Int'l L. 51 (2016)

¹⁵⁸ Barrie Strain, *Palestinian statehood: A Political Pipedream but a Legal Reality*, Cov. L.J. 2002, 7(1), 1-11

¹⁵⁹ Zohar Nevo & Tamar Megiddo, *Lessons from Kosovo the Law of Statehood and Palestinian Unilateral Independence*, 5 J. Int'l L. & Int'l Rel. 89 (2009)

¹⁶⁰ *Id.*

¹⁶¹ *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Cyprus*,

<https://history.state.gov/countries/cyprus#:~:text=The%20United%20States%20recognized%20Cyprus,to%20recognize%20the%20TRNC%2C%20however> (Last visited Aug. 10, 2022)

¹⁶² *Id.*

¹⁶³ Barrie Strain, *Palestinian statehood: A Political Pipedream but a Legal Reality*, Cov. L.J. 2002, 7(1), 1-11

¹⁶⁴ *Id.*

¹⁶⁵ Janis Grzybowski, *To Be or Not to Be: The Ontological Predicament of State Creation in International Law*, 28 Eur. J. Int'l L. 409, 411 (2017)

Besides legality and legitimacy, when an entity claims statehood, existing states look into other considerations like a recognized right to self-determination of the populace of the entity, human rights violations committed on the entity's territory against the populace, an institution-building plan to create an effective government, the involvement of the international community in what is happening in that entity, and the commitment of the entity to pacific solutions constitute new criteria that can compensate for the deficiency of fulfillment of the classic criteria.¹⁶⁶

Self-determination, as an example of the new criteria, is one of the legal principles that has a great impact on the willingness of existing states to recognize a new state.¹⁶⁷ A right to self-determination, fundamentally means the right of a people to be free from a colonizing power.¹⁶⁸ This right constitutes what is interpreted as “external” right to self-determination, the right to state-creation. Once these people have a state, their “internal” right to self-determination means their right to choose their own political system and freely seek their social, economic, and cultural developments.¹⁶⁹ In addition, some scholars have argued for the existence of a right to remedial secession, which is the right of minorities or distinct groups to separate themselves from a state and govern themselves when certain criteria are met.¹⁷⁰ Remedial succession consists of 3 criteria: a minority of people living within a territory of a state, the state exposes the minority to grave human rights violations, and the impossibility of any other peaceful settlement.¹⁷¹ While a right to remedial secession has not been recognized yet, the right of all peoples to be independent from colonial powers has been recognized since 1960s.¹⁷²

The principle of self-determination impacts statehood law by mitigating the degree of fulfillment of the classic criteria required for a statehood claim. Although it's arguable how effective a government needs to be to satisfy the classic criteria, a lower level of effectiveness can be satisfied when a right to self-determination of the populace is recognized.¹⁷³

These new considerations have helped some entities obtain recognition as new independent states despite the lack of fulfillment of the classic criteria. In 1991, the European Community established guidelines on the recognition of new states that came out of the dissolution of the Soviet Union and Yugoslavia.¹⁷⁴ The new states must demonstrate, *inter alia*, their acceptance of the U.N. Charter, especially regarding the rule of law and protection of human rights. For example, in the case of Bosnia and Herzegovina, the European Community did not rely on the classic criteria in determining whether to recognize Bosnia as a state.¹⁷⁵ Despite the lack of fulfillment of the “effective government” criterion, Bosnia was recognized as a state due to Bosnia’s satisfaction of the new considerations.¹⁷⁶

In the case of Kosovo, the new considerations were investigated when examining Kosovo’s statehood claim.

¹⁶⁶ Zohar Nevo & Tamar Megiddo, *Lessons from Kosovo the Law of Statehood and Palestinian Unilateral Independence*, 5 J. Int'l L. & Int'l Rel. 89 (2009)

¹⁶⁷ *Id.*

¹⁶⁸ Hurst Hannum, *Legal Aspects of Self-Determination*, <https://pesd.princeton.edu/node/511> (Last visited Oct. 28, 2022)

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Zohar Nevo & Tamar Megiddo, *Lessons from Kosovo the Law of Statehood and Palestinian Unilateral Independence*, 5 J. Int'l L. & Int'l Rel. 89 (2009)

¹⁷² Hurst Hannum, *Legal Aspects of Self-Determination*, <https://pesd.princeton.edu/node/511> (Last visited Oct. 28, 2022)

¹⁷³ François Finck, *The State Between Fact and Law: The Role of Recognition and the Conditions Under Which It Is Granted in the Creation of New States*, 36 Polish Y.B. Int'l L. 51 (2016)

¹⁷⁴ Eileen Denza, *European Practice on the Recognition of States*, E.L. Rev. 2011, 36(3), 321-338.

¹⁷⁵ Marc Weller, *The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia Background*, 86 Am. J. Int'l L. 569 (1992)

¹⁷⁶ François Finck, *The State Between Fact and Law: The Role of Recognition and the Conditions Under Which It Is Granted in the Creation of New States*, 36 Polish Y.B. Int'l L. 51 (2016)

1. Historical Background

While Serbs believe that Kosovo is the birthplace of their state, 90% of its population is Albanians.¹⁷⁷ Kosovo was an autonomous province within Serbia until Serbia, in 1974, eliminated this autonomy.¹⁷⁸ Thus, Kosovars in the 90s were seeking either retrieving Serbia's autonomy or independence.¹⁷⁹ The dissolved Provincial Assembly declared Kosovo independent in 1991, which led Serbia to start police and military actions in Kosovo to restore Kosovo as a part of Serbia.¹⁸⁰ Severe human rights violations, specifically ethnic cleansing and displacing hundreds of thousands of the people, were committed by Serbia in response to attacks by the separatist Kosovo Liberation Army.¹⁸¹ Therefore, the U.N. passed 1244 Resolution, which called for an international security presence in Kosovo that would help facilitate self-governance and the need for a final status.¹⁸² In 2001, the Provisional Institutions of Self Government were created, and later in 2005, the only doable solution was found to be independence of Kosovo after many failed attempts of negotiations.¹⁸³ Thus, the Kosovo Parliament, in 2008, declared independence and sovereignty of Kosovo through a unilateral declaration of independence.¹⁸⁴ In 2008, the General Assembly passed a resolution, based on Serbia's request, to consult the International Court of Justice on whether the unilateral declaration of independence of Kosovo adopted in 2008 violated international law.¹⁸⁵ The court in its advisory opinion held that the declaration of independence of Kosovo did not violate international law.¹⁸⁶ However, since 2006, Serbia adopted a constitutional amendment, which recognizes Kosovo as an autonomous province of Serbia.¹⁸⁷

2. Kosovo's Fulfillment of the Classic Criteria

Kosovo seems to meet the first two requirements for statehood in Montevideo, permanent population, and defined territory. However, it seems that Kosovo does not meet the other two requirements, effective government, and the capacity to conduct foreign relations. While having an effective government does not require a state to have a specific form, but a state has at least to meet some standards like having a government that is able to execute its obligations.¹⁸⁸ To be effective, a government has to establish basic institutions, be able to maintain law and order, and be capable of entering into relations with other states.¹⁸⁹

Reports by the U.N. and the European Union(EU) show that there is great progress in the process of institution-building, and that Kosovo succeeded in establishing some institutions that are necessary for a government such as police forces.¹⁹⁰ However, other institutions including law and order and monetary policy have not been established yet and still in the competence of the

¹⁷⁷ Zohar Nevo & Tamar Megiddo, *Lessons from Kosovo the Law of Statehood and Palestinian Unilateral Independence*, 5 J. Int'l L. & Int'l Rel. 89 (2009)

¹⁷⁸ Christopher Borgen, *Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition* (Feb. 2008), https://www.tjsl.edu/slomansonb/2.4_KosSecession.pdf

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Zohar Nevo & Tamar Megiddo, *Lessons from Kosovo the Law of Statehood and Palestinian Unilateral Independence*, 5 J. Int'l L. & Int'l Rel. 89 (2009)

¹⁸² Christopher Borgen, *Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition* (Feb. 2008), https://www.tjsl.edu/slomansonb/2.4_KosSecession.pdf

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ I.C.J, Accordance with international law of the unilateral declaration of independence in respect of Kosovo, <https://www.icj-cij.org/en/case/141> (Last visited Oct. 28, 2022)

¹⁸⁶ *Id.*

¹⁸⁷ Hurst Hannum, *Legal Aspects of Self-Determination*, <https://pesd.princeton.edu/node/511> (Last visited Oct. 28, 2022)

¹⁸⁸ Jane Hofbauer, *Sovereignty in the Exercise of the Right to Self-Determination*, 101 (2016)

¹⁸⁹ *Id.*

¹⁹⁰ Zohar Nevo & Tamar Megiddo, *Lessons from Kosovo the Law of Statehood and Palestinian Unilateral Independence*, 5 J. Int'l L. & Int'l Rel. 89 (2009)

international representatives.¹⁹¹ In fact, Kosovo relies on the NATO soldiers and law enforcement personnel.¹⁹² Moreover, Kosovo's capacity to conduct foreign relations seems to be partial, and the final authority of the international security presence in civil and military matters is recognized by the constitution.¹⁹³ Thus, Kosovo does not seem to meet the criteria in Montevideo.

3. The New Criteria in the Current International Practice

Even though Kosovo did not fully meet the classic criteria, it was declared independent and recognized by many countries around the world, including the United Kingdom and the United States of America.¹⁹⁴ Some factors have been seen in the case of Kosovo that supported its claim of statehood. These circumstances are not solely found in the case of Kosovo, but similar ones are found in other cases like the cases of Bangladesh, Bosnia Herzegovina and Timor-Leste.¹⁹⁵ Some scholars argue that factors beyond the classic criteria made Kosovo's claim for statehood meaningful and accepted, leading to its independence.¹⁹⁶ Some of these factors are the human rights violations committed against Kosovars, the collapse of the Socialist Federal Republic of Yugoslavia, failure of negotiations with Serbia, the involvement of the international community in Kosovo. Additional considerations have played a role in Kosovo's independence; a comprehensive framework for independence including having an institution-building plan, and its commitment to the protection of human rights.¹⁹⁷

In fact, Russia used the case of Kosovo to argue for the independence of Abkhazia from Georgia. It relied on similar factors to those in Kosovo's case like human rights violations, international involvement, and the lack of other solutions but independence.¹⁹⁸

4. The New Criteria Applied to the Case of Palestine

Despite the uniqueness of the circumstances in Kosovo's case, there are some similarities that might make Kosovo's experience useful and probably a precedent for Palestine. Kosovo was recognized as a state without fully meeting the criteria in Montevideo. Palestine's statehood should be determined similarly.

One of the similarities between the cases of Palestine and Kosovo is the involvement of the international community. The international community has been involved in the Palestine-Israel conflict for a long time. As a matter of fact, 131 U.N. resolutions have been passed in this regard, some of which recognized Palestine's territory, the right of Palestinians to self-determination, the right of Palestinian refugees to return, and the illegality of Israeli settlements.¹⁹⁹

Second is a recognized right to self-determination. The right of the Palestinian people to self-determination has been widely recognized by the international community. In 1947, the U.N. 181 Resolution called for the partition of Mandate Palestine and recognized the Palestinians' right to self-determination. On the same day the British Mandate expired, Israel unilaterally declared independence, relying on the U.N. 181 Resolution.²⁰⁰ This resolution recognized the right to self-determination for both the Jews and Arabs. Since Israel declared independence unilaterally,

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Colin Warbrick, *Kosovo: The Declaration of Independence*, I.C.L.Q. 2008, 57(3), 675-690.

¹⁹⁷ Zohar Nevo & Tamar Megiddo, *Lessons from Kosovo the Law of Statehood and Palestinian Unilateral Independence*, 5 J. Int'l L. & Int'l Rel. 89 (2009)

¹⁹⁸ U.N.SCOR, 5969th mtg., U.N. Doc. S/PV.5969 (Aug. 28, 2008)

¹⁹⁹ U.N., The Question of Palestine, <https://www.un.org/unispal/history/> (Last visited Aug. 2, 2022)

²⁰⁰ Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018),
<https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4efe26f074754dbca97>

Palestine should be able to do the same.²⁰¹ Moreover, the U.N. 242²⁰² Resolution called for the withdrawal of Israel from Palestine's territory, recognizing the right to sovereignty over its territory, and Resolution 338²⁰³ reaffirmed that. The right to self-determination is also one of the recognized rights in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to which Israel is a party.²⁰⁴

Third is human rights violations committed by Israel against Palestinians. Israeli settlements and apartheid wall in the West Bank, the continuous siege on the Gaza Strip, restrictions on movement, and the lack of adjacency between the West Bank, the Gaza Strip, and Jerusalem are examples.²⁰⁵ Although Israel is a state member to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the ICCPR, Palestinian detainees in Israeli jails are exposed to torture and inhuman treatment.²⁰⁶ Several human rights organizations have documented torture and ill-treatment cases committed by Israeli forces during interrogation. Palestinian detainees are subject to being beaten, cursed, threatened, deprived of sleep, placed in painful positions, and imprisoned under inhuman conditions.²⁰⁷ They are denied access to basic health care, family visits, and therapy.²⁰⁸ Besides the denial of their basic human rights, they are also not entitled to due process and fair trial guarantees.²⁰⁹ In addition, administrative detention is lawful and has been used to detain thousands of Palestinians for months or years for security reasons without being tried.²¹⁰

Since 2000, more than forty Palestinian journalists have been killed while doing their job by the Israeli forces.²¹¹ In 2022, Shereen Abu-Aqlah was shot dead by the Israeli forces while covering the news in Jenin camp in the West Bank.²¹² Before the assassination of Shereen, her colleague, Ali Samouri, was shot and injured while also doing his job.²¹³ Both, Shereen and Ali, were wearing their protective gear, which identified them as press workers.²¹⁴ The killing of journalists violates international humanitarian law, most of which have been identified as customary international law.²¹⁵

Amnesty International has reported that Israel is committing a crime against humanity, apartheid, against Palestinians whether they reside in Israel or the Palestinian territory.²¹⁶ Amnesty's investigations show that human rights violations, including unlawful killings, massive seizure of lands and property, denial for citizenship, and restrictions on movement, are committed by Israel, establishing a system of oppression and domination.²¹⁷

Fourth is the deadlocked negotiations. Palestine is committed in good faith to negotiating

²⁰¹ *Id.*

²⁰² S.C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967)

²⁰³ S.C. Res. 338, U.N. Doc. S/RES/338 (Oct. 22, 1973)

²⁰⁴ U.N., *UN Treat Body Database, Ratification Status for Israel*,

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=84&Lang=EN (Last visited Nov. 2, 2022)

²⁰⁵ U.N. Secretary-General, Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem, A/HRC/34/38 (Mar. 16, 2017)

²⁰⁶ ADDAMEER, Palestinian Counseling Center, and Mandela Institute, Medical Neglect of Palestinian Women in Israeli Prisons (June, 2008)

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ Press Release, U.N., U.N. Experts Condemn Journalist Killing Amid Rising West Bank Violence (May 13, 2022)

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ Amnesty Int'l, *Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity*, AI Index MDE 15/5141/2022 (Feb. 1, 2022)

²¹⁷ *Id.*

with Israel, which was emphasized in the 1988 Declaration of Independence and Palestine's application for U.N. membership in 2011.²¹⁸ However, negotiations between Palestine and Israel seem to be out of the question at this point. Grave human rights violations, Trump's plan, keeping Gaza under siege, refusing to apply the fourth Geneva Convention to the occupied territories frustrate any negotiations attempts.

Israel exploits more than 85% of the lands of Mandate Palestine even though Jews could only exploit not more than 6.2% at the time of the Mandate.²¹⁹ Israel plans to annex more than 30% of the West Bank to Israel,²²⁰ while it exploits 76 percent of the lands in Area C.²²¹ Thus, Palestine's president has declared that Palestine is no longer a party to the Oslo Accords.²²² While this declaration was symbolic and very late, negotiations between Palestine and Israel have failed a long time ago, probably since 2010.²²³ In the meantime, Israel continues to violate international law by building more settlements in the West Bank despite the U.N. Security Council 2334 Resolution, which declared the Israeli settlements in the West Bank a "flagrant violation" of international law.²²⁴

Trump's plan frustrated the last hope for negotiations between the two parties. The plan aimed to annex 30 percent of the West Bank to Israel by annexing most of the Israeli settlements to Israel and swapping some lands between Palestine and Israel.²²⁵ This plan was strongly rejected by Palestine and the international community, which has established pre-1967 borders to be the territory of Palestine. Thus, negotiations between Palestine and Israel seem unfeasible anymore.

Moreover, in 2011, Palestine launched a similar plan to Kosovo's by relying on building institutions to establish a de facto Palestinian State. This plan specifically aimed to building enough institutions for a functioning government. A U.N. report stated that the Palestinian government is sufficient for a functioning government.²²⁶ Palestine also ratified many human rights treaties to show its interest in the protection of human rights and willingness to comply with international human rights law.

The case of Kosovo has been seen as a unique case that cannot serve as a precedent, but there are many similar factors between the case of Kosovo and the case of Palestine. If these factors have helped Kosovo become a state and be recognized by western countries, the same countries that refuse to recognize Palestine as state, these factors must also be considered in the case of Palestine. In fact, some scholars have interpreted the case of Kosovo to be a successful example of remedial secession, which is a right that has not been recognized. In the case of Palestine, the right to self-determination, for a people under oppression, is a widely recognized right in international law.

The cases of Kosovo and Bosnia, among others, show that the current international practice seems to indicate that states consider other factors rather than only the classic criteria in Montevideo when determining their recognition and/or support for independence of a new state.

²¹⁸ U.N. Secretary-General, Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem, A/HRC/34/38 (Mar. 16, 2017)

²¹⁹ Palestinian Cent. Bureau of Statistic, *H.E. Dr. Awad, highlights the Forty-Four Annual Commemoration of Land Day in Statistical Figures* (2020), <https://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3700>

²²⁰ Palestine News & Info. Agency, *President Abbas Declares End to Agreements With Israel, US; Turns Over Responsibility on Occupied Lands to Israel* (2020), <https://english.wafa.ps/page.aspx?id=vWPVtFa117154132029avWPVtF>

²²¹ Palestinian Cent. Bureau of Statistic, *H.E. Dr. Awad, highlights the Forty-Four Annual Commemoration of Land Day in Statistical Figures* (2020), <https://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3700>

²²² Palestine News & Info. Agency, *President Abbas Declares End to Agreements With Israel, US; Turns Over Responsibility on Occupied Lands to Israel* (2020), <https://english.wafa.ps/page.aspx?id=vWPVtFa117154132029avWPVtF>

²²³ *Id.*

²²⁴ S.C. Res. 2334, U.N. Doc. S/RES/2334 (Dec. 23, 2016)

²²⁵ Palestinian Cent. Bureau of Statistic, *H.E. Dr. Awad, highlights the Forty-Four Annual Commemoration of Land Day in Statistical Figures* (2020), <https://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3700>

²²⁶ U.N., The Questions of Palestine, available at: <https://www.un.org/unispal/document/auto-insert-203115/>

CONCLUSION

There are two common statehood theories under international law: the declaratory and constitutive theories. The declaratory theory uses the criteria in the Montevideo Convention, a permanent population, defined territory, effective government, and the government's ability to conduct foreign relations, to examine whether an entity qualifies to be a state. The constitutive theory, however, uses recognition for such an examination.

Palestine qualifies as a state under the declaratory theory because it has a permanent population that resides on its territory while also having a government that exercises some powers including international relations. Palestine does not fully meet the criteria, but because it is under belligerent occupation, the powers that Palestine can exercise are enough for a statehood status. As for the constitutive theory, Palestine has been recognized by two-thirds of the states, meeting the primary requirement of the constitutive theory.

Montevideo sets criteria for statehood that are, indeed, necessary for a state. However, whether these criteria are applied strictly or broadly, and whether these criteria are valuable without recognition, the declaratory theory is unable to explain the current international practice. The constitutive theory, on the other hand, focuses on recognition without specifying the number of states that need to recognize an entity to be a state or explaining how recognition without effectiveness can establish a state.

Effectiveness and recognition are both, to some degree, needed. However, other considerations, as current international practice shows, can mitigate the lack of fulfillment. States, nowadays, take into consideration factors like human rights violations committed on the territory of the entity, the international involvement in the case, the lack of solutions other than independence, the existence of a statehood strategy implemented by an entity like institution-building, and the entity's commitment to the protection of human rights and willingness to comply with international law.

Because Palestine meets these factors or new criteria, this should mitigate any deficiency of fulfillment required for a statehood status in the case of Palestine. This is especially helpful because of the complexity of the facts and the law in the case of Palestine.

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This research paper was written by a Palestinian author. A sort of bias in favor of the Palestinian people might be found.

REFERENCES

François Finck, *The State Between Fact and Law: The Role of Recognition and the Conditions Under Which It Is Granted in the Creation of New States*, 36 Polish Y.B. Int'l L. 51 (2016)

Amnesty Int'l, *Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity*, AI Index MDE 15/5141/2022 (Feb.1, 2022)

U.N.SCOR, 8950th Mtg., U.N. Doc. S/PV.8950 (Jan.19, 2022)

U.N., The Question of Palestine, <https://www.un.org/unispal/history/>

Hasan Ismaik, *Unite Jordan and Palestine Again*, FP, Oct. 15, 2021

Palestine National Council, <https://www.palestinepnc.org/en/>

John Quigley, *The Israel-PLO Interim Agreements: Are They Treaties?* 30 Cornell Int'l L.J. 717 (1997)

ADL, Palestinian Authority (May 3, 2022), <https://www.adl.org/resources/glossary-term/palestinian-authority>

The Questions of Palestine, Key Issues at Stake, <https://www.un.org/unispal/permanent-status-issues/>

Michele Pitta, *Statehood and Recognition: The Case of Palestine* (2018),
<https://www.semanticscholar.org/paper/Statehood-and-Recognition%3A-the-Case-of-Palestine-Pitta/3a5087a512dd8d59e190d4fe26f074754dbca97>

Montevideo Convention on the Rights and Duties of States, 1933, 165 I.N.T.S. 19. The treaty was ratified by 19 Latin American states and the U.S.

Samantha Beson, *International Courts and the Jurisprudence of Statehood*, 10 Transactional Legal Theory, no. 1, 2019, at 30

Western Sahara, Advisory Opinion, 1974 I.C.J.(Dec.13)

North Sea Continental Shelf Case (Germany v. Denmark), 1969 I.C.J. (Apr. 26)

Errol Mendes, *Statehood and Palestine for the Purpose of Article 12(3) of the ICC Statute*, <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/D3C77FA6-9DEE-45B1-ACC0-B41706BB41E5/281876/OTPErrolMendesNewSTATEHOODANDPALESTINEFORTHEPURPOS.pdf>

Asylum Case (Colombia v. Peru), 1950 I.C.J. (Nov. 20).

U.N., Permanent of the Republic of Nauru to the United Nations, <https://www.un.int/nauru/>

The World Bank. Available at:
<https://data.worldbank.org/indicator/SP.POP.TOTL?end=1999&locations=NR&start=1997>

Barrie Strain, *Palestinian statehood: A Political Pipedream but a Legal Reality*, Cov. L.J. 2002, 7(1), 1-11

The World Bank, available at: See <https://data.worldbank.org/indicator/AG.LND.TOTL.K2?locations=NR>

Restatement (Third) of Foreign Relations Law § 201 (1987)

J. D. van der Vyver, *Statehood in International Law*, 5 Emory Int'l L. Rev. 9 (1991)

S.C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967)

S.C. Res. 2334, U.N. Doc. S/RES/2334 (Dec.23, 2016)

Palestinian Declaration of Independence, available at: <https://justvision.org/glossary/palestinian-declaration-independence#:~:text=On%20November%202015%2C%201988%2C%20the,Bank%20and%20the%20Gaza%20Strip>.

Ardi Imseis, *On membership of the United Nations and the State of Palestine: A Critical Account*, L.J.I.L. 2021, 34(4), 855-878

Palestine News & Info Agency, PCBS: Some 14.3 million Palestinians in the world in mid-2022 (July 7, 2022)
<https://english.wafa.ps/Pages/Details/129983>

Suzanne Panganiban, *Palestinian Statehood: A Study of Statehood through the Lens of the Montevideo Convention* (2016), <https://vttechworks.lib.vt.edu/handle/10919/64512>

World Population Review, Palestine Population 2022(Live), <https://worldpopulationreview.com/countries/palestine-population>

U.N. Docs. A/48/486-S/26560 (Oct. 11, 1993)

Victor Persson, Palestine's Ratification of International Treaties - A Back Door to Independence? (Spring 2016) (LL.M. Thesis, Lund University) (on file with the Lund University Libraries)

ICC, *State of Palestine, Situation in the State of Palestine*, <https://www.icc-cpi.int/palestine#:~:text=On%20202%20January%202015%2C%20Palestine,Palestine%20on%201%20April%202015>

International Commission of Jurists, *Palestine/Israel: ICC decision an important step towards accountability for crimes under international law* (Aug. 2, 2021),
<https://www.icj.org/palestine-israel-icc-decision-an-important-step-towards-accountability-for-crimes-under-international-law/>

Situation in the Case of Palestine, Case No. ICC-01/18, Decision on the Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court's Territorial Jurisdiction in Palestine (Feb. 5, 2021), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01165.PDF

Tanvi Bhargava & Rebecca Cardoso, *An Examination of Palestine's Statehood Status Through the Lens of the ICC Pre-Trial Chamber's Decision and Beyond*, 54 N.Y.U.J. Int'l. L. & Pol. Online F. 14 (2021)

Knox v. Palestine Liberation Organization, 306 F.Supp.2d 424 (S.D.N.Y.,2004)

Ardi Imseis, Watson: *The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements*, J. Palestinian Stud. 110 (2002)

Institut De Droit International, Resolutions Concerning the Recognition of New States and New Governments, 30 Am. J. of Int'l L. 185 (1936)

Diplomatic Relations, <https://palestineun.org/about-palestine/diplomatic-relations/>

U.N., *The Question of Palestine, Palestinian State-Building: An Achievement at Increased Risk – UNSCO Report to the AHLC* (March, 2012), <https://www.un.org/unispal/document/auto-insert-203115/>

Press Release, General Assembly, General Assembly Votes Overwhelmingly to Accord Palestine 'Non-Member Observer State' Status in United Nations, U.N. Press Release GA/11317 (Nov. 29, 2012)

John Balouziyah, *Palestinian Statehood under International Law* (2015)

U.N. Member States, available at: <https://www.un.org/en/about-us/member-states#gotoS>

Zohar Nevo & Tamar Megiddo, *Lessons from Kosovo the Law of Statehood and Palestinian Unilateral Independence*, 5 J. Int'l L. & Int'l Rel. 89 (2009).

A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Cyprus,

<https://history.state.gov/countries/cyprus#:~:text=The%20United%20States%20recognized%20Cyprus,to%20recognize%20the%20TRNC%2C%20however>

Janis Grzybowski, *To Be or Not to Be: The Ontological Predicament of State Creation in International Law*, 28 Eur. J. Int'l L. 409, 411 (2017)

Hurst Hannum, *Legal Aspects of Self-Determination*, <https://pesd.princeton.edu/node/511>

Eileen Denza, *European Practice on the Recognition of States*, E.L. Rev. 2011, 36(3), 321-338.

Marc Weller, *The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia Background*, 86 Am. J. Int'l L. 569 (1992).

Christopher Borgen, *Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition* (Feb. 2008), https://www.tjsl.edu/slomansonb/2.4_KosSecession.pdf

I.C.J, Accordance with international law of the unilateral declaration of independence in respect of Kosovo, <https://www.icj-cij.org/en/case/141>

Jane Hofbauer, *Sovereignty in the Exercise of the Right to Self-Determination*, 101 (2016)

Colin Warbrick, *Kosovo: The Declaration of Independence*, I.C.L.Q. 2008, 57(3), 675-690.

U.N.SCOR, 5969th mtg., U.N. Doc. S/PV.5969 (Aug. 28, 2008)

S.C. Res. 338, U.N. Doc. S/RES/338 (Oct. 22, 1973)

U.N. Secretary-General, Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem, A/HRC/34/38 (Mar.16, 2017)

U.N., *UN Treat Body Database, Ratification Status for Israel*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=84&Lang=EN

ADDAMEER, Palestinian Counseling Center, and Mandela Institute, Medical Neglect of Palestinian Women in Israeli Prisons (June, 2008)

Press Release, U.N., U.N. Experts Condemn Journalist Killing Amid Rising West Bank Violence (May 13, 2022)

Palestinian Cent. Bureau of Statistic, *H.E. Dr. Awad, highlights the Forty-Four Annual Commemoration of Land Day in Statistical Figures* (2020), <https://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3700>

Palestine News & Info. Agency, *President Abbas Declares End to Agreements With Israel, US; Turns Over Responsibility on Occupied Lands to Israel* (2020), <https://english.wafa.ps/page.aspx?id=vWPVtFa117154132029avWPVtF>

U.N., *The Question of Palestine, Advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (July 9, 2004), <https://www.un.org/unispal/document/auto-insert-178825/>

APPENDIX A

A map indicates areas A, B, and C of the West Bank as divided based on the Oslo Accords. From:
<https://www.un.org/unispal/west-bank-area-c-ocha-map/>

