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THE PALESTINIAN-ISRAELI
CONFLICT: AN ANALYSIS OF
PALESTINE'S BID FOR STATEHOOD

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1. Introduction

The question of the territory of Palestine has been and still is one of the greatest, if not the greatest challenge that remains to be solved in the international community. It is also one of the oldest challenges it is facing, having been an issue in need of a resolution since before the creation of the state of Israel in 1948.

The objective of this paper is to establish whether Palestine is a state and what has been the impact of the entrance of Palestine within the system of the United Nations as an observer state. To do this I will analyze several situations independently. First I believe that it is fundamental to understand the history of the conflict. The Arab-Israeli conflict is one of the oldest ongoing conflicts in the world. Both sides have been on the opposite side of the spectrum for a long time, and it is vital that their history is understood to understand the conflict and the consequences of the changes occurring. Without looking at the history of this conflict it is impossible to understand Palestinian claims for statehood and Israel's view on the process.

Once the history of this conflict is explained I will proceed to explain first the situation of Palestine within the United Nations and how it has evolved. This is fundamental to understand the current situation and how the international society through the UN framework has worked in regards to Palestine. The next section will look closely at the Israeli position, its views and claims, in order to attempt to understand why it holds its current position and where this position comes from.

The paper will then analyze the elements that constitute a state whilst at the same time examining and evaluating if a supposed Palestinian state would meet this requirements. This section is perhaps the most important one as it clarifies many of the doubts in regards to Palestinian claims to statehood and also indirectly compares Palestine to other states, as it contemplates if Palestinian institutions are state-worthy. This will be followed by an analysis of the two-state solution and how both sides have regarded this possible solution since its inception.

Lastly the paper will explain the consequences of the recent developments in regards to Palestine's bid for statehood, and how this changed the map of the conflict, including an analysis of how Palestine's entry into the International Criminal Court could possibly affect the relations between both sides. This will be followed by a series of concluding remarks, with the idea that at the end of the paper a better idea of the conflict and the bid for statehood by Palestine is achieved by the reader.

2. Historical Background

The Palestinian-Israeli conflict can trace its roots to the late 19th and early 20th centuries, with the birth of major nationalist movements among the Jews and among the Arabs, both geared towards attaining sovereignty for their people in the Middle East. The collision between those two forces in southern Levant and the emergence of Palestinian nationalism in the 1920s eventually escalated into the Israeli–Palestinian conflict in 1947, and expanded into the wider Arab-Israeli conflict later on.

With the outcome of the First World War, the relations between Zionism and the Arab national movement seemed to be potentially friendly, and the Faisal–Weizmann Agreement created a framework for both aspirations to coexist on former Ottoman Empire's territories. It is worth noting that both movements wanted control of the Palestine area and through statements with Britain and France both movements had been promised control of the territory, especially remarkable is perhaps the Balfour Declaration in 1917¹ which was a public statement of the British government in the form of a letter in which they explicitly approved the creation of a Jewish state in Palestine, however this new State and its borders were purposely left very vague. Furthermore the Balfour Declaration contradicted previous statements made by the British Government in favor of the creation of an Arab state in Palestine. However, with the defeat and dissolution of the Arab Kingdom of Syria in July 1920 following the Franco-Syrian War, a crisis fell upon the Damascus-based Arab national movement. The return of several hardline Palestinian Arab nationalists, under the emerging leadership of Haj Amin al-Husseini, from Damascus to Mandatory Palestine marked the beginning of the Palestinian Arab nationalist struggle towards establishment of a national home for Arabs of Palestine. This resulted in an increase in the tension in the area with both movements starting a slow struggle for control of Palestine.

In the early 1930s, the Arab national struggle in Palestine had drawn many Arab nationalist militants from across the Middle East, most notably Sheikh Izaddin al-Qassam from Syria, who established the Black Hand militant group and had prepared the grounds for the 1936 Arab revolt. Tensions continued to rise and erupted in 1936 into the Arab general strike and general boycott². The strike soon deteriorated into violence and the bloody revolt against the British and the Jews. In the first wave of organized violence, lasting until early 1937, much of the Arab gangs were defeated by the British and a forced expulsion of much of the Arab leadership was performed³. The revolt led to the establishment of the Peel Commission towards partitioning of Palestine, though this was subsequently rejected by the Palestinian Arabs. The two main Jewish leaders, Chaim Weizmann and David Ben-Gurion, accepted the recommendations but some secondary Jewish leaders did not like it.

The renewed violence, which had sporadically lasted until the beginning of WWII, ended with around 5,000 casualties, mostly from the Arab side. With the eruption of World War

¹ Bickerton, Ian J., and Carla L. Klausner. *A History of the Arab-Israeli Conflict*. Boston: Prentice Hall, 2010. P. 38-39

² Morris, Benny (2009). *One State, Two States: Resolving the Israel/Palestine Conflict*. Yale University Press. p. 66.

³ Louis, William Roger (2006). *Ends of British Imperialism: The Scramble for Empire, Suez, and Decolonization*. I.B.Tauris. p. 391

unsuccessful in contrast to the Zionist movement which was able to garner much support, especially considering it had the backing of USA. With tensions rising, and the Arab countries as well as the Palestinians not accepting the partition proposal mainly because they believed it was not fair since the majority of the population in Palestine was Arab, the Israeli state was declared unilaterally in May 14 1948 in Tel Aviv. Chaim Weizmann was declared the first president and Ben-Gurion as the first Prime Minister. Immediately after the neighboring countries declared war against the new state of Israel and invaded it.



Syria, Saudi Arabia, Iraq, Lebanon, and Egypt (the Arab League) declared war¹⁰. Despite the fact that the Arabs together outnumbered the Jews, the Israeli army was smaller, Israel was more organized and prepared and had the support of the USA. The Jewish state had been preparing for war for a long time already foreseeing the outcome of a declaration of state, whereas the Arabs talked about it and threatened with the use of force but didn't actually get ready. Israeli weaponry was better, and they were able to import heavy weapons too, such as aircraft.

The end of the war came about quickly in 1948 due to the high superiority of Israel, with an armistice declared that began in 1949. After the war, around 750.000 Arabs were forced to flee to neighboring countries and international communities. For Israel, by the end of the war, the population had increased to a million as more Jews came to live in the newly created of Israel. Israel took over areas originally given to the Arabs in the original

⁹ Bickerton, Ian J., and Carla L. Klausner. *A History of the Arab-Israeli Conflict*. Boston: Prentice Hall, 2010. P. 36

¹⁰ Bickerton, Ian J., and Carla L. Klausner. *A History of the Arab-Israeli Conflict*. Boston: Prentice Hall, 2010. P. 97.

partition plan. By 1949, Israel controlled almost 80% of original Palestine. Israel's borders were more defensible; they became much stronger, and stable, and the proposed state in the partition plan of Palestine for the Arabs basically disappeared. Following the outcome of the war the Arab League split and fought amongst themselves (blaming each other for their failure)¹¹. The overall fighting, resulted in around 15,000 casualties, and Israel holding much of the former Mandate territory, Jordan occupying and later annexing -the West Bank and Egypt taking over the Gaza Strip, where the All-Palestine Government was declared by the Arab League on 22 September 1948. The partition plan although before rejected by the Arab states and now demanded by some of them was effectively dead.

After the end of the war, the situation did not ease up. The Palestinians were displaced, without an effective territory, Israel had consolidated its territory and was effectively a state recognized by many, and the Arab league continued to oppose the creation and establishment of Israel. Through the 1950s, Jordan and Egypt supported the Palestinian cross-border attacks into Israel, while Israel carried out reprisal operations in the host countries. In 1956 the Suez Canal Crisis resulted in a short-term Israeli occupation of the Gaza Strip and exile of the All-Palestine Government, which was later restored with Israeli withdrawal. This was only a foreshadowing of what would come in the future. The All-Palestine Government was in 1959 officially merged into the United Arab Republic, to the detriment of the Palestinian national movement which slowly lost its identity. Gaza Strip then was put under the authority of Egyptian military administrator, making it a de facto military occupation. In 1964, however, a new organization, the Palestine Liberation Organization (PLO), was established by Yasser Arafat, immediately winning the support of most Arab League governments and receiving a seat in the Arab League.

The situation remained in a status quo without advancing until 1967 when the Six Day War¹² exerted a significant effect upon Palestinian nationalism, as Israel gained authority of the West Bank from Jordan and the Gaza Strip from Egypt in a short but intense war. Consequently, the PLO was unable to establish any control on the ground and had to establish its base in Jordan, home to hundreds of thousands of Palestinians. However, the Palestinian base in Jordan collapsed with the Jordanian-Palestinian civil war in 1970. The PLO defeat by the Jordanians caused most of the Palestinian militants to relocate to South Lebanon, where they soon took over large areas, creating the so-called "Fatahland".

Palestinian insurgency in South Lebanon peaked in the early 1970s, as Lebanon was used as a base to launch attacks on northern Israel and airplane hijacking campaigns worldwide, which drew Israeli retaliation. During the Lebanese Civil War, Palestinian militants continued to launch attacks against Israel while also battling opponents within Lebanon. In 1982, following an assassination attempt on one of its diplomats by Palestinians, the Israeli government decided to take sides in the Lebanese Civil War and the 1982 Lebanon War commenced. The initial results for Israel were successful. Most Palestinian militants were defeated within several weeks, Beirut was captured, and the PLO headquarters were evacuated to Tunisia in June by Yasser Arafat's

¹¹ Bickerton, Ian J., and Carla L. Klausner. *A History of the Arab-Israeli Conflict*. Boston: Prentice Hall, 2010. P. 101.

¹² Bickerton, Ian J., and Carla L. Klausner. *A History of the Arab-Israeli Conflict*. Boston: Prentice Hall, 2010. P. 153.

decision¹³. However, Israeli intervention in the civil war also led to unforeseen results, including small-scale conflict between Israel and Syria. By 1985, Israel withdrew to a 10 km occupied strip of South Lebanon, while the low-intensity conflict with Shia militants escalated. These groups would later become the organizations known Hizbullah and Amal which operated against Israel, and allied with the remnants of Palestinian organizations to launch attacks on Galilee through the late 1980s. By the 1990s, Palestinian organizations in Lebanon were largely inactive.

A Palestinian uprising began in 1987 as a response to escalating attacks and an occupation that seemed endless. By the early 1990s, international efforts to settle the conflict had begun, in light of the success of the Egyptian-Israeli peace treaty of 1982 and due to the ongoing conflict with no end in sight. Eventually, the Israeli-Palestinian peace process led to the Oslo Accords of 1993¹⁴, allowing the PLO to relocate from Tunisia and take ground in the West Bank and Gaza Strip, establishing the Palestinian National Authority. The peace process also faced great opposition among radical Islamic elements of Palestinian society, such as Hamas, who immediately initiated a campaign of attacks targeting Israelis. From Israel the peace process was also heavily criticized resulting in the assassination of Israeli Prime Minister Rabin assassinated by an Israeli fanatic who disagreed with the peace accords. This struck a serious blow to the peace process, resulting in the withdrawal of the newly elected government of Israel in 1996.

Years of unsuccessful negotiations, resulted in the Second Intifada on September 2000. The violence, gradually escalate and lasted until 2004/2005 causing 130 fatalities and Israel disengaging from Gaza. In 2005, Israel removed every soldier and every Jewish settler from Gaza. Israel and its Supreme Court formally declared an end to occupation, saying it "had no effective control over what occurred" in Gaza¹⁵. In 2006, Hamas took power by winning a plurality of 44% in a Palestinian parliamentary election. Israel demanded that Hamas agreed to accept previous agreements between Palestine and Israel, forswear violence and most importantly recognize the right of Israel to exist. This led to a renewed violence, with Hamas taking full control of Gaza and Israel imposing a naval blockade on the Gaza Strip, and a ground blockade of the Egyptian border with cooperation from Egypt

The tensions between Israel and Hamas, who gained financial and political support from Iran, escalated until late 2008, when Israel launched several strong military operations. By February 2009, a cease-fire was signed with international mediation between the parties, though small and sporadic eruptions of violence continued.

The question of whether Gaza remains occupied following Israel's withdrawal remains contentious. The government of Israel insists that its full withdrawal from Gaza means it does not occupy Gaza. However Palestinian leaders argue that the Israeli decision, following attacks from Hamas, to impose a weapons blockade of Gaza, Israel's control of Gaza crossing points into Israel, and Israel's control of air above and sea around Gaza

¹³ "History of the Israeli-Palestinian Conflict". PBS. December 2001.

¹⁴ Bickerton, Ian J., and Carla L. Klausner. *A History of the Arab-Israeli Conflict*. Boston: Prentice Hall, 2010. P. 101

¹⁵ Levs, Josh (6 January 2009). "Is Gaza 'occupied' territory?". CNN.

constitutes continued Israeli occupation, since in reality it is controlling the area. Furthermore the settlements in many areas have not been removed and have in some cases even increased in numbers. In regards to the occupation of Gaza the UN has taken no position.

In 2011, a Palestinian Authority attempt to gain UN membership as a fully sovereign state failed due largely to the influence of USA and its veto power in the Security Council. In Gaza, sporadic rocket attacks on Israel and Israeli air raids still take place, still causing deaths amongst civilians. In November 2012, the representation of Palestine in UN was upgraded to a non-member observer State, and mission title was changed from "Palestine (represented by PLO)" to State of Palestine.

3. Palestine in the United Nations

The question of Palestine has been a key issue in the United Nations for many years. In fact regarding this conflict statistical data proves how important it has been in recent years, the Middle East was the subject of 76% of country-specific General Assembly resolutions, 100% of the Human Rights Council resolutions, 100% of the Commission on the Status of Women resolutions, 50% of reports from the World Food Programme, 6% of United Nations Security Council resolutions and 6 of the 10 Emergency sessions¹⁶. This high attention to this conflict highlights the importance that the conflict has had in international community

The history between Palestine and the UN is a long and complicated one. For many years it has attempted to gain full membership in the United Nations, as this would implicitly mean an international recognition of its existence as a state with all the rights that this implies. The question of Palestine in the United Nations has been such an important issue that it ultimately resulted in the creation of a committee and a section of the organization dedicated to solving “the question of Palestine”. In 1975, through resolution 3376¹⁷ the UN General Assembly established the Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP), and requested it to recommend a program of implementation to enable the Palestinian people to exercise their inalienable rights to self-determination without external interference, national independence and sovereignty; and to return to their homes and property from which they had been displaced. The Committee's recommendations were endorsed by the Assembly, to which the Committee reports annually. The Assembly established the Division for Palestinian Rights as its secretariat and, throughout the years, has gradually expanded the Committee's mandate¹⁸. Previously through the resolution 3236 (XXIX) the General Assembly had specifically recognized of the Palestinians of:

1. self-determination without external interference;
2. The right to national independence and sovereignty;

It also reaffirmed the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and called for their return.¹⁹

Thus we find that the United Nations has explicitly recognized through its General Assembly the right for the Palestinian state to exist, furthermore it has reaffirmed the borders that were established previous to 1967 and the Six Day War. However despite this statements and resolutions it has encountered a barrier in the shape of the United Nations Security Council and the presence of the United States of America, Israel strongest ally, who has vetoed every attempt by the Palestinian representatives to be have Palestine become a full member, with all the right that this entails, in the United Nations System. This has prevented the situation from evolving and a solution being reached.

¹⁶ "THE QUESTION OF PALESTINE AT THE UNITED NATIONS" United Nations Website

¹⁷ UN General Assembly, *Question of Palestine*, 10 November 1975, A/RES/3376

¹⁸ "UN COMMITTEE ON THE EXERCISE OF THE INALIENABLE RIGHTS OF THE PALESTINIAN PEOPLE." *UN COMMITTEE ON THE EXERCISE OF THE INALIENABLE RIGHTS OF THE PALESTINIAN PEOPLE*.

¹⁹ UN General Assembly, *Question of Palestine*, 10 November 1975, A/RES/3376

The Committee on the Exercise of the Inalienable Rights of the Palestinian people has been working exhaustively in many areas to improve the situation of the Palestinians, but perhaps in no other area it has applied itself with more earnestness than that of the achieving the recognition of the state of Palestine. The State of Palestine declared the independence of the state and its establishment as an entity separate from the State of Israel, November 15 of 1988, reclaiming the borders established in the Partition plan, border that are completely rejected by the state of Israel. Thus the independence has been questioned since Israel completely controls areas of the supposed state of Palestine and has placed into effect an extensive blockade on Gaza.

The committee has worked endlessly especially throughout the 2014, the year that was officially recognized by the United Nations as the International Year of Solidarity with the Palestinian People. In its annual report²⁰ for the year 2014 the Committee how Israel has put in grave danger the peace process (now non-existent) and basically stopped and prevented any progress being made in the state-building of Israel.

3.1 Status as a Member

In 1974 the Palestinian Liberation Organization, the official representative of the Palestinian people, achieved the status of non-member entity in the form of an observer within the system of the United Nations. This status did not recognize Palestine as a state and granted a limited presence with the UN. The status as an observer entity was awarded through the resolution of the General Assembly 3237 (XXIX), it is important to note, that this status was granted to the PLO and not to a supposedly new Palestinian state. This status allowed for Palestine to have a presence within the UN, it could assist to meetings, have a representation and observe the proceedings in the General Assembly, although it did not have the ability to vote.

In 2012, the most important day in the recent history of Palestine occurred. Palestine was granted the status of a non-member state in the United Nations. This is relevant since it could be argued that through this Palestine was implicitly granted the status of a state, a full member of the international community with all the rights that are granted to states. To further understand the implications of this event on the Israeli-Palestine conflict we must first analyze what this new status as a non-member state implies within the organization and the system of the United Nations.

This status is not unique and has also been granted to the Holy See. This condition of an observer is normally granted on an *ad hoc* bases, thus it is normal to see in many organizations this status granted to several different types of organizations²¹

The question that is important to consider, is why Palestine did not seek full membership in the United Nations and applied for the status of an observer non-member state? The answer to this lies in the composition of the Security Council. The Security Council formed by 15 states of which 5 are permanent members, includes within its ranks the United States of America, the perennial ally of Israel. As a permanent member of the

²⁰ *Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People*. Rep. no. A/69/35

²¹ Remiro Brotons, Antonio. "Las Organizaciones Internacionales." *Derecho Internacional*. Valencia: Tirant Lo Blanch, 2007. Print.

United Nations Security Council, the USA has the ability to veto any decision. This is highly relevant as to become a full member of the United Nations a state must first be recommended by the Security Council. This is shown in article 4 paragraph two of the United Nations charter:

“The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council²².”

Thus this presents a severe roadblock for Palestine. Right now it is very difficult for the State of Palestine to achieve full membership due to this circumstance. The USA has effectively blocked every attempt by Palestine of becoming a member by virtue of its veto power. This has resulted in Palestine seeking a different method of getting implicit recognition from the United Nations as a state.

The only form of recognition that was available was the condition of observer state since this was granted by the General Assembly although it is worth noting that this was done by recommendation from the Committee on the Admission of New Members²³ after Palestine having requested admission to the Security Council and this organ referred the application to the Committee. The Committee recommended that Palestine be granted non-member observer State status in the United Nations. This later resulted in the aforementioned vote on the 29th of November 2012 in which an overwhelming majority — 138 in favor to 9 against (Canada, Czech Republic, Israel, Marshall Islands, Micronesia (Federated States of), Nauru, Panama, Palau and United States), with 41 abstentions – voted to grant the State of Palestine a new status.

This provided a new different scenario which granted Palestine access to new and different types of action that it could undertake. One could argue that in some way this implied an indirect recognition of the existence of the State of Palestine by the United Nations, and therefore due to the acquiescence of the states within the international framework of the United Nation it could be largely considered a recognition of the international system and its members of the existence of the state of Palestine.

²² United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI,

²³ S/2011/705 of 11 November 2011." Web.

4. Israeli Stance

In regards to Israel and the condition of Palestine as a state and its entrance in the United Nations, the Israeli stance has always been one of opposing the creation of the state while still claiming its desire for the creation of a Palestinian state in a future. Israel has historically opposed any attempts by Palestine to become a fully recognized state member of the United Nations doing so in a very effective way thanks in large to the collaboration of its greatest ally the United States of America, which has effectively blocked any attempt by Palestine to become a full member through its use of the power of veto in the Security Council.

It is true that officially Israel has traditionally claimed it seeks a two state solution, however its actions throughout the years have proven the contrary. Israel claims that the only way it would be willing to negotiate the creation of a Palestinian state is only if the Palestinians agree to accept the existence of Israel and agree to direct bilateral negotiations without condition²⁴s. This has proved to be the most controversial point as Israel refuses to treat Palestine as an equal actor with full rights in the negotiation, and the Palestinians refuse to meet with Israel as long as they are treated as a second-class actor within the negotiations. This proves that Israel is not fully willing to accept a Palestinian state, as it does not want to cede in any form within the framework of a negotiation.

The Israeli position has been deeply tied with the different Governments that have been in Israel. Each Government has outlined a different policy towards the negotiations and concerning the creation of a Palestinian state. On this section of the paper I will proceed to underline some of the actions and views held by the different governments, with the understanding that it is vital to comprehend the Israeli position and how this has resulted in the current view in Israel which will be explained at the end of this section.

Before we proceed to analyze the different governments it is important to understand that according to the literature there are two narratives²⁵ in relation to the conflict in regards to the Israeli stance. The "traditional narrative" essentially refers to how Israelis see themselves in relation to Palestinians and the wider Arab world and with a certain version of the history of the conflict. This "traditional" or "common" narrative, as the terms suggest, is both popular and well established in the mindset of many Israelis, both civilians and politicians alike and others outside of Israel, predominantly in the West. The narrative broadly holds that in the 1940s the Arabs were unwilling to negotiate and it was they who instructed their people to flee in 1948 creating the refugee problem that persists today. It also states that there are a group of Palestinians who are terrorists whose only objective is to destroy Israel and that the Palestinians are too demanding in their peace negotiations reflecting the extremism that they believe exists within Palestinian society, and although the destruction of Israel was initially an aim of groups such as the Palestine Liberation Organization (PLO) and remains one for some such as Hamas, just as the idea of creating an Israeli state covering the occupied territories remains an aim for some Israelis, this has largely been rejected as an aim now and the PLO officially recognized

²⁴ "Israel, Palestine and the Occupied Territories." *Global Policy Forum*. Web

²⁵ Slater, J., 2001, "What Went Wrong? The collapse of the Israeli-Palestinian Peace Process", *Political Science Quarterly*, Volume 116 (2), pp 171-199

Israel in 1988. Part of this traditional narrative is the belief that the causes of the conflict lie in the 1967 Six Day War and consequently peace discussions should form around the discussion of territorial negotiation. Such a narrative leads to certain assumptions about what is acceptable in peace creation and influences how Israelis who hold this perception view the peace process. This view thus already highlights some important faults, mainly that it is anchored in the past in regards to how Israelis think Palestinians regard Israel. This view regards all Palestinians as enemies of the state of Israel with the intention of destroying and has not adapted itself to the changes in for example the position of the PLO. It is anchored in a view of the conflict that starts in 1967 completely disregarding any previous happenings.

There is however a more modern view in the Israeli society in regard to the conflict, the new narrative. This is an alternative to the traditional narrative and it is a growing scholarship from Israeli academics and peace activists looking at the history of relations between Israel and Palestine and how it has developed in what has become known as a "new history"²⁶. Perhaps the most important author in this trend is Ilan Pappé. The new narrative has reassessed Israel's role in conflict creation and continuation, demonstrating an awareness of both Israeli and Palestinian roles in the process. As a result of its understanding that the conflict reaches back beyond the Six Day War, the narrative recognizes different causes for the conflict to be beyond Palestinian anti-Semitism and towards Zionism's insistence on creating a Jewish state in Palestine for example, and consequently views the peace process differently; less fearfully of Palestinian intentions and more sympathetically to Palestinian wishes. However whilst this new narrative is more open to negotiations it is not the main view currently in Israel, and thus has barely had an impact. However it is slowly becoming more popular which is quite promising for the peace process moving forward.

In regards to the position of the different governments and how they have interacted with the Palestinians we see a varied position normally connected to the ideological position of the Government elected at the time. Those governments formed by left wing parties have been generally more open to negotiate and to the idea of the creation of a Palestinian state. The left wing has been more sympathetic to the plight of the Palestinians and how they have been generally more open to the idea of a Palestinian state although not overly so. The left wing parties have also been critical of the position taken by Israel in the Oslo Accords and the Camp David 2000 summit in which they claim that Israel took too much of a hard line in the negotiations. However it is important to note that generally Israelis have preferred a right wing government with a more hard line position towards Palestine.

The governments of Sharon or Netanyahu have been prime examples of this and how this reflects the conservative attitude of the Israeli society in regards to Palestine. Ariel Sharon became Prime Minister in 2001 and brought with him a rightwing government in the face of the violent period of the second intifada. His reluctance to implement the goals of the 'Road Map for Peace'²⁷ demonstrated his unwillingness to negotiate and make gestures towards developments in the peace process. This led to people believing in

²⁶ Slater, J., 2001, "What Went Wrong? The collapse of the Israeli-Palestinian Peace Process", *Political Science Quarterly*, Volume 116 (2), pp 171–199

²⁷ Otterman, Sharon. "MIDDLE EAST: The Road Map to Peace." *Council on Foreign Relations*. Council on Foreign Relations, 07 Feb. 2005. Web.

Sharon having an agenda intended to achieve²⁸: “the sterilization of the Palestinian national movement...and the confinement of a Palestinian homeland within scattered enclaves surrounded by Israeli settlements, strategic military areas and a network of bypass roads for the exclusive use of the Israeli occupier.” Sharon viewed a Palestinian national movement as a threat to Israel and consequently would rather allow an independent state, although militarily weak. The dismantling of settlements in Gaza, instigated by Sharon, represents not only an unprecedented step by Israel but also that Sharon had decided unilateral action rather than a two state negotiation was the way forward to move towards peace. Thus we have a Prime Minister who was willing to allow for a Palestinian state as long as it was a weak and did not desire to achieve a negotiation based on two equal parts.

Netanyahu perhaps represents better than anybody else the more modern and more common Israeli view towards Palestine, especially due to the fact that he recently won the elections in Israel. He has been in government several times and has always taken a hard stance towards the Palestinian plight, refusing negotiations several times due to Hamas, criticizing any State or political leader from any country which has taken actions in favor of helping Palestine, placed a blockade in Gaza and continued to support colonization movements across Palestinian land. Netanyahu attempted to block the attempts of Palestine to gain recognition in the UN, (successfully preventing Palestine from becoming a full member thanks to the aid of the US) and has criticized the inclusion of Palestine in the International Court of Justice²⁹. He recently stated (before the elections) that in no way would allow for the creation of a Palestinian state, claiming that this would only lead to the creation of a zone perfectly suitable for the rise of Islamist extremists³⁰. Whilst after the elections he softened his speech, especially due to public international pressure³¹, the statement clearly shows his intentions towards Palestine. It show how he is not willing to allow for the creation of a neighboring Palestinian state, due to the security risks he perceives would result in such an allowance. His election has shown that most of the Israeli population are not ready for the creation of a Palestinian state due to fear.

Fear is an important factor to understand the Israeli position. Fear is seen by many as the force that drives the Israeli position, the stance and the relations Israel holds with Palestine. This fear is driven by the idea of security, an idea that understandably so if one considers the brief history of Israel has driven the Israeli mindset from the onset of conflict, due to being in an area full of conflicts. However this somewhat understandable concept and state of mind has result in Israel’s foreign policy being driven by fear. To better understand this idea of fear driving Israel I will use the conference given by Meir Margalit an Israeli activist and politician, as well as statements and actions taken by Government officials in Israel.

²⁸ Ben-Ami, S., 2005, *Scars of War, Wounds of Peace: the Israeli-Arab Tragedy*, London, Weidenfeld & Nicolson

²⁹ Perhaps due to the fact that now Palestine can take Israel to the court for violations committed throughout the occupation and the war.

³⁰ Carlos Sanz, Juan. "Netanyahu Afirma Que Si Retiene El Poder No Habrá Estado Palestino." *EL PAÍS*. 17 Mar. 2015. Web

³¹ Carlos Sanz, Juan. "La Presión Internacional Induce a Netanyahu a Ablandar Su Posición." *EL PAÍS*. N.p., 27 Mar. 2015. Web

An example of this fear being driven by security can be seen when dealing with the occupied territories. The official position of Israel holds that returning the occupied territories to the Palestinians, even though they are illegally held, would pose a threat against the national security of Israel, believing that if such an action was carried out it would result in an immediate increase of attacks on Israel but this time coming from the occupied territories. This indicates a shift in the idea of peace for Israel, they have replaced peace with the concept of security. This idea whilst at a first glance may look similar it is completely different. It could be argued that peace cannot come without security, but if security becomes the main concern of a state, as is the case with Israel, this might end up becoming the final objective. In other words the idea of peace becomes secondary to security, thus leading to aggressive actions that result in peace becoming increasingly more difficult to achieve. This has become a characteristic of Israel, they have replaced peace with security, peace is no longer their objective, and the people believe peace to be impossible. Thus they seek to achieve a relative security as the dominant force in the Middle East, being powerful enough that it dissuades any threat whilst simultaneously preventing a Palestinian state, a future possible threat, from developing. Israel is not willing to pay for the costs of peace, in other words it is not willing to compromise or weaken its stance in any form in order to achieve peace, since this is no longer their primary objective.

This notion of security becoming so entrenched within their society, can be explained according to activists like Meir Margalit and other experts through psychological factors. Specifically three factors; fear, catastrophism and the notion of sacrifice. Fear is a mechanism that obstructs the possibility of reasonable discourse. It destroys the rational process and thus does not leave space for a reasonable negotiation in the conflict since fear concentrates all of the attention in that which threatens Israel whether it is a real threat or an imaginary one. This fear and perception by Israel that it is constantly threatened and in a situation of constant danger has led to the adoption of an aggressive foreign policy towards its neighbors and to its opposition of the creation of Palestine.

The other factor we must consider is that of catastrophism. This is a direct result of the fear doctrine as the Israeli place themselves in the worst case scenario. This idea has been briefly touched upon before when I exemplified the fear that if the occupied territories are returned, this land will be used as an area used to attack Israel. This idea basically demonstrates the fact that Israel and its citizens are not wholly supportive of a Palestinian state based upon the idea that if such a state existed it would automatically present a threat towards the existence of Israel. This idea permits much of the society and is unable to look at realities, such as the fact that the PLO has accepted the existence of the state of Israel. It is characterized by the automatic assumption of the worst case scenario, leaving as a result no space for compromise. The violence of the second intifada reinforced this opinion to a popular belief that the creation of a Palestinian state and a long-standing peace would no longer be a viable solution as military responses rather than negotiation have taken precedence³². The effects of the second intifada resulted clearly in an increase

³² Pappé, I., 2004, *A History of Modern Palestine: One Land, Two Peoples*, Cambridge, Cambridge University Press

in this view as can be seen empirically through data collected as after the outbreak of the second intifada believe in a long lasting peace fell.³³

Thus we can summarize the Israeli stance as that is not very favorable towards the creation of a Palestinian state and that it is largely driven by fear. However it is important to note that this is not the only opinion towards Palestine in Israel. There is an increasing minority that more and more often claim for an end to the conflict, for the end of the colonization and occupation, for the end of the blockade and in favor of creating a Palestinian state. Public opinions change constantly and the notion of a withdrawal from the territories and Palestinians gaining their own state was unthinkable in most circles prior to the 1990s, however a decade later it was an accepted central theme of the peace process for many. Whilst it is true that the Second Intifada slowed this movement, it has slowly started to regain a foothold in Israel. There are an increasingly number of Israeli organizations dedicated towards helping the Palestinians, showing an increase of awareness and sympathy towards the plight of the Palestinians. If this continues to spread especially along the younger generations in Israel, a change may come in the official stance and result in an opening of the negotiations and a larger support for the creation of a Palestinian state.

³³ Survey Tel Aviv University, Tami Steinmetz Center for Peace Research, May 2004

5. State Recognition

The goal of this paper is to ascertain if Palestine can indeed be considered a state and to outline its path towards this achievement. Being considered a state would potentially bring a huge amount of benefits for the Palestinians, and perhaps advance the negotiations towards a peaceful resolution of the conflict. However in the International Society being considered a state depends on a number of factors that must be present. Before we can delve into considering if Palestine is a state we must first understand what a state is, at least in terms of the international society and the requirements needed. Only once we understand this requirements can we begin to see if Palestine fulfills them or not.

Traditionally a state is said to exist if it has the four classical requirements. A state must have a territory, a population, a government and sovereignty³⁴. The first three are specially important since they are still relevant elements, whilst the idea of sovereignty while still relevant is increasingly less so, as due to the new actors of international society and how this society has now organized itself the concept is experimenting changes and has become more flexible, this has started to happen especially due to the emergence multilateral international organizations with more power and competencies to act. Thus the state have ceded some of their sovereignty towards this new organizations. The idea of the convergence of this elements especially the three first is reflected in several international practices and treaties. All of this practices and treaties reflect the same idea although many add different nuances and shades. An example can be seen on the Convention of Montevideo from the 26th of December 1933 on the Rights and Duties of the State, which explained that a state is subject to international law and therefore a state when the follow conditions are met; permanent population, fixed territory, government and capacity to establish relations with other states³⁵.

First we are going to analyze the first condition, both in an abstract form and in regards to Palestine. The territory is the physical space – whether it's by land, sea or air – on which the sovereignty or jurisdiction of the state is projected on³⁶ and wherein the exclusive right to exercise their functions holds. The territory is perhaps the single most characteristic element of a state alongside the population, since international organizations do not have a territory, they only and exclusively have locals and offices situated in the territory of a state which has previously granted permission by means of a treaty for the establishment of such. It is very important to note that the dimension of the territory, the length of it, is non-important and not a condition in order for international law to grant the condition of state. This is clearly obvious by observing the wide range of state sizes currently in the world, from huge states such as China, Australia or United States, to the hundreds of states that are tiny such as Liechtenstein. It is also important to note that a territory of a state can exist even if the frontiers are not completely set, and that the existence of conflicts should not be an obstacle for the existence of a territory as part of the condition for a state to exist, furthermore to have a defined territory does not

³⁴ Remiro Brotons, Antonio. "Los Estados." *Derecho Internacional*. Valencia: Tirant Lo Blanch, 2007. 97. Print.

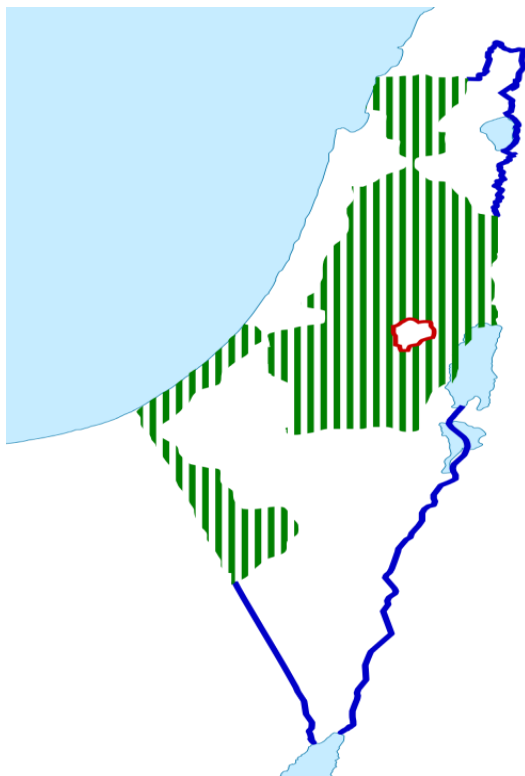
³⁵ Montevideo Convention on the Rights and Duties of States

³⁶ Remiro Brotons, Antonio o. "Los Estados." *Derecho Internacional*. Valencia: Tirant Lo Blanch, 2007. 98. Print.

mean necessarily mean a recognized territory. This reasoning leads to then analyze the situation of Palestine and its territory.

The question of the existence of a Palestinian territory is a controversial one. However it is impossible to deny that Palestine has a territory, no matter how vaguely defined this territory might be. The existence of a Palestinian territory can't be questioned, however to define this territory is a bit more difficult due to the actions of Israel. In 1948 the partition plan proposed a two state solution in which the Palestinians were supposedly given a state. The proposed state and its borders are shown in the map below³⁷ (map 1). However the partition plan was rejected and the proposed state never happened. The second map shows the situation after the Six Day War in 1967, and it clearly shows a diminishment in the Palestinian territory. This somehow reflects the current situation although in the West Bank it is even less territory due to the colonization of land by the Israelis. Thus we face a situation in which the Palestinian territory is a reality, however it is a reality that is questioned by Israel, who does not stop in its attempts to gain more land, and currently refuses to go fully back to a pre-1967 partition, or even a 1967 division before the colonization of Palestinian land. Furthermore by the time of the Six-Day War in 1967, acquiring territory through conquest had been banned – even if the conquest took place in a defensive war and thus the territory still belongs to Palestine despite the presence of Israel in it.

Map 1



Map 2³⁸



³⁷ United Nations Partition Plan for Palestine map

http://commons.wikimedia.org/wiki/File:United_Nations_Partition_Plan_for_Palestine_map.svg

³⁸ "Palestinian Territories, 1948-67" -

http://commons.wikimedia.org/wiki/File:Palestinian_Territories,_1948-67.svg#/media/File:Palestinian_Territories,_1948-67.svg

Another important factor but easily the most obvious one when it comes to analyzing if Palestine has all the conditions required to be considered a state is the population. It is quite clear that Palestine already has a population, According to the UN (2010) Palestinian population is 4.4 million³⁹ although this number might be bigger depending on how it is calculated. However the problem lies with the Palestinian refugees. Palestinian refugees are those who due to the numerous conflicts since 1948 have had to leave Palestine. This Palestinians seek to return to Palestine through the use of the right of return, a right officially recognized by the UN⁴⁰. The Palestinian right of return is a political position or principle asserting that Palestinian refugees, both first-generation refugees (estimates vary from 30 to 50,000 people as of 2012) and their descendants (around 5 million people as of 2012), have a right to return, and a right to the property they themselves or their forebears left behind or were forced to leave in what is now Israel and the Palestinian territories (both formerly part of the British Mandate of Palestine), as part of the 1948 Palestinian exodus, a result of the 1948 Palestine war and due to the 1967 Six-Day War. The United Nations UN General Assembly Resolution 194⁴¹ which was passed on December 11, 1948 recognized the right of return for the first time. Unlike Security Council Resolutions under Chapter VII of the United Nations Charter, General Assembly resolutions have only a recommendatory character and are not binding on its states. Resolution 194 also deals with the situation in the region of Palestine at that time, establishing and defining the role of the United Nations Conciliation Commission as an organization to facilitate peace in the region.

Thus we can see that whether it is Palestinians living in the territory or those that are refugees, they clearly constitute a population for a Palestinian state. Whilst this might be the most obvious of all 4 requirements it is nonetheless extremely important, if not the most important, since as judge Augusto Cansado Trindade said “states exists for human beings and not vice versa”. The reason for the existence of the states is people, its essence is based in that people live in the territory of the state. Without a population there can be no state, as the state is a creation by a population, a society to live together. Thus we can say that Palestine has the most important element in order to be considered a state, the population.

The third element is to have a government or political organization. The existence of a government constitutes a factor in favor of the existence of the state. By government it is understood that it is a political organization capable of establishing and maintaining some form of internal order and that it is able to participate in the international relations in an independent manner⁴². The participation of a state in the international sphere is very important, since it's a measure of projecting power and statehood, among similar subjects of international law. Before we analyze if Palestine has a government it is important to remark that the international society does not establish a set of guidelines or characteristics that a government must have. This is largely due to the principle of self-

³⁹ "Israel Profile - Overview - BBC News." *BBC News*. Web.

⁴⁰ General Assembly resolution 194, *Palestine - progress report of the United Nations Mediator*, A/RES/194 (11 December 1948), available from undocs.org

⁴¹ General Assembly resolution 194, *Palestine - progress report of the United Nations Mediator*, A/RES/194 (11 December 1948), available from undocs.org

⁴² Remiro Brotons, Antonio. "Los Estados." *Derecho Internacional*. Valencia: Tirant Lo Blanch, 2007. 101. Print.

organization that permits the spirit of international law. Resolution 2625 (XXV) established that all states have the right to choose their own political system⁴³, an idea that has been backed by the International Court of Justice in the 1986 Nicaragua case.

In regards to Palestine, it can be argued that the PLO is the official government right now of Palestine and that it has been considered as such by the international society since 1974 when it gained official recognition by the United Nations as the representative of the Palestinian people. The United Nations General Assembly recognized the PLO as the "representative of the Palestinian people" in Resolution 3210 and Resolution 3236, and granted the PLO observer status on 22 November 1974 in Resolution 3237. On 12 January 1976 the UN Security Council voted 11–1 with 3 abstentions to allow the Palestinian Liberation Organization to participate in a Security Council debate without voting rights, a privilege usually restricted to UN member states. It was admitted as a full member of the Asia group on 2 April 1986. After the Palestinian Declaration of Independence the PLO's representation was renamed Palestine. On 7 July 1998, this status was extended to allow participation in General Assembly debates, though not in voting. Not only has the PLO been accepted as the representative of the Palestinian people by the UN, but also by Israel. The PLO through the Fatah party have been the leading organization and government in Palestine under the name Palestinian Authority.

The Palestinian National Authority was the interim self-government body established to govern Areas A and B of the West Bank and Gaza Strip as a consequence of the 1993 Oslo Accords. According to the Oslo Accords, the Palestinian Authority was designated to have exclusive control over both security-related and civilian issues in Palestinian urban areas (referred to as "Area A") and only civilian control over Palestinian rural areas ("Area B"). The remainder of the territories, including Israeli settlements, the Jordan Valley region and bypass roads between Palestinian communities, were to remain under Israeli control ("Area C"). East Jerusalem was excluded from the Accords. Over time, political change has meant that the areas governed by the Authority have also changed. Negotiations with several Israeli governments had resulted in the Authority gaining further control of some areas, but control was then lost in some areas when the Israel Defense Forces (IDF) retook several strategic positions during the Second Intifada. In 2005, after the Second Intifada, Israel withdrew unilaterally from its settlements in the Gaza Strip, thereby expanding Palestinian Authority control to the entire strip. This seems to suggest that there is a firm and strong government that controls Palestine. However this was put to question with the emergence of Hamas, a more radicalized organization considered by many states including Israel and United States as terrorist organization. Hamas won the 2006 Parliamentary Election and almost immediately entered into conflict with the PLO affiliated Fatah Party. This questioned the capacity of a Palestinian government that exercised its powers effectively within Palestine. Hamas gained control of the Gaza Strip which was then placed under a blockade by Israel and Egypt. This inner conflict within the government of Palestine continued until 2014 when Hamas and Fatah reached an agreement. The Palestinian

⁴³ UN General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, 24 October 1970, A/RES/2625(XXV)

Authority would then go on to gain recognition as a non-member state in the UN and become known as the State of Palestine.

As the doctrine states, the composition of the government of Palestine should not be considered a challenge for its existence. Despite the internal issues and conflicts, the Palestinian Authority has managed to maintain a high level of internal order within Palestinian society and has managed to become the international representation of the Palestinians, as well as fulfilling all the typical roles of a government in the international society. Thus we can conclude that the third element of what constitutes a state, a working government, is present in Palestine.

The last element is sovereignty. This is perhaps the most difficult and controversial one due to the constant changes it experiences as a concept. In this new age of international organizations, with more competencies, such as the European Union, states find themselves losing more and more powers in favor of these organizations. Sovereignty is the fundamental attribute of the State and is a fundamental principle of international law. It is the totality of competencies attributed to the State by international law⁴⁴. It implies exclusivity of the state in the exercise of its powers. The autonomy in the exercise of its powers in relation to the powers of other states exercising such power. Lastly it also means to have full rights in the competencies of power. It is clear right off the bat why sovereignty is not as important as it used to be. Sovereignty as stated above implies exclusivity of the state in the exercise of powers, however that does not longer apply, since states are not the only ones with exclusivity in the exercise of powers. States have ceased to have the solutions to both external and internal problems which have led to a crisis in of the Sovereign state.

When it comes to Palestine the concept of sovereignty is especially controversial and hard to decipher. Most of the Palestinian territory is under military occupation by Israel, thus we can hardly say that the Palestinian Authority (or State) or even Hamas in the Gaza Strip are able to exercise their power within their territory. Many Israelis claim that they have better rights to the territory and as such should be able to occupy it. These settlers have indeed taken land from a supposedly Palestinian territory and whilst they traditionally have had the support of the Israeli institutions this has slowly started to change. Whilst the Israeli government has made no move to prevent or remove the settlements, they have slowly started reaffirming that the land in which the settlements are placed is Palestinian territory that is occupied in a belligerent fashion. This is especially important as it removes any rights of Israel over territory that is occupied especially the West Bank. The Fourth Geneva Convention of August 1949 in its Article 49⁴⁵ bans an occupying power from transferring “parts of its own civilian population into the territory it occupies.” As the official commentary explains, this is to prevent the occupier from colonizing the occupied territory to the detriment of the population living there.

⁴⁴Brottons, Antonio Remiro. "Los Estados." *Derecho Internacional*. Valencia: Tirant Lo Blanch, 2007. 127. Print.

⁴⁵ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) Article 48*, 12 August 1949

We can safely conclude that whilst Palestinian authorities are not able to fully control their territory, this is only due to the occupation, an occupation which is illegal. This should in no way prevent for the existence of a sovereign state.

Beyond the four elements that constitute a state, elements accepted by the international society as a whole, there is also another important factor that defines a state; and that is recognition by other states. Although this recognition is generally given once the state fulfill all four previous elements, it is nonetheless vital for a territory to be recognized as a state. Without this recognition a state cannot be part of the international community. In this area Palestine has achieved major success. Palestine currently has been recognized as a state and has official diplomatic relations with 135 countries including China, Brazil, Argentina and Sweden. Many other countries for example Spain and Norway have maintained good relations with Palestine, voting in favor within the UN for its upgrade in status to that of a non-member state, and in the case of Spain the parliament has even called through a vote for the government to officially recognize the Palestinian state although this is yet to become a reality. It is as a result safe to say that Palestine is considered to be a state and has recognition as such by most of the international society. The UN resolution which declared it a non-member state has given more legitimacy to this by declaring it indirectly as a sovereign state.

As the analysis of all the elements has proven Palestine meets all the requirements to be considered a state. Its upgrade in the UN towards a non-member state has only served in making the reality of a Palestinian state become more active. The meeting of all four criteria is not just backed by analysis but by the fact that Palestine is recognized by 135 states in the international community and is well on its way towards getting more recognition from other states such as Spain and France. Whilst it is true that there are many problems with the legal situation of Palestine and with its territory as well as other elements, this is also true of other officially recognized states. Many areas of conflict lack a definitive territory or a government capable of exercising its powers as well as having full sovereignty, yet this does not prevent it from being considered a state. Thus the occupation by Israel and the internal conditions of Palestine should not prevent it and should not be an excuse to stop it from being considered a state.

6. A Two State Solution

After having analyzed the positions of both interested parties, having analyzed what conforms a state and if Palestine meets this requirements we must analyze the two state solution that has been proposed. It is important to remark that this solution is not a new one but in fact has been the first solution proposed since the onset of the conflict. In this section I will attempt to explain what it entails, and the current position of both sides.

The two state solution has been around since the onset of the conflict in 1948 and even before that. With the rise of the Zionist movement, the idea of establishing two separate but adjacent states was considered. In fact the 1948 partition plan proposed the creation of two states, an Israeli state and an Arab state with Jerusalem becoming a UN mandated city having a special international regime. However the negative of the Arabs to consider this idea led to the declaration of the creation of the state of Israel foregoing any Arab state. Since then the creation of a Palestinian state has become one of the staple objectives of the international community. This idea was initially rejected by both sides. Israel did not want to have a neighboring state that was clearly against its existence and refused to acknowledge it as a state, even going as far as to attack it. The Arabs in Palestine and its allies refuse the two state solution as it would mean accepting an Israeli state in what they believed was their land. This in their viewpoint would only serve to strengthen the Israeli position and legitimacy of their state. This created an impasse and the creation of a Palestinian state has remained a controversial one.

The two-state solution envisages an independent State of Palestine alongside the State of Israel, west of the Jordan River. The boundaries between the two states is still subject to dispute and negotiation, with Palestinian and Arab leadership insisting on the "1967 borders", which is not accepted by Israel. The territory of the former Mandate Palestine would not be a part of the Palestinian State, with most of it becoming part of Israel. As stated above the problem with this idea, an idea that capsuled the resolutions of the UN, was the disagreement of both sides to accept this idea.

This started the change in the 70s as the PLO started to have a new attitude towards the situation, perhaps due to the realization that the anti-Israel stance and its opposition towards the solutions proposed by the United Nations were only hurting its cause. This change in attitude was seen as a major step by the international community towards the creation of the state of Palestine and this led to a new attitude also in the United Nations. The creation of the committee on the exercise of the inalienable rights of the Palestinian People and the division for the Palestinian rights reflected this change in the attitude towards the two state solution. However another roadblock was encountered in the form of the Security Council and United States. Resolutions dating back to June 1976 supporting the two-state solution based on the pre-1967 lines were vetoed by the United States, which argued that the borders must be negotiated directly by the parties. The idea however had overwhelming support in the UN General Assembly since the mid-1970s⁴⁶. They were endorsed by an overwhelming majority in the General Assembly, to which the Committee reports annually. The Assembly reaffirmed that a just and lasting peace in the

⁴⁶ Committee on the Exercise of the Inalienable Rights of the Palestinian People. "CEIRPP/DPR - Information Note (2005) (12 December 2005)."

Middle East could not be established without the achievement of a just solution of the problem of Palestine based on the attainment of the inalienable rights of the Palestinian people.

The Palestinian Declaration of Independence of 15 November 1988, which referenced the UN Partition Plan of 1947 and "UN resolutions since 1947" in general, was interpreted as an indirect recognition of the State of Israel, and support for a two-state solution. The Partition Plan was invoked to provide legitimacy to Palestinian statehood. Subsequent clarifications were taken to amount to the first explicit Palestinian recognition of Israel and have only served to reaffirm the two state solution.

The greatest roadblock to the two state solution currently lies with Israel. As has been stated before in this paper the violence of the second intifada and the political success of Hamas (a group dedicated to Israel's destruction) have convinced many Israelis that peace and negotiation are not possible and a two state system is not the answer. Hardliners believe that Israel should annex all Palestinian territory, or at least all minus the Gaza Strip. Israelis view the peace process as hindered and near impossible due to terrorism on the part of Palestinians and do not trust Palestinian leadership to maintain control. A common theme throughout the peace process has been a feeling that the Palestinians give too little in their peace offers. Thus a two state solution seems complicated, at least with the agreement of Israel.

In recent times a new attempt at conducting a bilateral negotiation towards achieving a two state solution has been undertaken. However by 2010, when direct talks were scheduled to be restarted, continued growth of settlements on the West Bank and continued strong support of settlements by the Israeli government had greatly reduced the land and resources available to a Palestinian state creating doubt among Palestinians and left-wing Israelis and the international community that a two-state solution continued to be viable.

The vote by the UN which named Palestine a non- member state resulted in Israeli PM Benjamin Netanyahu announced the building of 3,000 new homes on land to the east of East Jerusalem". The move was immediately criticized by several countries, including the United States, with Israeli ambassadors being personally called for meetings with government representatives in the UK, France and Germany, among others. Israel's decision to build the homes was described by the Obama administration as "counterproductive", while Australia said that the building plans "threaten the viability of a two-state solution". This then resulted in the Palestinian authorities resolving in attempting to achieve a state without the support of Israel and its allies.

As has been state before in this paper, recent declarations by Netanyahu in which he first denied the possibility of the creation of a Palestinian state, although he would later soften his stance, have resulted in the possibility of a two-state solution with the cooperation of Israel being less likely.

7. Consequences

Throughout this paper we have done an analysis of the stances of both sides, as well as concluding that the evidence shows that the question of whether Palestine is a state is a moot one, all the evidence and the actions of the United Nations clearly show that the Palestinian state meets all the necessary requirements to be considered as such. In this section we will now analyze the consequences and the impact of Palestine being considered a state, largely due to the recognition of the United Nations of Palestine as a state in the international community.

The recognition of the United Nation elevates its status to that of a state and that results in new implications and rights for Palestine. Perhaps the most interesting of this new rights for Palestine is the right of self-defense. A right recognized under article 51 of the United Nations charter⁴⁷. Article 51 states:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”

Whilst one could argue that this article exclusively refers to the right of self-defense of members of the UN, the right of self-defense is one of the basis of international law and has been around since the onset of state relations. Article 51 crystallized and had declaratory effects on this already international principle. Thus if Palestine is a state, Palestine can now under international law and costume justify self-defense whenever it is attacked by Israel. This causes a huge change in the status quo of this two warring states. Traditionally the whole conflict has been viewed as the state of Israel attacking an inferior non-state entity, with few abilities to defend itself and few legal arguments, however due to Palestine being considered a state, the situation is different. Israel is no longer attacking an inferior entity, but one of equal legal standing, it is attacking another state. Palestine would now be able to counter-attack with proportional measures and be justified in doing so since an attack on Palestine would be an attack on another state. The international Court of Justice ruled in the Nicaragua v United States⁴⁸ case that a state must endure an armed attack before it can resort to self-defense. The definition of an armed attack, in addition to being “action by regular armed forces across an international border,” includes sending or sponsoring armed bands, mercenaries or irregulars that commit acts of force against another state. The court held that any state under attack must first request outside assistance before undertaking armed self-defense. According to U.N. Charter Article 51, a state’s right to self-defense ends when the Security Council intervenes to maintain an international peace and security.” In fact an aggression by Israel

⁴⁷ United Nations, *Charter of the United Nations*, 24 October 1945

⁴⁸ *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America); Jurisdiction of the Court and Admissibility of the Application*, International Court of Justice (ICJ), 26 November 1984

on a Palestinian state could justifiably result in a military intervention by the UN and its members as considered in the charter.

Another implication that comes with Palestine being considered a state by the UN is that it has finally been able to become a part of the Geneva Conventions. This is potentially the biggest benefit that comes with the change in status at the UN. On 21 June 1989 the Permanent Observer of Palestine to the United Nations Office at Geneva informed the Swiss Federal Council that the PLO wished to adhere to the four Geneva Conventions⁴⁹. However after careful consideration the Swiss Federal Council did not grant this request due to it deciding it was not in a position to ascertain the existence of a Palestinian state. This all changed in 2012 with the decision of the UN and with the State of Palestine new status and Palestine was finally allowed to adhere to all the protocols. This means that Palestine is finally under the protection of these protocols. In the past due to Palestine not being part of the Conventions Israel could ignore the violations it committed even if a Security Council resolution pointed it out. Resolution 465⁵⁰ of the Security Council stated that the "Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem." The resolution went on to warn Israel that "all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East."

Furthermore due to Palestine being part of the Geneva Conventions we find other important violations such as the violation of Article III⁵¹ of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War. This convention lays out the minimum standards for the protection of civilians in a conflict that is not international in scope. Article 3(1) states that those who take no active role in hostilities must be treated humanely, without discrimination, regardless of racial, social, religious or economic distinctions. The article prohibits certain acts commonly carried out against noncombatants in regions of armed conflict, including murder, mutilation, cruel treatment and torture. It prohibits the taking of hostages as well as sentences given without adequate due process of law. Article 3(2) mandates care for the sick and wounded.

Whilst Israel has been able to successfully ignore its violations, largely due to the backing of the United States, its situation becomes increasingly more difficult to maintain as the gap for its violations narrows. As long as Palestine becomes part of an increasing number of multilateral humanitarian treaties, these violations Israel has committed, as well as the

⁴⁹ "Geneva Conventions for the protection of war victims of 12 August 1949 and Additional Protocols of 8 June 1977 Ratifications, accessions and successions as at 31 December 1996". International Committee of the Red Cross. 1997-04-30.

⁵⁰ UN Security Council, *Resolution 465 (1980) Adopted by the Security Council at its 2203rd meeting, on 1 March 1980*, 1 March 1980, S/RES/465 (1980)

⁵¹ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949

violation committed by Palestinians (especially Hamas), will decrease in number and hopefully result in a significant decrease in the violence of the conflict.

The latest consequence of Palestine now being considered a state was Palestine officially entering the International Criminal Court on the 1st of April⁵². This move has only served to legitimize Palestine as a state, as only states can be a part of the International Criminal Court (ICC) as is stated by the Statute of Rome which establishes the ICC.

The entrance into the ICC has opened a new set of possibilities for Palestine in the international community. The process to enter the ICC started soon after Palestine became a non-state member of the UN in 2012 with Abbas stating his intention to enter accept the Statute of Rome. In the spring of 2014, the Palestinian authority acceded to a number of additional multilateral treaties, and its instruments of accession were accepted by the respective treaty depositaries—the UN Secretary-General, and the governments of Switzerland and the Netherlands. With the outbreak of renewed violence between Israel and Gaza in July 2014, Abbas announced plans to accede to the Rome Statute; however, no instrument of accession was deposited at that time. This would wait until January of 2015 when Abbas lodged the new 12(3) declaration of consent with the ICC Registrar and deposited the instrument of accession to the Rome Statute with the UN Secretary-General. The Secretary-General on January 6 issued a notification of the accession stating, “The Statute will enter into force for the State of Palestine on 1 April 2015.”

Regarding the ICC it is important to note that jurisdiction is primarily based on the principles of nationality and territoriality. Thus, in the absence of a Security Council referral, Article 12 of the Rome Statute requires as a pre-condition to the exercise of its jurisdiction consent by the state of nationality of an alleged perpetrator or of the territory where the alleged crime occurred. Such consent may be manifested by being a party to the Rome Statute or by accepting its jurisdiction on an ad hoc basis pursuant to Article 12(3). By becoming a state party on April 1, 2015, the Court is able to exercise its jurisdiction on this basis prospectively⁵³. It is very important to remark that, Abbas lodged a declaration of consent under 12(3) accepting exercise of the Court's jurisdiction retrospectively to June 13, 2014. This is the basis upon which the Prosecutor opened her preliminary examination on January 16, 2015. This means that no crime prior to June 13, 2014 can be examined the Court.

The importance of this decision lies within the settlements of Israel in Palestinian territory. The ICC has jurisdiction over three types of crimes – war crimes, crimes against humanity, and genocide and the settlements could be argued to fall into the category of war crime. This is due to article 8 of the statute of Rome⁵⁴ which states in of its many paragraphs that “*The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;*”. There's a legitimate argument claiming that the settlements and more precisely, the government's support of the settlements and the transfer of people from Israel to the West

⁵² Ferrer, Isabel. "Palestina Ingres a En La Corte Penal Internacional." *EL PAÍS*. 01 Apr. 2015. Web

⁵³ "The ICC and Palestinian Consent." Web.

⁵⁴ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998

Bank, are strictly prohibited and amount to war crimes under the Rome Statute article (“the transfer, **directly or indirectly**, by the Occupying Power of parts of its own civilian population into the territory it occupies”). If the Court were to find this be true it could initiate an investigation although this would be hampered by the fact that the territories of Palestine and thus the territory where the ICC has jurisdiction is unclear and still has to be negotiated.

Lastly if the Court seeks to prosecute high government officials of states that are not parties to the Rome Statute, e.g., Israel, it will have to deal with the issue of immunity. While Article 27⁵⁵ of the Rome Statute effectively abrogates individual immunities of high government officials before the Court, this arguably applies only to officials of states parties or of states otherwise legally bound to cooperate with the Court (e.g. via Security Council decision). Thus, Palestinian officials who are prosecuted before the ICC would not benefit from any immunities they might otherwise have under international law. Israeli officials, however, may still benefit from such immunities, at least while in office.

As we have seen the consequences of the resolution by the General Assembly of the United Nations which changed its status towards a non-member state have had many consequences and present a change in the long standing status quo of the region, an impact which is yet to be fully seen.

⁵⁵ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998

8. Conclusion

In this paper I have attempted to highlight several things. The conflict in the Middle East between Palestine and Israel is an immensely complex one filled with religious, territorial and political factors amongst others. The history of this conflict as we have seen is a rich one, full of violence and miscommunication by both sides. The international community has been unable to solve this conflict which has dragged on for a long time and has been until recently unable to solve the issue of the Palestinian state and its existence.

As has been pointed it out in this paper Israel and United States primarily have been the two states opposed to the creation of a Palestinian state. They have attempted to prevent any attempt by the Palestinians for it to become a full member with all rights and duties of the UN. Israel has always based this behavior on a security measure, considering that the existence of a Palestinian state threatens the existence of Israel.

As this paper has proven the question of a Palestinian state is a moot one. The state of Palestine already exists, it has all the elements required to be a state, and it has been recognized by the majority of the states in the world and has been granted the status of state by the UN. Thus Palestine is for all intents and purposes a state. Perhaps it is a weak state, with difficult to ascertain borders and authority, but a state nonetheless. This has been a recent development, a development that started with the change in the UN which led to the Palestinian Authority becoming the State of Palestine.

Whilst many challenges lay ahead for the State of Palestine the situation has improved. Palestine has now new and available legal tools to protect itself and its position. It is part of new conventions previously unavailable to them, due to not being a state, and it has become a member of the International Criminal Court. If a long standing peace is to be reached and an end to this conflict Palestine must be a strong state, a state capable of negotiating on the same conditions as Israel. If this were not the case and Israel maintained its legal superiority, a peace that is acceptable to both terms would never occur and the conflict would be without end. Thus the recent developments have been immensely important and have resulted in my opinion in Palestine becoming a stronger entity capable in the future of negotiating on equal terms of the table with the State of Israel.

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