Palestinian Statehood: Trapped between Rhetoric and Realpolitik

Paul Eden

Introduction – The Letter of Application

• 23 September 2012, Mahmoud Abbas, in his capacity as the Chairman of the Executive Committee of the PLO and President of the State of Palestine, applied for admission to membership of the United Nations.

• The application for membership was stated to be based on:
  - UNGA Resolution 181 (II) of 29 November 1947 and
  - The Declaration of Independence of the State of Palestine of 15 November 1988 acknowledged by the UNGA in Resolution 43/177 of 15 December 1988
1. Membership of the United Nations is open to all other peace-loving nations which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. 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 Council.

The Charter of the United Nations, Article 4

The ambit and effect of Article 4

- Admission of a State to the United Nations (Advisory Opinion) [1948] ICJ Reports 57
  - the conditions laid down in Article 4(1) are exhaustive.
  - the UNGA cannot admit a new member in the absence of a recommendation of the Security Council.
## Security Council Membership when the Palestinian application was considered

<table>
<thead>
<tr>
<th>Permanent Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>China, France, Russia, United Kingdom, United States*</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non Permanent Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bosnia and Herzegovina, Brazil, Columbia, Gabon, Germany*, Lebanon, India, Nigeria, Portugal, South Africa</td>
</tr>
</tbody>
</table>

- **Green** indicates an affirmative UNESCO vote.
- **White** indicates an abstention on the UNESCO vote.
- **Red* indicates a negative vote on the UNESCO admission.
- **France** announced it would abstain on UN membership but support upgrading Palestine’s UN status to “observer state”

---

## Palestinian Statehood – Legal Issues

- The State as a person of international law should possess the following qualifications:
  - A permanent population;
  - A defined territory;
  - Government; and
  - Capacity to enter into relations with other States.

  **Article 1, 1933 Montevideo Convention on the Rights and Duties of States, (1934) 165 LNTS 19.**

  Palestinian UN application on basis of 4 June ‘67 borders.
Palestinian Statehood – Independence?

• Article 3(b) of Annex II of the 1993 Declaration of Principles on Interim Self-Government Arrangements (DOP) and article IX(5) (a) the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (“Interim Agreement”) clearly indicate that the Palestinian Authority lacks the capacity to conduct foreign relations.

• Gilmore v. The Palestinian Interim Self-Government Authority 422 F.Supp.2d 96 (D.D.C.,2006) – PA lacks independent government control in crucial areas such as foreign relations

• Ungar v. PLO 402 F.3d 274 (C.A.1 (R.I.), 2005)

Palestinian membership of UNESCO

• States not members of the United Nations Organisation may be admitted to membership of the Organisation, upon recommendation of the Executive Board, by a two-thirds majority vote of the General Conference.

• Article 2(2) of the UNESCO Constitution

• 31 October 2011 107 votes in favour, 14 against 51 abstentions

• United States withdraws UNESCO Funding due to US laws dating back to 1990 and 1994 aimed at isolating the PLO.
The Israeli Response to UNESCO vote

- Accelerated construction of over 2,000 settler homes in the West Bank and East Jerusalem
- Withholding VAT and customs revenues from the PA
- Interestingly Article IX (5)(b)(4) of the Interim Agreement states that the PLO may conduct negotiations and sign agreements with states or international organizations with regard to cultural, scientific, and educational matters.

ICC Office of Prosecutor’s Decision on the Palestinian declaration under article 12(3) of the Rome Statute

- Recognition by more than 130 governments and certain international organisations including UNESCO is insufficient evidence that Palestine constituted a State for the purposes of article 12(3) of the Rome Statute.
- However, the current status granted to Palestine by the United Nations General Assembly is that of “observer”, not as a “Non-member State”.