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A State of Palestine: The Case for UN Recognition and Membership

By: Victor Kattan · May, 2011

Overview

Is the strategy of seeking international recognition from and membership of the United Nations (UN) this September for the State of Palestine a meaningful move or just a gimmick? What benefits would UN membership bring given that Israel may still retain *de facto* control over the occupied Palestinian territories? What would the impact be on the growing movement for a one-state solution? In this policy brief, Al-Shabaka Policy Advisor Victor Kattan tackles these and other questions below and finds that on balance UN membership for a State of Palestine would be a strategic asset to the Palestinian struggle for self-determination, although there are risks involved.

The Strategy in Question

Mahmoud Abbas, chairman of the Palestine Liberation Organization (PLO) and President of the Palestinian National Authority (PA), affirmed in the *New York Times* on 17 May 2011 that "this September, at the United Nations General Assembly, we will request international recognition of the State of Palestine on the 1967 border and that our state be admitted as a full member of the United Nations."[1]

Although this announcement has provoked a storm of indignation amongst certain constituencies in the United States, it will not come as a complete surprise to those who have been following developments closely. In the past six months several Latin American countries have recognized the state of Palestine, bringing the total number of countries to have done so since 1988 to over 100.[2] In addition, Denmark, France, Ireland, Italy, Norway, Portugal, Spain, and the United Kingdom have upgraded the Palestine General Delegations in their capitals to diplomatic missions and embassies—a status normally reserved for states.

From Abbas's op-ed it would appear that there are two prongs to this strategy: international recognition of Palestine as a state, and membership of the UN.[3]

Recognition

Although the Palestinian strategy has not been fully articulated, it appears that the PLO hopes to use the opening plenary of the UN General Assembly in September as a forum to call upon other states to recognize it. In other words it will seek collective recognition.

According to Riyad al-Maliki, the PA Foreign Minister, some 150 countries have said that they will recognize a Palestinian state within the 1967 borders in September.[4] If this number is achieved it could be significant, especially if it includes recognition from some of the countries in the European Union (EU.) This is because if recognition of a Palestinian state is viewed as constitutive (the argument that statehood is a matter of recognition only) then the number and quality of states that recognize Palestine is important. If, however, recognition of a Palestinian state is viewed as declaratory (the argument that recognition alone cannot confer statehood but must be accompanied by other factors, independence being particularly important) then there is of course a problem if Israel retains control over the occupied territories.

UN Membership

Phase II of the 2003 Roadmap prepared by "The Quartet" (the U.S., the EU, Russia, and the UN) and endorsed by the UN Security Council calls for "creating an independent Palestinian state with provisional borders and attributes of sovereignty, based on the new constitution, as a way station to a permanent status settlement." As part of Phase II (June–December 2003), Quartet members were supposed to "promote international recognition of a Palestinian state, including possible UN membership."[5]

Thus, the Quartet envisaged that a Palestinian state could be established prior to the conclusion of final status negotiations with Israel. In other words, it was accepted that the PLO need not wait until Israel had agreed to completely withdraw from the territory before asserting its claim to statehood with provisional borders and attributes of sovereignty by seeking recognition and UN membership.

Abbas also announced in his op-ed that the PLO also intends to seek UN membership in September. According to Article 4 (2) of the UN Charter, admission to membership in the United Nations is to be effected by a decision of the General Assembly upon receiving a recommendation from the Security Council. It is possible that American opposition at the Security Council may not block such a recommendation.[6]

In his address at the State Department on 19 May 2011, U.S. President Barack Obama declared, "Symbolic actions to isolate Israel at the United Nations in September won't create an independent state."[7] It is worth noting that Obama did not flatly oppose such a Palestinian move and his statement is open to different interpretations, although one must assume that the U.S. would veto Palestinian membership given Washington's appalling track record of vetoing UN resolutions on the Palestine question.

Nevertheless, U.S. opposition to Palestine's membership of the UN would not necessarily affect Palestine's statehood if 150 states do recognize Palestine at the UN in September and assuming that recognition is constitutive. Statehood and membership in international organisations are entirely separate matters. For instance, Taiwan is not a member of the UN but it is a state. The Vatican is considered a state but it is not a member of the UN. Kosovo is considered a state by major powers, including the U.S. and the EU, but it is not a member of the UN. Switzerland only joined the UN in 2002 but it was a state long before then. During the Cold War, many states had their application for membership at the UN vetoed (such as Ireland, Jordan, and some Soviet republics) but this did not mean that they were not states.

Although some scholars have suggested that the PLO and its allies could still turn to the General Assembly and ask it to consider membership under the Uniting for Peace resolution that can be invoked when the Security Council is deadlocked — this is a risky strategy.

The International Court of Justice (ICJ) in the 1950 Admissions case made it clear that the UN Charter does not place the Security Council in a subordinate position to the General Assembly in matters of UN membership.[8] In the words of the Court, "To hold that the General Assembly has power to admit a State to membership in the absence of recommendation of the Security Council would be to deprive the Security Council of an important power which has been entrusted to it by the UN Charter."[9]

Accordingly, the ICJ was of the opinion that, "The admission of a State to membership in the United Nations, pursuant to paragraph 2 of article 4 of the Charter, cannot be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission, by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend."[10]

Consequently, it is likely that should the U.S. veto Palestine's application for membership, then Palestine will not become a UN member. Instead its position would be similar to that of Kosovo (whose membership is being blocked by Russia) and Taiwan (whose membership is being blocked by China).

The Potential Risks and Benefits of Statehood

Critics have attacked the Palestinian strategy of seeking membership of the UN as a state in September as being futile and a waste of time that will do nothing to change things on the ground. "The only thing that could be gained from UN recognition," argues Ali Abunimah "is for Abbas and his entourage to obtain international recognition for themselves as leaders of an imaginary 'state' while nothing changes on the ground for Palestinians."[11]

In 2009, I also argued that a Palestinian state that is recognised "with its territory partitioned, and subdivided into cantons, surrounded by walls, fences, ditches, watchtowers, and barbed wire, would scarcely be a state worthy of the name."

However, although there are risks involved, and although the PLO's current leadership lacks credibility given the grievous mistakes of the past two decades, the advantages of this Palestinian strategy could outweigh the disadvantages. Nor, as will be discussed below, would statehood necessarily bring an end of the dream some hold of a democratic state for all its citizens.

Assuming that 150 states, including those from the EU, recognize Palestine as a state, one of the consequences is that this would formally level the playing field between Israel and Palestine on the diplomatic level. In other words, it would become a relationship between states rather than between a state and a non-state actor. Palestine would be able to formally join the international community and to insist upon a relationship based on sovereign equality. Moreover, Palestine's status will be formally recognized without Palestine having to make

any concessions on settlements, the right of return, or Jerusalem, etc. Accordingly, in any future negotiations on these issues Palestine can negotiate with Israel as a state, i.e. as an equal rather than as an occupied people.

One of the consequences of this "formal equality" is that new avenues will become available to Palestine to pursue legal remedies against Israel in various international forums. As a state, Palestine will be able to ratify international treaties, including the Rome Statute of the International Criminal Court (ICC), where an application on the status of Palestine, is currently pending. Even if the U.S. manages to block membership of a Palestinian state, recognition by a large number of states at the UN General Assembly would greatly strengthen Palestine's claim to statehood and may have a favorable impact on the declaration lodged at the ICC. Should the ICC accept that Palestine is a state for the purposes of its Statute, it may commence investigations into allegations of war crimes and crimes against humanity from any time since July 2002 (the date the ICC Statute entered into force). For the first time in the history of the Israel-Palestine conflict, Israelis accused of major human rights violations could be held to account for their crimes.

The discourse might also change. Palestine could insist that the settlements and the continued occupation are a breach of its sovereignty, territorial integrity, and political independence and demand that Israel withdraws from the territory. For instance, Palestine could state that Israel is occupying a foreign state as Iraq did in Kuwait in 1990 and as South Africa did in Namibia for more than 40 years, and demand its immediate withdrawal. Should Israel desist and attack Palestinians on the scale say of its 2008-9 winter invasion of Gaza, then Palestine would be able to insist on its right of self-defense under Article 51 UN Charter.[12]

Should Israel continue to reject dismantling the settlements and withdrawing from the territory of Palestine, then the State of Palestine can as an aspect of its sovereignty demand that those persons either accept to become Palestinian

citizens and abide by the rule of law in Palestine or leave. Should Israel still refuse to withdraw from the territory or dismantle the settlements then Palestine would be able to ask the UN Security Council to take measure to force Israel's departure from the territory.

If the Security Council does not do so, then Palestine could seek support elsewhere and ask for a further advisory opinion from the ICJ asking what third states would be obliged to do in the event that Israel fails to bring to an end to the occupation that threatens international peace and security.

If Palestine did become a state, and was recognized as such by other states this would strengthen its argument that it has sovereign immunity, which could protect it from politically inspired lawsuits in the U.S. for "terrorist offenses" under the Alien Tort Claims Act and the Antiterrorism Act, which has caused Palestinian officials a headache in recent years. Palestinian officials, in turn, would be accorded diplomatic immunity, and could demand consular protection for their own nationals when they find themselves in trouble in foreign countries. This would include demanding a legal right to offer consular assistance to Palestinian prisoners in Israeli jails as well as jails in other countries.

Palestine would also be in a position to join a plethora of international organizations, in addition to the UN, such as the World Health Organization, and the United Nations Educational, Scientific and Cultural Organization, which would give it extra rights that can only be granted to states. It would be in a better position to boost trade with other countries by for instance concluding a full Association Agreement with the European Union and similar organizations, which might allow it to improve the economic prosperity of its citizens.

If, in addition, Palestine became a member of the UN, it would be able to draft, propose, and table its own resolutions at the UN and vote on them and others. Palestine could also conceivably even be elected as a non-permanent member of

the Security Council one day.

Moreover, Palestine's security forces could insist on no longer being described as "terrorists," but as the forces of a state whose troops are entitled to prisoner of war status. This would mean that if they are captured in an armed conflict with Israeli soldiers they should not be tried for murder in an Israeli court or any other tribunal if they have lawfully killed members of Israel's armed forces (as opposed to being involved in deliberate armed attacks against civilians.)

Regarding the fear that the PLO's statehood strategy might preclude the wishes of those Palestinians who strive for a bi-national state or a one-state solution to the conflict, it should be remembered that a state can always merge with another state if they are both interested in such a union (e.g., the union of Egypt and Syria when they established the United Arab Republic in 1958.)

Moreover, in its Constitution, Palestine could be make it clear that recognition of a Palestinian state would be without prejudice to the right of Palestinian refugees to return and compensation or to any other political solution that might arise in the future. In other words it would not necessarily spell the end of a bi-national or one-state solution if such a solution is desired by a majority of Palestinians and Israelis one day. Such a provision for instance exists in the Good Friday Agreement (1998) in Northern Ireland, allowing for the possibility for reunification if a majority of the people of Northern Ireland and the Republic of Ireland concurrently vote in favour of reunification. The Constitution of Ireland was amended to reflect this and a similar provision might be considered for a Palestinian constitution.

Staying the Course

Of course, much could change before September. One cannot predict what Israel might do, although it certainly senses that the winds of change are blowing through the region. It is not entirely inconceivable that it may respond with a

"dramatic" gesture such as agreeing to withdraw from most of the West Bank and even dismantling one or two outposts in order to portray Israel as being "moderate." This much can be gleaned from Prime Minister Benyamin Netanyahu's recent speech to the U.S. Congress. Alternatively, Israel could provoke a border conflict with Hamas or Hizballah in order to divide the Palestinians. This much too can be gleaned from Netanyahu's speech to Congress.[13]

The PLO has undoubtedly lost legitimacy and credibility in the eyes of many Palestinians in Palestine and in the Diaspora. As "The Palestine Papers" leaked by Al-Jazeera and the Guardian clearly showed, the Palestinian leadership has been willing to make far too many concessions on Palestinian rights. This might explain why the PLO is taking a tougher stance on the statehood question. It finally realized that it had exhausted the option of negotiations. Israel's minimum conditions for accepting a Palestinian state (no right of return, a demilitarized state, annexation of settlement blocs, no sovereignty over Jerusalem, no sovereignty over Jordan valley, etc.) are far less that what any Palestinian leader can accept.

Netanyahu wants to divide the Palestinians. Before Congress he pointedly called upon Abbas to tear up his unity agreement with Hamas. Netanyahu knows full well that such an action would divide Palestinian society, possibly provoking civil war. Abbas must not fall for any attempts to cajole him away from his current strategy. If he is serious about seeking statehood, then Palestinians must remain steadfast and united and the PLO must secure as much support as it can before the UN vote. Indeed, it should seek support from more than 150 states. For the more states that recognise Palestine as a state, the greater its case for statehood.

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1. Abbas is both the chairman of the PLO and president of the Palestinian Authority (PA). The PLO, as the sole legitimate representative of the entire Palestinian people, is responsible for negotiations with Israel. The PA remit

is restricted to administration of the occupied Palestinian territories. _

2. In 1988, then PLO Chairman Yasser Arafat declared an independent state of Palestine on the West Bank and Gaza Strip with East Jerusalem as its capital. By 2010, 105 countries recognized the state according to PLO sources. Other sources I have talked to claim it could be as high as 112. _
3. It should be noted that the UN does not have the authority to recognize states; only other states and governments may grant or withhold recognition of a new State or Government – see http://www.un.org/geninfo/faq/factsheets/memberstate.pdf . However, new states may apply to the UN for membership. _
4. Elior Levy, "PA: 150 states to recognize Palestine by Sept." ynet.news.com, 3 March 2011. http://www.ynetnews.com/articles/0,7340,L-4036984,00.html _
5. The full title is "The Performance-Based Roadmap Towards a Permanent Two-State Solution to the Israel-Palestine Conflict," http://www.un.org/media/main/roadmap122002.html. _
6. According to UN procedures, a new state or government submits its application for membership to the Secretary General together with a formal declaration to accept the obligations of the UN Charter. The application is first considered by the Security Council and must receive a majority of nine votes with no vetoes. If the Council recommends admission, this is submitted to the General Assembly, where it must receive two-thirds of the votes http://www.un.org/geninfo/faq/factsheets/memberstate.pdf _
7. http://www.whitehouse.gov/the-press-office/2011/05/19/remarks-president-middle-east-and-north-africa _
8. International Court of Justice, "Advisory Opinion: Competence of the General Assembly for the Admission of a State to the United Nations," 3 March 1950, 4, http://www.icj-cij.org/docket/files/9/1883.pdf _

9. Ibid., 9. _
10. Ibid., 10. _
11. See http://electronicintifada.net/blog/ali-abunimah/exclusive-abbas-let-israel-keep-settlements-even-if-un-recognizes-state. _
12. Victor Kattan, "UDI won't mean Palestinian statehood," Guardian – Comment is Free, 19, November 2009, http://www.guardian.co.uk/commentisfree/2009/nov/19/palestinian-statehood-udi _
13. http://www.pmo.gov.il/PMOEng/Communication/PMSpeaks/speechcongress240511.htm _

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