



Steps to UN membership for Palestine

Summary

In September, Palestinians intend to apply for UN membership for a Palestinian state in the 1967 borders, that is, in Gaza and the West Bank, including East Jerusalem, the Palestinian territories under Israeli military occupation since 1967.

It is expected that the US will veto the membership application in the Security Council and the application will fail. However, Palestinians are confident that they will succeed in enhancing their status at the UN in the autumn by being granted observer rights as a “non-member state”. This requires a simple majority in the UN General Assembly and cannot be blocked by the US.

As far back as 1974, the UN General Assembly recognised the Palestine Liberation Organisation (PLO) as “the representative of the Palestinian people” and granted it observer rights at the UN. At present, Palestine has a permanent mission at the UN with observer rights, but as a liberation movement, not as a state with internationally recognised territory. Palestinians hope to achieve that in the autumn.

This will not alter one whit Israel’s control of Palestinian territory. However, it will permit the state of Palestine to apply for membership of a variety of international bodies, including the International Criminal Court (ICC) with the possibility of serious consequences for Israel. Remember, for example, that under the Rome Statute of the ICC, colonising occupied territory is a war crime.

Palestinian state declared in 1988

In November 1988, the PLO declared the establishment of a Palestinian state in the 1967 borders, that is, in Gaza and the West Bank, including East Jerusalem, the Palestinian territories under Israeli military occupation since 1967. With this declaration, Palestinians accepted the objective of a state on just 22% of their historic homeland, with Israel continuing to exist in the other 78%.

Since then, the way has been open for a “two-state solution”. But, it has not been achieved because Israel has refused to withdraw from the territory meant for the Palestinian state.

In response to the declaration in 1988, close to a hundred states in the world recognised a Palestinian state and granted it full diplomatic relations. This number has increased to around 120 in recent months as a consequence of a worldwide campaign for recognition.

Other states, including Ireland, while not going as far as recognition, established some form of diplomatic relations with it. In January 2011, Ireland upgraded Palestinian representation in Dublin to that of a Mission.

Palestinians are now seeking the ultimate form of international recognition for their state, that is, UN membership. Writing in the New York Times on 17 May 2011, PLO Chairman, Mahmoud Abbas, made the following appeal:

“We call on all friendly, peace-loving nations to join us in realizing our national aspirations by recognizing the State of Palestine on the 1967 border and by supporting its admission to the United Nations.” [\[1\]](#)

How to apply for UN membership

UN membership is granted by the General Assembly upon the recommendation of the Security Council. The procedure is as follows [\[2\]](#):-

First, the state submits an application to the UN Secretary-General in a letter formally accepting a member's obligations under the UN Charter.

Second, the Security Council considers the application. Any recommendation for admission must receive the affirmative votes of 9 of the 15 members of the Council, provided that none of its five veto-wielding permanent members – China, France, Russia, UK and the US – have voted against the application.

Third, if the Council recommends admission, the recommendation is presented to the General Assembly for consideration. Two-thirds of the members present and voting must vote for admission for the application to succeed.

Article 18(2) of the UN Charter states that “decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting” and defines “the admission of new Members to the United Nations” as an “important question” [\[3\]](#).

The expected scenario

It is expected that the following scenario will unfold at the UN in the autumn:-

- (1) Palestinians will formally apply for UN membership for a state in the 1967 borders.
- (2) The application will be considered by the Security Council, which will probably establish a committee to do so. This process may take weeks.
- (3) If 9 or more members of the Security Council vote to recommend to the General Assembly that Palestine be granted UN membership, then the US will have to cast its veto in order to block it. It is not expected that France or the UK will veto it. China and Russia are expected to vote for it.
- (4) Assuming the Security Council doesn't recommend UN membership for Palestine, Palestinians intend to apply to be a "non-member state" recognised by the UN. This requires a simple majority in the General Assembly, which should be easily achieved.

What rights has a “non-member state”?

In the words of the UN website [\[4\]](#), “non-member states” have “a standing invitation to participate as observer in the sessions and the work of the General Assembly” and “to maintain a permanent observer mission at [UN] Headquarters”.

A considerable number of states that have become full members of the UN were first “non-member states”. These include West Germany (1952-1973), South Korea (1949-1991) and Switzerland (1946-2002). Today, there is only one “non-member state” – The Holy See.

Currently, Palestinians have a permanent mission with observer rights at the UN, but as a liberation movement. Becoming a “non-member state” recognised by the UN means that Palestinians will continue to have observer status but now as a state, with a territory – Gaza and the West Bank, including East Jerusalem – recognised by the UN.

“Occupied” or “disputed” territory?

In resolution after resolution, the UN Security Council and General Assembly have declared the West Bank, including East Jerusalem, to be “occupied” territory, within the meaning of the Fourth Geneva Convention. So has the International Court of Justice (ICJ) when in July 2004 it ruled Israel’s construction of a wall in the West Bank to be “contrary to international law” [\[5\]](#).

This is important since Article 49(6) of the Convention bans colonisation of occupied territory, saying that the occupying power “shall not deport or transfer parts of its own civilian population into the territory it occupies” [\[6\]](#).

However, Israel has never accepted that the West Bank is “occupied” territory, from which it might be expected to withdraw completely some day. Instead, it claims that it is “disputed” territory to which it has as much right as Palestinians. Hence, the Fourth Geneva Convention doesn’t apply and therefore colonisation is OK. Hence also, its refusal to accept the 1967 border – the Green Line – as the baseline for negotiations with Palestinians about a final border between Israel and an eventual Palestinian state.

UN recognition of a Palestinian state, albeit a “non-member state”, in the 1967 borders would be a powerful statement from the world that Gaza and all of the West Bank, including East Jerusalem, is the territory of a Palestinian state and not “disputed” territory, as Israel would have it. It follows that the transfer of any part of that territory to Israel can only come about if Palestinians consent. The Green Line has to be the baseline in any negotiations with Israel about territory.

Of course, Israel will continue to occupy the West Bank, including East Jerusalem, but now it will be the territory of a UN recognised state, if Palestinian plans are realised.

Membership of international bodies

Being a “non-member state” will allow Palestine to apply for membership of a wide variety of international bodies, including the International Court of Justice (ICJ) and the International Criminal Court (ICC). If Palestine becomes a party to the ICC, then the Court would have jurisdiction over the occupied territories and Israeli actions in these territories would be subject for the first time to international legal scrutiny.

The ICC will have jurisdiction over the occupied territories, albeit for offences committed after Palestine becomes a party to it. Remember, for example, that Article 8.2(b)(viii) of the Rome Statute of the ICC defines as a war crime

“the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies” [\[7\]](#).

Israelis active in the settlement building programme could in future be found guilty of war crimes.

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References:

- [\[1\]](http://www.nytimes.com/2011/05/17/opinion/17abbas.html) www.nytimes.com/2011/05/17/opinion/17abbas.html
- [\[2\]](http://www.un.org/en/members/about.shtml) www.un.org/en/members/about.shtml
- [\[3\]](http://www.un.org/en/documents/charter/chapter4.shtml) www.un.org/en/documents/charter/chapter4.shtml
- [\[4\]](http://www.un.org/en/members/nonmembers.shtml) www.un.org/en/members/nonmembers.shtml
- [\[5\]](http://www.icj-cij.org/docket/files/131/1671.pdf) www.icj-cij.org/docket/files/131/1671.pdf
- [\[6\]](http://www.icrc.org/ihl.nsf/WebART/380-600056) www.icrc.org/ihl.nsf/WebART/380-600056
- [\[7\]](http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf) www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf

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