

Palestinian Statehood Diplomacy
The Palestinian UN Bids of 2011-2012

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Declaration

I hereby declare that this dissertation is my own original work.

A handwritten signature in blue ink, appearing to be 'Reem Wahdan-Jarrar', written in a cursive style.

Reem Wahdan-Jarrar

April 18th 2014, Ramallah, Palestine

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Dedication

To my mother Hajar for insisting on providing me with the best available education,

To my best friend Nasser, the love of my life, and husband without whose support it would have been difficult to pursue my dreams, for all the encouragement, and assistance, especially at times when I thought I couldn't make it,

To my children Bassel and Salma , the joy of my life,

To Palestinians who still believe in their cause despite the disappointments and failures, who still have hope that our people will resurrect and witness an end to occupation.

"Then we discovered ourselves, we discovered the world, and it discovered us"

Edward Said, The Question of Palestine.

Abstract

The Palestinian Authority (PA) launched an intense diplomatic campaign to garner a supporting vote in the United Nations General Assembly (UNGA), which was finally realized in 2012 by an upgrade to a ‘non member observer state’, granting Palestine a set of new privileges. It represents a victory for Palestinian diplomacy and presents a model of statehood diplomacy that received support as much as criticism. It stirred discussions about statehood and state recognition, and exposed the limited success of international interventions in post-conflict state building efforts.

This dissertation focuses on Palestinian statehood diplomacy in the years 2011- 2012, and the circumstances surrounding the decision of the PA to apply to the United Nations (UN) to upgrade the status of Palestine. It reviews the main characteristics of the Palestinian statehood strategy as a model of post-conflict state-building diplomacy, while underlining the key external and internal conditions driving the PA to shift its attention away from the bilateral track of negotiations with Israel towards the multilateral stage.

The 2011 Palestinian application for admission to membership in the UN reflects the continuous evolution of the Palestinian historical quest for self-determination. The highlights in the development of Palestinian representation were the founding of the Palestine Liberation Organization (PLO) and the 1988 Declaration of Independence, the formation of the PA following the Oslo Agreement, and the effects of the institution-building agenda of Prime Minister Fayyad. All were fundamental for the state-building process and the establishment of the State of Palestine.

Not only failure of decades-long negotiations with Israel, but also a number of critical internal developments have geared the shift towards seeking UN recognition. Along with the severe implications of the collapse of the peace process with Israel, amid the upheavals of what has become known as the ‘Arab Spring’, the changes in Palestinian statehood diplomacy were significantly directed by the problems of reconciliation with Hamas, the PA financial crisis and the feeble constitutional position of the leadership.

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Abbreviations and Acronyms

DoP- Declaration of Principles

EU- European Union

Hamas- Palestinian Islamic Movement

ICC – International Criminal Court

ICJ - International Court of Justice

IMF- International Monetary Fund

OA - Oslo Accords

PA -Palestinian Authority

PLC- Palestinian Legislative Council

PLO- Palestine Liberation Organization

UN- United Nations

UNGA -United Nations General Assembly

UNSC- United Nations Security Council

US- United States

WHO- World Health Organization

WWI - World War One

WWII -World War Two

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Annex 1: Application of the State of Palestine for Admission to Membership in the United Nations (*source: Haaretz.com*)

Chapter One: An Interpretive Overview

Introduction: A statement of the problem

This dissertation concerns itself with the development of the post-conflict Palestinian diplomacy, and the major factors influencing its formulation and conduct. Palestinian diplomacy in late 2012 managed to successfully push through a bid for formal recognition of non-member state status at the UNGA, an elevation for Palestine from its standing as a permanent observer ‘entity,’ after it failed in an earlier bid to gain full UN membership, when it was unable to garner enough support in the UN Security Council (UNSC), and faced the threat of veto from the United States (US) (McMahon and Masters, 2012) .

Currently, 134 (69.4%) of the 193 member states of the UN have recognized the State of Palestine. However, Israel and a number of other countries do not recognize Palestine, seeing direct bilateral negotiations between Israel and the Palestinians as the only way through which the creation of any Palestinian state can be determined. Many of the countries that do not recognize the State of Palestine nevertheless acknowledge the PLO as the representative of the Palestinian people (Wikipedia, no date) .

Statehood recognition, together with borders, security, water rights, ongoing Israeli settlement expansion, the status of Jerusalem and freedom of access to religious sites, and legalities

concerning Palestinian refugees including the right of return, remained the main disputed issues in the Palestinian-Israeli conflict. It was the objective of the PLO to achieve recognition for the State of Palestine, as far back as November 1988, when the Palestinian Declaration of Independence announced the establishment of the State of Palestine in Algiers at an extraordinary session in exile of the Palestine National Council. The PLO approach, ever since the convention of the Madrid Conference in 1991, marking the beginning of negotiations, and then the signing of the Oslo Agreement in 1993, has been characterized by dependency on political negotiations within the framework of the peace process.

However, more recently, the PA, which governs the Palestinian controlled parts of the West Bank (*BBC News*, 2011), began a diplomatic campaign to gain statehood recognition on the borders prior to the Six-Day War, with East Jerusalem as its capital. The efforts gained widespread attention on 23 September 2011, when President Mahmoud Abbas, on behalf of the PLO, submitted an application for membership of Palestine in the UN. On 29 November 2012, UNGA granted Palestine non-member observer state status in its resolution 67/19. Its motion to change Palestine's "entity" status to "non-member observer state" passed by a vote of 138 to 9, with 41 abstentions. On 17 December 2012, UN Chief of Protocol decided that 'the designation of "State of Palestine" shall be used by the Secretariat in all official United Nations documents'(Gharib, 2012).

The PLO (representing itself, the State of Palestine, or the PA), and the PA that regularly participates in meetings of multiple international organizations and committees (with status of member state, observer, associate, or affiliate), established extensive diplomatic relations with numerous countries. The primary goal of Palestinian post-conflict diplomacy, the creation of an independent Palestine, side by side with the State of Israel, is not only broadly supported

internationally, but has also been formally backed by successive US administrations, with some popular support inside Israel itself (McMahon and Masters, 2012).

Yet, efforts by Palestinian authorities and demands of Palestinian post-conflict diplomacy have generated controversy, and were far from acceptable to the other side. The Palestinian official request for full recognition at the UN through the UNSC, which would allow its government to pursue legal claims against other states in international courts, was threatened with repeated warning by US government to veto. It has encountered real opposition from the US and Israel, the longstanding allies, on grounds that it would undercut the formal peace process and could incite regional unrest (EIPA, no date). It was seen as premature and damaging to the negotiating process by US officials, who were criticized by the PLO that accused Barak Obama of creating a sense of let down among the Palestinians, the Arabs, even the world, who expected him to live up to his promises.

Against this complex background, the case of Palestine and the unique circumstances surrounding the development of Palestinian representation, and the phases through which it passed, from the struggle of the PLO for recognition until the PA's bid at the UN for full membership, appear as a particularly interesting research topic. The subject of Palestinian diplomacy, whether a reactive recipient or preemptive initiator, its machinery, operations and strategies, have all become increasingly relevant and worthy of analysis.

However, there is a striking lack of specialized literature on Palestinian diplomacy with very few publications that adequately survey the history of PLO diplomacy, the working of the PA diplomacy, or their trials and tribulations, since both the PLO and the PA invariably constituted the prime functional and operational nucleus of the Palestinian state. Available reports on the recent Palestinian statehood bid in the UN are mostly policy papers or notes, or strategy papers prepared by think tanks for interested organizations or international groups. They are largely

limited to the political consequences on the Palestinian-Israeli peace process and the Palestinian-American or Palestinian-European relations, applying *real politique* perspective, with little attention to the internal political and economic challenges. The way external and internal factors combined to bring about crucial changes in Palestinian post-conflict diplomacy towards statehood remain largely under-researched, leaving some fairly relevant questions unanswered.

Aim and scope of the research

This dissertation, on the Palestinian statehood diplomacy in the years 2011- 2012, reviews the main dynamics of the decision of the PA to apply to the UN to upgrade the status of Palestine. It examines the major conditions that led the PA to shift its diplomatic approach to seek State recognition in the UN.

This dissertation seeks to make a contribution to the study of Palestinian diplomacy. It elaborates on the impact of years-long impasse in negotiations with Israel, and the position of the PA that it can no longer wait for a paralyzed peace process to bestow independence on the Israeli-occupied Palestinian territory, when it formally announced its intention to apply for full UN membership. It highlights the implications in the region and beyond of a general sense that the stubbornness of the Israeli government is to blame for failed peace talks, along with disappointment with Obama for failing to move the Israeli side (*BBC News*, 2011).

This dissertation explores how internal and external circumstances have come together to ripe a diplomatic moment in 2011 that drove the PA to its UN bid. It looks at the effects of the on-and-off negotiations with Israel (sponsored mainly by the US) reaching a rigid stall in September 2010, as well as the part played by the conflict between the two main Palestinian political factions, Fatah and Hamas, since Hamas' takeover of the Gaza Strip in 2007, which resulted in the split of the PA.

The main focal points are the circumstances that surrounded the submission of the statehood application, including the external diplomatic maneuvers, American and European, which influenced the articulation of the PA options, as well as internal factors which have had significant effects on the decision of the PA's leadership throughout various stages of the bid, including the paralysis of the legislative process and the question of the PA leadership legitimacy, and its running out of options in gaining credible popular support.

The literature review, theory and methodology of research

In political lexicon, the term “statehood diplomacy” is young and not yet researched as an independent discipline or branch of diplomacy, but it has lately become a short cut referring to the Palestinian statehood bid, particularly in 2011, and this connotation of the term was further consolidated after the upgrade in the status of Palestine at the UN in 2012 from observer status to non-member observer state status. The literature referring to cases of post conflict countries seeking universal recognition as states, such as the new states emerging from the fall of the Soviet Union, or those transformed in post-conflict situations such as Kosovo and Southern Sudan among others, don't necessarily refer to the newly coined term as such, but mostly focus on post conflict internal state building and international assistance, or look merely into the history of recognition of states from the perspective of international law.

One of the few scholars writing on the subject of statehood of Palestine from the time of the collapse of the Ottoman Empire, and the legal character the state of Palestine had gained under the mandatory authority of Great Britain was John Quigley as a Class A mandate. Quigley then tracks the status of Palestine to the post mandate era and the struggle of the PLO as the sole legitimate representative of the Palestinian people and its strive for international recognition on both the bilateral and multilateral levels, namely the process of the PLO accession to the UN and the manner through which it achieved that (2010, p. 39-53).

Khalidi, similar to Quigley, but from a social transformation point of view rather than an international law perspective, discusses the structures and development of the PA within the framework of what he calls the “Para State” status (2006, p 140-182).

Another approach to the statehood of Palestine, which lay emphasis on internal institutional building and formation of permanent structures that sustain statehood, is evident in the work of Khan *et al* who identified poor leadership, corruption, the weakness of democracy, and distorted economic ties with Israel under the aegis of Oslo as having damaging effects on the construction of a viable Palestinian state since the signing of the Oslo Agreement. Khan, Giacaman and Amundsen (2004) studied the social transformation of the Palestinian society, donor assistance and elite formation and its impact on Palestinian priorities and the institutionalization of the PA for a future state.

Post conflict early statehood diplomacies are reportedly profoundly shaped by interactions molded in a conflict, that in turn greatly influence the course of foreign policy formulation. Policies vary in their appropriateness at different phases of conflict. They are formulated amid the prevailing ways of thinking in the post conflict era that are remarkably influenced by how people characterize themselves and their adversaries, in one approach that is acting to change ideologies and belief systems that sustain conflict. Other diplomatic strategies constructed or used in similar situations to advance similar interests, which could serve as a model, show that the major Palestinian problem is representation and recognition.

As for ‘recognition’, there are mainly two relevant theories: the constitutive and the declaratory. The constitutive asserts that states and governments do not legally exist until recognized by the international community. On the other hand, the declaratory theory adopts that states and governments gain in the international personality when they come into existence and after they meet international requirements.

Although many argue that the declaratory theory is more practical and closer to international practice than the constitutive theory, this dissertation notes that multilateral diplomacy has gained growing influence among states that remain the fundamental building block in the current international system. After the end of World War Two (WWII) and following the end of the cold war, inter-state interdependence and interactions have drastically increased. New states, to obtain a legal personality and exercise their duties and rights according to the international law, are becoming more reliant on other states' recognition, implicit or explicit.

This dissertation reviews some of the key variables affecting institution building of the PA, not only in reports of the International Monetary Fund (IMF) and the World Bank among others, but also in programs and projects planned and implemented by the Palestinian government through donor assistance as laid in the government's annual national strategies in preparation for statehood. It discusses the legality of the bid from international law point of view, before examining its implications, for policy and strategy, from the perspective of the Palestinians, concerning the future of the conflict with Israel and the peace process.

The research is relying mostly on available published policy papers, journals, and documents from the UN archives. The Palestinian statehood diplomacy is a new phenomenon on which academic literature and theory is far from abound, making it a real challenge to write a literature review, structure the work, and find enough content to analyze and apply. There is some popular literature on the subject but this is fairly limited and un-academic.

It is not the goal of this dissertation to present a conclusive quantifiable analysis of diplomatic deliberations conducted in the corridors of the UN pertaining to Palestine's application, nor does it provide insights to how the countries voted in the UN and why. It deals with the path that the PLO and PA took to apply for membership and the reasons behind their initiatives and actions. It makes no claim to expand on the theoretical arguments of what consists a state or to challenge the

criteria by which states are defined, but rather seeks to answer questions about the turning point of Palestine's drive for international recognition more from a diplomatic and political point of view.

The reader will find little about the history of the Israel-Palestinian conflict *per se*, a highly complex source of tension in the Middle East, and the cause of enormous loss of life and property for many decades, where most narratives, decisions and actions remain controversial and debatable.

The organization of the study

The dissertation is divided into six chapters. The first, the introduction, provides an interpretative overview of the central *problematique*, aim, scope, theory and methodology of research. Chapter two presents more details on the historical background of Palestinian representation with the PLO accession into the UN, as a foundation for the development of the contemporary representation of Palestinians both on the bilateral and multilateral levels. It also examines the level to which Yasser Arafat's Declaration of Palestine's independence in 1988 is reflected on recent efforts to obtain recognition for Palestine.

Chapter three includes some of the main theoretical and conceptual analysis of the state and post-conflict state-building with special reference to the case of Palestine. Chapter four looks into recent endeavors of the PA to obtain recognition, and examines the internal and external elements behind the shift in strategy from bilateral negotiations with Israel, to high level diplomatic mobilization on the international stage for full membership. It also uncovers an important aspect of the Palestinian plea to statehood, which is the legal dimension both from the perspective of the international law and customary law.

Chapter five explores key tactics and steps of the Palestinians throughout the process of preparation for the UN bid, and states some of the major lessons learned from this model of statehood post conflict diplomacy. The final chapter provides concluding remarks and findings.

Chapter Two: Historical Background

This chapter presents an overview of the historical development of modern Palestinian statehood, with reference to the recognition (some forms of or full) by international bodies, from the time of the British Mandate in the early 1920s until more recent attempts to upgrade the status of Palestine in the UN in the years 2011-2012.

2.1 The British mandate of Palestine

The history of the modern Palestinian state dates back to the period of the British rule, when in 1921, the area that now comprises Israel, the West Bank, the Gaza Strip and Jordan was divided into two: east of the Jordan River became the Emirate of Transjordan, and west of the Jordan River became the Palestine Mandate. This was the first time in modern history that Palestine became a unified political entity (MERIP, 2001).

Before that, in the period between 1517 and 1917, the region that now includes countries like Lebanon, Syria, and Palestine were under the dominance of the Ottoman Empire which supported Germany in the 1914-1918 World War I (WWI), and were defeated and forced to surrender their non- Turkish territories to the Allies.

The Sykes-Picot Agreement of 1918 assigned Lebanon and Syria to France and Palestine and Jordan to Great Britain. Based on principles contained in the draft Treaty of the Confederation of States and the San Remo Resolution of 1920, Britain sought legitimacy for its continued mandate

over Palestine, which was confirmed on July 24, 1922 and formalized in 1923 by the Council of the League of Nations (Lilian Goldman Law Library, 2008).

The mandate system in international law was established under the Covenant of the League of Nations in 1919, as a system of international agreements signed for the purpose of administering a territory on behalf of the world community. According to Quigley (2010,p.39-53), Class A mandates comprised territories formerly controlled by the Ottoman Empire, considered as being at stages where they could exist as independent nations. The Class A mandates, including Palestine, were to be administered by the Mandatory until they could stand on their own as independent states, meaning that the State of Palestine had gained a legal character under the mandatory authority of Great Britain.

Quigley refers to Articles 9, 30, and 46 of the Lausanne Treaty of July 24, 1923, in which the defeated Ottoman Empire surrendered its territories, as provisions which regarded the Class A mandate territories, including Palestine as states. He further supports his arguments by making reference to cases in the Egyptian court in 1925 referring to a Palestinian plaintiff as a citizen of the state of Palestine. Another reference is made to international treaties in which Palestine was a party, such as that of a multilateral treaty that established an international agency for dealing with locust plagues, and another international agreement for the Establishment of an International Bureau of Intelligence on Locusts concluded at Damascus in 1926, which referred to its parties including Palestine, as “contracting states” with other class A mandates.

The British Mandate that lent no support to the independence of the Palestinian state, also sought to facilitate the development of the necessary social, economic and political infrastructures that would enable Jewish settlement in Palestine. The Mandate recited Britain’s intention in the Balfour Declaration (United Kingdom Foreign Office, 1917) to create a national home for the Jews, without prejudice, as the declaration stated, against the native non-Jewish communities in

Palestine. The document of the Mandate authorized division of the protectorate into Palestine covering historical Palestine, and the semi-autonomous Emirate of Transjordan. This was in line with the promises that British generals had made to the Sharif of Mecca and the Jewish Zionist Movement for the future division and governance of Palestine in return for their assistance in WWI against the Ottomans.

The consent to the Mandate by the League of Nations allowed Britain to divide the region into two administrative areas: Transjordan to the east and Palestine to the west. As indicated in the historical correspondences between General McMahon of Britain and the Sharif Hussein of Mecca in 1915, they agreed that the Transjordan region would constitute an independent Arab state after the war. Before the Mandate had taken effect, the agreement was formalized, effectively excluding Transjordan from direct British rule and making it an autonomous state with gradual transfer of power to an Arab government (Jewish Virtual Library, 2012). This presented evidence that a Class A mandate territory similar to Palestine was able to stand independently as a state.

2.2 The UN partition plan of 1947

The British mandate facilitated the immigration of Jews to Palestine, thus triggering protests from Arab leaders who demanded independence. With unrest and riots in Palestine in 1920 and 1921, amid rising tensions in the Arab-Jewish relations, the 1922 Churchill White Paper disclaimed the intention for a Jewish state on the land of Palestine, instead opting for the creation of a bi-national Palestinian state. The plan did not fly, and the territory was instead recognized as a Crown Colony (Doumani, 2007, p. 67).

A general strike by Arabs in 1936 led to the establishment of the Royal Commission, which found that the Mandate was unworkable and suggested partitioning Palestine into an Arab state

and a Jewish state. By 1938, the Palestine administration was losing control of the escalating riots, prompting another White Paper in 1939 by Britain announcing that Palestine, with its present population, was ready for the establishment of self-governance (Lilian Goldman Law Library, 2008).

With the Arabs of Palestine protesting against Jewish immigration, Jewish violence escalated in 1945 and 1946 after securing more weapons and arms from a number of sources. In 1947, Great Britain expressed to the UN its inability to bring a lasting resolution to the Palestinian situation and find reconciliation to its largely conflicting obligations to the Arabs and Jews. Following Britain's request to take up the peace effort in Palestine, the UN formed the Distinctive Committee on Palestine known as (UNSCOP) to investigate and submit proposals on the Palestinian problem.

Public hearings held by UNSCOP collected suggestions from both Arabs and Jews, and in September of 1947, it submitted recommendations suggesting either a Federal Palestine state or partitioning (UNGA, 1947). The report further cited that the possibility of partitioning was complicated by the facts that Jews formed the minority population. Also, the settlement followed no clear territorial separation between the Arabs and Jews.

The final recommendation of the Commission was that the Mandate be terminated and Palestine granted independence, but also reiterated earlier observations that vigorous disagreements existed as to the most appropriate form of independence for a unified government (Goodkind and Gaer, 2008, p. 53). A partition plan was recommended as the only way for reconciling the claims made by Arabs and Jews for Palestine. The plan was rejected by the Arabs of Palestine since it would award the larger portion of Palestine to the Jewish minority. However, on November 29, the UNGA Resolution 181 was passed recommending the implementation of UNSCOP's plan for

partitioning Palestine with the inhabitants being required to make adequate steps to ensure the effectiveness of the plan.

The plan drew defined boundaries to a Jewish state and an Arab state with economic union, describing specific border lines, villages and roads defining the areas which constitute both states in paragraph A of part II of the Plan. It also explained in detail the forms of self government including the establishment of a council and armed militias for security purposes, aspects deemed necessary for the formation of a state. Not only that, but the plan also opened the opportunity for admission into the UN.

Therefore, the resolution established all the pillars required for the fulfillment of the statehood criteria, starting from defined boundaries and area where the population is present, sovereignty through the establishment of security forces and a form of government through which the state would exercise its sovereignty, and add to that, it granted both states the ability to enter into the UN to obtain international recognition and be able to enter into bilateral and multilateral relations with other existing states.

This is indeed further evidence that the existence of the Arab State of Palestine was in fact awarded international legitimacy through the UN, and the Resolution laid down the fundamental pillars of establishing that state in a post conflict context. The Plan was rejected at that time because the Arabs saw the plan as a concession to Zionist settlers who formed a minority of the population.

The UN Palestine Commission was subsequently formed to oversee the Resolution 181 partition plan for Palestine into independent Arab and Jewish states, and an international mandate governing Jerusalem and Bethlehem. However, On May 14, 1948, the Jewish People's Council declared the independent State of Israel.

Israel received immediate recognition from most western nations and the Soviet Union, but the Arab League refused to recognize the establishment of Israel and established the All-Palestine Government in Gaza. After a ceasefire ending the 1948 events, Transjordan controlled the West Bank including a divided Jerusalem in accordance with the 1949 Armistice Agreements, Gaza came under the Egyptian rule, and Israel occupied additional land.

2.3 Representation of the Palestinian people

2.3.1 Establishment and role of the PLO

On the day that Israel announced its independent state, the Arab League announced plans for a single Arab administration for Palestine, leading to the establishment of All-Palestine Government on September 22, 1948 with Hajj Amin Husseini as President and Ahmed Hilmi Pasha as Prime Minister. The government was recognized by all Arab League states except Jordan, limiting its jurisdiction to the Gaza Strip under Egyptian protection with no executive roles, and the symbolic and political importance of this government gradually declined (Shlaim, 1990).

Following the ceasefire ending the war, Egypt had formally stated that it had no territorial claims over the Gaza Strip, and Jordan announced its intentions to annex the West Bank, which met resistance from the Arab League. While Egypt facilitated the registration under All-Palestine citizenship of Palestinians in Gaza, Jordan granted citizenship to Palestinians in the larger Kingdom of Jordan, making Palestinians displaced in the war consequently form the majority of the citizenry in Jordan (Shihade, 2012, p. 109).

In the Six Day War of 5-10 June 1967 between Israel and the neighboring Arab states, Israel took control over the entire territory of the West Bank and East Jerusalem, and an additional part consisting of the Sinai Peninsula from Egypt and the Golan Heights from Syria. In the same year

on November 22, the UNSC adopted Resolution 242 calling for Israel's withdrawal from these territories (UNSC, 1967).

Attempts at forming a Palestinian authority succeeded with the formation of the PLO during the 1964 Arab League summit. The PLO's main purpose would be the armed liberation of Palestine from Israel, with its charter stating that Palestine constituted the entire region of the former British Mandate, prohibiting Israeli occupation, and calling for the return and self-determination of Palestinians. The PLO received further legitimacy as the political authority for Palestinians in the designation awarded by the Arab League on October 28, 1974 as the sole and legitimate representative for Palestinians' right to an independent state (Becker, 2011, p. 14).

2.3.2 Arafat's declaration of independence and the peace process

In 1988, during the First Intifada, Yasser Arafat made the Palestinian Declaration of Independence that had been adopted by the PLO through its legislative arm, the Palestinian National Council in its 19th session. The declaration was based on the legal justification and terms of the 1947 UNGA Resolution 181 terminating the British mandate and providing for the partitioning (Boyle, 1990, p. 303). As chairman of the PLO, Arafat assumed the title of The President of Palestine with Jerusalem as its capital. At the time of the declaration, the PLO did not exercise authority over any territory.

The Declaration of Independence remains a pivotal document for the foundation of Palestinian nationalism, statehood, and diplomacy. Its importance emerges from its inclusion of reference to historical legal aspects that recognized Palestine's independence. It also draws the attention to Resolution 181 that Arafat stated: "still provides those conditions of international legitimacy that ensure the right of the Palestinian Arab people to sovereignty." The Declaration emphasized PLO's status as the sole legitimate representative of the Palestinian people, and reassured the

commitment of the State of Palestine to the UN charter and resolutions, and to principles of the Non-Aligned Movement (Rynhold, 2008, p.6-11). Elements of this Declaration still reflect on Palestinian modern-day plans for statehood, as will be seen in upcoming chapters.

In parallel, resistance by Palestinians against Israel increased with the First Palestinian Intifada that took place between 1987 and 1993 in the form of unarmed uprising against Israeli occupation. The 1991 Madrid Conference attempted peace talks between Palestinians and Israel allowed exiled Arafat to return to Palestine. Subsequent peace talks in the Oslo Peace Accords of 1993 allowed Palestinians limited self-governance in the West Bank and Gaza. However, efforts at bringing peace to the Middle East have still been largely unsuccessful (Austin et al, 2011, p. 31).

The PA was established as a result of the 1994 Oslo Accords (OA) as the interim self-governance body for Palestine (Waage, 2005, p.10). As provided in the Accords, the PA would have the exclusive control over civilian, economic and security issues for Palestinians living in urban Palestinian cities marked as Area (A), while Israel maintained control over rural areas, Jewish settlements, the Jordan Valley region and roadways in the West Bank marked as Areas (B) and (C). Peace negotiations continued on and off between the Israeli government and the PLO with oversight from the international community, mainly the US as the main broker on the basis of a two-state solution.

Israeli Prime Minister, Ariel Sharon's visit to Al-Aqsa Mosque triggered another period of intensified Palestinian uprising, referred to as the Second Intifada beginning in late 2000 and ending in 2005 as Israel commenced construction of a wall separating Israel from the West Bank. In the same year, the Quartet consisting the US, European Union (EU), Russia and the UN proposed a road map for peace calling for a Palestinian state alongside Israel.

In 2005, after the second Intifada had ended, Israel withdrew from the Gaza Strip, increasing the area under the PA control. Palestine held elections in 2006 with the election of the Fatah party for government being contested by the Palestinian Islamic Movement (Hamas). Following the disputed elections, the PA under Fatah fell out with Hamas in Gaza Strip in 2006, limiting the influence of the PA to the West Bank.

2.3.3 PLO diplomatic relations

The PLO has had relations with the international community since its establishment in 1964, which were enhanced following the Declaration of Independence in 1988. The PLO has maintained a network of offices in various foreign countries representing Palestinians, which would set the foundations for the PA diplomatic network. The majority of states recognizing the PA have upgraded the PLO offices status, though falling short of full recognition as diplomatic missions. Currently, a total of 143 states have diplomatic relations with the PLO and Palestine including Australia, Japan, China, the US and UK. Palestine has entered a number of bilateral trade agreements with several countries including Custom Union agreements with Israel in 1994, and Free Trade agreements with the EU, Egypt, Turkey and Jordan (MoFA, 2013).

But the most important achievement was that of the PLO accession into the UN with an observer status at the UNGA in 1974. The position of Observer Entity is not provided for under the UN Charter, but constituted a set precedent, allowing for variation in the privileges awarded to entities holding such positions. As an observer entity, the PLO received invitation in the UNGA as a representative for political and civil matters affecting Palestinians (State of Palestine Permanent Observer Mission to the UN, no date).

Following the Declaration of Independence, the UN convened and invited Arafat to address the UNGA, acknowledging the Palestinian Declaration and placing the PLO under the UN system as

the Palestine representative. The PLO was assigned the designation of 'Palestine', officially replacing its "Palestine Liberation Organization" beginning July 7th 1998 UNGA in Resolution 52/250: 124-4-10. With this change, Palestine was awarded privileges previously reserved for member states, including participation in the general debate that begins each UNGA and the right to co-sponsor UN resolutions. This upgraded Palestine's UN representation to an unprecedented and unique level, placing it between an observer entity and a member state status.

The PLO has had representation also in various international organizations as a member state, observer, or associate under the designation of Palestine. Palestine has member state status in over ten major international organization bodies including the International Trade Union, and non-member status at the UN, World Health Organization (WHO) and World Tourism Organization amongst ten others (MoFA, 2013). A bid by the PLO to gain membership into the Geneva Conventions failed owing to determination that the question over Palestinian statehood was unsettled in the international community, therefore rendering the convention incapable of recognizing it as so (Swiss Federal Department of Foreign Affairs, 1989).

According to the UN Charter, non-member sovereign states can submit petitions to join the UN with full membership following evaluation by the UNSC and UNGA. In November 2011, the PA led by Mahmoud Abbas announced plans to seek statehood recognition at the UNGA that year. Palestine sought recognition as a state based on the armistice lines that prevailed prior to the 1967 war. However, the US vowed to frustrate this effort by voting against such a resolution, contrary to the support by former US administrations for an independent Palestinian State (Zanotti and Browne, 2011, p. 3).

The US and Israel opposed the Palestinian bid of 2011 for state recognition at the UN citing the reason that it would not be the best approach to statehood and peace, opting instead for continued bilateral peace negotiations with Israel. In 2012 following consultations with the International

Criminal Court (ICC) on the legality of the Palestinian State and the petition, Palestinian status at the UNGA was upgraded to Non-member Observer State by an overwhelming majority vote in the UNGA.

In conclusion, the various eras marking the history of Palestine did in fact include some forms of international recognition of its ability to stand independently as a state, whether being as a class A mandatory territory under the British rule, or gaining UN recognition, although with different border demarcation in the UN resolution of 1947, and in the era following the establishment of the PLO, in which Palestine began to form its network of diplomatic representation bilaterally and multilaterally through the UN and its organizations and arms.

Chapter Three: Theoretical and Analytical Framework

The aim of this chapter is to elaborate on the conceptual foundations of the dissertation. It reviews the principal definitions of the 'state', and the main theories of state recognition which highlight the basic assumptions underlying the legal criteria for statehood in a post-conflict country, with specific reference to the case of Palestine. This chapter also looks at the major implications of the changes associated with processes of globalization on the conditions surrounding the notion and realization of statehood.

3.1 What is a state?

The state is central to the study of international relations remaining most likely so into the foreseeable future. It has been studied in different, inter-related and overlapping theories on social, political and economic change, and there is no academic consensus on the most appropriate definition of the state. States are sovereign, though some are subject to external sovereignty or hegemony, where ultimate sovereignty lies in another state. Cudworth *et al* (2007) have defined the state as a compulsory political organization with a centralized government that maintains a monopoly of the legitimate use of force within a certain geographical territory.

The term has been thoroughly examined by scholars in the past century, in light of the rapid emergence of new states as a result of decolonization, conflict resolution, and the fall of the Soviet Union in the early 90s. Many definitions set forth have relied on various criteria of what constitutes a state, and although the international law, embodied specifically in this case in the Montevideo Convention, has laid down specific criteria, theoretical debates have been raised about the definition of every criterion and its actual application.

Radcliff- Brown (1955, p. xxii) describes a state as an entity over and above human individuals who make up society, having one of the attributes as 'sovereignty', and as having will or issuing commands. Although this definition remains valid up to date, it has nevertheless aged, since it does not take into consideration the recent developments in the field of international relations, especially in view of the modern plethora of communications and the resulting aspects of globalization.

Following the formation of the League of Nations at the end of WWII, the legal character of a state began to require more than a sovereign entity, but must now obtain international recognition, an aspect which also remains controversial as will be discussed later in this chapter.

Moreover, Robinson (2010, p.111) quotes both scholars Short and Paasi to have defined a state as "a political organization covering a particular territory". He further describes Knight's definition that a "state is a sovereign, self-governing, independent territorial organization". At the simplest level, he says, the state is defined by its possession of sovereignty; this distinguishes it from all other forms of human organization. Thus, these scholars have agreed to insert the territoriality aspect into Radcliff's definition.

From a geographical perspective, Rosenberg (2011) regards a state as a self-governing political entity. According to him, a state has the following characteristics; it has a territory or space which

has an internationally recognized boundary, it has a population that lives there on an ongoing basis, it also has an economic activity and an organized economy. Rosenberg, thus, added three more criteria; first: internationally recognized boundary, which proved not to be a necessary condition for statehood in practice. For example, Israel, was internationally recognized as a state in 1948 without having marked defined borders, but rather exists until now within disputed lines.

The second is that of economic activity, which also remains supple and open to various interpretations and the third is the population. There is a broad agreement on the meaning of “population”, as established in an Advisory Opinion on Western Sahara (ICJ, 1975). It concluded that the population does not have to rest for a minimum amount of time or consist a minimum number.

Max Weber (cited in Jung, 2008, p.34) went as far as adding another significant, yet still debated component, to the definition of a state by emphasizing that monopoly of the legitimate use of physical force is the core of the modern state, having the military and the police as the core expressions of this monopoly. However, The state’s monopoly over this component has been greatly challenged by the spread of armed non- state actors, such as, *inter alia*, criminals, guerillas and paramilitaries, mercenaries and private security companies, clan chiefs and warlords, thus, undermining the state’s control over arms and their use (Bailes *et al*, 2007, p.10).

3.2 Statehood criteria in international law

The formula of the basic criteria for Statehood has been laid out in Article 1 of the Montevideo Convention of 1933:

The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) Government; and (d) Capacity to enter into relations with other states.

Looking at the first criterion of “defined territory”, it essentially implies that states are territorial entities, and this corresponds with Rosenberg’s definition. According to Newman (2005, p.16), this characteristic illustrates that territorial sovereignty involves the exclusive right to display the various activities of a state on a certain territory, there is however no rule that prescribes the minimum area of territory that a country should possess, nor does the word “defined” necessarily establish a permanent condition for continued statehood status. A good example is that of many states which have disputed territories, but have managed not to lose their rank as states, such as North and South Korea (Sterio, 2010, p.8).

Harris (1998, p.103) believes a state should also have a permanent population, which is necessary for statehood, though a minimum limit to this is not prescribed. There are states which have very small populations like the Pacific Island of Nauru, but still have not lost their statehood. Yet, the word “permanent” has been challenged in many cases of statehood. There are states that have been always regarded as states, but have witnessed major shifts in their number of population, and broad waves of forced migration such as that of Syria recently, but still remains defined as a state.

Having a government is central to the claim for statehood; both territory and territorial sovereignty all depend on a government which renders services- such as security, rule of law, social, and health- deemed vital to the functionality of a state and the well- being of its population. A government has two aspects; the actual exercise of authority and the exercise of title to exercise the authority (Newman, 2005, p.22). Yet, this criterion has been also challenged

by cases such as that of Somalia, which has been called a “ failed state” because it has not had a functional central government since the early nineties (Jamal, 2013, p.15). Also as evidence, Cendrowicz (2011) mentions the case of Belgium which witnessed the longest wait without a government in 2011 for 249 days, breaking a record set last by Iraq.

The capacity to enter into relations with other states is another criterion that defines a state, although Crawford (1977) explains it is not an exclusive prerogative of states, and cannot be considered a criterion, but rather merely a consequence of statehood, and one which is not constant but depends on the status and situation of a particular state. This view proves to be valid if we examine the impact of a globalized world, in which non-state actors also possess this capacity, especially when we look at the roles played by multinational corporations. Also, the PLO, as a representative organization of the Palestinian people, has been able to engage into bilateral and multilateral relations without Palestine being fully recognized as a state.

In conclusion, these criteria are broad and their exact definitions are ambiguous and even controversial. They lay down a rigid framework through which states are defined, and don't all necessarily apply in all cases to determine statehood, since nowadays, it has become intrinsically inevitable to take the contextual background of every new state separately, each with its differing circumstances and political leverage on the international scene. Yet, these are the criteria that are referred to as a legal framework whenever disputes arise pertaining to the constitution of statehood and are the criteria which qualify a state to file claims to the International Court of Justice (ICJ).

3.3 Impact of globalization on statehood criteria

With the plethora of information technology and communications in the past century, and the modern innovation of social media and its spread, there has been an increasing impact of

globalization on the dynamics of world affairs, specifically on how states define themselves and interact with other states. And although the concept of globalization has not been given a precise definition, its influence on individuals and states has been complex and multi-faceted, manifested in a variety of aspects.

Rushbrook (2012) describes globalization as a process of gradual change that comprises internalization, universalization, liberalization, westernization and de-territorialization. He asserts that one of its major causes (or effects) was the rise of a multitude of powerful non-state international actors, like multinational corporations, non-governmental organizations and others, which have been undermining the monopoly of state control over its resources, and therefore constraining its role (and function) in society and international relations.

Sterio (2010, p.1) detects the fundamental change caused by the new forces of globalization on statehood and argues that: “statehood is no longer satisfied through the four traditional criteria of the Montevideo Convention. Rather, for an entity to qualify as a state, and to continue to be regarded as a state on the world scene, additional criteria need to be fulfilled, which are in reality subparts of the fourth pillar of statehood, the capacity to enter into international relations, and they include: the need for recognition by both regional partners, as well as the most powerful states, which I refer to as the Great Powers; a demonstrated respect for human/minority rights; and a commitment to participate in international organizations, and to abide by a set world order.”

Another important aspect of globalization influencing the criteria of statehood is that related to boundaries becoming less significant than before, forcing territorial structures forming the basic component of the state system to experience structural change (Newman, 2005, p.2). Newman views this change as a challenge to the effectiveness of the state’s ability to practice its claim to a sovereign monopoly. He also argues that the changing nature of the world political order and

globalization raises questions about the role of the nation state and the way in which territory continues to define exercise of sovereignty.

Several scholars like Gary Dean (1998) and practitioners like Richard Haass (2006) and those who follow their tradition, see that the world order of today forces nation states to surrender part of their sovereignty to the international system. This is not only done through the rise of non-state actors and transnational organizations, but also by the mere will of states to sign international agreements and commit to internationally recognized obligations, in return of the benefits coming from collective action and engagement on the multilateral level with other states. Haass further emphasizes that “Globalization thus implies that sovereignty is not only becoming weaker in reality, but that it needs to become weaker.”

Condensed cross cultural, economic, and social interaction resulting from the revolution in communications technology, has created a “global village” in which societies in nation states have become more influenced by the changes in one another, therefore limiting the capacities of states to establish economic and social policies that are unique to their nations, and forcing them to abide by the set of rules followed by other states on a multinational level. Cerny (2000,p.17) explains that: “The future of statehood itself is increasingly uncertain and *contested* at a number of levels in a world characterized by increasing transnational and global problems, crosscutting political alliances and the emergence of more complex forms of awareness and expectations.”

This change in the dynamics of the world order has forced states to integrate formally or informally into global networks, and compromise part of their sovereignty, claim to monopoly of use of force, and territorial space to the new era of globalization, thus entering into alliances in order to survive the new political transformations. This resulted in a new trend regionally and

internationally, manifested in the creation of supranational bodies, most famously known is the EU.

Nevertheless, a counter argument suggests that regardless of all the changes reflected by globalization on the criteria of statehood, the nation state remains the major actor in international relations and will remain as such in the foreseeable future. Modern days have brought other actors into international relations, forcing the functions of a state to differ and become more open to new approaches, but has not, and will probably not; erode the existence of the legal character of a state anytime soon.

One of the advocates of this argument, Martin Wolf (2001), provides statistical evidence that the growing integration of world economy, the high rates of population migration and immigration, are not a new phenomenon, but rather an existing reality since the years following WWI. He also argues that the advancement in technology has not been a factor damaging the capacity of nation states but rather the contrary. It has provided easy and cheaper tools to collect information and hold a firmer grip on taxation, public spending, and investments, thus strengthening and not damaging the control of states over their resources.

3.4 State recognition

The issues relating to the criteria of statehood in international law and recognition remain confusing, with the lines between legality of statehood and political interests of states recognizing other ones, still blurry and undefined in the practice of international relations. Many examples from the real practice of international affairs illustrate that the rules of applying the criteria and obtaining recognition have been inconsistent, and determined by political forces rather than mere legal or academic approaches. Yet, there exists two competing famous theories regarding recognition.

One views statehood to be legally determined by the four criteria set forth by the 1933 Montevideo Convention, which constitutes the legal reference for any disputes whether an entity can be granted statehood or not, and then after that is determined, other states can either recognize the statehood of that entity or not. Thus, as Sterio (2010, p.7) puts it: “external actors could choose to treat an entity as a state though it does not satisfy the four criteria of statehood, and on the contrary, external actors could choose not to treat an entity as a state although it does satisfy the four criteria of statehood”. This argument forms the core of the Declaratory theory.

Worster (2010) demonstrates that: “This theory looks at the purported states assertion of sovereignty within the territory it exclusively controls to determine if it can access the international plane.” Therefore, the Declaratory argument does not rely on individual state recognition of an entity in determining the legality of its statehood, but rather on the fact of its existence and the exercise of its powers as a state, looking at recognition by other states as a political act that is non- determinative to the status of a state.

Raic (2002, p.38) explains that applying the declaratory theory avoids the legal vacuum that the constitutive theory creates in the period between the birth of a state and its recognition by other states. It automatically bestows upon the new state the privileges, duties, and responsibilities attached to statehood as a fact upon existence. The theory does not leave the decision of statehood to the individual discretion of other states but rather to an established criteria by the international customary law embodied in the Montevideo Convention.

Yet, one of the major criticisms to this theory, according to Raic, is that the mere factual existence of a state does not award it the international legal personality, but will have to be acquired according to international law in order to enjoy its legal character. This makes

recognition by other states a necessary component for transforming the factual existence of a state into a lawful existence.

Brownlie (2008, p.86) asserts recognition of a new state will sometimes involve the demarcation of a certain area as a 'state area' for the purpose of international relations, with consequent effect upon the rights and duties of other States. In such a case, it might actually be argued that recognition at least in the non-formal sense of 'treating like a state' is central rather than peripheral to the issue of international capacity.

The other theory views state recognition as a fundamental part of statehood that is necessary to fulfill the fourth criterion of statehood, which is the capacity to enter into international relations. Advocates of this theory argue that without external recognition, the new state will not be able to harvest the benefits of its status, and will not be able to manifest its legal character and sovereignty on both the bilateral and multilateral levels.

Crawford (1977) illustrates that the Constitutive theory states that recognition of a state is not automatic; a state is a state if only other states recognize it as such, and other states have a considerable discretion to recognize or not recognize the existence of the new state. Many scholars argue that this theory provides solid basis for determining statehood.

Crawford also mentions that supporters of this theory believe that the criteria for recognition are easier to achieve. Essentially a recognized state will have the legal international personality which grants it the capacity to enter international treaties and agreements, the ability to file claims before the ICJ, to have total privileges and immunities within sovereign state jurisdiction, and the capacity to participate in various international bodies such as the IMF and World Bank, where technically, participation depends on international membership status.

However, as Raic (2002, p. 34) explains, it is taken against this theory that it creates a legal impasse regarding the legal person of a new entity, having some states recognizing it and others not. This would generate legal difficulties in cases where parts of the territories of the new state are lawfully annexed by another state not recognizing it. Also, a major criticism of the Constitutive argument is that it concentrates only on external legal rights and duties and overlooks the internal factual situation.

3.5 State-building in post conflict situations

There is no one theory that fully explains the complex relationship between peace building and state building efforts in post conflict situations, but increasingly, there are studies that address the different challenges facing post-conflict societies. This section briefly highlights some of the relevant growing academic discussion and concepts developed on state building approaches and challenges from the international community perspective; in which state building in post conflict countries has been interconnected with peace building efforts within a political and economic context.

Haider (2012, p.5) explains that there is a growing tendency to follow an integrated approach of peace building and state building, offering two models to such an approach. One is bottom-up civil society approaches which involve conflict prevention, multi track diplomacy, and building local capacities for peace. The other is top-down institutional approaches focused on creating and strengthening governmental institutions.

One of the approaches presented by Reimer (2005) suggests that the main objective of state-building in post conflict situations is crisis prevention. The ultimate objective is to prepare an environment where substantial transformations are made from trembling security situations into a more stabilized condition. Within this context, he believes there are three prerequisites to success:

the ability of society members to guarantee material production, checks and balances, and production and securing values.

Samuels (2006) also explains that peace building and state-building from an international relations perspective give attention to the role of international development interventions in post conflict countries. He illustrates that these interventions, generally, had little success due to operational limitations, unintended negative effects of international aid, lack of knowledge how to re-build states and failure of state building strategies.

Brahimi (2007, p.2) agrees that international community help to post conflict countries is often too little and have two main shortcomings: the first is inadequate knowledge of local and regional conditions, the second is the low priority given to building national institutions. Thus, the two foundational principles of international development efforts must be local ownership and leadership of the state building processes.

Intervention of external actors influences conflict and can actively promote particular interpretations on how the path is drawn from conflict to statehood, and can foster norms and institutions that either help or impede the development of this path. This usually requires a post-conflict nation to give careful attention to improving its institutional capacity and developing mechanisms which allow it to mobilize and manage political pressure, economic conditionality, donor support, and technical expertise in a diplomatic fashion. However, post conflict nations don't always have the basic governmental structures to manage these capacities.

Therefore, when examining the case of Palestine, international peace-building and state-building interventions have changed from a bottom-up civil society approach, in which donor support was focused on non-governmental organizations and promoting a grassroots culture for peace, until the PA retained control and took the lead by setting a political agenda through the

implementation of national state-building strategies. This led to shifting the focus of international donor aid into supporting the top-down approach of building governmental structures and institutions necessary for the functioning of the future state of Palestine.

3.6 The case of Palestine

It has become important to recognize that the criteria of statehood and recognition are in fact inexorably intertwined in a manner that both have become prerequisites to the fully functional legal character of a state and its enjoyment of the benefits of statehood. Recognition is not complementary, it has become a need for new states to engage in world affairs, and thus I view a combination of both the legal criteria and recognition by other states as central components of statehood, and fulfilling both sets of requirements as deeply rooted requirements. This is indeed an important lesson learned from the case of Palestine.

In November 15th 1988, President of the PLO, Yasser Arafat declared the independence of the State of Palestine in Algiers. At that time, the PLO had no political jurisdiction, authority, or control over any territory or land of historical Palestine, and thus had no structure of a government. Some scholars would argue that the Executive Committee of the PLO consisting of various Palestinian factions represented some form of government with the Palestinian National Council as the legislative arm. However, it did not manifest sovereignty in any form over a defined territory.

With a Palestinian population present in the occupied territories and scattered around the globe, and although it did not legally meet all the criteria of statehood, the declared state of Palestine received recognition from several countries at that time, either explicitly from countries like Jordan and Egypt, or implicitly from European countries by entering into bilateral diplomatic

relations with the PLO and allowing it to open delegations, information offices and consular missions in their capitals.

Even before that date, the PLO was able to engage in international relations with other countries, and was already a member of multilateral forums such as the Arab league, the Organization of Islamic Cooperation, the Non-Aligned Movement, and most importantly it acquired an observer status at the UN in 1974 (Aissa, no date) . So, legally, the declared state of Palestine didn't meet all four criteria of statehood but did receive political recognition.

At that time, had we applied the declaratory theory of statehood, which basically states that the existence of a state is independent from its recognition by other states, Arafat's declaration of 1988 would have been hollow, with no impact whatsoever on enhancing the PLO relations with other states or in international forums, and it would have not advanced the PLO role of representing the Palestinian people. Therefore, the Constitutive theory remains the valid theoretical framework in practice. The declaration, from an international perspective was rather symbolic, but was able to move forward the political and diplomatic agendas of the Organization through the recognition it received.

The realities on the ground have changed since. Following the signing of the OA of 1993, the PLO became in control of a defined piece of territory called areas (A) of the West Bank and Gaza Strip, over which it enjoys full civil and security control. Add to that, Palestinians received the recognition of 122 states of their state with the borders along the 1967 lines (*Ynet News*, 2011). Yet, the Palestinian territory remains an occupied territory by Israel.

The PA has been basically the government controlling the West Bank and Gaza, until Hamas took over the Gaza strip in 2006. Control by the PA over these areas has been considered

sovereign in the sense that Palestine enjoys territorial control and also a degree of policy coherence and continuity (Andersen, 2013, p.85).

The status of Palestine in the UN, as defined through a series of UNGA resolutions, is an 'entity' having received a standing invitation to participate as an observer in the sessions and the work of the UNGA (UNGA, 1974). Palestine has a defined although disputed boundary with a population of people that the PA, the de facto government, rules over.

After having a defined territory, a population, a government, and international relations, and unlike 1988, the State of Palestine now meets the four criteria of statehood as mentioned in the Montevideo Convention, and a network of recognizing states that has far exceeded that of the PLO, especially now with the upgrade of the status of Palestine to a non-member observer state in the UN in 2012 with a vote of 138 countries in favor (Aljazeera, 2012).

Chapter Four: The Road to Palestinian Statehood, Why Now?

It is known that The PLO, in its struggle to achieve the ultimate realization of Palestinian self-determination in the form of the State of Palestine (within the armistice lines drawn in 1967 including the West Bank, Gaza Strip, and East Jerusalem), has for decades pursued the strategy of bilateral negotiations with successive governments in Israel. More recently, Abbas, one of the main architects of the Oslo agreement, turned his energy towards the international community for response to fundamental Palestinian national aspirations and demands. The decision to take action in the UN to obtain recognition, a daring move from the Palestinians, was not without a number of underlying factors that are inter-related. The aim of this chapter is to review the most important external and internal conditions leading the PA to shift its strategy from bilateralism with Israel to multilateralism and the UN.

4.1 External factors

4.1.1 Failure of Oslo

The signing of the Oslo agreement in 1993, and the historical symbolic handshake between former arch-enemies becoming peace partners, Yasser Arafat and Yitzhak Rabin, under the auspices of Bill Clinton, all received widespread, worldwide welcoming, as they promised to find a solution and begin the ending of the long Israeli-Palestinian conflict. The OA, based on the Declaration of Principles (DoP) have marked Israel's first time recognition of the

PLO as the sole and legitimate representative of the Palestinian people, and the PLO recognition of the State of Israel (Rynhold, 2008, p.6-11). The Accords also entailed partial withdrawal of Israel from the West Bank and Gaza Strip, to what later became to be known as areas (A), under the full civil and security control of the newly established PA.

The agreement didn't receive full applause from rejectionist parties on both sides who mostly saw the agreement as fragile and inadequate in fulfilling the aspirations of the two peoples. Professor Edward Said and poet Mahmoud Darwish among other Palestinian academic scholars, heavily criticized the agreement saying that the PLO took Israeli recognition of it as the sole and legitimate representative of the Palestinian people as a victory itself rather than the ultimate realization of the Palestinian self-determination which would eventually translate into a Palestinian sovereign state (Shlaim, 2005, p. 241-245). No article in the Accords or the DoP mentions Palestinian sovereignty or establishes means for the realization of a future Palestinian state. Critiques from the Israeli side didn't see the Accords as fulfillment of PLO recognition of Israel as a Jewish state, which was in fact a disappointment to most.

Moreover, when examining Oslo from the perspectives of both signatories towards this process, Israel viewed the agreement from a conflict management perspective rather than from a conflict resolution perspective (Rynhold, 2008, p.12). For the PLO, it was a savior agreement given that it had lost its base in Lebanon and had been weakened since its transfer to Tunisia, so it found itself with no option but to enter into negotiations.

Critical issues of Jerusalem, refugees, borders, and water were all postponed to final status negotiations. These essential matters were in fact the core of the conflict and were not timely and thoroughly addressed in the Accords. Also, the economic arrangements which were intended to achieve integration and interdependency between Israel and the newly established Palestinian

interim authority did not achieve their intention, but rather introduced additional obstacles to the relationship between both (Rynhold, 2008, p.2).

According to Rynhold (2008, p.6-11), two schools of thought emerged in analyzing the failure of Oslo looking at the matter from different angles. Liberals saw that the failure of Oslo was indeed a failure of implementation. The instability of the leadership, especially on the Israeli side, didn't allow for the opportunity to lead necessary concessions to reach final status negotiations.

Realists, on the other hand, explain that the failure of Oslo has not been due to failure of implementation, but rather from inherent flaws in the agreement itself, the ambiguity of its language, and flaws in the sustainability of the structures it established. Rynhold continues to illustrate the Realist explanation: "The Oslo process was flawed from the outset because the practical meaning of mutual recognition as understood by the two sides was too far apart to be bridged in a manner amenable to practical implementation".

Yet, the most significant mistake affecting the sustainability of the agreement and its implementation was that it drew a road map to negotiations but did not propose solutions to the future of Jerusalem, which Israel deems non-negotiable, while Palestinians consider it the capital of their state, or to the future of Israeli settlements in the Palestinian territory, or the Palestinian refugees Israel has forcibly displaced during 1948 and 1967. This meant that there were no features set for the future realization of Palestinian self-determination as such, or its embodiment in a Palestinian independent state with Jerusalem as its capital.

4.1.2 The Arab Spring

The turbulent events of what has become known as the Arab spring in Tunisia, Egypt, Libya, Syria, and Yemen have brought winds of change not only to these countries but also to the whole of North Africa and the Middle East region. The demise of the long-ruling authoritarian and

oppressive regimes in some of these countries, especially in a large country like Egypt, at the heart of the Arab world, had a significant impact, and brought about crucial transformations in society, government and politics. It certainly exposed the internal problems of many Arab countries and attracted the attention of the international community.

Popular uprisings demanded democracy, free elections, and fair distribution of resources, civil governance, accountability, and equal economic opportunities. These demands have been internally driven and directed, yet remain global in principle, which formed a broader call to the rest of the Arab world to undertake necessary changes in national political systems, structures and mechanisms.

Nevertheless, the pressure remains on the PA leadership for change, even if a model of Egypt's Tahrir Square has not yet replicated in the public squares of the West Bank and Gaza Strip, the influence has not faded and will not fade away any time soon, especially if the current instabilities in the Arab spring countries bloom into new radical democratic transformations. This will put the Palestinian leadership in an even more difficult position than the one it is already in right now.

The Arab Spring essentially represented the rise of whole societies against government authoritarian rules. Katz (2013) believes this method was clearly not applicable in Palestine simply because the Palestinians did not have the unity required for the effective running of demonstrations. It is also clear that such demonstrations would not be pursuing democratic rights; rather, they would be a quest to resist the oppression of the Israeli occupation and the confiscation of Palestinian lands for Israeli settlements.

This does not mean that grounds for a Palestinian spring do not exist but rather on the contrary. The tenure of the Palestinian president has ended in 2009 and he continues to rule since then with an appointed government that was not elected by the people, a paralyzed Legislative Council,

division between Hamas and Fatah that practically translates into two separate conflicting governments in the West Bank and Gaza, failed negotiations with Israel, high levels of corruption in the public sector, and no transparent management of donor aid funds. All are potential igniters for a robust Palestinian uprising in search for democracy.

Abbas wanted to avoid a Palestinian spring amid the desperate political and economic situation in the Palestinian territory, and had to find an option to gain grounds of popularity and support both in the West bank and Gaza Strip after failure to reach conciliation with Hamas. Turning an eye to the UN was a reasonable option; one that would tickle the national aspirations of the Palestinian people and garner the support of the Arab world behind the initiative, especially that the leadership was practically running out of options. In the 2011 bid, Palestinians in the West Bank hoped that Arab Spring sentiments in the region would be useful in gaining recognition by the UN (Ivo, 2011, p. 5).

Critics claim the bid of the Palestinians for UN recognition was a strategic move to have the influence of the Arab Spring take course on the people living in Gaza. The Hamas rule in the region has weakened the negotiations position of President Abbas with Israel. If the West Bank became recognized as the representative state of Palestine, the people living in Gaza would be compelled to raise a 'Palestine Spring' to have democracy prevail in their region as well. The application to the UN was just the beginning of a strategic plan that would possibly help settle the Israel-Palestinian conflict through forced diplomacy (Katz, 2013, p. 6).

4.1.3 The role of US

Ever since the establishment of the PA in 1993 and many years before, the US policy has been marked by efforts to establish a Palestinian state within the 1967 borders through a negotiated two-state solution with Israel. The US sought to invest in close military and economic ties with

its strategic ally in the region- Israel- along with support and financial assistance to the PA to advocate campaigns of negotiations to resolve the Israeli-Palestinian conflict.

However, Cordesman and Wittemen (2004, p.3) say that the continued efforts of the US during the tenure of many of its presidents did not succeed in revitalizing the peace process in a successful manner to achieve a final lasting peace in the region. Each American president came with his own vision of a settlement and his administration's involvement in the Israeli-Palestinian conflict depended mostly on priorities of the internal agenda and its reflection on foreign policy maneuvers. They believe that: "it is a fact of life that when peace does not seem possible, and progress is difficult to make, US politics tend to turn towards other missions and tasks, and US domestic politics take on more importance."

Nevertheless, this is not the only shortcoming of US policy in resolving the conflict. The US has gained the reputation of being biased towards its indispensable ally- Israel. This has been further consolidated by its tendency to veto resolutions which are generally critical of Israel or in favor of Palestinians in the UNSC, which in turn, largely influenced how the US is perceived not only among Palestinians, but also in the Arab world. Yet, it remains the most influential intensely engaged broker of the peace process, and has been able to maintain immense efforts and political investment in it.

The years of the Bush administration (2001-2008) were considered a major setback to the peace process in the Middle East. During his tenure, in 2002, a road map for peace was initiated, promising to create a viable, peaceful, and democratic state for Palestinians in 2005. The Road Map- ironically depended on the neutralization of Arafat who signed the Oslo Agreement nine years before, giving Abbas, the first Palestinian Prime Minister then, the responsibility of guarding the mission of delivering a Palestinian state under a turbulent disagreement with his rival movement- Hamas (McGreal, 2003).

The Annapolis Conference in 2007 came as a final attempt to revive the dead, yet to no avail. The joint statement at Annapolis, signed by Ehud Olmert and PA President Abbas declared: “We agree to engage in vigorous, ongoing, and continuous negotiations, and shall make every effort to conclude an agreement before the end of 2008” and that was about it. The Conference was expected to fail even before it started by both Israeli and Palestinians, because resolving the conflict was not in fact the US administration’s foreign policy priority amid the war on terror announced by Bush. Nevertheless, the Road Map for peace continued to be the officially adopted framework to reach a peaceful settlement (Patel, 2007).

In 2009, soon after his inauguration, Obama expressed his commitment to the establishment of a sovereign, independent Palestinian state, and regarded this as a national interest for the US. This reinvigorated optimism in the Arab world that the new administration which internally advocated change, will present better future opportunities for negotiations and reframe the conflict. Max Fisher (2013) of the Washington Post described both Obama’s speech in Cairo University in the spring of 2009 and his speech in Jerusalem in 2013 as “a break from typical American rhetoric and appealing to the people of the Middle East.”

To implement his vision, Obama immediately appointed the conflict expert George Mitchell as the Middle East Special Envoy, who paid numerous visits to the region in attempts to bring both parties back into negotiations for an end to the conflict. However, his efforts did not translate into progress on the ground. As reported in *The Guardian* (2010), Israeli Prime Minister Netanyahu refused to comply with the demand of a complete freeze in settlement expansion which the Palestinians set as a prerequisite to resuming negotiations, and the American administration failed to twist the arms of both parties into resuming bilateral negotiations.

Following the stalemate in the Israeli-Palestinian talks in 2010, the PA sought recognition of a Palestinian state from individual countries. In September 2011, the PA President applied for full

membership of Palestine in the UN. The US opposed the unilateral action and vetoed the resolution in the UNSC, and cut \$200 million of funds allocated to projects related to food aid, health care, infrastructure, and state building efforts (Haaretz & Mozgovaya, 2011).

With the start of Obama's second term, and the appointment of John Kerry as Secretary of State, American diplomatic efforts continued with a different pace. Dunne (2013) explains that Obama had to first overcome the gaps created by previous efforts that backfired on US- Israeli relations and Palestinian- American relations and caused a deadlock. He wrote that settling the conflict appears to have lower priority than other portfolios, saying that: "for US diplomacy to have chance, something would have to change, for better or worse to create urgency". Moreover, when examining the situation in the Middle East as a whole: Iran's nuclear program, disturbed Egypt, and crisis in Syria, it appear that the US administration has diverted its attention from the Israeli-Palestinian portfolio which seems to have little hope in marking achievement if any.

4.2 Internal factors

A number of internal factors prompted the leaders of the PA to apply for state recognition by the UN. The factors range from economic deterioration, a serious financial crisis, and a dysfunctional political system. Brown (2010) explains that the move was aimed at having the state of Palestine recognized by the international community, which would subsequently hasten the solving of the Israeli-Palestinian conflict. The promotion would also enable the PA to take over the running of the new state legally and this would enable it to undermine the influence of Hamas in Gaza.

4.2.1 Hamas–Fatah reconciliation

In 2006, the Palestinian legislative elections were held, bringing Hamas into power, making the US and several other European countries diplomatically and financially boycott the Hamas-led government. As a result, the PA witnessed a major financial crisis along with inter-factional

fighting between Hamas and Fatah which has been leading the PA since its establishment. In 2007, Hamas completely took over the Gaza Strip, and continues to govern it up to date, leaving Fatah in control of the West Bank. Consequently, The US worked to strengthen the Fatah-led authority in the West Bank by allocating funds to develop infrastructure, good governance, security, and rule of law.

Abu Toameh (2011) indicates that many attempts have been made to reconcile the two fighting Palestinian factions; nevertheless, the rift has been made larger by the insistence of both sides on maintaining the status quo and their grip of powers and influence in the respective areas they are controlling. Not only this, but an increasing economic gap and conflicting interests of regional and international powers have brought reconciliation efforts to an impasse. However, in 2011, the leaders from both sides were able to reach a reconciliation agreement signed in Cairo under the patronage of the Egyptian Intelligence. Yet, the implementation was not actualized back home, and the hostility between members of both groups continued, as the agreement was suspended.

The reconciliation talks, however, were not only influenced by domestic politics but were, and still are, rather subject to the winds of regional upheavals and broader international power dynamics. The US state-department blacklisted movement- Hamas- if in a coalition government- will prompt the US to withdraw aid from the PA unless it recognizes the State of Israel, which Hamas insists not to do. The European Union will also illustrate a similar position as it did in 2006 when Hamas won the elections, therefore putting the PA in a crucial financial position.

The Arab spring had a swapping influence on the options of both parties. Mullin (2011) writes that the toppled Mubarak regime was interested in maintaining the status quo in the Palestinian territory, mediating the talks from that perspective all the way long mainly by Chief of Intelligence Omar Suleiman. However, the Egyptian revolution of January 2011, brought to

government new officials who were more genuinely concerned in achieving inter-factional reconciliation.

The tribulations in Syria against the Asad regime also rocked the boat of reconciliation in its own way. Syria which was the fortress of Hamas political bureau, headed by Khaled Masha'al and consisting of 15 other members have been operating from Damascus since 1999 were forced out to Qatar and other Arab capitals (Kanafani, 2012). This was deemed a sign that Syria, a long supporting Hamas regional ally, has shifted its interests to the mass uprisings within, and therefore weakening Hamas position and reducing its options.

Mullin adds that Fatah, on the other side, was facing a different type of pressure. Palestinian youth on social networks were mobilizing to push forward a unity government and reconciliation in an unprecedented manner. The influence of youth uprisings in Tunisia and Egypt were inspirational to the Palestinians who demanded unity and end of division between the two parts of the homeland.

Later in 2012, Khaled Mashal, Head of Hamas Political Bureau, and President Abbas signed the Doha deal, which would provide a platform for reconciliation between both parties. This attempt also failed because the two sides could not agree on holding joint elections to improve their democratic practices and were not able to sort out the technical details for security arrangements (AIC, 2012).

Reports from the Fatah side indicated that the Gaza government was still harassing Fatah members accessing their region and, on the other side, Hamas claimed that Fatah government in the West Bank continued to chase and detain its affiliates. Following the several failed attempts to form a government with their counterparts in Gaza, the Fatah leaders opted to use a simpler

way by applying for state recognition by the UN. This would officially make the Fatah side of the Palestinians the representative state of the people (Berg, 2012).

Finally, it is important to recognize that internal issues and the external political process are inexorably inseparable. Practically, the Palestinian internal order is a prerequisite to addressing the external political track on better terms. This way, the Palestinians will have a clear perception of how to resolve the current complexities to avoid division that may lead to undesired foreign intervention.

4.2.2 PA financial crisis

The economic relationship between the PA and Israel is regulated by the Paris Protocol which was incorporated as Annex V of the Oslo Agreement signed in Washington in 1994. The Protocol established structures and mechanisms which would make the Palestinian economy dependent on Israel and donor aid funds. Levi's analysis (2012) of the Protocol suggests that this framework allows Israel to remain in control of the revenues of the PA and collect taxes and customs on its behalf, which Israel used and still uses as leverage whenever it wanted, contributing to halting any opportunity for the development of Palestinian economic independence.

Dependency on donor aid funds is a common character of post conflict economies, and the PA has been no exception. Portland Trust Report (2011) indicates that donor assistance is a dominant source for the PA budget, covering 42% of recurrent government spending in 2009 and 38% in 2010. This assistance comes either directly to the Single Treasury Account of the Palestinian Ministry of Finance to pay the increasing bill of civil servants wages, or indirectly through development projects dedicated to infrastructure, capacity building, security, or institution building, and NGOs, among others. The main funders are the US and the EU, but also a pool of more than 40 countries.

However, the emergence of the world financial crisis in 2007 has had its influence on the PA in several aspects. El-Jafari (2010, p.46) specifically identifies three aspects by which the PA economy was influenced. First, Palestinian trade with Israel; second, international aid funds from the donor countries, which have reduced significantly since the beginning of the crisis, and third through the banking system. The most dominant was indeed the second factor.

With Europe and the US mainly affected by the global financial crisis and them being the main donors of the PA, covering around 60% of the PA's expenditures, El-Jafari considers that the declination of donor country funds has had a profound influence on the PA's ability to render social, health, and even food services to the Palestinian population and its capability of self-sustainability. This recurring crisis has significantly threatened the existence of the PA and its stability, which added further pressure on the leadership to take up creative solutions.

On the other side, Gaza Strip has been undergoing difficult economic and living conditions due to the Israeli siege and closing of crossings and borders. This has led to the suspension of production from Gaza due to the lack of primary raw materials for manufacture, and the lack of access for the export of agricultural and industrial products. The blockade has led to a rise in unemployment, especially with the cessation of construction, and ban on exports of berries and flowers during their seasons (ISM, 2014).

People in the streets were beginning to feel the pain of the crisis, as the PA removed subsidies on fuel and other government- subsidized goods. Palestinians in the West Bank specifically began to mobilize and demonstrate in face of the new economic changes which added further constraints to their lives. These demonstrations culminated in 2012 as the financial crisis was further aggravated by the decision of the Congress to cut USD 200 million of aid to the PA, punishing Abbas for pursuing the UN bid (Haaretz and Mozgovaya, 2011).

4.2.3 Legitimacy of the PA leadership

Following the heavy military clashes between Hamas and Fatah which resulted in the separation between the West Bank and Gaza Strip as Hamas took full control of the later in 2007, PA president, Mahmoud Abbas dissolved the Fatah-Hamas unity government that was formed earlier according to the inter-factional Mecca agreement signed under Saudi auspices in March of the same year. He then, announced the state of emergency and appointed Dr. Salam Fayyad Prime Minister of the Emergency Government, while the Hamas- led government headed by Ismail Haniyeh continued to rule separately in Gaza.

Abbas continued to rule with an emergency government of technocrats headed by Salam Fayyad, and issued presidential decree laws to regulate the daily life of Palestinians, which many critiques considered illegal, saying that these decree laws had to be presented to the Palestinian Legislative Council (PLC) once able to convene. The Hamas- Fatah separation had caused the paralysis of the legislative council.

Harb (2009, p. 10) summarizes how the paralysis occurred On July 5, 2007, when Mahmoud Abbas called by presidential decree for the inauguration of the 2nd session of the PLC on July 11, 2007. However, the Hamas Bloc refused to convene the inaugural meeting of the Council, and the First Deputy Speaker of the Council called for an extraordinary session in order to avoid holding elections for the Speaker of the Council in the absence of the numerical majority of Hamas members. Because the "ordinary" session was not convened, the result was the obstruction of the legislative work causing a "legislative deadlock", which continues up to date.

By January 2009, the four year term of President Abbas has legally ended, but no presidential elections were held due to the continued division between both parts of the Palestinian territory.

Yet, Abbas continued to rule even after the end of his term, and received further extension of the term by a vote of the Central Council of the PLO which is mainly led by Fatah in December 2009. Fatah officials stated that this step comes to fill in a leadership vacuum if Abbas leaves office, something that is necessary to avoid, in order to prevent the collapse of the PA. Hamas on the other hand considered this extension illegitimate and unconstitutional (Prusher, 2009).

Therefore, the Palestinian leadership has since then been facing increasing criticism regarding the legitimacy of its governance and the means by which it was governing in the West Bank, with a failure to achieve reconciliation, hold elections, or activate the legislative arm of the Authority. Therefore Abbas, and his Prime Minister Salam Fayyad were playing on a very democratically insecure foundation of government, whether internally or externally in negotiations with Israel which has been starting to become complicated and slow-moving with Netanyahu in government.

4.3 Legal aspect of the Palestinian statehood bid

It was indeed a major shift in strategy that Abbas has taken in September 2011. His political history has been always that of support to bilateral negotiations, and his move to the UN was indeed the least to say unexpected. Although internal circumstances have played a major role in this new move, Abbas, found himself in stalled unfruitful efforts in negotiations, especially with Obama's administration distraction away from focusing to resume negotiations between Israel and the Palestinians, the weight of the Israeli right, and continued settlement constructions. Abbas' endeavor aimed to further internationalize the Palestinian cause, reaffirm previous UN resolutions pertaining to Palestine, and acquire new legal tools which are associated to an upgraded status of Palestine in the UN for a better position in future negotiations.

One of the eminent legal aspects of the Palestinian UN statehood bid was to actualize the recognition of Palestine as a state by many of the world countries into official recognition in the

most important multilateral forums- the UN. Such recognition will allow the PA to be the ruling government of the entire Palestinian territory according to the 1967 armistice lines. The application meant that Palestine would have to be recognized as a state and a member of the UN, making it an obligation of the rest of the members to intervene in the Israeli-Palestinian conflict (Weiss, 2011). The statehood of Palestine would automatically bolster the legitimacy of the claims of Palestinians against Israel.

4.3.1 The UNSC and UNGA

The PLO was granted Observer status in the UNGA in 1974, and its privileges progressively developed with time since then. In 1998, The UNGA decided to reclassify Palestine in the UN Bluebook as an entry under the category of: Entities Having Received a Standing Invitation to Participate as Observers in the Sessions and Work of the General Assembly and Maintaining Permanent Observer Missions at the Headquarters, along with the Holy See (UNGA, 1998).

According to paragraph 2 of Article 4 of the UN Charter (1945): “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”. Looking closely at the UN system of work, there are two paths to be pursued through which Palestine’s status can be upgraded: the UNSC and the UNGA. However, the political atmosphere in the latter appeared more appealing than the first.

In the UNSC, Palestine would have to win the consensus of the five permanent members of the Council, which would be practically impossible, since Obama administration has already vowed to veto any proposed resolution for an upgrade in status but the UNSC had an obligation to look into the bid by the PA to have Palestine recognized as a state. According to the UN Charter, the bid had to receive a total of nine or more votes out of the possible fifteen. The majority of the

members of the UNSC would have voted for the recognition of Palestine as a state, but the U.S efforts to block the bid would have prevailed (Parsons, 2011).

The environment in the UNGA is more supportive in many aspects. First and foremost, recommendations of resolutions to the UNSC are passed by majority and not unanimously, and since diplomatic bilateral efforts of the Palestinians have granted their state the recognition of 124 countries of the 193 UN member states (Maan, 2011), it would not be difficult to win the vote especially with the support of large blocks of countries such as members of the EU and sympathizing countries of Latin America.

According to Krastev and Recknagel (2011), if certain of being blocked in the UNSC – Palestinians could ask the UNGA to be recognized as a state but not as a member of the UN. This request, which requires only a simple majority approval in the UNGA and does not need UNSC endorsement, would give Palestinians the position of a “non-member state” with observer status, an upgrade from their current status as a non-state observer”, which indeed was the case.

Furthermore, presidency of the UNGA was in the hands of an Arab country- Qatar at the time of the bid. Nassir Abdel Aziz-Al-Nassir, Former Permanent Representative of Qatar at the UN, was elected President of the 66th session of the UNGA on 22 June 2011 and assumed the Presidency on 13 September 2011. just on time to further boost a positive atmosphere in support of the case (UNGA, 2011).

The process of admitting new members into the UN is prescribed in the rules and procedures of the UNSC and the UNGA. The application for admission is submitted to the UN Secretary General. The Secretary General then forwards the application to both the UNSC and the UNGA. According to rules 58 to 60 of the Provisional Rules and Procedures of the UNSC, the applicant

state must include a statement in the application declaring that “it accepts the obligations contained in the Charter”(Zanotti and Browne, 2011, p.6).

After receipt of the application, President of the Council refers it to the Committee on the Admission of New Members, which reviews it, and if it recommends the acceptance of the new member, the rest remains subject to the veto of any of the five permanent members. If the Council decides to recommend the state for admission, it adopts a resolution of recommendation and forwards it to the UNGA, which then considers whether the state is a “peace-loving” state and is “able and willing” to carry out obligations in the Charter, and then decides by two thirds majority of the members present and votes on admission by a resolution (Zanotti and Browne, 2011, p.6)

As for the case of Palestine, and knowing that the US would veto the resolution in the UNSC, The UNGA may adopt a resolution to consider Palestine a “non-member state” on the 1967 borders, without the recommendation of the UNSC. However, the decision will legally be non-binding (Parsons, 2011). This was the scenario that succeeded on November 29th 2012, and the upgrade in the status of Palestine won by a majority of 138 members out of the 193 in favour, 42 abstentions, and 9 rejections, among which are Israel and the US (Euronews, 2012).

4.3.2 Legal ramifications of the bid

The PA’s UN action headed by President Abbas will have several legal implications. First and foremost, it will provide Palestinians with a legal tool to submit grievances against Israel in the ICJ (Azarov, 2011, p.5), a significant tool to the cause of Palestinians against Israeli occupation, that Palestine does not now enjoy due to its lack of recognition as a state. This would have a significant influence on final status negotiations issues, such as settlements and Jerusalem.

Azarov (2011) also explains that a Palestinian state party in the ICC will enable Palestinians to present the issue of settlements to the court and prosecute Israelis responsible for the construction and expansion of illegal settlements within the recognized 1967 borders including East Jerusalem. Palestine would also be able to prosecute Israelis who have committed violations of the International Humanitarian Law and war crimes against Palestinians, which have been repeatedly condemned by the international community.

Moreover, Palestinian general access to international institutions and bodies will be enhanced by recognition of the UNGA. Holm (2011) summarizes the benefits as follows: “An internationally recognized Palestinian state (through the UN General Assembly) would be able to join international organizations such as the IMF and the World Bank, become a signatory party to important multilateral treaties, especially those protective of human rights, have standing in the International Criminal Court, the International Court of Justice and domestic courts of countries that recognized the Palestinian state.”

Holm also sees that a Palestinian state that is party to the Geneva Conventions will oblige Israel to change the treatment of Palestinian prisoners who are currently considered “civilians engaged in unlawful combat” to prisoners of war according to the Third Geneva Convention. It will also emphasize the Advisory Opinion on the Illegal Construction of the Israeli Separation Wall.

On the other hand, Israel sees the UN bid as a blatant breach of the peace agreements signed and already in force, and also to UN Resolution 242 which calls upon Israel and fighting Arab states to reach a just and lasting peace through negotiations. Also, Israel claims that the 1967 armistice lines never constituted defined and marked borders, and that it would be unlawful for Palestinians to claim these lines as internationally defined borders (Parsons, 2011).

Yet, despite the counter argument of Israelis, Palestinians believe the September bid would bolster the cause and legitimacy of Palestinian rights in international fora, whether in UN institutions, bodies, and arms, or other non- UN entities. It would further strengthen Palestinian leverage in any future negotiations or diplomatic process, and enhance the representation of the Palestinian people in new arenas.

4.4 Key analytical findings

The Palestinian leadership took the decisive decision to focus on obtaining recognition for the state of Palestine under the impact of a number of external factors in the context of regional and international politics, most prominently, the impasse of peace negotiations with Israel, the prevailing right wing in Israel, and the influence of the Arab spring and the political instability in neighboring Arab countries, in addition to the changes in the role of the US in the Israeli-Palestinian peace process.

These factors came hand in hand with the internal issues emerging from increased resistance and more opposition to the illegitimate grounds of governance of the Palestinian leadership amid a grave economic and financial crisis in the PA, coupled with a persistent failure in achieving internal reconciliation and unity with the Hamas government in the Gaza strip.

Internal conditions fueled the desire of the PA to reach out for a ray of hope in a newly explored-field, the UN. The Palestinian UN bids were a mean to legitimize the very existence of the political leadership governing the PA, but could also be seen as a creative diplomatic step to sail away from the unfruitful strategy of bilateral negotiations given the surrounding international and regional circumstances, and exploring novel opportunities to garner further international support for the Palestinian cause, hoping to empower Palestinian national aspirations with newer tools of

multilateralism, and achieve better representation at the international stage in the path towards self- determination.

The PA leadership has attracted both positive support and criticism from the international community. The bidding move to get recognition from the UN indicated that the PA leaders were more than ready to use multilateral diplomacy as an alternative option to resolving external and internal conflicts surrounding them. The move was inevitable as it is influenced by the leaders' desperation to save their authority and implement developments that would uplift the economic status of the Fatah- ruled West Bank.

Some have viewed the bidding move in 2011 by the PA leaders a cunning strategy to gain grounds for empowerment to have negotiations with Israel with a different set of rules for the game, and compensate for Abbas' inability to deal with the difficult situation in Gaza.

Chapter Five: Palestinian Statehood Strategy

The aim of this chapter is to examine the main components of the state-building strategy of Salam Fayyad who served as Prime Minister from 2007 to 2013. It seeks to assess the extent to which his vision has impacted the political and diplomatic process and road to the upgrade in Palestine UN status in 2012, while reviewing the support given to him, as well as the criticism leveled at his approach. It presents a description of the bid, the obstacles and challenges it encountered, and the diplomatic campaign launched to bring it to success. It also gives an account of the influence of foreign aid on the Palestinian bid strategy, and looks into future prospects after the upgrade in UN status.

5.1 Fayyad and ‘Fayyadism’

Fayyad was the Prime Minister of the PA since June 2007 until his resignation on 13 April 2013. He was in charge of the Finance Ministry between 2002 and 2006 and again in March 2007. He was first appointed Prime Minister on 15 June 2007. His reappointment came on 19 May 2009, and his resignation was attributed to political differences with Abbas over the finance portfolio.

Fayyad, a western-educated internationally respected economist and politician, was born in the West Bank in 1952. He received his bachelor's degree from the American University of Beirut, MBA from St. Edward's University in Austin, Texas, and PhD in Economics from the University of Texas at Austin (Remnick 2012). Fayyad was teaching economics at Yarmouk University in Jordan, before working with the World Bank in Washington D.C. from 1987 to 1995. He served as the IMF's representative to the PA until 2001. He was appointed as the PA Finance Minister under Yasser Arafat from 2002 to 2005, and became known in the international community for introducing economic reform and combating official corruption. In late 2005 he resigned from the cabinet to found and run the Third Way Bloc, an independent party that would run and win two seats in the PLC elections of January 2006 (*BBC News*, 2007).

In March 2007, Fayyad was again appointed PA Finance Minister under President Mahmoud Abbas, in the joint Hamas-Fatah government. Following the Palestinian inter-factional violence and division between the West bank and Gaza Strip, Abbas dismissed Prime Minister Ismail Haniyyeh of Hamas, and Fayyad was sworn in as Prime Minister of an emergency government on June 15, 2007. Though appointment to the position was never confirmed by the PLC, Abbas reappointed Fayyad as Prime Minister in May 2009 until he resigned in April 2013.

When Fayyad announced his two- year plan in 2009, aiming at building a Palestinian state, as presented in the program of the 13th government titled 'Palestine- Ending the Occupation, Building the State,' he marked a shift in focus from the political framework of the peace process with Israel into building Palestinian institutions for a future state.

5.1.1 Essence and main components

Salam Fayyad, a renowned economist whose influence has grown over the past decade, sought to lay down a national strategy that advocates national development, enhanced security, and

effective governance of social, economic and political interests, and to engage in active economic building of Palestinian institutions through innovativeness in all businesses. The plan involved restructuring government institutions, developing the infrastructural base of Palestine, and strengthening the security sector. Columnist Thomas Freidman of the New York Times, coined the term “Fayyadism” to describe the political and economic reforms of Fayyad, that have been vital to the state-building agenda (Leech, 2012).

The political and economic vision of Fayyad was basically laid down in three main documents guiding the work of consecutive Palestinian governments: 1. The Palestinian Reform and Development Plan, 2. Palestine: Ending the Occupation, Establishing the State, and 3. Homestretch to Freedom. The most significant to the scope of this study is the second document, which was also known as the program of the thirteenth government issued in August 2009, and covered the 2 years preceding the Palestinian bid for statehood in the UN.

In essence, the document expresses belief in paving the way for statehood as it states in its introduction: “The establishment of a Palestinian state within two years is not only possible, but essential.” It elaborately explains Fayyad’s vision of the future state of Palestine and its foundational principles, in harmony with the national goals prescribed in 11 clauses: “end the occupation of the Palestinian territory since 1967; promote national unity; protect Jerusalem as the eternal capital of the Palestinian state; protect refugees and follow up on the attainment of their rights; secure the release of prisoners; ensure human development; achieve economic independence and national prosperity; bring equality and social justice to all citizens; consolidate good governance; bring safety and security across the homeland; and build positive regional and international relations.”

It emphasizes that the achievement of national goals will require the development of the PA’s public institutions through “unification and modernization of the legal framework; rationalization

of governmental organizational structures and processes; information and communications technology; financial resources management; and human resources management.” These were further translated into priorities and programs for every development sector within the PA, with specific development objectives for each of its operating ministries.

As indicated in the plan, the government would embark on a two-year course of constructing government offices, roads, and other infrastructure projects to promote the economy. The infrastructure building plan would create employment opportunities to the numerous jobless Palestinians, and it would influence innovativeness in investments, and attract foreign investments to Palestine, thus strengthening the private and public sectors.

The foundational principles of Fayyadism, mentioned specifically in the plan, were enhancing accountability and transparency in the public sector, and combating corruption which has been not only gnawing the PA’s limited resources, but also undermining the position of the PA in front of international donors, who became skeptical about the basic capability of the PA in managing the resources allocated as public funds.

5.1.2 Support and criticism

Fayyad’s approach garnered the support of many analysts, but also received critique from various parties. Supporters such as Elgindy (2011) explain that Fayyad introduced a new approach by compelling the Palestinian society and its government to look into assuming a development-oriented outlook to statehood, thus turning the eyes of the government towards development in a more structured manner.

Inbari (2009) further advocates this view saying that the plan has influenced the shift of government institutions from corrupt and ineffective functions to transparent institutions, with the common objective of turning Palestine into an economically sufficient state. He asserts that the

West Bank in particular, was revolutionized by the efforts of Fayyad and his followers, and that the economic performance of Gaza increased significantly, proving the 2- year plan to be fruitful.

In his analysis, Inbari views the plan as a challenge to the PLO rhetoric since 1964, and an attempt to sideline Fatah Movement of President Abbas, in which Fayyad has many rivals, by assuming an alternative approach to Fatah's only option for decades, which is negotiating with Israel. Yet, this issue remains controversial. The document reaffirms commitment and alignment of approach and implementation with the national goals and founding principles of the PLO, and remains in conformity with the national direction towards a two state-solution.

Zunes (2012) also echoes Inbari by affirming that the plan attained one of its primary goals, which is to create transparency in the government institutions, and gear them towards assuming the culture of accountability, turning their focus from passing time to making development-oriented decisions. He believes that every impact of the 2-year plan was identified as a goal achieved for the state building agenda.

Following the start of implementation, the US and Europe, major donors to the PA, applauded the new vision and stepped in to back up Fayyad's quest financially. In a joint statement issued on September 24th 2009, the Quartet officially welcomed the new Plan. The Statement read: "Recalling that transformative change on the ground is integral to peace, the Quartet welcomes the Palestinian Authority's plan for constructing the institutions of the Palestinian state within 24 months as a demonstration of the PA's serious commitment to an independent state that provides opportunity, justice, and security for the Palestinian people and is a responsible neighbor to all states in the region."

Moreover, on September 22, 2009, Tony Blair, the Middle East Quartet Special Envoy, hosted the UN Ad Hoc Liaison Committee for Assistance to Palestinians, on the margins of the UNGA,

where committee members praised Fayyad's performance. Norway's foreign minister, Jonas Gahr Store, praised donor support of the plan as "an investment in a political project", adding that: "the plan now, I think, will be a key in the way donors plan and structure their assistance" (UN, 2009). Committee members highlighted the increase in the flow of donor assistance to the PA budget in support of the new endeavor, promising to cover the \$400 million deficit in the PA budget.

On the other hand, these developments were not well received by pro-Israeli critics, as Israeli officials expressed legal and political concerns pertaining to the plan being a preface for a unilateral declaration of a Palestinian state on the 1967 borders, which they considered a breach of peace agreements signed between the PLO and the Government of Israel. Also, Israel expressed concern about Fayyad's blueprint including development ideas for Areas C which are still under full Israeli control (Inbari, 2009).

Criticism of the plan did not only come from the Israeli side, but also from several voices in the Arab world. Leech's research paper (2012) for the Arab Center for Research and Policy Studies based in Doha, Qatar highlights the deficiencies of Fayyad's agenda. First that the language of the plan appealed to the West, namely the US and its plans to create a new Middle East in which the economic arrangements are centralized under its hegemony. Second, that "Fayyadism" further entrenched occupation and Palestinian dependency on donor money instead of achieving the opposite as drawn in the plan, since the reform agenda required heavy financing from the international community.

Other flaws highlighted by Dunne (2010) illustrated that the plan was unrealistic, in the sense that some of the reforms in Palestinian institutions were difficult to achieve without the full cooperation of Israel, especially security sector reform, a major component of Fayyad's plan. And therefore, although the plan was ambitious in wanting to create a de facto Palestinian state

within two years, the reality on the ground imposed that the state building plan was unable to replace the political track of negotiations with Israel.

Despite all the controversy raised about Fayyad's method and vision, his plan was the first to structure and organize the work of the PA towards a specific objective within a set timeframe. The World Bank report in September 2011 which came in conclusion of the 2 -year plan submitted to the Ad-Hoc Liaison Committee, noted that the public institutions in the West Bank and Gaza have been performing as good as other World Bank client countries of the same income level, yet showing concern about the sustainability of the Palestinian territory economic growth in light of Israeli restrictions and donor dependency.

Also, the IMF reiterated the PA's preparedness for a state, by declaring in a report submitted to a donor meeting in Brussels in 2011: "The PA is now able to conduct the sound economic policies expected of a future well-functioning Palestinian state, given its solid track record in reforms and institution-building in the public finance and financial areas." Such findings have received the backing of donor countries and the UN, which in turn, gave a boost to the PA's initiative to approach the UN for recognition.

5.2 The UN 2011-2012 statehood bid

Official reports of the World Bank and IMF, in addition to European and Arab support, formed a solid base for the PA's move towards obtaining recognition in the UN. Palestinians used these official testimonies as proof of their preparedness for the establishment of the state, and commenced diplomatic efforts to convince individual countries and country blocs to support the Palestinian quest.

In an interview conducted on 4 March 2014, Ambassador Rawan Abu Yousef, Assistant Foreign Minister for Multilateral Relations, clarified that the Palestinian leadership always believed that

seeking the realization of the right to self determination of the Palestinian people is an inalienable right, and that seeking recognition for the State of Palestine and the negotiations process should go in parallel tracks. Therefore, the leadership approached the UNGA, not as an alternative to negotiations, but rather as an assisting factor to commit Israel to the internationally agreed terms of reference of the peace process. This came to the distaste of many foreign and Arab countries.

Ambassador Abu Yousef explained that President Abbas embarked on consultations internally with the PLO Executive Committee and Palestinian political factions, and externally with the Follow-Up Committee of the Arab Summit, geopolitical groups, and multilateral forums such as the Organization of Islamic Conference and the Non-Alignment Movement in which Palestine is a member, before officially submitting the membership application to the UN.

In 2010, the shift in Palestinian strategy was marked by President Abbas refusal to submit to American pressure and declination to return to direct negotiations with Israel without a complete freeze of settlement construction and clear terms of reference. According to the International Crisis Group Report of 2010, this shift indicated that: first, Palestinians have long invested in the peace process which turned out to be a disappointment not only to the leadership but also to the people.

Second, the Palestinian leadership, and for the first time in a long time, is looking for a strategic alternative to gain more international leverage to strengthen their weakness as a negotiating partner, and to alleviate Palestinian dependency on the US as the sole broker, approach the rest of the international community which is generally concerned about the Palestinian cause, and promote additional engagement of sympathetic forces in the dynamics of the Israeli-Palestinian conflict resolution.

On September 23rd 2011, President Mahmoud Abbas officially submitted the application to the Secretary General of the UN, Ban Ki-moon, requesting the admission of membership of the State of Palestine in the UN. A letter was attached to the application, declaring, in accordance to rule 58 of the Provisional Rules of Procedure of the Security Council, and rule 134 of the Rules of Procedure of the General Assembly, that Palestine is a peace- loving nation, accepting the obligations contained in the UN charter, and promising to fulfill them (see Annex 1) (Zanotti and Browne, 2011, p.6).

5.2.1 A feverish diplomatic campaign

To garner support for the bid, Palestinian statehood diplomacy began way earlier than September 2011, by contacting high political officials in target countries and lobby groups supporting the Palestinian cause. The President, Ministry of Foreign Affairs and its diplomatic missions abroad, namely the Palestinian Permanent Mission to the UN started a lobbying plan to persuade the largest majority possible to recognize Palestine as a state and vote for the bid. By June 2011, 112 nations have recognized Palestine as a state and the Palestinian UN envoy Riyad Mansour announced that the number is approaching 120 (*BBC News*, 2011).

The month following his appearance in the UNGA, the President commenced an international tour to garner further support for the bid. In October, he gave a speech at the European Council in Strasburg, and visited Honduras, and two members of the UNSC Columbia and Portugal, in addition to Bosnia and Herzegovina to convince them to vote in favor of the bid. The plan, according to Azarof (2011), was to work on three levels: obtaining recognition from international organizations, such as the UN and others, ratifying various international conventions such as the Geneva Convention, and approaching individual states for recognition.

On the bilateral level, Ambassador Abu Yousef explained that an inventory was prepared listing countries which supported the bid and those who were reluctant, and accordingly, meetings were organized with friendly countries to request them to influence other reluctant countries. This way, many countries, such as Germany and Australia, changed their positions from rejection to abstention. President Abbas also had his influence, for example, he was able to convince Switzerland to change its position from abstention to in favor.

To campaign for the bid, a political committee subordinate to the PLO Executive Committee was formed in 2011, consisting of most of the members of the PLO Executive Committee and others. The political committee was responsible for preparing plans and policies and presenting them to the Executive Committee for decision making and endorsement. The Media Committee was also formed as to draft policies, declarations, and talking points.

In an interview with Ammar Hijazi, Deputy Assistant Foreign Minister for Multilateral Affairs, and former coordinator of the political committee responsible for the campaign on 4 March 2014, he said that preparations for the campaign started in 2009 by initiating an international campaign to broaden recognition of the state of Palestine. The launch of the campaign started through contacting foreign political parties, and the first circle of friends and acquaintances in foreign countries, in addition to already – existing solidarity movements, who were in support of the Palestinian cause but wanted to follow a defined policy line. A very important element of the campaign was the Palestinian Diaspora who used their local knowledge to advocate the quest.

Another tool used was dispatching special envoys of the president on tours to garner support for the bid like: Dr. Mohammad Shtayyeh, Senior Advisor to the President on Negotiations with Israel, to south east Asia, Dr. Ghassan Al-Khatib, former Director of the Government Media Centre, to Australia and the pacific ocean islands, Dr. Hanan Ashrawi, member of the PLO

Executive Committee, to the US, Canada, and Austria, and Abbas Zaki, member of Fatah Central Committee to China.

Internally, the PA leadership concerted efforts to mobilize the Palestinian people behind the initiative to create internal momentum in support of the bid. As reported in *The Telegraph* (2011), one week earlier to his speech at the UNGA, on September 16th 2011, the President addressed the people on television announcing and explaining the initiative, the reasons behind it, and the realistic results expected to be achieved. He said that the main overall objective was to end occupation.

Also, Mr. Hijazi explained that the political committee made contacts with political parties and factions to mobilize their supporters, and also made contacts with journalists, think tanks and non- governmental organizations, who have the capacity to influence public opinion. Palestinian mass demonstrations in the streets of the West Bank were organized to support the move.

5.2.2 External challenges

One of the major criticisms against the bid, mainly voiced out by the US and Israel, was that it was a unilateral move. Suzan Rice, US Ambassador to the UN, stated in her remarks to the Security Council Open Debate on the Middle East held in October 2012, reiterating Obama's comments to the UNGA a month before: "Unilateral actions, including initiatives to grant Palestinians non-member state observer status at the United Nations, would only jeopardize the peace process and complicate efforts to return the parties to direct negotiations." (Pollak, 2012)

Israeli Foreign Minister Liberman was quoted to have said: "If the Palestinians go to the UN General Assembly with a new unilateral initiative, they must know they will be subject to severe measures by Israel and the United States." (*The Daily Star*, 2012). In response, Ambassador Abu

Yousef refutes the argument of unilateralism saying that returning the Palestinian cause to the arms of the most significant multilateral forum, the UN, backed by countries which recognize Palestine cannot be called unilateral.

Israel and US opposition to the bid was reflected in actual steps to influence the PA's decision. Israel stopped the transfer of Palestinian tax revenues to the PA which it direly needed to pay its employees, and the US Congress decided to bar the transfer of about \$200 million of aid to the PA, which was allocated for crucial development projects (*Haaretz*, 2011). Both Israel and the US were aware of the deteriorating financial conditions of the PA and decided to exert pressure through financial and diplomatic means to change the Palestinian course of action.

Europe on the other hand did not suspend any donor aid to the PA, but did not want to get to an UNGA vote that would illustrate the extent of division among EU member states on a major foreign policy question when it is already trembling with its euro zone crisis. According to initial statements by various country officials in the media, Spain, Portugal, the Nordic countries, and France stated they will vote in favor of a resolution, while Germany, Italy, the Netherlands, the Czech Republic, and Hungary will oppose, and many others will abstain (*Al Arabiya*, 2011).

Moreover, the bid received dislike from advocates of the creation of a one bi-national state who believed the bid would damage this option as a solution for the Israeli- Palestinian conflict. Other activists argued that the bid's legal implications may compromise the right of return of refugees to historical Palestine, since the recognition would establish the 1967 armistice lines as defined borders for the Palestinian recognized state. Also, that altering the international status of the PLO may threaten the representation of Palestinian refugees and Diaspora (*Ma'an*, 2011).

Furthermore, Ambassador Abu Yousef contested another criticism claiming that the bid was only a tactic and a diplomatic maneuver on the part of President Abbas saying If it was a tactic, the

president would not have gone forward with it. Many pressures were exerted on him to back down, not only from the US and Israel threatening him to be toppled, but from Arab countries as well, but his argument was always a legal argument, that self determination is an indispensable non-negotiable right for the Palestinian people granted by the international law.

Despite the challenges, President Abbas submitted Palestine's application for admission in September, and gave a historic speech to the UNGA Sixty-sixth session advocating for the application and reaffirming the guiding principles of Palestinian strategy. He emphasized that the PLO objective is to realize Palestinian national rights, and that it still adheres to the renouncement of violence and the option of negotiating a lasting solution to the conflict in accordance with resolutions of international legitimacy, will continue the popular peaceful resistance to the Israeli occupation, and that bringing the cause to the UN is confirmation of Palestinian reliance on the political and diplomatic option.

As the application got processed, the main obstacle facing it remained the US. Obama administration announced that it will veto the application at the UNSC, which it actually did. The PA had six supporting votes in the UNSC out of 15 and needed 9 to force a positive vote. This was a difficult challenge to overcome since the US imposed all its weight and diplomatic strength to defy a supporting vote (Spillius and Blomfield, 2011).

With failure to achieve the objective in the UNSC, UNGA's 193 member states were the remaining hope. The PA believed it had a chance to upgrade its UN status to gain a new set of privileges not previously granted with a positive vote in the Assembly. Yet, a major bloc like Europe had no appetite for full recognition of a Palestinian state which it considered a unilateral move, and was divided when it came to an upgrade in status (Usher, 2011).

Nevertheless, the PA leadership was not in a position to back down after all the momentum it created on the internal front. Any sign of Abbas lenience or submission to Israeli and American pressures would have sparked serious distaste from the Palestinian people, and would have compromised the power of the President and probably instigated a third Intifada, which the US and Israel in particular wanted to avoid.

Also, the PA warned that any sway from the UN bid would boost the popularity of Fatah's rival faction- Hamas- and would increase its expanding influence in the West Bank. The PA feared Hamas would use the President's fall back to discredit his leadership and damage his power and image. This would have invalidated Abbas' rule, and weakened the position of the PA amongst its people which was already in a feeble situation. (McGreal, 2012).

To prevent these scenarios before the vote in the UNGA, the region attracted intense diplomacy to alleviate the risks. The US initiated a diplomatic endeavour in which it assigned the Quartet to crafting a new statement calling for the recommencement of Israeli-Palestinian talks based on Obama's May speeches on the Middle East which referred to the 1967 lines as basis for negotiations (Makovsky, 2011, p.5).

According to Makovsky (2011,p.5), the aim of this step was to convince Abbas to discard the UN bid and buy time to return to negotiations with Israel, thus, avoiding a direct diplomatic confrontation with Israel, and saving the US the hassle of dealing with this issue when it is already busy preparing for elections. A Quartet statement would also save face of the EU, which was struggling to reach a unified policy amongst its member states regarding the Israeli-Palestinian conflict. This was not enthusiastically welcomed by the PA leadership, and was deemed unsatisfactory given that the statement did not provide clear terms of reference or timeframe for the talks.

Another US endeavor involved proposing an alternative European- led UN resolution that would address the aspirations of the Palestinian people and set the framework for future negotiations without achieving state recognition. The resolution would upgrade the status of Palestine, but without any demarcation of borders, opening embassies, or awarding Palestine the powers of statehood. Makovsky (2011, p.7) notes that: “The Palestinians may therefore need to choose between a weaker resolution that enjoys European support and a more maximalist resolution with less support”. This resolution was difficult for the PA to accept, first because this option would not live up to the momentum already created internally promising recognition in the UN, and the PA was already on the move to push forward the bid.

5.2.3 Options and prospects after the bid

Palestine overwhelmingly won the vote in UNGA on 29 November 2012, with 138 votes in favor, 9 votes against (Canada, Czech Republic, Israel, Marshall Islands, Micronesia, Nauru, Panama, Palau, US) and 41 abstentions, and became a non-member observer state (UNGA, 2012). The PA changed all its official papers and correspondences accordingly to address the world as the State of Palestine. This meant that the Israeli-Palestinian conflict has become more internationalized, in the sense that the conflict is now between two states in the eyes of the international community and that the State of Palestine is occupied by another state. This would definitely increase the leverage of the Palestinians worldwide and their negotiating position.

Direct talks resumed under the auspices of US Secretary of State John Kerry in 2013, with a time frame of 9 months ending in April 2014 for reaching an agreement. In an interview conducted on 23 October 2013, Dr. Mohammad Shtayyeh, Senior Advisor to President Mahmoud Abbas on Negotiations with Israel, and when asked about the tangible influence this upgrade in status had on the Palestinian position on the negotiations table, and how the diplomatic support Palestinians garnered in the UN manifest in negotiations, he stated that the upgrade in the status of Palestine

is in fact a significant legal change to the characteristic of representation from “occupied Palestinian territory” to the “occupied state of Palestine”.

He explained that the upgrade in status meant that: first, Palestinians achieved international legitimacy for the state of Palestine on the 1967 borders. Second, international recognition of Jerusalem as the capital of the State of Palestine, and third, the change from occupied territory to an occupied state, further solidifies the legal claims of the Palestinian people.

Shtayyeh further added: “Until now we have committed ourselves to not seeking membership in UN agencies. However, if the negotiations process collapses, we will be heading towards a strategy of total internationalization of our cause in multilateral forums. This means we will go to the ICJ, ICC and other UN bodies and organizations. The applications to join 63 UN agencies are ready to be submitted any time. Now is the time for a paradigm shift in how the international community pushes Israel towards achieving peace”.

Ambassador Abu Yousef further confirmed this, saying that a strategy has been prepared by a team of experts from the MoFA, Negotiations Support Unit, and major Palestinian diplomatic missions to seek admission of the state of Palestine to UN bodies, arms, and organizations. However, with the resumption of negotiations, the leadership committed itself politically to freeze their application for admission in specialized UN agencies until later.

On a more internal level, with the resignation of Prime Minister Salam Fayyad in April 2013, a new era had begun. The end of Fayyadism was mourned by some but welcomed by others. His program was already decaying according to Brown (2013), and the new government of Rami Al-Hamdallah will take some time to plough its way through given the legacy Fayyad left in developing Palestinian institutions.

5.3 Key analytical findings

Despite the controversy which accompanied Prime Minister Fayyad's methodology towards institution-building for the establishment of a Palestinian state, his plans and vision had paved the way for the diplomatic moment in which the PA was able to invest to achieve an upgrade in status in the UN.

And despite the fact that the reality of occupation on the ground has not changed, the successful diplomatic efforts exerted by the PA to create a supporting momentum for the bid, does not only mark a success for the better representation of the Palestinian people in multilateral forums, but also an achievement for Palestinian diplomacy.

The vote in the UN was a practical measure to weigh international sympathy and support Palestinians were able to garner, and a result of a diplomatic momentum Palestinians were able to create in light of the turning realities of the region and dynamics of international politics. The Palestinian leadership thought the step would give the weak Palestinian negotiating position a better tool to maneuver on the negotiations table, yet this awaits proof.

As many argue that the vote itself did not represent a victory, the least that can be said is that the State of Palestine has now a new set of international tools and privileges that allows it to present the Palestinian people's case and cause with better representation and better international support.

In conclusion, by creating this diplomatic momentum internally and externally, it became difficult for the Palestinian leadership to back down under the influence of opposing forces, mainly the US and Israel. The implications of withdrawing the application or endorsing a resolution that would fulfill a target less than recognition were politically disastrous to the credibility of the leadership, and would have strengthened internal opposing forces, namely Hamas.

Conclusion

Palestinian statehood is not a very recent phenomenon, or some new emerging issue, but rather a plea that dates as far back as the British mandate of the 1920s. It went through successive changes in continuous evolution connected to a number of significant historical developments in Palestine during the past decades.

The case of Palestine -and other cases of post conflict states- has triggered discussion on what constitutes a state. Scholars have proposed a variety of definitions in terms of borders, a permanent population, sovereignty, monopoly over the use of force, and others. In international law, the established criteria of statehood is prescribed in the Montevideo Convention of 1933 as having a permanent population with defined territory and government, and capacity to enter into relations with other states. These criteria have been influenced by trends and forces of globalization, which some scholars believe have undermined the power of the state and its role and function, while others believe they have only changed how states define themselves and exercise their powers.

One of the most substantial, yet controversial, elements of statehood is state recognition. This aspect has been ruled by mainly two major theories, the declaratory and the constitutive, each having its group of advocates. The arguments of both sides revolve around whether recognition of the new state by other states is fundamental or not to the legal character of that state and its interaction with other states in the international arena.

Post conflict state building has experienced numerous external interventions and effects from the international community. Such interventions have followed several approaches, but mainly bottom-up and top down state construction. They, however, had little or limited success in achieving their goals due to a number of complex issues and challenges, including inadequate knowledge of the culture of post conflict countries and operational limitations. Many researchers agree that along with such problematic interventions, the most important shortcoming in state building after major conflicts is the lack of local leadership and ownership of the state-building process.

During the British mandate, Palestine was among the Class A mandates that were considered capable of standing independently as fully fledged states. And even after the cause was put in the hands of the UN in 1947, it fully recognized a Palestinian Arab state alongside the Jewish state in the partition plan, giving Palestine the form, structure, and foundations of a state.

Later on, as the representation of the Palestinian people further developed with the establishment of the PLO, it sought recognition on bilateral and multilateral levels, and struggled for the enhancement of Palestinian representation worldwide alongside the struggle for liberation. All three stages formed the foundations for the Palestinian statehood plea in recent years.

Within this context, the case of Palestine is significant proof of the validity of the constitutive theory in international practice. The recognition of the Palestinian state declared by Arafat in 1988 opened new doors of diplomatic opportunity to the PLO to expand its representation of the Palestinian people. After the Oslo agreement, which entailed the establishment of the PA, Palestine fulfilled the four criteria necessary for statehood with a wide network of recognizing countries, UN bodies, and international organizations.

And in 2011, internal and external factors have come together to ripe a diplomatic moment for the PA leadership to shift its strategy from bilateral negotiations with Israel to requesting recognition of Palestine as a member state in the UN. External factors included the failure of Oslo and stalemate of peace talks with Israel, US administrations preoccupation with internal agendas, and their failure to reboot fruitful Palestinian-Israeli negotiations, and the wave of ‘Arab Spring’ in the Middle East and North Africa.

Internal factors also added pressure on the PA leadership to take the daring move in 2011. The most prominent being failure to achieve reconciliation with Hamas, causing the continuous division between the West Bank and Gaza Strip, the PA’s financial trouble that has been further aggravated by the global financial crisis of 2007, and increasing criticism against the constitutional and legitimate foundations of President Abbas rule and his emergency government.

Analysis varied regarding the PA shift towards multilateralism. One saw this to be a tactical intervention to obtain better terms in negotiations with Israel, another suggests that this step was a savior option to the PA’s leadership, given the hardships and pressures caused by internal and external forces. The leadership hoped that upgrading the status in the UN would bolster its popularity among the Palestinian people and assist the president in maneuvering internally with Hamas and externally with Israel.

Regardless of the criticisms, the upgrade in status had several legal implications which empower Palestinians with new legal international tools to support Palestinian claims against Israel, and boost the representation of the Palestinian people in international bodies and institutions, most significantly in the ICJ and ICC, in which Palestine can file claims against the Israeli occupation.

In preparation for statehood, Salam Fayyad, who held the position of the PA prime minister from 2007 to 2013, proposed a novel vision different from the PLO traditional approach, in which he

geared the PA focus, and consolidated its resources towards the construction of the Palestinian public sector, combating corruption, and introducing economic reform, as major components of his state-building agenda.

His vision, later called ‘Fayyadism,’ as presented in the program of the 13th government, to achieve a Palestinian state by 2011, received both applaud and criticism. Supporters saw his approach to be a valuable method towards developing the effectiveness and transparency of Palestinian institutions, and his plans received particular praise from donor countries, which were encouraged to provide funds in aid of his policies. On the other hand, Israel heavily criticized the new approach, considering it preparation for a unilateral move towards statehood, in violation of all signed agreements with the PLO. There were other critiques among Palestinians and from the Arab world, who voiced their concern that the plan further entrenched occupation and dependency on donor aid instead of helping to achieve the opposite.

Nevertheless, by the end of the implementation of Fayyad’s two year plan, many international organizations reported development in the PA institutions; presenting evidence that the plan played a significant role in illustrating the PA preparedness to having a fully functioning Palestinian state.

The Palestinian application for an upgrade in UN status faced serious obstacles, mainly posed by the US and Israel who took actual steps to stop the progress of the application through exerting financial and diplomatic pressures, however to no avail. It was difficult for the leadership to compromise for less than the upgrade it requested, or else risk damaging its image and destroying its credibility among the Palestinian people, and strengthening internal rivals, mainly Hamas.

To gain support for the application for admission of the State of Palestine to UN in September 2011, Palestinian statehood diplomacy used three main instruments: creating internal momentum

in support of the bid, approaching individual states for recognition, and mobilizing already existing structures supporting the Palestinian cause. These instruments were successful in garnering support to the bid in the halls of the UNGA, after the US vetoed the resolution in the UNSC.

After achieving the upgrade in status from “non-member observer entity” to “non-member observer state” in the UN, Palestine has acquired a number of new privileges and instruments, mainly its ability to become a member of UN agencies and bodies, and file claims at the ICC and ICJ. However, with the resumption of negotiations in 2013, the PA leadership decided to freeze Palestinian membership applications in these agencies in favor of the political track of negotiations with Israel.

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Annexes

Annex 1: Application of the State of Palestine for Admission to Membership in the United Nations

The President of the Security Council presents his compliments to the members of the Council and has the honour to transmit herewith, for their information, a copy of a **note dated 23 September 2011 from the Secretary-General** addressed to the President of the Security Council, and its enclosures.

This note and its enclosures will be issued as a document of the Security Council under the symbol S/2011/592.

23 September 2011



THE SECRETARY-GENERAL

23 September 2011

Dear Mr. President,

In accordance with rule 135 of the rules of procedure of the General Assembly and rule 59 of the provisional rules of procedure of the Security Council, I have the honour to convey herewith the attached application of Palestine for admission to membership in the United Nations, contained in a letter received on 23 September 2011 from its President. I also attach a further letter, dated 23 September 2011, received from him at the same time.

I should be grateful if you could bring the letter of application and its annex to the attention of the members of the Security Council. I would also be grateful if you could bring the further letter to the attention of the members of the Security Council.

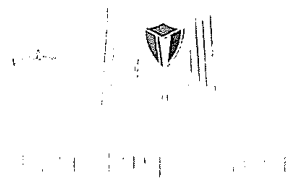
Please accept, Mr. President, the assurances of my highest consideration.

A handwritten signature in black ink that reads "Ban Ki-moon". The signature is fluid and cursive, with the first name "Ban" being the most prominent.

BAN/Ki-moon

His Excellency
Mr. Nawaf Salam
President of the Security Council
New York

Transmitted under cover ()
20109 11-09305



**Application of the State of Palestine
for Admission to Membership in the United Nations**

Excellency,

I have the profound honor, on behalf of the Palestinian people, to submit this application of the State of Palestine for admission to membership in the United Nations.

This application for membership is being submitted based on the Palestinian people's natural, legal and historic rights and based on United Nations General Assembly resolution 181 (II) of 29 November 1947 as well as the Declaration of Independence of the State of Palestine of 15 November 1988 and the acknowledgement by the General Assembly of this Declaration in resolution 43/177 of 15 December 1988.

In this connection, the State of Palestine affirms its commitment to the achievement of a just, lasting and comprehensive resolution of the Israeli-Palestinian conflict based on the vision of two-States living side by side in peace and security, as endorsed by the United Nations Security Council and General Assembly and the international community as a whole and based on international law and all relevant United Nations resolutions.

For the purpose of this application for admission, a declaration made pursuant to rule 58 of the Provisional Rules of Procedure of the Security Council and rule 134 of the Rules of Procedure of the General Assembly is appended to this letter.

I should be grateful if you would transmit this letter of application and the declaration to the Presidents of the Security Council and the General Assembly as soon as possible.

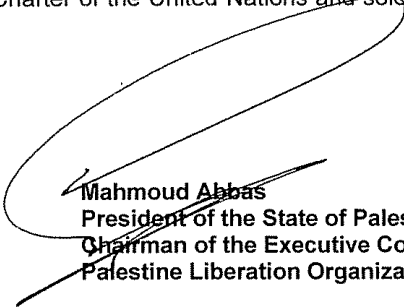
Mahmoud Abbas
President of the State of Palestine
Chairman of the Executive Committee of the
Palestine Liberation Organization

H.E. Mr. Ban Ki-moon
The Secretary-General of the United Nations
The United Nations
New York



Declaration of the State of Palestine

In connection with the application of the State of Palestine for admission to membership in the United Nations, I have the honor, in my capacity as the President of the State of Palestine and as the Chairman of the Executive Committee of the Palestine Liberation Organization, the sole legitimate representative of the Palestinian people, to solemnly declare that the State of Palestine is a peace-loving nation and that it accepts the obligations contained in the Charter of the United Nations and solemnly undertakes to fulfill them.


Mahmoud Abbas
President of the State of Palestine
Chairman of the Executive Committee of the
Palestine Liberation Organization

Handed to SA by President in
NY on 23 Sept.



23 September 2011
Ramallah, Palestine

(Related
copy
91-09306

Excellency,

After decades of displacement, dispossession and the foreign military occupation of my people and with the successful culmination of our State-building program, which has been endorsed by the international community, including the Quartet of the Middle East Peace Process, it is with great pride and honor that I have submitted to you an application for the admission of the State of Palestine to full membership in the United Nations.

On 15 November 1988, the Palestine National Council (PNC) declared the Statehood of Palestine in exercise of the Palestinian people's inalienable right to self-determination. The Declaration of Independence of the State of Palestine was acknowledged by the United Nations General Assembly in resolution 43/177 of 15 December 1988. The right of the Palestinian people to self-determination and independence and the vision of a two-State solution to the Israeli-Palestinian conflict have been firmly established by General Assembly in numerous resolutions, including, inter alia, resolutions 181 (II) (1947), 3236 (XXIX)(1974), 2649 (XXV) (1970), 2672 (XXV) (1970), 65/16 (2010) and 65/202 (2010) as well as by United Nations Security Council resolutions 242 (1967), 338 (1973) and 1397 (2002) and by the International Court of Justice Advisory Opinion of 9 July 2004 (on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory). Furthermore, the vast majority of the international community has stood in support of our inalienable rights as a people, including to statehood, by according bilateral recognition to the State of Palestine on the basis of the 4 June 1967 borders, with East Jerusalem as its capital, and the number of such recognitions continues to rise with each passing day.

Palestine's application for membership is made consistent with the rights of the Palestine refugees in accordance with international law and the relevant United Nations resolutions, including General Assembly resolution 194 (III) (1948), and with the



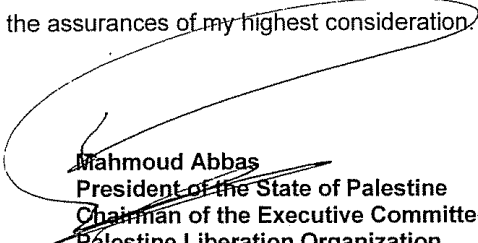
status of the Palestine Liberation Organization (PLO) as the sole legitimate representative of the Palestinian people.

The Palestinian leadership reaffirms the historic commitment of the Palestine Liberation Organization of 9 September 1993. Further, the Palestinian leadership stands committed to resume negotiations on all final status issues - Jerusalem, the Palestine refugees, settlements, borders, security and water - on the basis of the internationally-endorsed terms of reference, including the relevant United Nations resolutions, the Madrid principles, including the principle of land for peace, the Arab Peace Initiative and the Quartet Roadmap, which specifically requires a freeze of all Israeli settlement activities.

At this juncture, we appeal to the United Nations to recall the instructions contained in General Assembly resolution 181 (II) (1947) and that "sympathetic consideration" be given to application of the State of Palestine for admission to the United Nations.

Accordingly, I have had the honor to present to Your Excellency the application of the State of Palestine to be a full member of the United Nations as well as a declaration made pursuant to rule 58 of the Provisional Rules of Procedure of the Security Council and rule 134 of the Rules of Procedure of the General Assembly. I respectfully request that this letter be conveyed to the Security Council and the General Assembly without delay.

Please accept, Excellency, the assurances of my highest consideration.


Mahmoud Abbas
President of the State of Palestine
Chairman of the Executive Committee of the
Palestine Liberation Organization

H.E. Mr. Ban Ki-moon
The Secretary-General of the United Nations
The United Nations
New York