Palestinian Self-Determination: variables and options

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Synopsis

In September 2025, the 80th Session of the United Nations General Assembly will again consider recognition of Palestine as a state. This is the third time that the General Assembly has addressed this question, following sessions in 1988 and 2013 that did so. The campaign for full statehood has made steady progress. Each time it is considered, the number of States recognising Palestine as a peer sovereign state increased. Currently, 147 UN member states recognise Palestinian statehood.

If it were plain fact that Palestine is in fact an extant state, then it would be odd to need to repeatedly mobilise the UN General Assembly to adopt resolutions stating so. To the contrary, many UN member states that recognize Palestine as a sovereign state do so in ambivalent terms. Furthermore, Palestine was unsuccessfully nominated to the UN Security Council for membership of the United Nations in 2011 and again in 2024.

It is the central argument in this paper that national declarations that purport to recognise Palestine as a fully-fledged state are wrong in law and harmful to peace. The legal concept of statehood and the integrity of international law are collateral damage in the Palestinian statehood diplomatic offensive.

These declarations of recognition assume a one-fits-all size and shape of self-determination. However, full Palestinian statehood is not the only available expression of self-determination in international law. There are many and various forms of self-determination that can be considered. The Jewish and Arab peoples of Israel and Palestine can be saved from the chaos of violent conflict, if we look broadly to consider the available range of autonomy arrangements for peaceful self-determination that international legal practice offers and that might better serve both parties.

External self-determination and legal criteria for statehood

At its most simple, political self-determination for nations or distinctive peoples can be expressed externally through independent statehood or can be expressed internally through autonomous governance arrangements. The international campaign for Palestinian self-determination is premised upon independent external statehood.

The formation of states as entities with international status under customary international law is governed by the criteria set out in the Montevideo Convention on Rights and Duties of States,

adopted in 1933 to promote consensus on the recognition of newly independent states in Latin America. The Montevideo criteria are accepted globally today. This means that claims to statehood made by people seeking self-determination through a polity that claims statehood should satisfy the four Montevideo criteria. The criteria require that a polity aspiring to statehood must have a permanent population, defined territory, effective government, and be recognised by other states as having the capacity to enter into international relations with them.

Oslo Accords and Palestinian statehood

Over time, considerations applicable to the question of whether Palestine is a sovereign state have evolved. The fundamental change in considerations occurred at the time of the Oslo Accords from 1993-1998 and can be distinguished as pre-Oslo and post-Oslo Accords.

Prior to 1993, the Palestine Liberation Organization (PLO) obtained nonstate observer status in the United Nations, on 22 November 1974, pursuant to General Assembly Resolution 3237XXIX. On 15 December 1988, General Assembly Resolution 43/177 acknowledged the proclamation of the State of Palestine by the PLO Palestine National Council on 15 November that year and determined that the designation "Palestine" should be used in the United Nations system in place of the PLO. The PLO is a national liberation movement that can claim to represent the Palestinian people but it has no jurisdiction over them.

From 1993, the Oslo Accords transformed an aspect of the PLO into the newly established Palestinian Authority, an autonomous governing body created by Israeli authority with limited jurisdiction over Arab residents in territorial areas in the West Bank (Judaea and Samaria) and Gaza, as discussed by Sabel (p 269). At this point, the critical question today concerns whether the governance responsibilities given to it amounted to effective government over the specified territory and population for the purposes of establishing sovereignty. If so, other countries should recognise the sovereignty of Palestine and its capacity to enter into international legal relations with them, as is usual practice.

Lack of government negates Palestinian statehood

In 2012, subsequent to adoption of the Oslo Accords, the Palestinian Authority was elevated in status to become a UN non-member state observer named as the “State of Palestine”, pursuant to General Assembly Resolution 67/19. As noted in the extensive dissent of Judge Kovac, in the International Criminal Court Pre-Trial Chamber judgement on whether the court’s jurisdiction extended to Palestinian Territories, many UN members that voted in favour explained that their votes were intended to promote rather than to recognise Palestinian statehood.

Full Palestinian statehood was not and still is not warranted under international law, however, as the first three Montevideo criteria are not yet met. Since the Oslo Accords, the PLO has exercised only limited authority, through the Palestinian Authority, over a permanent population and specified territory. Despite it claiming statehood over all of the West Bank (Judaea and Samaria) Gaza and East Jerusalem, less than half the territory in these areas are governed under the Palestinian Authority. More importantly, the juridical scope of the authority it exercises is extremely limited. It is limited both *de jure* under the rights delegated under the Oslo Accords and *de facto* by the limited practical capacity and geographic reach of Palestinian governmental agencies.

In the West Bank (Judaea and Samaria), which is divided into three jurisdictional zones, A, B and C, three distinct types of limits on Palestinian Authority territorial jurisdiction apply. In zone A, the Palestinian Authority has security and civil jurisdiction, in zone B it has civil jurisdiction only, and in zone C it has no jurisdiction. In the West Bank, the vast majority (99%) of the Palestinian population resides in towns under a Palestinian Authority civil jurisdiction in zones A and B, but 60% of the geographic territory is under Israeli jurisdiction in zone C, which is mostly unbuilt land other than Israeli towns.

As noted by Crawford, "This is unpromising in terms of providing a substantial base of autonomous local self-government on which to found a claim to Palestinian statehood" (p 444). He was of the view that an alternative doctrinal argument that Palestine unilaterally seceded from Israel to become an independent *de jure* State is also unsatisfactory. The United Nations Charter makes provision for the decolonisation of peoples subject to imperial rule (Art 1) but does not provide a right of secession from a state by distinctive groups of people from within it (Art 73). Instead, a state may choose to allow secession of a region, such as by allowing it to be self-governed by its inhabitants.

In Gaza, the Oslo Accords similarly provide the Palestinian Authority with no *de jure* legal powers over Israeli towns or citizens. Israel evacuated its citizens and towns from Gaza in 2005 and relinquished military occupation and security control. Gaza then came under government by Hamas, elected in 2007. The Palestinian Authority was forcefully ousted and itself exercises no *de facto* control over Gaza.

Moreover, effective and independent *de facto* exercise of governmental control is well-established in international law as a requirement of statehood. In the 1920 Aaland Islands case, 'stable political organisation' 'strong enough to assert themselves throughout the territories of the state without the assistance of the foreign troops' was required to meet the requirement of independent effective government control. Since then, international legal practice has relaxed requirements for effective control to be exercised throughout all the relevant territory. Shaw notes that allowances for civil war, internal instability and local loss of control facilitated European Union recognition of Croatia and of Bosnia and Herzegovina as newly independent states despite civil war conditions in 1992. However, the same recognition was not afforded to Kosovo in 2008. Croatia and Bosnia and Herzegovina were admitted as states to UN membership but Kosovo was not (para 23).

The separation from the Palestinian Authority of the Hamas government ruling in Gaza should exclude Gaza from recognition as part of the territory where the Palestinian Authority exercises *de facto* control, as Gaza's separate arrangements have been in place for almost 20 years. The Palestinian Authority has never exercised any *de facto* or *de jure* jurisdiction in zone C, nor security jurisdiction in zone B. Furthermore, internal order under the Palestinian Authority has broken down even in area A, such that the Palestinian Authority is no longer capable of imposing *de facto* security control there.

More concerning, however, is the fact of Palestinian rejection of any accommodation, acceptance or tolerance of the existence of Israel. Hamas, which exercises *de facto* governmental control in Gaza, utterly rejects peace with Israel has, for decades, been more popular than the Fatah party faction controlling the Palestinian Authority across the broad

Palestinian population and remains more popular today. The October 7, 2023 massacre of 1200 Israelis within Israel led by Hamas included about a thousand opportunistic Gazan civilian attackers and was widely celebrated as an opening salvo by Palestinian Arabs. Hence, Israel's anxiety is substantial and sustained over threats to its security posed by a proposed sovereign Palestinian government. It is inevitable that Israel's security concerns shall constrain the limits of Palestinian self-determination. Is there any sensible, peaceful reason to support the creation of a new state that is intended and determined to wage war on its neighbour?

Crawford concluded that 'a process of negotiation towards identified and acceptable ends is still, however precariously, in place' (p 446). Although Crawford and Shaw acted as counsel for the opposing legal positions of Palestine and Israel respectively, their views agree on this point. Shaw draws the observation to its logical conclusion, that recognition of Palestinian full statehood today would be wrongful in international law and would set a bad precedent undermining the integrity of the legal concept of statehood, which is a fundamental pillar of international law (para 51). Even worse, recognition of a new state for a reason irrelevant to its statehood, to wield a form of punishment against a third party (i.e. against Israel for its war with Hamas) is a perverse misuse of international law.

External self-determination options for qualified sovereignty

Even if all four Montevideo criteria were met, self-determination does not necessitate a uniform or standard single size and shape of statehood. In 1920, the International Commission of Jurists appointed to investigate and report on the international legal status of the Aaland Islands observed that:

> "The fact must, however, not be lost sight of that the principle that nations must have the right to self-determination is not the only one to be taken into account. Under such circumstances, a solution in the nature of a compromise, based on extensive grant of liberty to minorities, may appear necessary according to international legal conception and may even be dictated by the interests of peace" (p 5).

In 2005, 85 years later, Crawford noted that 'Even the exercise of external self-determination need not result in independence; there are other options' (p 446). A wide variety and range of national self-determination practices and precedents are implemented and recognized under international law. Its variables can include qualified international sovereignty, non-fully independent defence and security arrangements, reduced participation in the United Nations bodies, subordination of international trade to other managerial bodies, dependency on foreign currencies for financial transactions, and geographically non-contiguous territories.

Examples are given below to illustrate the variety and ingenuity of forms of self-determination and these may be instructive in informing discussion of potential options for Palestinian autonomy. The examples are extensive but not comprehensive.

Limited national sovereignty is evident in sovereign countries in free associations with other countries, whereby their international relations or military defence are conducted by the other countries. Examples include the Cook Islands and Niue, which are associated with New Zealand; and the Marshall Islands, Micronesia Palau, and Puerto Rico, which are associated with the USA.

Another arrangement is shared sovereignty, as exemplified by the Principality of Andorra which is under both French and Spanish sovereignty, and St Martin, which is under the sovereignty of France and the Netherlands.

More than ten percent of the United Nations membership (21 states) are not militarised, having no armed forces. These demilitarised states occur in Europe (Andorra, Iceland, Liechtenstein, San Marino, Vatican City), the Caribbean (Dominica, Granada, St Lucia, St Vincent and the Grenadines), Latin America (Costa Rica, Panama), South Pacific (Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Samoa, Solomon Islands, Tuvalu, Vanuatu) and Indian Oceans (Mauritius). Some sovereign countries are limited in their United Nations participation, such as the Cook Islands and Holy See, which are observer states. Some other countries that are recognised as sovereign by some states have not been admitted to UN membership (Abkhazia, Kosovo, Northern Cyprus, Northern Ossetia, Palestine, Somaliland, Western Sahara).

In the fields of trade and currency, the 27 member States of the European Union have subordinated their international trade relations to the European Commission. San Marino subordinates its trade relations to Italy. The € Euro is used by 20 EU members of the Euro zone as well as by five non-EU regions (Andorra, Monaco, San Marino, Vatican City, Kosovo, Montenegro, Akrotiri and Dhekelia). Similarly, the $US dollar is used by Ecuador, El Salvador and Timor-Leste, as well as countries in free association with the USA, USA unincorporated territories and certain British territories (Virgin Islands, Turks and Caicos), as well as Dutch special municipalities (Bonaire, Sint Eustatius, Saba). The £ British Pound Sterling is widely used, in forms stamped and issued by British self-governing territories, and a substantial range of other countries use foreign currencies as their own tender.

Concern has been expressed that planned construction by Israel in the E1 area between Bethlehem, Jerusalem and Ramallah will prevent the establishment of a geographically contiguous Palestinian state. Yet, Gaza was never contiguous to Bethlehem or Ramallah and it should be noted that many other countries have geographically non-contiguous territories. For example, exclaves (overseas territories occurring within another country) are held by East Timor (Oecussi in Indonesia), Spain (Ceuta and Melilla in Morocco) and the UK (Akrotiri and Dhekelia in Cyprus). Enclaves (countries entirely surrounded by another country) occur in the cases of Lesotho (in South Africa), San Marino (in Italy), and Vatican City (in Italy). Archipelagos, groups of islands separated by seas, can also be considered as geographically non-contiguous areas of land.

Internal self-determination options without statehood

Internal self-determination for distinct minorities of people within a state has its modern origins in the pragmatic need of 19th-century European empires to manage the diverse peoples under their imperial rule to ensure peaceful governance. For the benefit of minorities in the areas of the defeated Austro-Hungarian and Ottoman empires, protective provisions were adopted in the peace treaties between the victorious Allies and defeated states of Austria, Hungary, Bulgaria and Turkey following World War I. Separate treaties were adopted also for the protection of minorities Poland, Czechoslovakia, Romania, Yugoslavia, Greece and Danzig, which were newly independent or enlarged, following World War I, as discussed by Musgrave (p 40).

Protection of minorities often involves the granting of rights to particular groups of people who are subjects in specific regions of dismantled empires, colonial countries, or disputed lands. Those rights include distinct cultural expression, devolution of governance, independent resource management or other minority rights.

For example, as recently as 1 June 2025, UK and Morocco issued a joint communiqué that proposed local self-government under Moroccan sovereignty, by the Saharawi, in the Western Sahara. The proposal for Saharawi self-government under Moroccan sovereignty is supported by Portugal, Spain, the USA and France. The communiqué states that:

> 'the UK, in encouraging the relevant parties to engage, urgently and positively with the UN-led political process, considers Morocco's autonomy proposal, submitted in 2007 as the most credible, viable and pragmatic basis for a lasting resolution of the dispute.

A comparable internal autonomy regime might be appropriate for an Arab population in disputed Palestine. Various arrangements for self-determination can include federation, consensual provisions for geographic regionalisation with devolved autonomous government under a central sovereign state, as well as provisions for multiple distinct languages and financial currencies within a state.

Federations are a long-established form of autonomy within statehood. For example, Australia, Canada, Germany, India and the USA were established by federal constitutions adopted in 1901, 1867, 1949, 1947 and 1789, respectively. National negotiated agreements with representatives of distinct populations within specific regions of a sovereign state are also evident in relatively recent State practice. Within Europe, Belgium evolved a federal structure between 1970 and 1993, achieved through state reforms. In the late 1990s, the United Kingdom devolved governance to its constituent countries of Wales, Scotland and Northern Ireland.

Since the 1990s, regional autonomy over natural resources has been devolved to indigenous peoples. In 1999, Canada transferred responsibility for governance over its Northwest territory from the national capital to indigenous Inuit through the creation of Nunavut, an Inuit self-governing territory. In 2005, Norway established the Finnmark Estate in northern Norway, which is a land management body comprised of representatives from both the indigenous Sami Parliament and the County Council. Australia, Bolivia, Brazil, Canada, Mexico, Scandinavia and USA have also devolved land title or natural resource management autonomy in specified regions to identified groups of their local indigenous peoples.

Cultural and political regional autonomy within a sovereign state is also well-established in state internal practice. Political systems distinct from the national governmental system operate in Québec, Canada; Hong Kong, China; Puerto Rico, USA; and Dutch Caribbean special municipalities. Countries with multiple official languages include Bolivia, Canada, Belgium, India, Israel, Singapore, South Africa and Switzerland. Two countries even have multiple heads of state under one sovereignty: San Marino (2) Switzerland (7).

Non-sovereign self-ruling territories tend to take two forms: unincorporated self-ruling territories, or incorporated state territories. The former include the British Channel Islands and Isle of Man, the Danish Faroe Islands and Greenland, New Zealand's Tokelau, and American self-ruling unincorporated territories (American Virgin Islands, American Samoa, Guam, Commonwealth of

Northern Mariana Islands, Puerto Rico). The latter incorporated state territories are island territories that have been incorporated into states, as is the case in Australian, British, Dutch French and Spanish island territories.

Conclusion: Palestinian options for self-determination

As Palestine does not fulfil the Montevideo criteria to qualify as a state under international law, lesser forms of governance than full statehood are correct and appropriate. Many varieties of self-determination are available for the implementation of Palestinian self-determination using forms of governance less than fully fledged statehood.

The Oslo Accords made leaps towards arrangements that would achieve such Palestinian self-determination while preserving Israeli sovereign security. It is arguable that, by establishing the Palestinian Authority to govern autonomously in prescribed territories over the Palestinian Arabs, the Oslo Accords have already gone a long way to implement Palestinian self-determination without state sovereignty.

Nevertheless, consideration of other models may be instructive for further development of Palestinian self-determination. External self-determination could take the form of qualified statehood in relation to military, trade, currency or international relations. Internal self-determination could take the form of a regional independence within the sovereignty of Egypt, Israel or Jordan, or joint sovereignty, that provides for Palestinian autonomous control of regional resources, cultural, linguistic and political life. Moreover, the use of the Israeli shekel or the Jordanian dinar or Egyptian pound as the Palestinian currency would not be extraordinary. Palestine might be regarded as a non-sovereign self-governing territory under Israel and/or Jordan or Egypt but not incorporated into either, or another arrangement might be to establish a pact of federation of Palestine with Israel or Jordan or Egypt. Even multiple heads of a Palestinian state are possible! A multitude of examples illustrate the practice of non-contiguous territories under the rule of a single political entity.

It is remarkable that international discourse has ignored the multitude of other possibilities than full statehood for Palestinian self-determination in circumstances where they are so obviously needed. The fact that none have been proposed in the campaign for Palestinian self-determination is a likely result of the half-century long zero-sum diplomatic offensive against the legitimacy of the State of Israel as a Jewish state, organised by the Arab League and Organisation for Islamic Cooperation, in broad coalition with regional neighbours, economically dependent clients and some predominantly hostile allies. This gambit posits Palestinian Arab statehood as a strategy opposed to Jewish statehood.

The legal concept of statehood and the integrity of international law are collateral damage in the Palestinian statehood diplomatic offensive. International law can yet be saved from erosion, and the Jewish and Arab peoples of Israel and Palestine saved from the chaos of conflict, if we look broadly to consider the available range of autonomy arrangements for peaceful self-determination that international legal practice offers.

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