



## STATEHOOD OF PALESTINE

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### INTRODUCTION

The recognition of Palestine as an independent state is a notion that is popular in the international sphere. While most states have already recognized the state as such, Israel and United states continue to deny the state this critical status. Over time, various measures have been undertaken by the country as an individual to restore its sovereignty. Since the fall of the Ottoman Empire, Palestine has struggled to attain recognition as a state. Notably, these efforts have been fruitful and currently, more than one hundred states already recognize it as a state. In addition, a significant number of states share diplomatic relations with it.

Notably, the country has satisfied the prerequisite qualifications that were set since historical times. It cannot be disputed that it has faced various challenges in an effort to acquire the status but nonetheless, it can be contended that it has fully satisfied the required provisions. Furthermore, it also fully satisfies the theoretical provisions that basically accredit the qualifications. It is against this background that this research paper seeks to acknowledge the fact that Palestine is a sovereign and independent state. In order to enhance a harmonic consideration, this paper provides an explicit analysis of various arguments that have been put forward by credible sources in affirmation of this fact. In addition, it reviews the theoretical bases that support this status.

Palestine has struggled with its state recognition since independence. While most states affirm that it really is an independent state and therefore should be accorded the necessary recognition, some are reluctant while the US and Israel completely disregards the position. In his review, Hillgruber<sup>1</sup> indicates that Palestine attained its independence in 1988, amid controversies and opposition from a small percentage of the global nations. Further, Boyle<sup>2</sup> postulates that the four traditional elements of defined territory, government, permanent population and the ability to relate in various ways and levels with other states need to be at the center stage of statehood. These are the elemental qualifications that were provided for by the Montevideo Convention<sup>3</sup> of 1933. Notably, Palestine has satisfied these provisions and therefore qualifies to be a state.

With regard to the notion of a defined territory, Boyle<sup>4</sup> argues that this does not need to be determinate and fixed. Indeed, this has applied to other states like Egypt and Israel that are fully recognized as independent states by the international law, yet there territories are not yet fully determined. Nevertheless, Cassese<sup>5</sup>ascertains that control of a territory

<sup>1</sup>Hillgruber, C. ACCORDING STATEHOOD TO NEW STATES. International Law, 9 (1993), 490-510

<sup>2</sup>Boyle, F. PALESTINE & INTERNATIONAL LAW. Clarity Press, UK, 2003

<sup>3</sup>Montevideo Convention, 1933; Also see, <https://www.ilsa.org/jessup/jessup15/Montevideo%20Convention.pdf> and <http://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml>

<sup>4</sup>see, Boyle, F. STATE OF PALESTINE. <http://www.ejil.org/pdfs/1/1/1136.pdf>

<sup>5</sup> Cassese, A. International Law. UP, Oxford, 2003.



is imperative for state's sovereignty. Essentially, this gives the particular state the power to take various legal as well as factual measures within the territory and prohibit external governments from exercising such power within the same territory without its consent. Accordingly, Stefan ascertains that Palestinian territorial land mask encompass the Gaza strip and the West bank. In addition, it has various cities that include Bethlehem, Hebron, Ramallah, Nablaus and Gaza. Furthermore, the international law does not require that a state delineates its borders prior to attainment of statehood. The borders are negotiated within the neighbouring states, just like other peace negotiations.

The need for a government is also considered a prerequisite for statehood. Indeed, governance is critical for effective functioning of a state. In particular, governments maintain legal order within the state and enhance constitutional autonomy of a given state. On a larger scale, it enables the state to act autonomously and avoid entire dependence on other states for critical decision making. In her analysis, Martha<sup>6</sup> affirms that Palestine fully satisfies this provision. In this respect, it is worth acknowledging that by assuming critical governmental roles in 1994, the Yasser Arafat's leadership went a long way in providing Palestine with a definite form of governance. In addition, Stefan indicates that presently, the PLO is collaborating with the Intifadah to provide provisional governance. Indeed, they are providing

critical social services for the Palestinian populace as well as assuming various administrative functions. Of great reference in this regard is the provision of the post of the prime minister since 2003. The office of the PM in Palestine has significant powers that are recognized and appreciated both on the local and international scale.

Permanent population is also considered critical in the existence of a state. The determination of such a population is undertaken by individual states and governed by the internal law of such states. In his study, John<sup>7</sup> ascertains that Palestine satisfies this criterion as it can readily identify a population that has resided within its territory since time immemorial. It is argued that this population comprises the original inhabitants of the region. Furthermore, the population can be easily distinguished due to the fact that they are fixed and determinate. It is in this consideration that it is argued that since they have often possessed the land, they need to be allowed create a state. Statistical evidence indicates that the estimated Palestinian population stands at seven million, with three million inhabitants living in Gaza strip and West Bank. The remaining four million were supposedly forced out of their traditional territory and in some cases forced to become Israelis. This is attributable to the implications of involuntary inclusion. Irrespective of their geographic location, it is contended that a Palestinians across the globe enjoy their national sovereignty.

<sup>6</sup> Martha, P. RECOGNITION OF GOVERNMENTS. American Journal of International Law, 76(1983), 30-51.

<sup>7</sup> John, D. Recognition and UN. UP, Cambridge, 1987.



Furthermore, cultural studies ascertain that the inhabitants of Palestine share similar cultural and traditional practices. These are exemplified through a single language that is spoken, similar mode of dressing as well as food consumed. Notably, these are core indicators of a shared culture, ethic and tradition. Furthermore, they practice a similar mode of production that differs in different ways from that of Israelites. Coupled with the fact that the population inhabits a defined geographic area, it can be ascertained that indeed, they are original inhabitants of the region. Therefore, they need to be accorded statehood that would then boost their determination and enable them to pursue and improve their social and economic development.

Finally, the ability to enter in to various relations with other nations is also a criterion for statehood. According to Crawford<sup>8</sup>, this is a clear indication of independence. In this regard, statistical records ascertain that currently, 114 states recognize Palestine as an independent state. In addition, Boyle notes that Palestine is accorded state recognition by all the neighbouring states apart from Israel. Furthermore, the Resolution 43/177<sup>9</sup> that was adopted by the UN General Assembly in 1988 recognizes Palestine as an Independent State. The Resolution accorded it the critical position of observer state within the United Nations Organization. It is indicated that 104 states voted in favour of the resolution, forty four abstained and only

two rejected. According to Malcolm<sup>10</sup>, this strong vote was a clear indication that Palestine was regarded by a great percentage of the nations as a state. In addition, it is posited that the position of the international community in this respect concurred with the majority of states because of the lack of opposition, as was in the case of Turkish Republic of Northern Cyprus. Furthermore, Boyle demonstrates that this recognition by the general assembly of Palestine as a state is definitive, constitutive and universally determinative.

The ability of Palestine to relate with other nations is also exemplified by its being party to a host of treaties even before its independence. For instance, Quigley<sup>11</sup> ascertains that this state was party to the multilateral treaty in 1926 that established an agency address the problem of locusts. In this, it assumed the position of a contracting state. Another agreement that it was party to; was the Reciprocal Enforcement of Judgments. Of great reference was its agreement about its post office and that of Great Britain. Notably, this was registered by the League of Nations and was therefore legal and recognized. In this consideration therefore, it can be contended that Palestine maintained viable relations with other countries in the capacity of a sovereign state. In addition to the traditional criterion, Evans affirms that Palestine satisfies the emergent

<sup>8</sup>Crawford, J. STATEHOOD IN INTERNATIONAL LAW. OUP, Oxford, 2003. Also see, Crawford, J. CONTROVERSIES OVER THE CREATION OF PALESTINE. <http://www.ejil.org/pdfs/1/1/1137.pdf>.

<sup>9</sup>A/RES/43/117of 8 December 1988.

<sup>10</sup> Malcolm, S. International Law. UP, Cambridge, 2003.

<sup>11</sup> Quigley, J. PALESTINE: FROM AN INTERNATIONAL LAW VIEW POINT. Duke, UK, 2005. Also see, Quigley, J. PALESTINE: THE STATEHOOD ISSUE. Rutgers Law Record (2009) <http://www.lawrecord.com/files/35-rutgers-l-rec-1.pdf>



criteria that reflects inherent global dynamism. Indeed, it is notable that additional criteria has been proposed over time and is widely recognized as being a prerequisite for statehood. Despite global dynamism, Evans asserts that this condition is attributable to the varying positions that individual states have increasingly assumed in the recent past. The need to incorporate these concerns in the traditional criterion has prompted the international community to accord the same equal consideration.

To begin with, states agree that in order to be accorded recognition, a state should not arise out of illegality. In this respect, it is certain that Palestine qualifies as a state. Ti-Chang<sup>12</sup> points out that as back as in 1919, Palestine was provisionally recognized by the League of Nations as a nation. He asserts that the conservatory clause in article 80 (1) found in the UN Charter effects the continuation of this recognition.

In addition, it is widely contended that the state needs to be willing as well as able to abide by the laws of the international community for it to be accorded statehood. This provision according to Ti-Chang<sup>13</sup> is also upheld by international organizations and policy of states. Again, the position of Palestine in this respect is affirmative. In particular, its commitment to the peace process in the Middle East is in line with this provision. The provisional government asserted that it would employ negotiation in resolving outstanding concerns of the conflict. In a letter sent to the Prime Minister in 1994, the chairman asserted that

Palestine would not assume a particular status while negotiations regarding the Gaza strip are pending.

Further, the emergent criteria require an assessment of sustainability and viability to ensure that the given state would continue to uphold the criteria after it has been accorded statehood. Palestine in this regard is considered a viable state and therefore its recognition needs to be upheld. Notably, since the peace process began in 1993, most of the central state institutions in the region have been established on behalf of Palestine. In addition, the state controls the Gaza strip and a portion of the West Bank. In addition, it has vital state institutions like the police, the president, government and a judicial system. Of great importance is the fact that its passport is recognized by twenty nine countries.

In addition, legal studies indicate that a persons need to have a legal right to self-determination. This right then gives them a leeway to freely pursue their cultural, economic and/or social development as well as determine their political wellbeing. Notably, this has been a bone of contention in the international arena. However, Palestinians and states that recognize the as an independent state perceive this a critical aspiration. This solid determination according to Collin has made Palestine to be recognized as a state by the international community irrespective of its failure to control its territory.

The criterion of effective control has in the recent past raised various concerns as most states maintained that Palestine was unable to exercise this. This was because of the

<sup>12</sup> Ti-Chang, C. INTERNATIONAL LAW AND RECOGNITION. Stevens & Sons, UK, 1951.

<sup>13</sup>Supra 12



realization that a great percentage of the state was under military occupation of another state. Currently, Dixon and McCorquadale affirm that the executive and legislature of Palestine that was elected democratically and have the approval of the international community has countered the situation. This has also been aided by the presence of an effective judicial system, ministries and substantial security forces. Indeed, 'effective control' has once more been restored in a significant percentage of the territory that is presently occupied by the Palestinians. Notably, these efforts have been recognized by various states like US, irrespective of the denial to extend diplomatic relations to Palestine.

### **A BRIEF HISTORY OF PALESTINIAN STATEHOOD**

Although they have not yet been given full-membership in the U.N. (and would not have gained membership through Abbas' proposal), the body has affirmed Palestinian statehood numerous times, most recently with a 2012's UN General Assembly (UNGA) resolution 67/19<sup>14</sup>, which passed with 138 votes in favor, 9 votes opposed and 41 abstentions, recognizing Palestine as a non-member observer state.

This vote built on Palestine's 1988 Declaration of Independence, which was recognized by UNGA resolution 43/117<sup>15</sup>, mandating a mutual recognition of sovereignty between Israel and Palestine. (The two sides formally achieved this milestone in 1993). The 1989 resolution also called on Israel to vacate all territories captured in 1967, and return to the borders

detailed in the 1947 Partition Plan for Palestine. It was approved with 104 in favor, 2 against, and 36 abstentions.

1989's measure reiterated the terms of 1967's UNSC resolution 242<sup>16</sup> which demanded Israel withdraw from the lands it seized in the Six-Day War and guarantee Palestine access to the seas and waterways—which Israel's ongoing blockade of Gaza flagrantly violates.

Commensurate with these resolutions, 135 of the UN's 193 member states (70%) already recognize Palestine; the only holdouts are Canada, Australia, the United States and most of Western Europe—although Europeans are increasingly coming around as well. The international consensus is beyond doubt, the UN statutes are similarly clear: Palestine is a state.

In contrast to this overwhelming support for Palestinian statehood, the resolutions partitioning the British mandate into two countries, and later recognizing Israel, barely achieved the required two-thirds threshold in the General Assembly.

UNGA resolution 181 (II)<sup>17</sup> which divided the British mandate was narrowly approved with 33 voting in favor, 13 opposed and 10 abstentions. UNGA resolution 273 which granted Israel membership in the United Nations similarly squeaked by with 37 in favor, 12 opposed, and 9 abstaining—albeit under the conditions that it return all territories not accorded them by UNGA resolution 181 (II), provide the right to

<sup>14</sup>A/RES/67/19 of 4 December 2012

<sup>15</sup>Infra 9

<sup>16</sup>S/RES/242 of 22 November 1967

<sup>17</sup>A/RES/181(II) of 29 November 1947



return for Palestinians displaced by the war, guarantee equal rights to all citizens regardless of race or religion and abide by subsequent U.N. resolutions. Needless to say Israel has and continues to unapologetically violate every single one of these precepts, thereby voiding the terms of their membership in United Nations.

Moreover, unlike the votes recognizing Palestine, the resolutions establishing Israel were passed prior to de-colonialization, when the Assembly was about one-fourth of its current size, comprised primarily of the United States, Western Europe and their client states in Latin America. This makes the notion that the vote represented an international will or consensus extremely problematic—even if the measures had won by large majorities instead of their historical reality of barely making it through.

Neither resolution could have passed if the rest of the world had a say. Post decolonization Israel has emerged as the world's #1 violator of U.N. resolutions—be they from the General Assembly or even the Security Council: pursuing nuclear weapons, illegally seizing land and resources, carrying out devastating attacks on civilian populations and infrastructure, as well as institutionalizing discrimination of Palestinians both within its legal borders and in the occupied territories.

But despite this contemptuous disregard for international rules and norms, the United Nations has been prevented from any kind of substantive response by the U.S. veto—exercised 41 times on Israel's behalf since 1972.

## **LEGAL STATUS OF THE STATE OF PALESTINE**

The legal status of Palestine has raised various concerns at different levels in the past. Nevertheless, it is certain that most states recognize Palestine as an independent state. In addition, the decisions made by the national and international tribunals affirm Palestine as a state. In this respect, Hersch cites the principle of succession of states to 'A' Mandates as prescribed by the Treaty of Lausanne<sup>18</sup>. Also, the relevant post war treaties widely concur that Palestine was actually a newly created state. In addition, the permanent Court of International Justice recognized the state of Palestine during its judgment regarding concessions provided by Ottoman authorities. In this respect, it is noteworthy that the courts of Britain and Palestine arrived at a decision that the government of Palestine was the successor state and therefore needed to be accorded the properties listed on the Ottoman civil list.

The issue of state succession has also contributed significantly to the recognition of Palestine as a state. In this respect, Hersch<sup>19</sup> affirms that the legal evaluation that was undertaken by the international court of justice indicated that the agreement of the League of Nations provisionally recognized Palestinians as a nation. According to the court, the distinct guarantee concerning the access to holy sites and freedom of movement that were contained in the Berlin treaty of 1878 were preserved under

<sup>18</sup>Treaty of Lausanne in 1923, Also See <https://ecf.org.il/issues/issue/1094>

<sup>19</sup>Hersch, L. RECOGNITION & INTERNATIONAL LAW. Cambridge, UK, 1947.



Palestinian mandate. Furthermore, the court required that these be acknowledged accordingly in a declaration and embodied in basic laws and constitutions of affected states. Additionally, the partition plans had provisions that supposedly bound new states to various international conventions and agreements. At this point in time, Cattanascertains that Palestine had become party to these and even held them accountable for its financial responsibilities.

With regard to international recognition, Pappé<sup>20</sup> affirms that Palestine is recognized by the United Nations as a sovereign state. Indeed, the Palestinians are duly recognized as the permanent inhabitants of the Palestine territory as well as East Jerusalem. The General Assembly Resolution 64/185 of 2009 that was adopted had 165 in favour, 7 abstentions and 8 against it. In addition, Palestine was accorded a right to sovereignty over natural resources. Notably, this is inclined in the international law and it is an essential and vital component of state sovereignty. In this consideration therefore, it can be argued that legally, Palestine is indeed a sovereign state.

Legal studies also indicate that Palestine maintains an elevated niche in the international arena. To begin with, it has a special status in the United Nations. Despite the resolution 43/177 of the General Assembly of 1988<sup>21</sup> that accorded Palestine an observer status, the new resolution 52/250 conferred Palestine more rights and privileges. Of great reference in this regard was the right to actively participate in the

debate that was held at the beginning of each session of the General Assembly. In addition, Palestine was given the right to raise and discuss issues that affected the entire Middle East during the General assembly sessions.

In addition, Jennings and Watts indicate that despite the opposition from Israel and United States, Palestine has been in position to obtain membership in renowned international organizations such as the World Health Organizations and UNESCO. This is a clear demonstration of its ability to discharge critical conventional and international obligations as prescribed by the international law. In addition, it indicates that Palestine has the ability to initiate and maintain viable international relations with other countries. This is fundamentally at the core of the international law.

With regard to the customary international law, Brownie<sup>22</sup> indicates that the Palestinian Territories that were occupied since 1967, with an exception of the expanded East Jerusalem, are not contested. Despite the fact that the state of Israel occupies a part of Palestine, Palestine remains a sovereign state. This is due to the fact that the resultant conflict between Israel and Palestine has increasingly gained international recognition and viable measures are being undertaken by the international government to resolve the same.

Indeed, the 1917 Balfour Declaration deprived Palestine its sovereignty. To begin with, it is certain that this declaration did not

<sup>20</sup>Pappé, I. PALESTINE. Cambridge, UK 2004

<sup>21</sup>Infra 9

<sup>22</sup>Brownie, I. FUNDAMENTALS OF INTERNATIONAL LAW. OUP, Oxford, 2008.



reflect the independence pledges that were accorded to the Arabs prior to and after its issuance. In addition, the mere prove that Palestine was collaborating with an institution that sought to settle non Palestinians in their original land imply that the institution undermined the autonomy and sovereignty of Palestine. In this respect, ICJ argues that this move ignored the interests of the Palestinians. Furthermore, it is posited that it violated its fundamental rights. In addition, the declaration in itself was controversial. Essentially, it can be contended that the British committed the land of Palestine at a time when it was still under the administration of Ottoman Empire. This implies that the natives of Palestine were lowly regarded and that their opinions in this declaration were not considered important. In this consideration, it can be contended that the Balfour Declaration did deprive Palestine of its sovereignty.

Quigley<sup>23</sup> argues that the declaration of statehood in 1988 by the Palestine National Council is a continuation rather than beginning of statehood. This contention seeks to strengthen Palestine's claim for its statehood. This presumption is true, especially considering the fact that Palestine enjoyed state sovereignty since time immemorial. In addition, since it was inclined in the Ottoman Empire, it should be acknowledged that Palestine is a succession state that should be accorded sovereignty accordingly.

Of great reference is the fact that in the preceding years, the nation engaged in state

activities and related with other states at different levels in a sustainable manner. In addition, the self determination that characterizes the Palestinians needs to be furthered in order to enhance its sovereignty. Past efforts indicate that the natives have the will and determination to attain this desirable status. Therefore, rather than condemn and discourage these activities, the international community needs to help it restore its sovereignty. It is because; Palestine's sovereignty was compromised by the same international community whose decisions and actions contributed significantly to the fall of the Ottoman Empire.

The continuation of the sovereignty of the Palestinians is also reflected through continued citizenship. Quigley<sup>24</sup> argues that since they lost the citizenship of the Ottoman Empire after its fall, it follows that there needed to be a transition to another form of citizenship. In this regard, the emergence Palestine offers the best option because of the fact that its territory was a constituent of Ottoman Empire. In this consideration, it can be argued that the statehood of Palestine is indeed justified. Citizenship is critical to statehood as it is an indication of a permanent population. In addition, citizenship enables the nation to be recognized by the international community because of the implications of passports and other forms of identification. At this juncture, it can be affirmed that since Palestinians have their own citizenship, they should be accorded statehood.

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<sup>23</sup>Infra 11

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<sup>24</sup>Id.



Additionally, it can be argued that the 1947 UN partition plan (Resolution 181 (II))<sup>25</sup> played an instrumental role in separating Palestine from Israel. Essentially, this resolution proposed the partitioning of Palestine into two independent states. Notably, one state that was envisaged in the partitioning plan declared its independence in 1948 as Israel. After this, it engaged in war and as a result, it expanded its territory and ultimately occupied seventy seven percent of the remaining Palestine. Legal studies affirm that close to half of the indigenous populations were either expelled or fled their original homes. The remaining thirty three percent of the territory that was initially assigned to the other states was occupied by Jordan and Egypt.

The 1967 war later gave Israel a chance to occupy the remaining parts of Palestine that were supposedly under Egypt and Jordan. These are the present day West Bank and Gaza Strip. In his review, Brownie indicates that again, this war led to an increased exodus of the Palestinians from their original land. However, the Security Council resolution 242 of 1967<sup>26</sup> called upon Israel to withdraw from the West Bank and Gaza strip regions that it had occupied in the latter conflict. In 1974, studies indicate that the General Assembly reinforced the inalienable rights of the Palestinian population. Once again, Palestine had a right to self-determination, sovereignty, and national independence and could comfortably return to their original lands. After a struggle through time, Palestine finally declared its independence in 1988.

<sup>25</sup>Infra 17

<sup>26</sup>Infra 16

Following the above strongly pronounced developments, it can be ascertained that Palestine's claim of statehood is indeed justified. Seemingly, the emergent opposing views are geared towards denying the country its rightful position. Since the fall of the Ottoman Empire, Palestine maintained its independence all through. Notably, Israel is the one that tampered with the Palestinian territory. The implications of the same to the Palestine population are massive. At this point in time, it can be proposed that rather than undermining its efforts, the international community needs to take practical measures to help Palestine regain its position as a state.

The legal status of Palestine can be considered to be sui generis because of the fact that the relative mandate is not geared towards preparing the populace for self-governance; rather it seeks to maintain the situation as it is until Palestine has amassed enough population to attain the desirable status through self-determination.

### **THEORETICAL AND CONCEPTUAL CONSTRUCT**

The constitutive theory presumes a state to be one that is accorded recognition by other states. Fundamentally, international law does not propose that a given state does not exist if it is not recognized; rather it notices it before its recognition. The constitutive theory asserts that through recognition, a state can become an international entity that is bound by international law. Palestine has been accorded this recognition by over one hundred states. However, Crawford argues that despite this, Palestine does not command quasi unanimous support that is a prerequisite for establishment of a certain



rule of international law. According to him, this is a prerequisite for complete recognition of a state.

Emerging theories have also rejected the constitutive theory on the premise that it enhances subjectivity with regard to the concept of a state. Of particular concern is the fact that recognition at any level is not legally recognized by the international law that governs third states. This theory also gives powers to the states that do not recognize the particular state as one to refrain from giving it such treatment. This partly explains the reactions of US and Israel towards Palestine. Notably, the constitutive theory asserts that recognition can supplement the provisions of Montevideo Convention in instances where a state does not meet the same. However, this does not apply to Palestine as it meets the required qualifications that are prescribed by the Montevideo convention.

The declarative theory on the other hand perceives a state to be one if it meets particular structural criteria, irrespective of the fact that it could be accorded recognition by other states. Essential, the provisions of the Montevideo convention<sup>27</sup> provide the basis for these criteria. In addition, it is worth noting that the modern criteria, as discussed in the preceding section have been widely employed in this respect. Article three of the Montevideo convention<sup>28</sup> states that statehood is not dependent on recognition by other states. Other provisions that qualify a state to be one are also put forward by the European Economic

Community. According to this, a state is fundamentally defined by having a population, territory and political authority. Under this consideration, it can not be disputed that Palestine qualifies to statehood because of the fact that it satisfies the provisions set forth by various institutions.

### **Concept of state:-**

It is significant that though some sort of political organization has existed since ancient times, such as Greek city-state and the Roman empire, yet the concept of the 'state' as such is comparatively modern. The contemporary concept of the state owes its origin to Machiavelli (1469-1527) who expressed this idea in early 16<sup>th</sup> century as 'the power which has authority over men'.<sup>29</sup>

Geoffrey K. Roberts (*A Dictionary of Political Analysis; 1971*) gave the definition of State as-

“A territorial area in which a population is governed by a set of political authorities, and which successfully claims the compliance of the citizenry for its laws, and is able to secure such compliance by its monopolistic control of legitimate force.”

The elements which are relevant for a state to be called a state are-

- Population: the state is a human institution. The population is there for an essential element of the state, which requires the condition of individual's interdependence, consciousness of common interest, and general regard for a set of common rules of behavior and institutions.
- Territory: territory is another essential element of a state. The state must possess a

<sup>27</sup>Infra 3

<sup>28</sup>Id.

<sup>29</sup>O.P.GAUBA, AN INTRODUCTION TO POLITICAL THEORY (5<sup>th</sup>ed; pg. no.-133)



territory where its authority is accepted without dispute or challenge. A state comes into existence only when its population is settled in a fixed territory.

- Government: it is another essential element of the state. It is the agency or machinery through which common policies are determined and by which common affairs are regulated and common interests promoted. Government is responsible for maintenance of law and order and for the provision of common services like- defense, foreign relations, roads, bridges, communication system, health and education, etc.
- Sovereignty: it denotes the supreme or the ultimate power of the state to make laws or take political decisions. It is the final authority of the state over its population and its territory. It is by the virtue of its sovereignty that a state declares- through the agency of the government- its laws and decisions and issues, commands which are binding on the all citizens claiming obedience thereto, and punishes the offenders. It is because of the sovereignty that the state deals independently with the other state.

A state continues to exist so long as it is armed with sovereignty. If a state loses its sovereignty because of internal revolt or external aggression, the result disappearance of the state as such. Some writers regard 'international recognition' as an essential element of state. This denotes formal recognition of the sovereignty of the state over a given territory and population, by other states.

### CONCLUSION

To sum up it is certain that Palestine qualifies for statehood and therefore, it

needs to be accorded this right. As it has come out from the review, Palestine satisfies the criteria that have been put forth by the customary and international law. Indeed, it has a clear territory, permanent populace, a government and has the ability to relate well with other nations at different levels. In addition, it is notable that since historical times, Palestine has continuously been accorded this status. It is for this reason that some of the authors perceive its 1988 declaration as a continuation of statehood. Furthermore, the efforts undertaken by Palestine to satisfy the emergent criteria have been enormous. To date, it can be contended that the state satisfies all the provisions of both the modern and traditional criteria. Legally, it is also certain that courts and international organizations perceive Palestine as a sovereign state.

With regard to the theoretical construct, it is clear that Palestine qualifies to statehood due to the fact that it fully satisfies the requirements proposed by the vital statehood recognition theories. Indeed, the provisions of both the declarative and constitutive theories have been satisfied by Palestine. Considering the influence of the two theories to the customary and international law, it is argued that satisfying its requirements is imperative. At this juncture, it is important to acknowledge that the Palestine problem in this respect has been perpetuated by the indifference that the US and Israel accords the state. The fact that the nation has been enjoying this status since 1919 gives it a right to be fully recognized as a state by the entire globe. It is in this consideration that this paper concludes by affirming that Palestine is indeed a state and there is an urgent need to recognize it as



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such. This would be instrumental in helping it to pursue its social economic and cultural development accordingly.

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