

The Political and Legal Logic for Palestinian Statehood

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The issue is now before the United Nations. It is already obvious from the applause following President Abbas' speech at the UN General Assembly on September 23rd that a resolution to support Palestinian statehood would receive overwhelming support from the 193 UN member states, with only the United States threatening to veto the final legal act at the Security Council.

Maarti Ahtisaari and Xavier Solana recently wrote that there are ten or eleven reasons to support Palestinian statehood,¹ in a confusing jumble of items that gives the impression of a game to find 10+ arguments. They can be summarised as follows:

1. To keep the two-state solution alive.
2. The EU has already invested hugely in a two-state solution, around €1 billion per year.
3. To respond to President Abbas's state-building achievements.
4. To avoid double standards in the context of the Arab Spring.
5. European interests in security of energy supplies and countering terrorism.
6. To strengthen the hand of the US administration in dealing with Israel.
7. In opening up negotiation options, it might help Israel.
8. It would not necessarily give Palestine easier recourse to the International Criminal Court.
9. It would not make Palestinian violence more likely.
10. A 'yes' at the UN does not entail recognition, which requires bilateral action.
11. It could be a positive, unified foreign policy act by the EU.

Curiously they have mostly omitted the basic arguments, namely the criteria for state recognition embedded in international law. These are the four criteria of the Montevideo Convention of 1932 (see Annex for relevant extracts from the text).

The first criterion, a permanent population, is met without any doubt.

¹ Martti Ahtisaari and Javier Solana, "Ten reasons for a EuropeanYes", *New York Times*, 16 September 2011.

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With the second one – a defined territory – the argument becomes more interesting. The UN has been adopting resolutions on the frontiers of an Arab state of Palestine since 1947, with Resolution 181 proposing an excellent map characterised by contiguity between Gaza and the West Bank. The ensuing Israeli-Arab war resulted in the 1949 Armistice (or Green) line drawn up between Israel, Egypt, Jordan and Lebanon. These are nowadays confusingly called the “1967 frontiers”, i.e. the 1949 frontiers that prevailed before Israel pushed further into the Palestinian territories in the six-day war in 1967. Resolution 242 of 22 November 1967 called for Israel to withdraw from the newly occupied territories, thus requesting a return to the 1949 Armistice lines.² But this has not happened because of unrelenting Israeli settlement expansion beyond the Armistice lines. So the frontiers are contested, although even here the principle of territorial compensation for deviation from the pre-1967 lines is generally admitted as a matter for negotiation, including by Israel.

What are the consequences of the degree of uncertainty over the frontier lines? If it is put as an argument against granting statehood, then it should apply to other states that have contested frontiers, which include China, India, Morocco, Cyprus and many others. But above all, it includes Israel as the other side of the same coin. If Palestine has to be a non-state, then so should Israel. This means that the status quo is *reductio ad absurdum*.

On the third criterion, having government, there is general recognition that under President Abbas and Prime Minister Sayed the Palestinian Authority has made great strides of progress functionally, and in terms of the workings of democratic processes. The Palestinians, in fact, receive the highest grade for democracy of all Arab states in various independent sources.³ Compare that with the failing or failed statehood of other internationally recognised states, such as Somalia or the Congo (DRC). Yet Gaza remains largely controlled by Hamas, outside the reach of Ramallah. There are talks of a unity government, which have not yet born fruit. Recognition of statehood would be a boost for the Ramallah government, a political if not legal argument.

As regards the fourth criterion, the capacity to enter into international relations, the Palestinian Authority has for years entered into many contractual relationships, including with the EU on a large scale.

There are three additional arguments that are pertinent to this discussion. The first is that statehood should not be granted to a party that contains fundamentalist political factions that declare their commitment to the destruction of another state. Israel cites Hamas, which according to doctrine would like to see all the Jews pushed back into the Mediterranean Sea. But this argument is also a two-edged sword. The Israeli political landscape and governing coalition includes fundamentalist parties committed by doctrine to the Greater Israel, which means pushing all Palestinians to the other side of the River Jordan. If this were a criterion to deny statehood, it should apply equally to Israel as to the Palestinians. And then who else should not be recognised? Iran for example. Again *reduction ad absurdum*.

The second argument is that the status change would not change anything for real. Following President Abbas, Prime Minister Netanyahu said in his speech at the General Assembly that the Palestinians want “a state without peace”, as an argument for denying them statehood. But then Israel is itself “a state without peace”.

² Analysts of the Israeli-Palestinian peace process point out the discrepancy between the English text of the resolution, which requests withdrawal from *the territories* occupied in the war (implicitly all the territories), whereas the French text refers just to *territories* (implicitly possibly meaning just some of the territories).

³ Economist Intelligence Unit, “*Democracy Index 2010 - democracy in retreat*”, 2010.

The argument that it doesn't change anything also implies that pure principles and legal status don't matter. Take a couple of other examples. Does it matter whether the individual is a citizen with full legal rights or a non-citizen? Does it change anything when a couple who may have been living together for years, finally decide to get married. In both cases, the change – the act of recognising citizenship or marital status – may not change anything concretely or immediately. But to tell the individuals in question that they should not do this because it does not change anything immediately would be an insult, and in conflict with all that is most valued about the rule of law.

This second argument is most importantly used by the United States to justify its threatened veto at the UN Security Council. Why is the US virtually the only state in the world making this argument? The weakness of the administration in facing the political power of the Israeli lobby in an election season seems to be relevant, but this is hardly an argument that merits support in the rest of the world. It is hard to imagine another single move of US diplomacy that could do more to wipe out President Obama's diplomatic advances towards the Arab world, beginning with his fine speech in Cairo in June 2009 and continuing since the onset of the Arab Spring, or to reinvigorate Islamic fundamentalist tendencies in the Muslim world at large.

The final argument can be about equality and equity, as enshrined in Article 4 of the Montevideo Convention about the equality of rights of states before international law, irrespective of power. The inequality and inequity of the status quo is precisely that: while Israel is a recognised state, Palestine is not. Why should this be addressed now? Of course it should have been addressed over half a century ago. But today's context makes it the moment to act. The Arab Spring at its best sees convergence of this vital region on internationally respected norms of democracy and the rule of law. The West in particular sees this convergence as a matter of strategic political priority. Regularisation of Palestinian statehood in international law should be part of this process. To deny it would give ample justification to the Arab world's harshest critiques of Western double standards and hypocrisy. If the US insists on going this way, the EU should not follow, but rather should endorse Palestinian statehood. Then maybe the US will find its own way out of its absurd position.

Annex: Extracts from the Montevideo Convention, 1933, on the rights and duties of states

Article 1. 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 the other states.

Article 3. The political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.

Article 4. States are juridically equal, enjoy the same rights, and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law.

Article 11. The contracting states definitely establish as the rule of their conduct the precise obligation not to recognize territorial acquisitions or special advantages which have been obtained by force whether this consists in the employment of arms, in threatening diplomatic representations, or in any other effective coercive measure.