International Law and the Question of Recognition of Palestinian Statehood: A Legal Subaltern Reality.

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Abstract

The recognition of Palestinian statehood, specifically at the United Nations (UN), has been met with questions regarding Palestine's fulfilment of statehood requirements set out by the Montevideo Convention on the Rights and Duties of States (1933) and Article 4 (1) of the UN Charter. This essay attempts to understand the barriers that Palestine has faced to achieving full legal recognition by drawing on the concept of International Legal Subalternity (ILS) as coined by Ardi Imseis. Through an overview of the concepts of statehood and recognition and an analysis of the history of Palestine and its pursuit of statehood and recognition, a legal subaltern pattern can be discerned. This becomes especially clear through evaluating records from member states at the 6636th Security Council meeting on October 24th, 2011 regarding the Question of Palestine and the Middle East. The historic elements of this paper combined with transcripts from the Security Council meeting reveal that the case of Palestine's recognition at the UN has been treated as a rule *by* law approach, rather than the rule *of* law.

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Acknowledgment

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List of Abbreviations

AHLC	Ad Hoc Liaison Committee for the Coordination of the International Assistance to Palestinians
DOP/Oslo Accords	Declaration of Principles on Interim Self-Government Arrangements
ICJ	International Court of Justice
ILS	International Legal Subalternity
OPT	Occupied Palestinian Territory
PA	Palestinian Authority
PLO	Palestine Liberation Organization
PNC	Palestine National Council
UN	United Nations
UNGA	United Nations General Assembly
UNSCO	The Office of the United Nations Special Coordinator in the Occupied Territories

Introduction

On November 16th, 1988, Dr. Riyad Mansour, the Deputy Permanent Observer of the Palestine Liberation Organization (PLO), sent a letter to the United Nations addressed to the Secretary-General announcing the Palestinian National Council's declaration of independence. He stated:

> The Palestine National Council [PNC] hereby declares, in the Name of God and on behalf of the Palestinian Arab people, the establishment of the state of Palestine in the land of Palestine with its capital at Jerusalem. (UN, 1988)

This aspiration for Palestinian statehood was not new. Having been shaped through decades of conflict[1], dating back to 1948 and the establishment of the state of Israel, and the subsequent tensions, desires for statehood have often been perceived as essential to establishing lasting peace within the region. Efforts for peace and recognition during these decades have been codified under international law through treaties, agreements, and resolutions. This thesis will provide a historic account of the pursuit of statehood under international law, in order to explore the international context for the question of Palestinian statehood.

The idea of statehood is a contested term in academia, however this thesis will focus specifically on the concept of "state recognition." Scholarship regarding statehood and recognition is often grounded in constitutive or declaratory theories (Rose et al, 2022 p 46). According to the constitutive theory of recognition, a state does not exist until it is acknowledged by other states. The declarative theory of recognition, on the other hand, maintains that a state

[1] The purpose of this thesis is not to engage with the history or root causes of the Palestine-Israel conflict or otherwise discuss the politics of the region. However, conflict has shaped the pursuit of statehood, as well as the international legal subaltern realities faced by the Palestinians. Hence, historic as well as current elements relating to the conflict will be highlighted if deemed relevant to the analysis.

can exist without recognition, as recognition is only an admission of an already-existing circumstance (Rose, et al, 2022 p 46). While the international community does not deny the existence of the people of Palestine, many have failed to recognize its claim of statehood. While it is true that 139 countries recognize Palestine (Imseis, 2021 p 872), a general international consensus has not been reached as reflected by the failure of the state of Palestine to receive United Nations (UN) membership. Specifically, in 2011, member states were unable to agree on whether the state of Palestine met the requirements outlined by Article 4 (1) of the UN Charter.

The question of the applicability of the UN Charter to the case of Palestine is fundamental to this analysis. Such instruments of international law are often utilized in a selective manner rather than being universally applied to the same degree for all parties. Imseis (2021) claims that international law in relation to statehood has often been used in a "liberal, flexible and permissive" (p 855) manner in many cases, such as for the case of Israel (p 869), yet the same cannot be said for Palestine. He introduces the concept of International Legal Subalternity (ILS), which he explains as the idea that international law and practices of international organizations only offer legal recourse to specific nations, and disregard "global subaltern classes, here [in his article] represented by Palestine" (Imseis, 2021 p 856). This concept ties international law to the struggle faced by states in the global south when it comes to having international norms fairly and justly apply to them or be utilized to challenge the global north in legal matters. Furthermore, it adds to the existing conceptualizations of statehood by highlighting the rule *by* law rather than rule *of* law nature of international law, specifically for the case of Palestine's recognition.

The main questions of this essay can be summarized in the following terms: how can we understand the concept of statehood and international recognition for the case of Palestine? Why

has the state of Palestine been the exception at the UN, and what role has international law played in its lack of recognition? In seeking to answer these questions, this thesis will argue that the complexities behind the international recognition of Palestine can be understood through the lens of the 'liberal, flexible and permissive' character of international law that the concept of ILS brings to light. It highlights the purpose of international recognition through a review of literature related to statehood and recognition, as well as an analysis of the historic context of Palestine, in terms of its efforts to achieve recognition of its claim to statehood. The essay will refer to instruments of international law and agreements, including the UN Charter, the Montevideo Convention on the Rights and Duties of States (1933), and different UN General Assembly and Security Council resolutions. In addition, records from member states at UN General Assembly and Security Council meetings will act as my primary sources of analysis. I will utilize academic sources for the more conceptual aspects of this essay, such as discussions on statehood and legal concepts, to assist in my analysis of my primary sources.

This thesis will begin by providing a literature review on key concepts, including statehood, recognition, ILS and UN membership. It will continue with a necessary historic analysis on the Palestinian endeavours towards statehood, dating back to the Ottoman Empire. Furthermore, I will evaluate the state of Palestine's application to UN membership based on an analysis of the statements made by member states in the General Assembly and the Security Council regarding the question of Palestine. Finally, the essay will end by connecting the analysis of the state of Palestine's application to the history of the Palestinian desire for statehood, revealing a pattern of ILS.

1: Statehood, UN Membership and Recognition under International Law.

The problématique for this research draws its initial inspiration from Bob Jessop's 2015 monograph titled *The State: Past, Present, Future.* The author asks, is "the State […] best defined by its legal form, coercive capacities, institutional composition and boundaries, international operations and modes of calculation, declared aims, function for broader society or sovereign place in the international system?" (Jessop, 2015 p 20) This set of questions highlights the respective perspectives on understanding statehood, whether it be in terms of its relationship to others, i.e., its international presence, or its national composition and capacity, i.e., its institutions, legal systems, and population. This essay will pay particular attention to the concept of statehood regarding its recognition internationally, and hence, to Jessop's question regarding the relationship between the state and its "sovereign place in the international system."

Jessop, relying on the work of Max Weber on the modern state, argues that an accurate approach to defining the state, and thus responding to the set of questions noted above, can be understood through four different elements. The first three points reflect the work of Weber, including understanding the state as a set of apparatuses (i.e., institutions and organizations), as having territorial nature (i.e., land and borders), and a population over which decisions are made. The fourth element is his own addition: the *idea* of the state. This means that the state should be treated and understood through its relationship to other states and systems. His concept of the idea of a state encapsulates the main argument of his book, that the state is not fixed, rather it is relational. To elaborate, he expresses how states do not exist in isolation, but instead are connected to different institutions, legal systems, economies, and other states. In his final chapter, he emphasizes the need to understand the state beyond general principles, self evident truths, and academic concepts, as he states that the exploration of its core involves understanding

"how its boundaries are established through specific activities with and outside of the State" (Jessop, 2015 p 246).

While conceptualizing the state acts as a starting point for this research, I am more specifically concerned with state recognition under international law. Jessop's (2015) four elements of statehood approach encapsulates the requirements for statehood reflected in resolutions such as the Montevideo convention. Furthermore, the author's call for understanding the core of a state as its relationship with institutions including, most importantly for the analysis presented here, international institutions, is essential to my analysis. Recognition is one example of this relationship, both with other states and with multilateral institutions, such as the UN.

As noted in the introduction, scholarship regarding state recognition is often grounded in constitutive or declaratory theories. In his book, *The Creation of States in International Law*, James Crawford (2006), explains both approaches. According to Crawford (2006), the declarative theory argues that the mere fact that a state exists makes its legality irrelevant, whereas constitutive theory views that statehood is only made relevant upon recognition by other States. The constitutive theory purports that in order for a state to exist, it must be recognized. This means that states essentially have the power to determine the validity of another state's existence. (Rose et al, 2022 p 46) This approach was prominent, according to Crawford (2006) in 19th century positivist approaches, which shifted attention away from the factors that determine the status of States, including land, population, and capable governments, factors additionally brought up by Jessop (2015), and focused on the idea of recognition by other states (p 17). He argues that this dependent connection between recognition by other states and statehood is harmful, as it allows for the influence of politics to impact whether leaders choose or choose not

to recognize States. He notes that "[i]f this is the case, the international status and rights of whole peoples and territories will seem to depend on arbitrary decisions and political contingencies" (Crawford, 2006 p 19) To expand, if states had the freedom to define and allocate legal status to other nations, international law risks being reduced to a political tool utilized by governments, and hence, simply reflects the freedom of leaders to recognize states based on their own political calculations, which in turn can produce political tensions within the international community. This means that recognition can become dependent on relationships that states have with one another, implying a political influence on the allocation of legal status. Crawford (2006) does not negate the importance of international law in this conversation, rather he continues to emphasize how it can be utilized beyond this simplified perspective, as he states that it is "a system with the potential for resolving problems, not merely expressing them" (p 20). Here, he suggests that international law is used for dual, yet contradictory purposes. Despite often being used as a political tool, prone to political calculations and interests, international law also prospectively provides a framework to supersede political agendas and potentially address international tensions.

Declaratory theory, on the other hand, defines state recognition as a political act, which, is independent from the existence of a state as a subject of international law. (Crawford, 2006 p 22). To elaborate, the declaratory theory posits that recognition of a state only means that the requirements for statehood under international law are met, and that the state has been accepted in the international community. This does not mean that a state left unrecognized does not exist (Rose et al, 2022 p 46). While he argues that this approach confuses law with fact, as it implies that mere existence is an indicator of legal status, Crawford (2006) purports that denying a state its right to exist, or protection under international law simply due to non recognition is

unacceptable, as statehood can exists beyond formal recognition. However, he does not suggest that declaratory theory denies the importance of recognition, particularly in terms of its legal consequences, international relations with other states and capacity to engage with multilateral institutions. This is particularly expressed in his statement that "[r]ecognition is an institution of state practice that can resolve uncertainties as to status and allows new situations to be regularized." (Crawford, 2006 p 27) implying, that when a state is recognized, doubts regarding its status are cast away.

Crawford's (2006) work calls attention to the tensions that exist within legal conversations surrounding statehood. While he argues that defining a state should not be dependent on its recognition by other states, he also underlines that the international recognition of a state is vital to its diplomatic endeavours, and security. Along these lines, Mikulas Fabry (2010) emphasizes the negative impacts non-recognized states are faced with, which includes isolation from the international community, inability to participate in international organizations, exclusion from signing international agreements, and limited ability to engage in diplomatic and economic relationships. Furthermore, a non-recognized state can find themselves vulnerable to security threats, as the author purports, they become "legally exposed to being forcibly displaced from the territory they claim and control, by the state actually recognized as sovereign in that territory." (Fabry, 2010 p 7) International recognition therefore plays an important role in strengthening a state's claim over a key aspect of what defines a state as a state: its territory.

Fabry (2010) argues that the recognition of a state is "a constitutive foundational practice of modern international society" (p 7), and that despite the efforts to challenge the 19th century approaches to statehood discussed above, it remains the dominant practice. However, he claims that this approach to understanding statehood is unequal, as certain communities feel unsatisfied

with the status given to them when processes of international recognition do not succeed. Demands for independence and often conflict ensue (Fabry, 2010 p 13), which are themes explored later in this essay. Considering dissatisfaction with the lack of international recognition can lead to conflict, Fabry (2010) maintains that *de facto* statehood is the most viable standard to establishing statehood when agreements and formal recognition fail. *De facto* statehood refers to territories that have not formerly been recognized as states yet possess all the formal elements of statehood (Fabry, 2010 p 9) such as those that have been outlined by the Montevideo convention on the Rights and Duties of States of 1933, which is the convention that codifies the declaratory theory of statehood. This differs from *de jure* statehood, where formal recognition is involved. Utilizing *de facto* statehood, he argues, is "the only viable international standard" (Fabry, 2010 p 219) when faced with a lack of formal recognition. When a political community treats an entity as if it were an independent state, through, for example, diplomatic relations, this implies that the community believes that the entity has a functional government and control over its own affairs. Consequently, this treatment serves as a strong indicator of the community's recognition of the entity as sovereign and independent, even if there is no formal international recognition.

De facto recognition is the result of difficulty arising from formal recognition. Examining the process of UN membership is one approach that can illustrate these difficulties. Universal recognition of States under international law is most commonly achieved through acquiring UN membership. As stated by Fabry (2010) "[a]dmission to the United Nations has certainly served as evidence of widespread recognition for particular entities as states." (p 8). His statement acknowledges the general universal consensus regarding a state's recognition that UN membership has in the eyes of the international community.

The universality of the UN as an international body pushes states to strive for admittance into the organization. Requirements for statehood were first codified under customary international law within the Montevideo Convention, and later put into practice under Article 4 (1) of the UN Charter regarding Membership to the UN. Membership rules were outlined at the first regular session of the General Assembly (UN, 1947). Rules 113 through 116 explain that for a state to become a Member of the UN, an application to the Secretary-General must first be submitted and must contain a declaration that the state accepts the obligations of the Charter. A copy is then either sent to the General Assembly if it is in session, or to the Members of the United Nations. The General Assembly, following the recommendation of the Security Council, then evaluates whether the state meets the requirements, i.e., whether it is "peace-loving" and is willing and able to carry out obligations of the Charter. A two-thirds majority vote in the UN's General Assembly is required in order for a state to accede to membership. If the Security Council recommends against UN membership for the State, then the General Assembly can send the application back, after a thorough evaluation, with records of their discussions, as well as their recommendations (UN, 1947 p 20)

UN membership has often been perceived as universal and open to what the UN terms "peace-loving" states. This understanding became popularized during the period of decolonization which is generally understood to span between the founding of the UN in 1945 until the late 1960s and early 1970s. The organization went from 51 members in 1945, to 76 in 1955 and 184 by January 1994 with the last expansion of membership stemming from the fall of the Soviet Union in the early 1990s (Ginther, 2002 p 180). During this time, States were admitted with nearly no reference to the criteria outlined by Article 4 (1), and as stated by Ginther (2002), the process emerged as a "procedural formality permitting for the automatic admission of even

microstates" (p 180), perhaps engaging in formal recognition of *de facto* states. However, as I will argue in later sections, membership has been conditional and ultimately unequitable with the uneven application of the requirements for membership, as it has been for the case of Palestine, in many ways an entirely unique and unprecedented case in the UN's more that 75-year history.

The unevenness of the application of standards imposed by UN members regarding membership in the organization, particularly for the case of Palestine, is a case of, as coined by Ardi Imseis (2021), of International Legal Subalternity [2](ILS). Breaking down the term international legal subalternity allows for a clearer understanding of its presence. Subalternity, or the subaltern, dates back to the work of Antonio Gramsci, who defined the subaltern as those facing others holding hegemonic power or an elite status. For this particular analysis, Imseis (2023) relays the idea of the subaltern to the study of law, as he explains that powerful states are those who hold this power over, individuals, and developing states, which would constitute the subaltern (p 3).

How does international law conform to subalternity? Imseis (2023) argues that international law is developed and embedded in power structures and relations, and benefit those in favorable political positions, as he states that the law is "the product of the exercise of political power by subjects who wish to impose on society some form of normative order consistent with

[2] The point of this thesis is not to conduct an in-depth analysis of legal subalternity as a concept. Rather, the purpose is to make use of this concept, which I draw primarily from the work Imseis, to examine the case study of the international recognition of Palestinian statehood. I acknowledge that more elaboration is necessary to fully grasp the context of the relationship between international law and subalternity. In a similar fashion to the concept of ILS, scholars have, for instance, made use of the term 'lawfare' to highlight the strategic utilization of international legal regimes and norms to justify certain actions taken specifically in the context of war. Initially popularized by Charles Dunlap (2001 p 4), a former US military officer who saw international legal norms as a potential threat to American military operations, lawfare has come to refer to the distortion of law for the sake of meeting military objectives. Both ILS and lawfare are concepts that bring to light the distinction between 'rule by law' and 'rule of law' and thus draw attention to the volatility of international law and the absence of universal application of legal norms. Rather, viewed from the perspective that these concepts introduce, the application of such norms is seen to benefit certain parties over others.

their interests and worldviews" (p 9). Yet, while the law is often created to impose a norm that benefits a specific party, it becomes a standard that is also imposed on that party and can act separate from the political interests that created it in the first place. (Imseis, 2023 p 9)

Understanding ILS in the case of Palestine is, hence, a result of grasping both subalternity, and the relationship between the development of law and power structures. ILS refers to the unequal application of international law, which in turn leads to the establishment of what can appear as two legal standards: one that applies to 'subaltern citizens' and one that applies to citizens with more political power. To elaborate, it is the fact that despite the claim of universal justice offered by international law and institutions, its application is often selective and withheld from developing and global south countries (p 856). In legal terms, Imseis (2021) explains that ILS is rooted in the rule *by* law versus rule *of* law debate. The withholding of justice is due, as he explains, to an international rule *by* law approach, where the law is selectively applied and/or abused under the guise of political legitimacy, rather than the application of the rule *of* law, where such legal norms would be systemically applied to all without prejudice. In the case of Palestine, the pursuit of statehood has fallen victim to the rule *by* law approach of UN membership, making them unable to engage in the benefits of recognition as previously outlined by Fabry (2010). In the section that follows, I will set up the historic background necessary for understanding the case of ILS in the UN regarding Palestine and its international recognition.

2: Evolution of Independence and Statehood: A Brief History of Palestine.

Although I will not be engaging in an in-depth analysis of the historical factors behind the Palestine-Israel conflict, it is essential to establish a timeline to understand the current

position of Palestinian statehood as it pertains to international recognition. Hence, I will begin by presenting a brief history of Palestine in terms of its statehood.

The end of World War I on November 11th, 1918, acts as a catalysis for the continual struggle for self-determination for Palestine. After being under the rule of the Ottoman Empire and following the 1916 Sykes-Picot agreement between British and French authorities, which divided the Arab states under their respective powers, Palestine fell under British rule (Quigley, 2010, p 11). This was officially reinforced by the League of Nations in 1922, as they placed Palestine under the administration of British Mandatory Power. This temporary form of rule over former colonies was claimed to be necessary for regions such as Palestine until the league deemed them "capable" of being independent (Erakat, 2013 p 15). The mandate resulted in growing concerns amongst Palestinians, particularly due to the Balfour Declaration of 1917, which marked the key early international steps in the process of establishing a Jewish home in Palestine. With the fall of the Ottoman Empire, Britain began engaging with the idea of supporting the World Zionist Organization. This European based Jewish organization had a goal of establishing a Jewish state in Palestine (Quigley, 2010). With this support from British authorities, the threat of the legitimization of the Balfour Declaration of a Jewish state through the British Mandate in Palestine felt more imminent.

The British Mandate continued until 1947, and during this time, Jewish migration to Palestine grew significantly. While Muslim Palestinians had grown from 589,177 in 1922 to 1,157,423 at the end of 1947; the Jewish population increased from 83,790 to 589,341 during the same time period (Hagopian, 1974 p 8). This number was less than what the Zionist Organisation, and Balfour declaration had anticipated, as originally the plan was to settle 3 to 4 million European Jews, but it was still a significant enough number to have a noticeable effect

(United Nations a, n.d.). Considering that before World War I, the Jewish population consisted of 7% of the population and increased to 30.9% of the population by 1947 (Hagopian, 1974 p 9), it is clear that the increase was significant. Hence, this migration was met with resistance from the Palestinians, as they felt the rise of political Zionism was a looming threat to their existence in Palestine.

Following 25 years of the Mandate, Great Britain brought what had come to be known as "the Palestine problem" to the attention of the UN, arguing that the Mandatory Power was no longer able to manage and control the situation, and pressuring the organization to hold a special session of the General Assembly to consider establishing a special committee tasked with overseeing the governance of Palestine (Part II Question of Palestine, n.d). Hence, during the second session of the UNGA convened in September 1947 this special committee constituted itself as an Ad Hoc Committee. This led to the UN Partition plan under resolution 181 (II), on November 29, 1947 (UNGA,1947), a decision made in favour of implementing the Balfour declaration, and a means to solve the Jewish refugee crisis emerging following World War II (Erakat, 2019 p 46). This plan split Palestine into two separate states, with Jerusalem under UN administration. The West Bank was ruled by Jordan, while Egypt had power over the Gaza strip. In 1948, as Israel successfully applied for UN membership, it also seized more land than the Partition Plan had set out, leading to the expulsion, or displacement of almost half of the Palestinian Arab population (United Nations a, n.d.). This is often referred to as “Al Nakba” or the “Catastrophe.” Furthermore, during the 1967 war, referred to as “Al Naksa” or the setback, Israel captured the West Bank and Gaza, including East Jerusalem, which it later annexed. The war brought about a second exodus of Palestinians, estimated at half a million. (United Nations a, n.d.).

The foundations of what appeared to be permanent peace were outlined in Security Council Resolution 242 on November 22, 1967, which called for the termination of all claims or states of belligerency, as well as an Israeli withdrawal from areas it had occupied during the conflict and an equitable resolution to the refugee issue. This is reflected in Article 1, paragraph 1 (i) and (ii) of the resolution, as the Security Council states that it:

> 1. Affirms that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:
>
> (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;
>
> (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force; (UNSC, 1967)

Resolution 242 was adopted unanimously at the 1426th meeting of the Security Council, with 13 votes to none and 2 abstentions by Canada and the United States of America (US) (UNSC, 1967). However, the resolution did not bod well with the Palestinians, and specifically, with the PLO.

During this period, the PLO began acting as the governing body for the people of Palestine. This organization was formed following the 1964 convention held in Jerusalem backed by the Arab League regarding Palestinian Independence. The convention formed the PNC to be the body responsible for decision making on behalf of the PLO, and to represent Palestinian Arabs. This council set up the PLO to act as a government for the people of Palestine (Quigley,

2010 p 133). Ultimately, the PNC rejected Security Council resolution 242 due to the fact that it implied accepting Israeli control over 78% of historic Palestine, and additionally failed to establish a path forward for the return of Palestinian refugees (Erakat, 2019 p 98).

Efforts from the UN General Assembly (UNGA) to uphold peace was attempted through their recognition of the PLO. Specifically, on October 10, 1974, the UNGA invited the PLO to the plenary session regarding the "Question of Palestine," as representatives of the Palestinians, despite the fact that they were not recognized as a member state, a status normally needed to attend such meetings. This invitation was seen as a movement towards peace on behalf of the UN (Quigley, 2010 p 138). This was particularly significant as the President of the General Assembly who was the former foreign minister of Algeria, Abdelaziz Bouteflika, extended this invitation as an effort to pay tribute to anticolonial settlements. Due to its growing diplomatic successes following their freedom from 132 years of French colonial rule, Algeria was perceived as a success story by other former colonies. Bouteflika utilized this invitation as a form of recognition of the Palestinian struggle for freedom in parallel to Algeria's own experience, and introduced leader of the PLO, Yasser Arafat, to the UN as General Commander of the Palestinian Revolution (Erakat, 2019 p 97), an effort towards a declaratory approach to recognition. This led to Resolution 3237, officially granting observer status to the PLO as representatives of Palestinian people, as stated in Article 1:

> 1. Invited the Palestine Liberation Organization to participate in the sessions and the work of the General Assembly in the capacity of Observer. (UNGA, 1974)

While this Resolution passed, 95 to 17, with 19 abstentions, Israel notably, voted against. (UNGA, 1974)

According to Noura Erakat (2019), the role the PLO played in the United Nations acted as a strategic effort to implement the idea of Palestinian statehood into international legal norms, through the utilization of legal instruments. This is exemplified not only through their participation in the plenary session at the United Nations, but additionally through the PNC's rejection of the UN Security Council Resolution 242. Hence, the author states that "the PLO drew upon the same legal and institutional norms that legitimated Israel's establishment, naturalized its existence and protected its territorial and political sovereignty" (p 99).

However, neither independence or peace was established. As Israel continued to invade and occupy Gaza, as well as the West Bank, thousands of Palestinians were forced to flee, persisting pattern over the past 20 years highlighted thus far. Combined with the frustration of 20 years of continued conflict, the real catalyst to the continued conflict was the crash caused by an Israeli vehicle in Gaza on December 8th, 1987, killing four Palestinians (Hawaleshka, 2023). This sparked the 1987 revolt, referred to as the "Intifada" or the uprising. Rashid Khalidi (2020) describes the uprising as "a spontaneous, bottom-up campaign of resistance, born of an accumulation of frustration" (p 173). The Intifada demonstrated the unequal power dynamics between Israel and Palestine. One commonly discussed example of the escalation of violence is the orders by Yitzhak Rabin, Israel's Defense Minister at the time, who instructed soldiers to use "force, might and beatings" (Clines, 1988) against Palestinian demonstrators. This led to United Nations Security Council resolution 605, adopted on 22 December 1987, condemning Israel for violating the human rights of the Palestinian people. The resolution passed with 14 votes to none against and one abstention from the United States (UNSC, 1987).

Despite the United States' abstention, the events represent a turning point for negotiations between Israel and Palestine. On November 15th, 1988, as a result of discussions during the 19th

session of the Palestine National Council, a declaration of independence was issued for the state of Palestine. This declaration can be viewed as a qualifying factor for Palestinian statehood, and pursuant to the declaratory theory of recognition. Annex III outlined their Declaration of Independence, and affirmed their commitment to UN membership, as it stated:

> The state of Palestine declares its commitment to the purposes and principles of the United Nations, to the Universal Declaration of Human Rights and to the policy and principles of non-alignment. (United Nations b, n.d.)

Around the same time, also in attempt to promote peace following the Intifada, the United States and the USSR organized Israeli-Palestinian dialogue through a Middle East Peace Conference in Madrid, held in October 1991. The PNC approved the participation of Palestinians through a joint Palestinian-Jordanian delegation. This was due to the fact that Israel did not recognize the PLO after the state had voted against resolution 3237 noted above. By voting against the resolution, Israel showed it was unwilling to engage with the PLO. The Palestinians, through the joint delegation continued to attempt to mobilize the law in their favor. During negotiations in 1992, when Israel sought to amend a previously agreed settlement freeze in favor of the "natural" development of up to 2,000 settlement units, the Palestinians, despite previous rejection of Resolution 242, attempted to include it in the interim process[3] of the agreement. This was done in order for the issues of settlements and Jerusalem to be addressed right away, as emphasized by the resolution. (Erakat, 2019 p 149).

[3] The interim process of the agreement was to last for a period of five years, during which Israel was expected to slowly withdraw from the Gaza strip and West Bank. The final status stage was to be the second phase of the agreement, where other issues including settlements, security, and borders amongst other areas of concern were to be discussed and would mark peace between Israel and the Palestinian Authority. These phases are commonly referred to as Oslo I and Oslo II. More on the Oslo Accords will be elaborated upon below.

According to Erakat (2019), if resolution 242 were to be applied from the beginning of the negotiations, it would imply a legal requirement for withdrawal in exchange for peace. In this case, resolution 242 would potentially prevent settlements and codify existing settlements as illegal under international law. On the other hand, limiting the application of resolution 242 to the final status agreement represented Israel's efforts to delay the topic of settlements, and maintain as much power over the Gaza strip and West Bank as possible (Erakat, 2019 p 149). Essentially, despite the fact that, according to international precedent, Israel had accepted a form of understanding of Resolution 242 during the 1978 Israeli-Egyptian peace negotiations, it rejected this request from the Palestinians to include the resolution, insisting that resolution 242 only involves states, a status which Palestine did not have (Erakat, 2019 p 150).

In 1993, despite lack of recognition of the PLO s position, Israel engaged in confidential discussions with the PLO in Oslo, Norway. This is particularly important because, while the joint Jordanian-Palestinian delegation emphasized concern with the building of new settlement housing in Gaza and the West Bank, the PLO brushed off this concern (Quigley, p 174). This is due to the fact that the PLO began losing power in the region, due to alternative leadership such as Hamas, an Islamic Resistance Movement founded following the first Intifada in 1987. This resistance group grew in popularity due to their direct opposition to the Israeli Occupatio, and the frustration Palestinians felt regarding the corruption within Fatah, and consequently the Palestinian Authority (PA) and PLO. (Khalidi, 2020 p 219) As the PLO's power diminished,[4] it

[4] While the PLO was favorable amongst Palestinians when it was first established, as they were working towards strengthening diplomacy and the Palestinian cause as a whole, they began losing popularity following the First Intifada and the War between Israel and Palestine in Lebanon in 1982. The PLO, which was operating in Lebanon following their expulsion from Jordan, agreed to leave in August of that same year, and fled to Tunis. As they began operating in Tunis, they lost touch with the people of Palestine and what their struggles were, as they were no longer living amongst them. Hence, their popularity declined. (Khalidi, 2020)

fought not to save the Palestinians, but to save itself, and by compromising with Israel, it hoped to reach a peace agreement and maintain power (Erakat, 2019 p 139).

Eventually, following nearly two years of negotiations, both parties signed the Declaration of Principles on Interim Self-Government Arrangements (DOP), known as the Oslo Accords. With the Oslo I Accord signed in 1993 and the Oslo II Accord in 1995, providing the PLO governing power over the West Bank and the Gaza Strip, the Oslo Accords created the PA tasked with overseeing the Palestinians living under Israeli military occupation in areas of the occupied West Bank and Gaza. The PA was only intended to exist "for a transitional period not exceeding five years and serve as a form of "Interim Self-Government" (UNGA & UNSC, 1997 Article III 4). The PA was, and continues to be supported by Fatah, a secular political party established by Palestinian diaspora during the 1948 Nakba. They are also the main force behind the PLO. Furthermore, through the PA, the Oslo Accords divided the West Bank into three regional levels of Palestinian sovereignty as illustrated by the map below: Area A (PA), Area B (PA and Israel), and Area C (Israel), which accounted for 60% of the West Bank.

United Nations Office for the Coordination of Humanitarian Affairs

occupied Palestinian territory

West Bank: Area C Map

February 2011

According to Erakat (2019), the Intifada provided the PLO with a legal opportunity to leverage international law and norms in its pursuit of self determination. While the Intifada provided the PLO with legal leverage, as images spread across the world of the horrors faced by the Palestinians, they failed to mobilize the international attention in their favor (Erakat 2019 p 159). Similar to their use of international law in the 1970s, this could have been an opportunity to give further legitimacy to their cause. The Oslo agreement failed to recognize Palestinian's right to establish an independent state, with only an eventual withdrawal of Israel from occupied territories being discussed. While the PLO considered the agreement a win, clutching on to the promise of eventual withdrawal on the Israeli end, Israel had only agreed to this withdrawal knowing that there was no clear definition of the scope of the interim agreement, and time frame. Yet, efforts to push for the success of the Oslo Accords continued, particularly on behalf of the UN.

The Office of the United Nations Special Coordinator in the Occupied Territories (UNSCO) was created by the UN in 1994 to oversee aid to the Palestinian people in support of the peace process (UNSCO, 2019). The office is actively involved in pursuing a diplomatic resolution to the Arab Israeli conflict and it supports and directs humanitarian and developmental efforts in Palestine through its coordination of different UN agencies. The Secretary-General appointed the Special Coordinator for the Middle East Peace Process and Personal Representative to the PLO and PA in 1999, expanding on their previous role (UNSCO, 2019). Nonetheless, Israel persisted in occupying the Palestinian Territory, which included East

Jerusalem. In the Occupied Palestinian Territory (OPT), Israel, the Occupying Power[5], increased the number of settlers by building multiple new settlements and growing the ones that were already there, in defiance of applicable international law, particularly humanitarian, human rights and customary international law. In 2001, Human Rights Watch reported that in the first half of 2000, there was a 96% increase in the number of new settlements in the Israeli-occupied West Bank and Gaza Strip, with 860 occurring in the Jerusalem region (HRW, 2001).

Despite these international frameworks set in place with the intention of protecting Palestinians, the community felt deeply disappointed with the signing of the Oslo Accords, even with the initial hope for future claims to statehood. Khalidi (2020) describes what he refers to as a "post-Oslo confinement" (p 208) felt amongst Palestinians in Gaza in the West Bank. As checkpoints, walls, fences, and denials of movement increased, the population was consequently confined to the West Bank and Gaza. The despair grew further in the community following the continuation of the supposed five-year interim period long after it should have ended (Khalidi, 2020 p 210). In addition, the PLO's power grew weaker as disappointment in the Oslo agreement became more widespread and support for Hamas, skyrocketed. The tensions between these parties, as well as the increased frustration amongst the Palestinians, resulted in the second Intifada in September 2000, where violence skyrocketed, The eight-year long second Intifada resulted in an estimated 6,600 deaths, as compared to the same number of years for the first Intifada with approximately 1,600 deaths (Khalidi, 2020 p 213).

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[5] Israel has been identified as an Occupying Power under provisions of international law. Australia, Belgium, Canada, Denmark, the European Union, Finland, France, Ireland, Luxemburg, the Netherlands, Norway, Spain, Sweden, Switzerland, and the United Kingdom reiterated their position that Israeli settlements are prohibited by Article 49 of the fourth Geneva Convention in a joint statement on settler violence in the West Bank. The joint statement was intended to also reaffirm the position taken by the countries listed above that Israel is considered an occupying power under international law. (Finucane, 2024)

In an attempt to facilitate further peace negotiations, the European Union, Russia, the United Nations and the United States established the Middle East Quartet in 2002. The Security Council supported the quartet through its adoption of resolution 1397 (2002). Namely, the quartet works on what it calls a Performance Based Road Map to a Two-State solution, codified in Security Council resolution 1515 (2003). This Roadmap works towards a three-phased performance-based strategy to peace in the region. This includes phase 1, ending terror and violence, normalizing Palestinian life, and building Palestinian institutions, which was to last from December 2002 to May 2003. Phase 2 is referred to as the transition, where in order to achieve a permanent status settlement, efforts are concentrated on the possibility of establishing an independent Palestinian state based on the new constitution, complete with provisional borders and sovereign powers. This phase was scheduled to last from June 2003 to December 2003. Finaly, phase 3 titled the permanent status agreement and end of the Israeli Palestinian conflict, was set to last from 2004 to 2005. Despite these efforts, and as the pattern of history between Israel and Palestine has revealed thus far, conflict persisted.

Close to a decade later, on September 23, 2011, the Security Council received a membership application letter from President Mahmoud Abbas, President of the state of Palestine, and Chairman of the Executive Committee of the PLO (UNGA& UNSC, 2011). The State's application for membership in the UN was brought forth to the Security Council a few days later on September 28th, 2011 (UNSC, 2011 a). The application was grounded on UNGA resolution 181 (II) and the Declaration of Independence of the state of Palestine. According Abbas, the application was submitted with the prospects for peace with Israel in mind (UN

News, 2011 b). At the time of the application, Abbas also noted[6] an increased number of Israeli settlements, and the growing threat of the Israeli occupation.

Five informal meetings were convened during the 109th meeting for the council to consider whether Palestine met the requirements for membership according to Article 4 (1) of the UN Charter. (UNSC, 2011 a). However, the UNGA reported that no unanimous recommendation could be made to the Security Council. In response, member states called for the UNGA to adopt a resolution making the state of Palestine a non-member Observer State. On November 29th, 2012, resolution 67/19 established Palestine as a non-member observer state, (UNGA, 2012) and full membership has yet to be attained.

3: Palestine's UN membership Application

Why is it that member states were unable to come to a unanimous agreement on Palestine's application for UN membership? Before answering this question, a brief explanation of key elements of international law is required. International legal processes and norms are created and maintained through different sources. Two main categories include treaty law and customary international law. The main source through which public international law is created, modified and annulled is treaty law. These are written agreements occurring between states and with international organizations. These treaties can be bilateral, or between two entities, and

[6] This was also reported by a Human Rights Watch report in 2012, which reported on the events in Israel-Palestine in 2011. According to their report, as of November 1st, 2011, the destruction of 467 homes in the West Bank and in East Jerusalem by Israeli authorities had led to the displacement of 869 Palestinians (HRW, 2012). This is particularly alarming, as the rate of displacement was greater in 2011 than in any year since 2006, which is when the UN began collecting such data (HRW, 2012).

multilateral or between multiple entities. Not only does treaty law act as an official record of international law, but it also serves as a process to codify it (Rose et al, 2022 p 18).

Customary international law, unlike treaty law, is not written but is defined by two elements. Firstly, there is the general practice, which are the words and actions of states. This can include comments made in the General Assembly by member states. The second element of customary international law is the acceptance or conviction of states, or opinio juris. This means that a state acts out of a legal obligation, and in accordance with international law (Rose et al, 2022 p 23). Rather than acting based on a written agreement, states infer action based on relevant state practices.

The difference between both elements has a multitude of implications when it comes to the codification of international legal norms. For one, treaties can only be changed by the establishment of a new treaty, whereas customary law can shift out of new political situations or legal precedents (Erakat, 2019 p 183). In other words, while the former is mostly static, the latter is more malleable.

What does the prominence of customary international law mean in terms of the enforcement of international law? Considering its malleability, if a state wishes to not comply with a certain law, it can easily argue that the specific custom has yet to be clarified by the international community. As for treaty law, a state can argue that it is not applicable to their case through different interpretations of the agreement. The Vienna Convention on the Law of Treaties (VCLT) of 1969, which stands as a main instrument of treaty law, outlines the way through which states are expected to carry out interpretations of treaties. Article 31 (1) mentions that these interpretations shall occur “under good faith and in accordance with the ordinary meaning to be given to the terms of the treaty in their *context* and in the light of its *objectives* and

purposes" (VCLT, 1969, emphasis added). By discussing context, objectives and purposes, the VCLT attempts to constrain interpretations of treaty language in order to ensure that interpretations are coherent with the overarching goals of the treaty (Rose et al, 2022 p 70)

Erakat (2019) argues that international laws are difficult to impose especially as they compete with national interest and sovereignty, and hence, allow for political agendas to influence the enforcement of international law (p 184). She maintains that "[i]n cases where there is no political will to compel a state to comply with the law, violations can become the norm rather than the exception" (p 185). This highlights not only the resistance of applying international law fairly, as it is dependent on political will, but also how the influence of politics in law sets a precedent within the international community in that once violations occur by one or more states, it becomes difficult to stop other states from doing the same. This can be exemplified through the struggle of member states to agree on the right of Palestine to UN membership.

To begin analyzing the concept of international legal subalternity on Palestinian statehood recognition, it is important to reflect on the application for membership in 2011 and the Report of the Committee on the Admission of New Members concerning the application of Palestine for admission to membership in the United Nations (hereinafter referred to as The Report) (UNSC, 2011). While there is no publicly available record of the transcripts from the meeting, one can gather a general idea of the perspectives of different member states through the Security Council's 6636th meeting on "the situation in the Middle East, including the Palestinian question" held on October 24th, 2011 (UNSC, 2011 b). Hence, in order to analyze the decision regarding Palestine's application for membership, I will connect the general claims made by the

Report, to statements made by representatives[7] at the 6636th meeting of the Security Council regarding Palestine's application.

The records of the meeting reveal tension amongst different government representatives, as they present different perspectives. Furthermore, while the representatives of the member states are not necessarily interpreting international law, in this case the UN Charter, from a legal perspective, they act as an example through which treaties and customary international law are utilized, understood, and vocalized. In other words, these discussions are where international law, in a sense, 'lives' and is made real in the discussions of international politics beyond treaties and precedents.

The perspectives on whether Palestine could receive UN membership seemed to touch primarily on the role of peace negotiations between the government of Israel and the Palestinians. Referring to the Report of the Committee on the Admission of New Members noted above, a plethora of questions were raised regarding whether Palestine met the requirements of statehood under of Article 4 (1) of the UN Charter and the 1933 Montevideo convention on the Rights and Duties of States. As described in Article 4 (1) of the UN Charter, the requirements for UN Membership are laid out in broad terms:

> Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations. (U.N. Charter art. 4, para. 1)

[7] For the sake of consistency, and the purpose of this analysis, the individuals speaking on behalf of member states to the United Nations will be referred to as "representatives". The representative of Palestine will be referred to as the Permanent Observer of Palestine due to its recognition as such within the UN.

What it takes to be “peace-loving” or “able and willing” to follow the requirements of the UN Charter appear to be up for interpretation in that they are broad conceptualization of what defines the behaviour and actions of a ‘state’. This is where the Montevideo Convention, in contrast, is useful, as under Article 1, it outlines more specific requirements for statehood as follows:

> A state as a person of international law should possess: (a) A permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states (Montevideo Convention on the Rights and Duties of States, 1933).

Whereas the UN Charter reflects the normative ideals of the UN in its terms for membership, the Montevideo Convention outlines more descriptive and specific requirements. These conditions are similar to academic conceptions of statehood, going back to Jessop’s (2015) four elements approach to defining a state. The four criteria identifying the state as a person in international law are expressed in the Montevideo convention, where standards for statehood, including requirements of population, land, governance, and international relations with other states, are clearly outlined.

While Palestine’s application recalled that most member states had bilaterally recognized the state of Palestine on the basis of the June 1967 borders, the inability to unanimously recommend Palestine’s full membership reflected hesitance by some member states to codify recognition as established by the UN Charter. Clearly, some were not ready to fully support the Palestinian application for statehood, including Israel, whose representative stated in the 6636th meeting that “Palestinian unilateral action at the United Nations is no path to real statehood; it is a march of folly.” (UNSC, 2011 b p 10)

The Report reveals that the majority agreed that the state of Palestine was able to enter relations with other states as demonstrated by its membership in the United Nations Educational, Scientific and Cultural Organization (UNESCO), which was established on October 31st, 2011 (UNSC, 2011 a) The then members of UNESCO voted in favor of making the state of Palestine a full member, by a vote of 107 in favour to 14 against, and 52 abstentions (UN News, 2011 a). Furthermore, many acknowledged the fact that over 130 States at the time recognized Palestine as independent. Going through the records of the 6636th meeting of the Security Council reveals The Permanent Representative of Palestine stated that "Those [130] countries have taken a principled stand in support of our people's right to self-determination and in line with countless United Nations resolutions, from resolution 181 (II) of 1947 to present." (UNSC, 2011 b p 5) However, member states questioned, again, the ability of the PA to engage in relations with other states as per the Oslo accords (UNSC, 2011 a). Under clause 5, a of article IX of the Oslo Accords, the limitations of the PA's ability to engage in diplomacy is stated as follows:

> In accordance with the DOP, the Council [PNC] will not have powers and responsibilities in the sphere of foreign relations, which sphere includes the establishment abroad of embassies, consulates or other types of foreign missions and posts or permitting their establishment in the West Bank or the Gaza Strip, the appointment of or admission of diplomatic and consular staff, and the exercise of diplomatic functions. (UNGA & UNSC, 1997 Article IX 5-a)

The clause, which outlines that the PNC should not be granted power in engaging with foreign affairs and responsibilities, is presumably what the Report is referencing. However, as pointed by Imseis (2021), the Report does not mention that those powers were expected to be carried out by the PLO on the PA's behalf, and that Palestine has demonstrated its ability to

engage in foreign relations through its negotiations regarding the Oslo Accords (p 871), and their engagement with the UN, codified under Resolution 3237. The Report does not elaborate on this point further, and neither do any of the statements made by member states in the Security Council meeting.

On the other key elements of membership to the UN as described in the article of the Charter quoted above, i.e., commitment to the UN Charter and willingness to carry out its obligations, many expressed that this was evident through the mere fact that Palestine had pledged to do so through its application for UN membership (UNSC, 2011 a). The Permanent Observer for Palestine highlighted that their application was validated through the fact that the United Nations Secretary-General and the Legal Council for verifying Palestine's application decided to consider it in the first place. The representative stated that this verification "reflects the strength of Palestine's application and its fulfilment of the required criteria for this important step." (UNSC, 2011b p 6) However, many countered this position by saying a commitment cannot be solely verbal. Showing a commitment to peace was essential. It was argued that Hamas was failing on this account and had not accepted these obligations. This is reflected through the discussions surrounding the idea of 'peace'. While the Report made sure to provide a broad perspective on each of the main points of discussion regarding Palestinian membership to the UN (UNSC, 2011 a), one theme dominated the discussions at the Security Council 6636th meeting, that of a "peace-loving" state. Specifically, representatives continuously discussed the relationship between the Israel-Palestine peace negotiations through the Quartet, and the Palestinian's right to statehood.

According to the Report, concerns were raised regarding the power that The Islamic Resistance Movement, commonly known as Hamas, held over 40% of the population. During the

January 25, 2006, elections Hamas won 44% of the vote, following 40 years of Fatah in power (Khalidi, 2020 p 219). The fact that this armed resistance group had a substantive amount of control in the area, made States feel as though the PA did not have effective control over the claimed territory. (UNSC, 2011 a) The representative of Israel, reflected this sentiment in his statement, as he mentioned that "[t]he President of the Palestinian Authority has zero authority in the Gaza Strip" (UNSC, 2011 b p 10). On the other hand, the representative for Palestine, The Permanent Observer for Palestine, discussed the efforts in strengthening Palestinian national institutions through a two-year plan set out by the PA, and legitimized by international institutions through the Ad Hoc Liaison Committee for the Coordination of the International Assistance to Palestinians (AHLC).[8] The representative took note of the decisions from the Ad Hoc Committee, stating that they "reaffirmed that we [Palestinians] are able to govern ourselves with viable, effective institutions that are above the threshold for a functioning State." (UNSC, 2011 b p 5)

The prominent presence of Hamas in the region, and the fact that the group held a goal to destroy Israel and was refusing to denounce terrorism and violence, made many member states feel as though the peace-loving requirement noted in Article 4 was left unmet. This is despite the fact that others pointed out the commitment of representatives of Palestine to peace with Israel through participation in agreements such as the Arab Peace Initiative, relevant UN resolutions and more. In fact, the ties between peace and UN membership was a topic of heavy discussion amongst member states, as reflected by speeches from representatives to the Security Council at the 6636th meeting. The opinions of different state representatives at the meeting were

[8] The AHLC is the main instrument for policy-level coordination of development assistance to the occupied Palestinian territory (OPT). Norway is the AHLC's chair, and the US and EU are co-sponsors. (UNSCO, n.d.)

expressed on whether peace agreements were required for pursuit of statehood. The Permanent Observer of Palestine pointed out the failure of peace negotiations thus far, as he emphasized the continuous sacrifice of the Palestinians, which have consistently been met with Israeli violations of international law (UNSC 2011 b p 6). The representative emphasized the importance of international law and the role that upholding key resolutions plays in a sustainable peace process. The Permanent Observer of Palestine pointed out that the peace process and Palestinian endeavours for independence are mutually inclusive, as he highlighted the shared goal of a two-state solution. This is reflected in his statement near the end of his address to the Security Council where he stated that the determination to achieve an independent peaceful state of Palestine, as this would "be the core of a just and lasting solution to the Israeli-Palestinian conflict and the Arab Israeli conflict as a whole" (UNSC 2011 b p 8).

The representative of Brazil agreed with the Permanent Observer for Palestine regarding the mutually inclusive relationship between Palestinian membership and peace, through statement where she affirmed that "[t]he recognition of the Palestinian people's legitimate right to sovereignty and self-determination increases the possibilities of peace between Israel and Palestine" (UNSC, 2011 b p 17). The representative of Brazil went on to elaborate on the need for a sustainable peace agreement between the Palestinians and Israel, one that takes into consideration the power imbalances that exists between both parties. Brazil stated that international recognition is key to this, as "the Palestinian state and its admission in the United Nations as a full member can help reduce the asymmetry that at present characterizes relations between the parties" (UNSC, 2011 b p 17). The representative further highlighted that the evidence that Palestine fulfils the peace-loving requirement is made evident by their mere decision to apply for UN membership, as per the statement, "[t]he ultimate demonstration that

Palestine is a peace-loving state is precisely the decision to turn to international law and to the United Nations to realize its legitimate right to self-determination" (UNSC, 2011 b p 17).

While the representative of Brazil and the Permanent Observer of Palestine painted a picture of the peace negotiations and independence for the state of Palestine as having a dependent relationship, sharing the same goals, and reinforcing each other, this topic appeared to be contested by other member states. For example, while they did not directly claim concern for the peace-loving requirement for statehood, the then Representative of the United States reaffirmed their opposition to Palestinian efforts towards UN membership, expressing their concern for the consequences for peace: "We have been very clear that we believe Palestinian efforts to seek member state status at the United Nations will not advocate for the peace process, but rather will complicate, delay and perhaps derail prospects for a negotiated settlement." (UNSC 2011 b p 12)

This was further echoed by the representative of Germany, who stated that "Germany supports the establishment of a Palestinian State. As a matter of course, such a state will become a Member of the United Nations." However, the representative emphasized the need to operate within the Quartet Roadmap and added that "[t]he two-state solution can be achieved only through a peace agreement between the parties" (UNSC 2011 b p 15). Both of these cases show that many member states felt as though peace negotiations were a required step before statehood, rather than a result of it.

Other member states separated the peace process and Palestinian's membership from the UN completely. The representative of India, firmly adhered to this position, as he stated that members should not "make Palestine's membership at the United Nations conditional upon a peace agreement, for that would be legally untenable, even while we support the resumption of

direct talks to resolve the outstanding issue" (UNSC 2011 b p 14). The representative of Lebanon, made an interesting point regarding this complete separation of peace process and Palestinian membership. The representative highlighted that the fate of Palestinian statehood should not be left to the fate of an agreement with Israel as an occupying power. Lebanon stated that Israel would technically be provided a "right to veto over the self-determination of the Palestinian people, a right that the General Assembly has recognized as inalienable since 1974" (UNSC, 2011 b p 15).

What makes the discussions surrounding the Palestinian application for UN membership a case that is illustrative of international legal subalternity? It is, as Imseis (2021) argues, the fact that the UN typically carries out a regime of "liberal, flexible and permissive" (p 863) application of its requirements for membership. To elaborate on this, I will utilize the example of Israel's successful application for membership on May 11th, 1949. This analysis will be based on the record of the 207th plenary meeting of the Security Council, concerning the Application of Israel for admission to membership in the United Nations: report of the Ad Hoc Political Committee.

Some context is necessary before engaging in this analysis in order to highlight key differences between the two cases. First, the founding of the state of Israel occurred following the Holocaust and the horrors unleashed by World War Two. From 1941 to 1945, 6 million Jews, along with hundreds of thousands of Roma, other ethnic minorities, and LGBTQ+, were murdered throughout German-occupied Europe. As Götz Aly has argued, this emerged out of European ideas of the nation-state and the growing obsession, after WWI, with a "pure" nation. Jews and other minorities were viewed as interlopers or "foreigners" against rising nationalisms around Romanization, Polonization, Hellenization, Aryanization etc. Tensions culminated during

World War Two which, historian Richard Overy (2021) has recently termed the "last imperial war." According to Overy, the War can be understood as emerging out of a final "dynamic drive to empire" on the part of Germany, Italy and Japan, seeking to violently expand territory in the 1930s in Eastern Europe, Asia and Africa (Overy 2021, p. 3). This sparked intensive imperialist rivalry with existing colonial powers, escalating into "total war," and unleashing the most violent military conflict in history. After the War, with the Jewish population decimated and Europe in shambles, European states gradually became particularly devoted to the founding of the state of Israel, as a partial form of reparation for the Holocaust and as a way to address the political tensions of an internally displaced Jewish population.

While the devastation of the Holocaust gave rise to political support for Israeli statehood in Europe and North America, the process through which this occurred remained a colonial one in the Middle East, and one in which Palestian statehood became delegitimized and subalternized.[9] This reflects the ways in which, seen though an ILS lens, international law emerges and develops in ways that are instrumentalized and selective based on politics and power relations at a given historical moment. International law often proceeds along a dual track, where the legal legitimization of one group comes at the expense of the further subalternization of another. This is revealed through not only the ability of Israel to establish a Jewish state in Palestine, but through their ability to easily gain UN membership.

Furthermore, the UN had been established only 4 years before the founding of Israel, on October 24, 1945. One needs to recall the question of Palestine had already been brought to the UN through resolution 181 (II) through the Ad Hoc committee tasked to tackle the question of

[9] The result of this subalternized reality faced by the Palestinians following the establishment of the state of Israel is highlighted in the second section of this paper, such as the Nakba.

Palestine in 1947. It is also important to recall that this was during the height of the Nakba and the atrocities that came with it.

The most interesting point of discussion regarding the presentations of state representatives, was regarding the "peace-loving" requirement of the UN Charter. Recall the point delivered by the representative of the US regarding Palestine's application, where it was concluded that Palestine's membership to the UN would "complicate, delay and perhaps derail prospects" of peace negotiations. This implies that membership would get in the way of peace between Israel and the Palestinians. This was additionally echoed by the representative of Germany. However, in the case of Israel's application, it was the very argument later made by the Observer of Palestine in 2011, regarding the mutually inclusive relationship between UN membership and peace, that was delivered by many member states during the 1949 meeting on Israel's application for membership.

The representative of Canada, for example, stated that Israel's admission to the UN "would mark a significant stage in its political growth" (UNSC, 1949 p 317). This signaled again, that peace and growth can result from UN membership, rather than being a requirement for it. This was further argued by the representative of the US, who stated that "[t]he long discussion of Israel's application was evidence of the general deep-rooted desire for a just solution of questions relating to Palestine, and especially those of Jerusalem and the Arab refugees" (UNSC, 1949 p 313). These statements share the same sentiment of not only the Observer of Palestine in 2011, but also the representative of Brazil following her discussion of how the 'peace-loving' requirement was demonstrated by the fact that the Palestinians through their representatives were turning to international law in regard to goal of achieving self-determination.

While there are concerns in most conversations, and nuances found, ultimately, unlike the case of Palestine, Israel was able to receive UN membership with a vote of 37 to 12, with 9 abstentions (UNSC, 1949 p 331). Following the successful vote, the representative of Israel delivered a speech in which they stated that "[o]nce its own place and status had been secured, Israel had no higher ambition or urgent task than to attain a relationship of good neighbourliness and friendly collaboration with the peoples of the vital area (of the Middle East)" (UNSC,1949 p 334). Again, it is interesting to note the differences between Israel's emphasis on needing to establish its own status within the international community to move towards peace, versus the expectation that the Palestinians must achieve peace before receiving membership. While peace would be a result of status for the case of the former, it was considered conditional for membership for the latter. Even though it could be argued that this is due to an escalation of violence during 2011, as opposed to the situation in 1949 when Israel received UN membership, where a year before in 1948, the Nakba was, as previously discussed, far from a peaceful period, with half a million Palestinians being displaced.

The threats to peace during the time of Israel's application was highlighted by many member states. The representative of Syria, for example did not regard Israel "as peace-loving in view of the circumstances in which it had come into being" (UNSC, 1949 p 314), in reference to the events of the Nakba. This view was echoed by other allies such as Saudi Arabia, Yemen, and Lebanon, who each brought up the context of the violence at the time.

4: UN Membership Application, Universality and Legal Subalternity

What does the admission of Israel as a permanent member to the United Nations, as opposed to the 'non-member observer state' status given to Palestine, mean in terms of the application of international law in questions regarding statehood? First, the purpose here is not to argue that Israel should not have been admitted to the United Nations. In reality, as argued by Imseis (2021), the admission of Israel was not out of character for the UN. As he states, discussions around this case "was in line with the liberal, flexible and permissive approach that would come to characterize UN admission practice after 1955" (p 875). This approach to UN admission can also be described as the universality of UN membership. According to Imseis (2021), a defining feature of the United Nations is its universality when it comes to membership, considering not only its commitment to safeguarding peace and human rights, but also according to historic precedents (p 857).

The International Court of Justice's (ICJ) Conditions of Admission advisory opinion dated May 28, 1948, states that a Member of the UN voting on a state's application for membership in the UN, in accordance with the letter and spirit of the Charter, may not condition its consent to admission on anything other than what is stated in paragraph 1 of Article 4 of the Charter (ICJ, 1948 Article 4).[10] According to Imseis (2021), the ICJ's advisory opinion played a pivotal role in curbing the impact of political factors and other extraneous criteria that could be used to restrict the admissions process of the United Nations. This paved the way for the flexible interpretation of the Article 4(1) requirements in that the broad criteria of 'peace-loving'

[10] The International Court of Justice (ICJ) has determined that conditions laid out by Article 4(1) means states need to be subjected to five key components as related to membership. They must (i) be a state, (ii) be peace-loving; (iii) accept the obligations of the Charter; (iv) be able to carry out those obligations; and (v) be willing to do so. According to the court, these are determined by joint efforts on behalf of the UN Security Council and the General Assembly (ICJ, 1948).

and ‘able and willing’ to carry out the obligations of the Charter formed the basis for the principle of universality for admissions (Imseis 2021 p 859). The decision to embark on a permissive approach to membership is reflected in different UN resolutions, including Resolution 506 (VI) adopted at the General Assembly sixth session on February 1st, 1952, which states:

> Considering that the Charter of the United Nations provides that membership is open to all States not original Members of the Organization and that this universality is subject only to the conditions that they be peace-loving and accept the obligations contained in the Charter and, in the judgment of the Organization, are able and willing to carry out these obligations. (UNGA, 1952)

The wording of this resolution reflects the position of the ICJ’s advisory opinion, that universality should be applied to the conditions of the UN Charter, and external factors influencing decisions of member states should be disregarded so long as they are irrelevant to the Charter. Resolution 918 of the UNGA 10th session on December 8th, 1955, titled “Admission of New Members to the United Nations” called for a broader admission to the UN in an appeal to the Security Council. Under Clause 2 of the resolution, the General Assembly:

> *Requests* the Security Council to consider, in light of the General opinion in favour of the widest possible membership of the United Nations, the pending applications for membership of all those eighteen countries about which no problem of unification arises. (UNGA a, 1955)

To elaborate on this resolution, the 1955 report of the Committee of Good Offices highlights the sentiment for the adoption of universality to UN membership shared by member

states at the September 30th, 1955 meeting for the Ad Hoc Political Committee. The joint draft resolution was endorsed by most of the speakers throughout the discussion. At the time, different points were made in favour of a permissive approach to admission. There was a widespread belief that the United Nations should have the largest possible membership. Furthermore, there was a growing realization that a compromise regarding the US wanting to disregard People's Democracies, as they opposed their regimes, and other member states wanting a universal approach, was the only way to resolve the issue. As long as an applicant state satisfies the requirements outlined in the Charter, it should not be denied entry due to its political system. This in particular was a response to the US not wanting to admit any People's Democracies, as opposed to the USSR who had consistently worked on the admission of all states meeting the requirements for membership since 1949 (UNGA b, 1955). In addition, a notable point emerged during these early discussions on membership regarding the idea of 'peace'. The 1955 report highlighted that members that are applying, in line with the spirit of the organization regarding promoting peace, that "every state should be presumed to be peace-loving until the contrary was established." (p 24) As revealed from the 6636th meeting of the Security Council regarding Palestine's application, it appears that the presumption of "peace-loving" was disregarded, as opposed to that of Israel, where peace was assumed to flourish following its recognition by the UN.

These resolutions, in line with the decision of the ICJ, reflect the universality approach to UN membership. The "liberal, flexible and permissive" application of Article 4 (1) of the UN Charter can also be observed for the case of Russia's UN membership. The Union of Soviet Socialist Republics, or USSR, was a founding member of the UN Charter. (UN, n.d. b) On December 24, 1991, following the fall of the USSR, Boris Yeltsin, the President of the Russian

Federation, sent a letter to the Secretary General that Russia would take the USSR's place in the Security Council and UN organs, with support of countries from the Commonwealth of Independent States. On December 31, 1991, Russia was given a seat at the Security Council without a formal vote or decision on behalf of the General Assembly. Some 30 years later, this issue was brought forth by the ministry of foreign affairs of Ukraine on December 26th, 2022, who stated that "[t]he Russian Federation took over the seat of a permanent member of the UN Security Council bypassing the procedures defined by the UN Charter" (MFA Ukraine, 2022). While this case differs from that of Israel or Palestine, it can be seen as another example of the ongoing liberal, flexible, and permissive approach to UN membership often applied to member states.

To answer the question posed in the beginning of this section, this flexible application, versus the "narrow and erroneous" (Imseis, 2021 p 856) approach to the case of Palestine, reflects the reality of international legal subalternity found in interpretations of international law. Considering for the case of Israel, and arguably for the case of the Russian Federation, UN admission was provided in line with the idea of universality, where the conditions of Article 4 (1) of the charter were discussed for the case of Israel, yet ultimately, not as heavily enforced as in the case of Palestine. For the Russian Federation, these elements were disregarded as accession to UN membership was provided on the basis of the membership of USSR as a founding member state. This reflects the rule *by* law approach, as the rules of the charter were selectively applied, and enforced, notwithstanding the efforts of the ICJ to rule out political influences in interpretations of the UN Charter Article 4 (1). Despite the efforts on behalf of the Palestinians to utilize international law in their favor, notably the PLO's effort in making use of international law and the Oslo accords as a tactic to normalize the legal status of Palestine as a state,

ultimately, they could not escape the standards of legal subalternity they faced. International law has neither been able to sustain lasting peace in the region, shown through the failure of the UN Partition Plan and Security Council resolution 242, nor recognize fully the right of Palestinians to self-determination.

Other than the failure of international law to provide lasting peace, the inability for Palestine to receive UN recognition has political, economic and social consequences. According to Goodwin-Gill and Qafishesh (2013) within the confines of its traditional legal boundaries, territory, population, governance, capacity, and recognition, the state is viewed as the model actor on the global stage. Viewed as a model actor, the state is seen as being capable of asserting its rights as an equal and sovereign member of the international community, resisting attempts by others to encroach on or violate those rights, aiding in the resolution of disputes involving foreign territories, and having the right to access the various channels for peaceful dispute resolution. It is also seen as being capable of seeking and receiving assistance from other States or international organizations without being subject to the dictates of one another in matters of economic development, social justice, or cultural affairs and acting independently in both internal and external affairs (Goodwin-Gill & Qafishesh, 2013 p 31).

Considering these benefits, rights, and obligations, statehood also appeals to the Palestinian people, according to Goodwin-Gill and Qafishesh (2013), in ways that are not strictly legal but nevertheless heavily rely on the state as the potential and actualization of a national home, a location where one can define one's national identity, and a place one can return to. Placed in this context, full UN membership as a key step to statehood would mark a significant accomplishment that would bring worldwide recognition and, theoretically, sovereign equality with other nations. (Goodwin-Gill & Qafishesh, 2013 p 32)

Conclusion

This essay has attempted to outline the trajectory of Palestine's statehood endeavours and questions the legal subaltern realities that emerge as part of these endeavours. The paper begins with a description of statehood from an academic perspective. Recall Crawford's (2006) discussion of the declaratory theory of statehood in the first section of this essay, which he purports is the predominant approach to understanding statehood today. He argues that while recognition is not the defining element of statehood, it certainly assists in increasing capacity to engage with other states. Furthermore, as highlighted by Fabry's (2010) statement in the first section in this paper, UN membership is arguably the most inclusive way to be recognized, as he mentions that it "has certainly served as evidence of widespread recognition for particular entities as states" (p 8).

Both the declaratory and constitutive theories of statehood were important to highlight, as they mark a recognized starting point in the academic literature on state recognition. However, these approaches alone cannot fully reveal the picture of Palestine's international recognition as a state in that the case of Palestine does not fall neatly in the conceptual scenarios of either the constitutive or declaratory theories. This is where the concept of ILS adds to the conversation on conceptualizing statehood and international legal recognition. It adds to this conversation by seeking to draw attention to something that might not be directly visible when focusing solely on declaratory or constitutive theories. As examined in this essay, introducing ILS allows for a discussion on the flexible and permissive nature of international law and further brings to light the distinction between the rule *of* law and the rule *by* law. It is by adding these additional insights through the lens of ILS, this essay has argued, that a more complete picture of the

history and present of Palestine's quest for international recognition, and the role that international law has played in this quest, can be understood.

The essay continued by outlining a timeline of the role of conflict in shaping Palestine's endeavours towards recognition. The historic pattern of international agreements thus far has failed. As highlighted in the second section of this essay, while international resolutions for peace, including Security Council resolution 242, General Assembly resolution 181 (II), or the negotiation efforts by the Middle East quartet, reflect efforts to address the conflict multilaterally and through international law, these agreements have clearly been unable to prevent conflict. Clearly, there is a missing piece to these negotiations and international efforts. This becomes particularly relevant when looking at recent events in the region.

On October 7, 2023, armed Palestinian groups in Gaza fired thousands of missiles in Israel's direction. They also broke through the border fence several times, penetrating Israeli towns, murdering over 1,200 people, and kidnapping both Israeli soldiers and civilians (HRW, 2024). Following the declaration of "a state of war alert," the Israeli military started attacking homes and medical institutions in the Gaza Strip. Since then, portions of Gaza have been reduced to rubble, resulting in thousands of deaths and over a million displaced persons. Stéphane Dujarric, Spokesman for the Secretary-General reported that as of February 29th, 2024, 30,000 people in Gaza have been killed, and over 70,000 people have been injured. (UN, 2024) In the span of four months, the death toll is more than four times of that of the 8-year span second Intifada, which resulted in 6,600 deaths (Khalidi, 2020 p 213). With a declaration of war by Israel, and the clear escalation of violence and casualties, the need for sustainable peace is more vital than ever.

The UN Security Council adopted resolution 2728 on March 25th, 2024 which, under paragraph 1, calls "an immediate ceasefire for the month of Ramadan respected by all parties leading to a lasting sustainable ceasefire," (UNSC, 2024). At the time of writing this essay, two weeks following the call for the ceasefire, we have yet to observe any concrete steps towards an immediate cease fire. However, judging by the inability of resolutions intended for peace between both parties thus far, the chances of a ceasefire being implemented appears highly unlikely.

During an interview with BBC's Lewis Vaughan Joneson October 9th, 2023, Hussam Zumlot, member of the PA and the Palestinian Diplomat to the UK, was asked what he thought a viable solution would be for the war following the October 7th events. His answer was precise and direct: "International Law, that's it. The equal application of international resolutions and law" (Gilmour, 2023-time stamp 6:00-6:08). His emphasis on international law and its application, not only reflects on the frustration felt by the PA regarding the international legal subaltern realities of the Palestinian people, as he called for "equal" application of the law, but also, their adamant desire to continue to turn to international law for peace and legitimization. Nicolas de Rivière, France's ambassador to the UN, expressed on PassBlue that this War has shown the strong desire for Palestinian statehood, as she states that "This crisis is another example that the aspiration of Palestine to statehood is a fact" (Banjo et al, 2024).

Why would statehood recognition assist in the Palestinian case? As a recognized state, Palestine's diplomatic efforts would be facilitated. Khalidi (2020) expresses the benefit of diplomacy and international law for the Palestinian cause, as he calls for a new approach to Palestinian international relations. He purports that the diplomatic strategy of the PLO since the 1980s, with the US as a mediator as per the Oslo accords cannot continue, especially since the

US has failed to show interest in Palestine's endeavours for state recognition. He states that feasible Palestinian diplomatic efforts "must reject the Oslo interim formula" and instead "[a]n intensive global public relations and diplomatic campaign must be aimed at demanding international sponsorship and rejecting exclusive US control of the process." (p 253)

Section 3 of this paper unveils the disinterest many member states, including the US, have towards Palestine's recognition as a member of the UN. The records from Security Council 6636th meeting, as well as the 2011 Report of the Committee on the Admission of New Members for the case of Palestine's membership, reveals that member states were unable to agree unanimously on Palestine's application for UN membership. Ultimately, as outlined in section 4, despite the "liberal, flexible and permissive" approach of UN membership, Palestine has yet to gain full UN membership.

This is unfortunate considering engaging in diplomatic endeavours and international solidarity could be facilitated with UN membership. Erakat (2019) agrees that UN membership would come with positive outcomes, as it could allow for increased diplomatic campaigns, and enhance the appeal for humanitarian aid and intervention for Palestinians (p 221). She highlights that controversy surrounding Palestine's legal status would cease, and that it would provide the Palestinians opportunities to mobilize the international community and attempt to pressure Israel to act in accordance with rules of sovereignty and occupation outlined by international law. However, she also states that "[i]nternational law is not a command" (Erakat, 2019 p 221), as has often not been implemented by member states, with little to no consequences, insinuating that radical change might not necessarily result from a step towards UN membership.

This perspective on UN membership and international law as being unable to create radical change in the case of Palestine is made evident by the ongoing reality of international

legal subalternity. The fact that interpretations of UN Charter Article 4 (1) were “narrow, strict and erroneous” (Imseis, 2021 p 877) for Palestine’s application, as opposed to precedents of “liberal, flexible and permissive” (Imseis, 2021 p 877) approaches to other members’ admission, as well as the continued conflict despite a plethora of international resolutions calling for peace, certainly creates a pessimistic perspective on the role that international law plays in relation to the question of Palestine. One wonders if UN membership were to even be provided, if much would change, or if the rule *by* law approach would persist. However, recall that customary international law is formed through general practices that come to be accepted as law. If the state of Palestine were to receive UN membership, a new precedent would be set. Perhaps, this precedent would even challenge the international legal subaltern reality it finds itself in. On April 8th, 2024, the Security Council reported that they will be referring the case of Palestine’s UN membership to the Committee of Admission of New Members, following the referral made by the Ambassador of Malta (UN Affairs, 2024). While at the time of writing this paper, no updates have been recorded regarding this referral, this effort highlights the growing relevance of Palestine’s efforts towards international recognition.

Bibliography:

Aly, G., & Chase, J. S. (2021). *Europe against the jews: 1880-1945*. Picador.

Banjo, D. (2024, January 2). Calling a cat a cat: Palestine's aspiration to statehood is a fact, France says. *PassBlue*. https://www.passblue.com/2024/01/02/calling-a-cat-a-cat-palestines-aspiration-to-statehood-is-a-fact-france-says/. Retrieved on: March 20th, 2024.

Cabrera, H. (2024, March 18). *NDP motion on Palestinian statehood passes after major amendments*. CBC news. https://www.cbc.ca/amp/1.7147521. Retrieved on March 24th, 2024.

Clines, X. F (1988, February 5). Talk with Rabin: Roots of the Conflict. *The New York Times.* https://www.nytimes.com/1988/02/05/world/talk-with-rabin-roots-of-the-conflict.html. Retrieved on: March 20th, 2024.

Crawford, J. (2006). *The Creation of States in International Law*. Clarendon Press.

Diplomatic Relations. State of Palestine Mission to the United Nations. (2024). http://palestineun.org/about-palestine/diplomatic-relations/. Retrieved on: March 20th, 2024.

Dunlap, C. J. (n.d.). Humanitarian Challenges in Military Intervention Conference. In *Carr Center for Human Rights Policy Kennedy School of Government, Harvard University*. https://people.duke.edu/~pfeaver/dunlap.pdf. Retrieved on: April 15th, 2024.

Erakat, N. (2020). *Justice for Some: Law and the Question of Palestine* (1st ed.). Stanford University Press. https://doi.org/10.1515/9781503608832

Fabry, M. (2010). *Recognizing States: International Society and the Establishment of New States since 1776.* Oxford University Press.

Finucane, B. (2024, February 23). *Israel, the United States, and the Fourth Geneva Convention*. Just Security. https://www.justsecurity.org/92592/israel-the-united-states-and-the-fourth-geneva-convention/. Retrieved on: April 15th, 2024.

Gilmour, D. (2023 October 9). UK Palestinian diplomat blasts BBC "misrepresentation" when confronted on Hamas attack in heated on-air interview. *Mediaite.* https://www.mediaite.com/uk/uk-palestinian-diplomat-blasts-bbc-misrepresentation-of-conflict-in-heated-on-air-interview/ Retrieved on: March 20th, 2024.

Goodwin-Gill, G. S. (2013). Palestine, UN Membership and Popular Representation: International Legal Challenges and Strategic Options. In M. Qafishesh (Ed.), *Palestine Membership in the United Nations: Legal and Practical Implications* (pp. 30–44). essay, Cambridge Scholars Publishing.

Hagopian, E., & Zahlan, A. B. (1974). Palestine's Arab Population: The Demography of the Palestinians. *Journal of Palestine Studies*, 3(4), 32–73. https://doi.org/10.2307/2535449

Hawaleshka, D. (2023, December 8). *History illustrated: The first intifada against Israel*. Al Jazeera. https://www.aljazeera.com/gallery/2023/12/8/history-illustrated-the-first-intifada-against-israel. Retrieved on: April 15th, 2024.

House of Commons. (2024, March 18). *Vote no. 658*. Vote Detail - 658 - Members of Parliament - House of Commons of Canada. https://www.ourcommons.ca/members/en/votes/44/1/658. Retrieved on March 24th, 2024.

Human Rights Watch (HRW). (2024, January 11). *World Report 2024: Rights trends in Israel and Palestine*. https://www.hrw.org/world-report/2024/country-chapters/israel-and-palestine. Retrieved on: March 20th, 2024.

Human Rights Watch (HRW). (2012). *World Report 2012: Rights trends in World Report 2012: Israel/Occupied Palestinian Territories*. Human Rights Watch. https://www.hrw.org/world-report/2012/country-chapters/israel/palestine. Retrieved on: April 19th, 2024.

Human Rights Watch (HRW). (2001). World Report 2001: *Israel, The Occupied West Bank and Gaza Strip, and Palestinian Authority Territories.* Human rights Watch. https://www.refworld.org/reference/annualreport/hrw/2000/en/22226. Retrieved on: April 20th, 2024.

International Court of Justice. (1948, May 28). *Conditions of Admission of a State to Membership in the United Nations*. Advisory Opinion of 28 May 1948. ICJ Rep. 57, at 62.

Imseis, A. (2021). On Membership of the United Nations and the State of Palestine: A critical account. *Leiden Journal of International Law*, 34(4), 855–878. https://doi.org/10.1017/s0922156521000418

Imseis, A. (2023). *The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity*. Cambridge: Cambridge University Press.

Jessop, B. (2015). *The State: Past, Present, Future*. Cambridge: Polity.

Kapoor, I., & Fridell, G. (2024). *Rethinking Development Politics*. Edward Elgar Publishing.

Khalidi, R. (2020). *The Hundred Years' War on Palestine. A History of Settler Colonialism and Resistance, 1917-2017*. Metropolitan Books.

Minister of Foreign Affairs of Ukraine (MFA Ukraine). (2022, December 26) *Statement of the MFA of Ukraine on the illegitimacy of the Russian Federation's presence in the UN Security Council and in the United Nations as a whole.* Ministry of Foreign Affairs of Ukraine. [Press

Release]. https://mfa.gov.ua/en/news/zayava-mzs-ukrayini-shchodo-nelegitimnosti-perebuvannya-rosijskoyi-federaciyi-v-radi-bezpeki-oon-ta-organizaciyi-obyednanih-nacij-u-cilomu. Retrieved on: March 20th, 2024.

Montevideo Convention on the Rights and Duties of States. (1933, December 26th) https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20165/v165.pdf. Retrieved on: March 20th, 2024.

Overy, R. J. (2023). *Blood and Ruins: The last Imperial War, 1931-1945*. Penguin Books.

Quigley, J. B. (2010). *The statehood of Palestine: international law in the Middle East conflict*. Cambridge University Press.

United Nations (UN). (n.d. a). *Part I (1917-1947) - Question of Palestine*. https://www.un.org/unispal/history2/origins-and-evolution-of-the-palestine-problem/part-i-1917-1947/#Origins_and_Evolution_of_the_Palestine_Problem_1917-1947_Part_I. Retrieved on: March 20th, 2024.

United Nations. (n.d.-b). *UN Membership-Founding Member States.* United Nations. https://research.un.org/en/unmembers/founders. Retrieved on: March 20th, 2024.

United Nations (UN). (2024, February 29). *Statement Attributable to the Spokesperson for the secretary-general - on Gaza.* [Press Release] https://www.un.org/sg/en/content/sg/statement/2024-02-29/statement-attributable-the-spokesperson-for-the-secretary-general-gaza?_gl=1%2A1f9bqyh%2A_ga%2ANTI3NDEwNTYzLjE2NjgyMDE3MjQ.%2A_ga_TK9BQL5X7Z%2AMTcxMDQ2NDU0Mi40NS4xLjE3MTA0NjQ4MTcuMC4wLjA.%2A_ga_S5EKZKSB78%2AMTcx. Retrieved on: March 20th, 2024.

United Nations (UN). (1988). *Declaration of State of Palestine - Palestine National Council - question of Palestine*. United Nations. https://www.un.org/unispal/document/auto-insert-178680/. Retrieved on: March 20th, 2024.

United Nations (UN). *Provisional Rules of Procedure for the General Assembly*. (1947, April 28) UN Doc: A/71/Rev 1 https://documents.un.org/doc/undoc/gen/nl4/700/25/pdf/nl470025.pdf?token=VpfCbPv8hyLjLDX7E2&fe=true. Retrieved on: March 30th, 2024.

United Nations (UN). (1945, June 26) UN Charter, Chapter 2 Article (4), para 1. https://www.un.org/en/about-us/un-charter/full-text#:~:text=Article%204,to%20carry%20out%20these%20obligations. Retrieved on: April 15th, 2024.

UN Affairs. (2024, April 8). *Palestinian request for UN membership moves on to Specialized Committee | UN News*. United Nations. https://news.un.org/en/story/2024/04/1148366. Retrieved on: March 15th, 2024.

United Nations General Assembly (UNGA) (1952, February 1). Sixth Session. *Admission of new Members, including the right of candidate States to present proof of the conditions required under Article 4 of the Charter*. Un Doc: A/RES/506(VI)[A] https://digitallibrary.un.org/record/666216?v=pdf. Retrieved on: March 20th, 2024.

United Nations General Assembly (UNGA) (1955 b, September 19). *Part 1 Sec 1 Chapter 3 Admission of New Members.* Report of the Committee of Good Offices. https://cdn.un.org/unyearbook/yun/chapter_pdf/1955YUN/1955_P1_SEC1_CH3.pdf. Retrieved on: March 20th, 2024.

United Nations General Assembly (UNGA) (1955 a, December 8). Tenth Session. *Admission of new members to the United Nations*. UN Doc: A/Res/918X https://digitallibrary.un.org/record/666216?v=pdf. Retrieved on: March 20th, 2024.

United Nations General Assembly (UNGA). (2012, November 29). Sixty Seventh Session. *Status of Palestine at the United Nations*. UN Doc A/Res/67/19. https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F67%2F19&Language=E&DeviceType=Desktop&LangRequested=False. Retrieved on: March 20th, 2024.

United Nations General Assembly (UNGA). (1974, 22 November). Twenty Nineth Session. Observer status for the Palestine Liberation Organization. UN Doc A/Res/3237. https://digitallibrary.un.org/record/189836?v=pdf. Retrieved on: March 20th, 2024.

United Nations General Assembly (UNGA). (1947, November 29). Second Session. *Resolution Adopted on the Report of the Ad Hoc Committee on the Palestinian Question.* UN Doc: A/Res/181 (II). https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F181(II)&Language=E&DeviceType=Desktop&LangRequested=False. Retrieved on: March 20th, 2024.

United Nations, General Assembly and Security Council (UNGA & UNSC). (2011, 23 September) *Application of Palestine for admission to membership in the United Nations*. UN Doc: A/66/371-S/2011/592 https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IP%20S2011%20592.pdf. Retrieved on: March 20th, 2024.

United Nations General Assembly and Security Council (UNGA & UNSC). (1997. May 5). At the 51st UNGA meeting and 52nd UNSC session. *Israeli-Palestinian Interim Agreement on the*

West Bank and the Gaza Strip. UN Doc: A/51/889 & S/1997/357. https://peacemaker.un.org/sites/peacemaker.un.org/files/IL%20PS_950928_InterimAgreementWestBankGazaStrip%28OsloII%29.pdf. Retrieved on: March 30, 2024.

United Nations, General Assembly and Security Council (UNGA & UNSC). (1993, October 11). *Report of the Secretary General on the work of the organization, Agenda item 10*. UN Doc: A/48/486-S/26560. https://peacemaker.un.org/sites/peacemaker.un.org/files/IL%20PS_930913_DeclarationPrinciplesnterimSelf-Government%28Oslo%20Accords%29.pdf. Retrieved on: March 20th, 2024.

UN News. (2011 a, October 31). *UNESCO votes to admit Palestine as full member | UN news*. United Nations. https://news.un.org/en/story/2011/10/393562. Retrieved on: March 30th, 2024.

UN News. (2011 b, September 23). *Palestinian Authority President Outlines Application for United Nations Membership as Heads of State, Government Address General Assembly* | Meetings Coverage and press releases. United Nations. https://press.un.org/en/2011/ga11152.doc.htm Retrieved on: April 19th, 2024.

United Nations Security Council (UNSC). (2024, March 25). *Resolution 2728*. UN Doc: S/RES/2728. https://documents.un.org/doc/undoc/gen/n24/080/81/pdf/n2408081.pdf?token=2kLgWX3oA7pR18T4f2&fe=true. Retrieved on: April 8th, 2024.

United Nations Security Council (UNSC). (2011 a, November 11). *Report of the Committee on the Admission of New Members concerning the application of Palestine for admission to membership in the United Nations.* UN Doc: S/2011/705.

https://undocs.org/Home/Mobile?FinalSymbol=S%2F2011%2F705&Language=E&DeviceType=Desktop&LangRequested=False. Retrieved on: March 20th, 2024.

United Nations Security Council (UNSC). (2011 b, October 24). 66th Year. *The situation in the Middle East, including the Palestinian question.* UN DOC S/PV.6636.

United Nations Security Council (UNSC). (1987, December 22). 42nd Year. *Security Council resolution 605 (1987) [on protection of Palestinian civilians under Israel occupation*]. UN Doc: S/RES/605. https://digitallibrary.un.org/record/151623?v=pdf. Retrieved on: March 20th, 2024.

United Nations Security Council (UNSC). (1968, May 21). *Resolution 252*. UN Doc: S/RES/252/1968. https://digitallibrary.un.org/record/90754?v=pdf. Retrieved on: March 20th, 2024.

UNSCO. (n.d.). *AHLC & Socioeconomic Reports*. https://unsco.unmissions.org/ahlc-socioeconomic-reports. Retrieved on: April 15th, 2024.

UNSCO. (2019, January 22). *About*. https://unsco.unmissions.org/about. Retrieved on: April 15th, 2024.

United Nations Office for the Coordination of Human Affairs (OCHA). (2011, February) *Occupied Palestinian territory. West Bank: Area C Map.* [Map outlining the division of Palestine under the Oslo Accords.] https://www.ochaopt.org/sites/default/files/ocha_opt_area_c_map_2011_02_22.pdf. Retrieved on: March 20th, 2024.

United Nations (UN). (1969, 23 May). *Vienna Convention on the Law of Treaties* (VCLT). Vol. 1155,1-18232 https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf. Retrieved on: March 30, 2024.