



# THE MIDDLE EAST

## Moot Points over Palestinian Statehood?

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**Ever since last summer, much ink has been spilt, and many computer bytes have been used, as experts and commentators alike have discussed whether Palestinians should go to the United Nations in order to claim their statehood or whether they would stand down at the last minute due to realpolitik considerations or the huge pressures exercised against them.**

After all, whether one measures history as starting from 1947 or 1967, Palestinians have unremittingly striven for their right to self-determination and have gone so far as to declare unilaterally their state in 1988 as well as adhere to a number of accords whose purpose has to some degree been the establishment of this putative reality - a sovereign Palestine.

Besides, according to key institutions such as the World Bank, IMF, OECD, UN and the Quartet, Palestinians are now ready for statehood and have prepared the exacting standards set for them by the international community. No less than President Barack Obama predicted both in 2009 and then again in 2010 that an independent Palestinian state would be a reality in the region come 2011 - in other words at the end of this year.

But given that the problems facing Palestinian statehood today are far more political than legal (although there are basic juridical ramifications too) and also given that much has been said about the options available to the Palestinian leadership for this démarche, I would merely like to suggest a few succinct moot points that impact both the procedure and psychology of what is brewing in the corridors of the UN in New York. Any extensive analysis of statehood is better done *ex post facto* once we learn what truly happens at the UN later this week.

Although much has been said about the looming US veto at the Security Council, it is also quite possible for this body not to recommend statehood without use of the veto so long as 9 out of its 15 permanent and non-permanent members were to vote against the application. Although we know more or less who is for or against the bid, there are some UNSC members (such as Portugal or even the UK) that have not yet fully revealed their hands.

It is also important to stress that an application at the Security Council could take a long period for consideration and might be stalled long enough for alternative behind-the-scenes deals to help reach different 'compromises'.

The General Assembly might well vote for statehood but the International Court of Justice affirmed in its Advisory Opinion of 3 March 1950 that this plenary body does not have the competence to admit a state as UN member without the recommendation of the Security Council. Accordingly, 'Palestine' could become a non-member state and join the ranks of the Holy See, Taiwan or Kosovo - albeit in a somewhat different format.

I believe the Palestinian political leadership might still opt out of an application bid if only the Quartet were able to provide a last-minute blueprint that is credible enough to warrant their due consideration. Any such document would encourage direct negotiations, but also involve clear positions on the illegality of settlements, the course of the separation wall as designed by its architect-retired army colonel Dan Tirza, and the demarcation of the borders of a future Palestinian state within the parameters of a two-state solution. However, the contentious and slanted suggestions made by Dennis Ross or Tony Blair to date are insufficient, particularly since their viewpoints are considered strictly pro-Israeli by much of the Arab World anyway.

Procedural aspects aside, let me also make few observations about the psychology of this démarche.

It would be quite risky for the EU to abstain in the vote since that could again steer the Israeli-Palestinian conflict toward a wider Arab-Israeli one as it would also run counter to the whole spirit of the MENA popular uprisings.

The USA is manifesting once more its biased stance as a fair arbiter let alone the alarming duality of its statements about supporting the democratic trends within the 'Arab Spring'. Threats made by Republicans such as Rick Perry, supported by the likes of MK Danny Danon and others, for Congress to block \$50 million to the Palestinian Authority could also become double-edged swords if more chaos becomes the consequence on the ground.

However, far more substantive are the normative or legal questions that need clarification in view of previous UNGA Resolutions such as 181, 194, 242 and 338: (i) How would the right of return for Palestinian refugees be affected by the bid? (ii) Would the succession of the PLO by 'Palestine' be deemed constitutional according to the Palestinian Charter? (iii) Could the Oslo Accords become defunct by commission or omission, and would the Palestinian Authority be dismantled as a consequence? (iv) If so, what are the legal and practical consequences of any such move? (v) What will be the implications in legal terms over access to international bodies?

The latest attempts made by some Israelis to transfer Palestinians (as raised recently in Yadiot Aharonot) into Jordan as a substitute homeland are as disingenuous as they are perilous. At the very least, there is a peace treaty between Jordan and Israel that is valid under the *jus cogens* positivist principles of International law.

Five hundred Israeli academics and intellectuals recently signed a petition supporting the Palestinian statehood bid: so will the 66th Session of the UN General Assembly decide whether 'Palestine' becomes fact or stays fiction - and in fact what fact or what fiction? Perhaps equally interestingly, will Palestinians trust the promises of the international community and will they simply be coerced into turning fact into fiction yet again?

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