

Palestinian Statehood, the Two-State Solution and Peace

Position Paper 1 August 2011

**The General Delegation
of Palestine to
Australia, New Zealand
and the Pacific**

Introduction	1
Statehood and the Peace Process	2
Self-Determination and Sovereignty	3
UN Resolutions and Statehood	4
Statehood and International Law	5
Conclusion and Recommendations	6

Introduction

Palestine is committed to two-state solution through the creation of a viable, independent and sovereign Palestinian state living side-by-side with Israel, and each within recognised and secure borders.

This is the same long-standing commitment of the international community to a just and peaceful solution to the conflict between Israel and Palestine.

Sixty-four years after the United Nations (UN) Partition Plan contained in UN General Assembly (GA) resolution 181 which called for the creation of 2 states(1), 44 years of Israeli occupation, numerous United Nations Security Council (SC) resolutions re-affirming the creation of a Palestinian state, and 20 years of good faith negotiations by Palestine, Israel exists as a secure nation state and Palestine remains under Israeli military occupation.

To achieve the two-state solution, end Israeli occupation and create the just and durable peace demanded by SC resolutions 242, 338, 1397 and 1515(2), recognition of Palestine as a state is sought through collective international recognition in the United Nations and bilateral recognition of Palestine as a state in which individual nation states recognise Palestine as a state.

Palestinian statehood supports the two-state solution through creating the legal and political foundation fundamental to overcoming the obstacles to just and durable peace between Palestine and Israel.

Palestinian statehood addresses the foundational problem of inequity within the current peace process. Palestinian statehood creates the legitimacy needed to re-establish clear terms of reference for negotiations between Israel and Palestine, and the international framework needed for the ending of the occupation and the equitable resolution of Final Status Issues.

Australia's major political parties have long-supported the two-state solution as the equitable and durable resolution to the question of the right of self-determination of Palestinian people and the right of Israel to exist securely and peacefully within recognised borders.

Australian recognition of Palestinian statehood through the United Nations and bilaterally, will gain the peace and security that is sought by Australia, Palestine and Israel, and the international community.

STATEHOOD AND THE PEACE PROCESS

The international frameworks intended to support the peace process, oversee the creation of a viable, independent Palestinian state and resolve the Final Status Issues of Settlements, Water, Borders, Security, Jerusalem and Refugees are; UN resolutions, the Declaration of Principles (DOP) or the Oslo Accords(3) the Road Map(4) and relevant international and humanitarian law.

The Oslo Accords and later agreements such as the Road Map have all been intended to be bound by, and fulfilled within specific time frames. The Oslo Accords established a Palestinian Interim Self-Government Authority or the Palestinian Authority PA and the PLC the elected Council for the Palestinian people in the Gaza Strip and West Bank – including East Jerusalem.

These bodies were to exist for a transitional period not exceeding five years, *because the Accords dictated the necessity for a permanent settlement based on SC 242 and 338.* Final Status Issues including Settlements, Borders, Security, Jerusalem, Water and Refugees, were to be settled no later than the 3rd year of the interim period. The UN GA expressed full support and stressed the need for the UN and its member states to play an active role in the peace process.

Despite systematic violation by Israel of all peace process frameworks, Palestine has remained committed to the peace process, continuing to participate in negotiations in good faith as the **first track to peace** and to offer negotiated positions on the Final Status Issues.

Two examples of Israel's systematic violation of the peace process are Settlements and Jerusalem., two of the Final Status Issues necessarily subject to negotiation.

Settlement expansion is a flagrant breach of all international frameworks including the Oslo Accords and the Road Map, UN resolutions and international law, and is

the largest, single threat to the two-state solution and a stable and durable peace because it destroys the possibility of a viable, sustainable Palestinian state.

When Israeli settlements, Jordan valley control, settlement infrastructure, and land cut off by the Wall, is combined together, a Palestinian state is left with 54.5% or little over half of the 22% of the land recognized by Israel and the international community in the Two-State solution, and declared as a Palestinian state in 1988. Israel continues to unilaterally expand settlements, seeking to claim these areas as Israel and Palestine is powerless to stop Israel's gouging.

In the case of Jerusalem, Israel is in specific contravention of a) SC resolutions 252 and 476 which declare Israel's actions with regard to Jerusalem to be a serious obstruction to peace, b) the Fourth Geneva Convention, the law of occupation, c) the Oslo Accords and d) a range of relevant international and humanitarian law.

Palestine has offered negotiable positions on Jerusalem, each of which recognise the unique status of the city and accord with SC resolutions and international law. However Israel has passed the Basic Law of 1980 determining Israel to be the eternal and undivided capital of Israel, confiscated land for the expansion of Jerusalem and at the expense of Palestinian inhabitants, upheld the confiscation of Palestinian homes in East Jerusalem and deported Palestinians from East Jerusalem in an effort to decrease the numbers of Palestinians living in Jerusalem.

Negotiations which are foundational to the peace process and the resolution of Final Status Issues, require robust international support and an established international framework, in order to create equity and enforceability between such unequal partners.

The objective of the peace process is the two-state solution in which an independent, viable Palestinian state has always been integral, and an inalienable right

Australia can support the Two-State Solution through

*Directly requesting updates on negotiating positions and the progress of negotiations
Providing Australian expertise to Palestinian negotiating teams*

SELF-DETERMINATION AND SOVEREIGNTY

Recognition of Palestinian people as a unique national entity and possessing a right to a their own state, is not new. The claims of Palestinian people are long-standing and are internationally recognized.

On 15 November 1988, Palestinian people represented by the PLO, declared a state on 22% of historic Palestine, their patrimonial land. This 22% is the land occupied by Israel in 1967 and consists of the West Bank, East Jerusalem and the Gaza Strip, known as the Occupied Palestinian Territories or oPt. Importantly, these three areas are a single polity. This declaration of statehood occurred in the *Proclamation of the Independence of the State of Palestine*, and recognized UN resolutions and international law(5).

On 22 November 1988, the PLO recognized Israel and agreed to a Palestinian state on 22% of the land of historic Palestine, the land occupied by Israel in 1967 and consisting of the West Bank, East Jerusalem and the Gaza Strip.

On 10 September 1993 as part of the Oslo Accords, Israel and the PLO mutually recognised each other through the exchange of letters of mutual recognition. The PLO recognised Israel's right to exist and Israel recognised the PLO as the representative of the Palestinian people.

The status of the land on which the Palestinian state is declared and for which recognition is being sought, invokes international law at its most foundational: Territory cannot be acquired by force, even in self-defence(6). The oPt is not Israel and Israel does not have, nor has it acquired sovereignty over the oPt.

The oPt is occupied by Israel as recognized in UN SC resolutions 242 and 338, the overwhelming weight of international legal opinion and its application and the International Court of Justice *Israeli Wall*

Advisory Opinion (7).

The oPt is not as claimed by Israel, a disputed territory with an indeterminate status under international law and to which only humanitarian provisions of the Fourth Geneva Conventions apply (8), with Palestine's sovereign claim able to be reasonably and believably denied.

Palestine's claim to sovereignty over the oPt is uppermost as it is the most legitimate claim established in conjunction with the absolute legal reality that sovereignty does not belong to Israel, and the only other possible claim being a Jordanian claim that was fully relinquished in 1988 in favour of Palestine and was combined with the severing of all Jordanian legal and administrative claims to the West Bank including East Jerusalem(9).

Within this area, the Palestinian Authority has built the infrastructure and institutions of state to enable self-governance, stability and sovereignty. The building of effective organisations and functions of state which is recognized by international bodies such as the EU, IMF, World Bank and the UN, is the **second track** towards achieving the two-state solution. The reports of the these international bodies recognise that the only remaining major obstacle to stability and security for Palestine, is the Israeli occupation.

The land which Palestinian people seek to be fully recognized as a state and admitted as a state to the General Assembly, does not deprive Israel of any of its sovereign rights, sovereign territory or sovereign resources.

Palestinian statehood is the recognition of self-determination, statehood and sovereignty on the land to which Palestinians have the most legitimate claim, as recognized by the UN and under international law.

Today, Palestinian institutions compare favourably to those in established states.

Catherine Ashton
EU High Representative
Ad Hoc Liaison Committee
13 April 2011

... in the 6 areas where the UN is most engaged, governmental functions are now sufficient for the functioning of a state .

Report of the EU
Ad Hoc Liaison Committee
13 April 2011

Australia can support the Two-State Solution through

Expanding Australia's 5 Year Development with Palestine, which addresses 2 criteria of statehood; effective government and the capacity to enter into relations with other states.

UN RESOLUTIONS AND STATEHOOD

Both the UN Security Council and the UN General Assembly have passed resolutions regarding Palestine. According to Article 25 of the Charter of the United Nations, members of the UN are required to implement SC resolutions. GA resolutions are a demonstration of the collective position and will of the international community .

UN resolutions and particularly SC resolutions 242 and 338, in conjunction with international law and international agreements, are the legitimate legal basis of Palestine's claim to its own state on the oPt and the basis of Palestine seeking universal bilateral recognition of statehood and collective international recognition of statehood through UN resolutions.

Admission to the General Assembly is dependent upon a recommendation of the Security Council, according to Article 4(2) of the Charter of the United Nations. Palestine as a Permanent Observer to the UN and in conjunction with Arab League states, will submit a resolution to the SC, that it

recommend membership for Palestine as a state, to the GA.

However if the full member status admission to the GA does not succeed in September 2011, Palestine is not precluded from seeking GA membership again, and neither is it prevented from seeking universal bilateral recognition of statehood.

States are created through declaration and recognition and currently over 122 nation states recognise Palestine as a state.

Recognition of statehood and possible full admission to the GA as a member state, will strengthen Palestine's 1988 declaration of statehood and sovereign claim over the oPt. Each and all of these actions create the political impetus and the legal foundation to fully resolve Palestine's status, and see it fully recognized as a state.

Universal bilateral recognition in combination with collective international recognition will create the strongest foundation for productive and equitable negotiations with Israel. Palestine will be in a position to request to become a state signatory to international conventions and treaties that will strengthen Palestine's standing in a range of relevant arenas. For example, in negotiating the Final Status Issue of Water, Palestine may invoke the legal frameworks of the 1997 *UN Convention on the Law of the Non-Navigational Uses of International Water Courses* and the *Helsinki Rules on the Uses of the Waters of International Rivers of 1966*.

Palestinian Statehood has been a long-held goal of the international community , integral to the comprehensive peace envisioned by the Security Council and the international community. The goal of Palestinian statehood has been expressed repeatedly and most clearly in Security Council resolution 1515 of 19 November 2003 which re-affirmed two States, Israel



The government of Israel on 17 August, announced approval for the building of 300 new homes in Ariel Settlement in the north of the West Bank, and 900 homes in occupied East Jerusalem. This brings to 2,700, the total number of new settlement homes approved in the past 2 weeks of 4 - 17 August. Israel has and continues to systematically and intentionally violate all previous agreements on the freezing of settlement building and all relevant international law which defines the responsibility of the occupying power.

Australia can support the Two-State Solution through

Fully observing its obligations under the Charter of the United Nations requiring implementation of Security Council resolutions by member states.

STATEHOOD AND INTERNATIONAL LAW

Declaration and the recognition of statehood and the according of the rights, privileges, responsibilities and legitimacies of a state, occur according to agreed criteria **and** their practical application.

Interpretation of the five basic criteria; a defined territory, a permanent population, effective government, the capacity to enter into relations with other states, and independence, is according to political will and practical application. Supplementary criteria can also be applied in order to determine if the five basic criteria are reasonably achieved.

It is the interpretation of the criteria that produces differing perspectives on whether Palestine can be recognised immediately as a state or whether additional actions are required before statehood can be recognised.

Importantly, occupation by Israel does not prevent bilateral recognition of Palestine as a state and may not prevent collective international recognition of Palestine as a state.

Where political will exists to recognise statehood, the criteria can be interpreted positively. One example of this positive interpretation is the declaration and recognition of Israel on 14 May 1948 and admission of Israel into the General Assembly on 11 May 1948.

Israel did not possess delimited or defined borders and the defined population of the area was subject to real, enormous and almost daily change. However, Israel declared statehood and was recognized bilaterally as a state because the criteria in combination with the political will of the international community upheld Israel's declaration of statehood. Israel was admitted to the General Assembly in 1949.

To this day Israel does not delimit or define

its borders, yet it would be absurd to suggest Israel is not a state.

Increasing bilateral recognition of Palestine as a state creates real international impetus to end the Israeli occupation of Palestine. Recognised as a state and entitled to independence and sovereignty, Palestine could be determined by the international community to be a state under occupation. Occupation is intended to be a temporary condition and a condition to which the Fourth Geneva Convention in its entirety, necessarily applies and with enforceability.

Formal international recognition of Israel's occupation of Palestine, would open a range of legitimate and established options to stop Israel's theft of Palestinian land and resources. Israel's theft of Palestinian land and resources is in systematic breach of international law, and is destroying Palestine's viability.

Equally, a practical application similar to the ending of the occupation of Namibia may be decided. In this case, Namibia was not recognized immediately as a state, but as an entity requiring international action to bring about its independence and statehood. With this decision, the international community specifically created the bodies required for Namibian independence and statehood.

Recognition of Palestine as a state is the **third track** towards achieving the two-state solution.

Palestine as a state will have a legal status equal to Israel, and will be able to make its own requests to the international community for support and for enforceability of international frameworks, as it negotiates the long-standing issues that will guarantee durable peace for both Palestine and Israel.

The question is asked:

If Palestinian statehood is recognised, will the peace be gained?

The answer is:

Yes.

The equalizing of the relationship between Palestine and Israel through statehood, will support the Two-State solution at its most foundational level by creating a more equal relationship between negotiating partners and a clear international framework for negotiations. Neither of these 2 necessary elements have existed together.

Australia can support the Two-State Solution through

Calling on Israel to conform to all relevant international law and end the impunity that is destroying trust in negotiations

CONCLUSION AND RECOMMENDATIONS

Conclusion

Palestinian statehood supports the two-state solution and will create security and stability for both Palestine and Israel. This security and stability is sought by all; Australia, the international community and most of all, by Israel and Palestine.

Palestinian statehood will create the equitable, legitimate and intended international foundation and framework that is required for resolving the conflict between Palestine and Israel and creating the just and durable peace required by United Nations Security Resolutions. Palestinian statehood supports negotiations between Israel and Palestine, the **first track** in achieving the two-state solution, by providing the necessary foundation and clear framework for negotiations.

The necessary foundation and framework for successful negotiations is: an equitable relationship between Palestine and Israel, an international framework as intended in all previous agreements and enforceability, in the face of Israel's systematic and intentional violation of all previous agreements, UN resolutions and international and humanitarian law.

Building effective and transparent government institutions, the Palestinian Authority is recognised by all major international bodies as satisfying the **second track** for achieving the two-state solution: effective self-government.

Recognition of Palestinian statehood by Australia, fully supports the two-state solution and is the **third track** in achieving the two-state solution. Palestinian statehood properly and effectively recognizes the long-standing claims of Palestinian people to self-determination through the creation of a viable, independent and sovereign Palestinian state existing side-by-side with Israel and each within secure and recognized borders.

Recommendations

1. Australia support the forthcoming resolution to the UNSC for recommendation for admission to the UN General Assembly as a state
2. Australia support forthcoming UN resolutions on Palestine that address and strengthen the status of Palestine
3. Australia Support SC and GA resolutions that will create specific frameworks for the implementation of the Two-State Solution with the creation of a viable, independent, sovereign Palestinian state existing side-by-side with Israel and each within secure and recognized borders
4. Australia request full and proper explanations for actions that prejudice the resolution of Final Status Issues, and that violate SC resolutions and international law e.g. alterations to the status of Jerusalem as per SC resolutions 252 and 476 and the Fourth Geneva Convention
5. Australia support the application of international legal frameworks, to ensure the equitable control and sharing of natural resources such as water, until Palestine and Israel resolve these issues through bilateral negotiations conducted within international frameworks
6. Australia open discussions with the Palestinian Authority to bilaterally recognise Palestine as a State

References

- (1) UN General Assembly Resolution 181 of 29 November 1947. All GA resolutions on Palestine and Israel can be found at: <http://domino.un.org/unispal.nsf/vGARes?OpenView>
- (2) All SC resolutions on Palestine and Israel can be found at: <http://domino.un.org/unispal.nsf/vCouncilRes?OpenView>
- (3) Oslo Accord: Declaration of Principles on Interim Self-Government Arrangements, 10 September & 13 September 1993. Full text: <http://www.nad-plo.org/etemplate.php?id=62>
- (4) Road Map: A Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestina Conflict, 7 May 2003. Full text: <http://domino.un.org/unispal.nsf/f3059c4183c2cc2b85256d33006f5b4b/6129b9c832fe59ab85256d43004d87fa?OpenDocument>
- (5) *The Palestinian Declaration of Independence*, also known as the Algiers Declaration. Full text: <http://www.nad-plo.org/userfiles/file/Document/Declaration%20of%20Independence.pdf>
- (6) Article 2, p 2, *Charter of the United Nations. Declaration On Principles Of International Law Concerning Friendly Relations And Co-Operation Among States In Accordance With The Charter Of The United Nations. Full Text:* <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement>
- (7) ICJ Israeli Wall Advisory Opinion 2003, n3, para 95. Full record of the ICJ Judgement: <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&code=mwp&case=131&k=5a>
- (8) Beit Sourik Village Council vs the Government of Israel and the Commander of the IDF Forces in the West Bank, 13, 14.
- (9) Declaration by King Hussein of Jordan (1988)